

# **EXHIBIT G**

## **Franchise Agreement**

**Exhibit G****FRANCHISE AGREEMENT**

FRANCHISE AGREEMENT (the "**Agreement**"), dated as of September 12, 2008, by and among The New York Racing Association, Inc. ("**New NYRA**"), The State of New York (the "**State**") and The New York State Franchise Oversight Board (the "**FOB**").

**RECITALS**

- A. Unless otherwise defined herein, capitalized terms used but not otherwise defined herein shall have the meanings set forth in Article I below.
- B. New NYRA is the not-for profit racing corporation incorporated pursuant to Section 402 of the Not-For-Profit Corporation Law of the State of New York, as authorized by Chapter 18 of the Laws of 2008.
- C. Pursuant to (1) the New York State Racing, Pari-Mutuel Wagering and Breeding Law, as amended (the "**Racing Law**"), and (2) that certain Stipulation Relating to, Among Other Things, the Operation of the Racetracks, dated December 31, 2007, as amended, from 1955 up to and including the date hereof, New NYRA's predecessor in interest, The New York Racing Association Inc. ("**Old NYRA**"), has operated the racing facilities known as Aqueduct Racetrack ("**Aqueduct**"), Belmont Park ("**Belmont**") and Saratoga Race Course ("**Saratoga**" and collectively with Aqueduct and Belmont, the "**Racetracks**") and conducted thoroughbred racing and pari-mutuel and simulcast wagering thereon, together with various activities related thereto, including, without limitation, live wagering and retail, food, beverage, trade expositions, and entertainment facilities.
- D. On November 2, 2006 (the "**Petition Date**"), Old NYRA filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, as amended (the "**Bankruptcy Code**"), with the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"), Case No. 06-12618 (JMP) (the "**Chapter 11 Case**").
- E. On February 13, 2008, the New York State Senate (the "**Senate**") and the New York State Assembly (the "**Assembly**") passed legislation, S. 6950 and A. 9998, respectively, providing for, among other things, the granting of the franchise to New NYRA to continue thoroughbred racing operations and pari-mutuel and simulcast wagering at the Racetracks for a period of not more than twenty-five (25) years, (the "**Legislation**"). On February 19, 2008, the then Governor enacted the Legislation into law as Chapter 18 of the Laws of 2008.
- F. On April 28, 2008, (1) the Bankruptcy Court conducted a hearing (the "**Confirmation Hearing**") to consider the Modified Third Amended Plan of Debtor Pursuant to Chapter 11 of the United States Bankruptcy Code, dated April 28, 2008 (the

**“Modified Plan”**), in accordance with section 1129 of the Bankruptcy Code and (2) in connection therewith, Old NYRA presented testimony and other evidence regarding, among other things, (a) the compromise and settlement between Old NYRA and the State, including, without limitation, the granting of the Franchise to New NYRA, the levels of the Support Fee and the CAPEX Amount, each as set forth in the Legislation, that certain State Settlement Agreement, dated as of the date hereof, by and among Old NYRA, New NYRA, the State, the Oversight Board and the New York State Division of the Lottery (the **“Settlement Agreement”**) and herein, the waiver of certain claims by the State and the payment of other monies to Old NYRA by the State and (b) compliance with the provisions of section 1129 of the Bankruptcy Code, including, without limitation, the feasibility of the Plan and the viability of New NYRA’s ongoing operations. By order, dated April 28, 2008 (the **“Approval Order”**), and based upon the evidence presented at the Confirmation Hearing, the Bankruptcy Court (1) confirmed the Modified Plan and (2) authorized the consummation of the transactions contemplated by the Modified Plan, including, without limitation, the execution and delivery of (i) this Agreement and (ii) the Settlement Agreement.

G. Chapter 383 of the Laws of 2001 authorized video lottery terminal gaming (**“VLT Gaming”**) to be conducted at Aqueduct.

H. On June 24, 2008, the Senate and the Assembly passed legislation, S. 8709 and A. 11502, respectively, amending the Legislation and the Racing Law to correct certain technical errors and certain provisions of the Legislation, including, without limitation, the distribution mechanism associated with the VLT Revenues, as defined below (the **“Chapter Amendment”**). On June 30, 2008, the Governor enacted the Chapter Amendment into law.

I. Contemporaneously herewith, (a) the Plan became effective, (b) Old NYRA irrevocably relinquished and conveyed all of Old NYRA’s right, title and interest in, to and under the (i) Racetrack Properties, all improvements thereon and all physical assets appurtenant thereto, including, without limitation, the land underlying the Racetracks, each as described in the Deeds, (ii) works of art, including, without limitation, those works of art listed on Exhibit “P” to the Settlement Agreement, (iii) all rights to intellectual property, including, without limitation, trademarks, tradenames, copyrights and simulcasting rights (collectively, the **“Intellectual Property”**), and (iv) leasehold improvements and interests, now existing or hereafter created with respect to the foregoing ((i) through (iv) collectively, the **“Transferred Property”**) to the People of the State of New York in consideration for and in reliance upon the following: (1) the payment to Old NYRA of One Hundred Five Million Dollars (\$105,000,000.00) for services and expenses required relating to payments for capital works or purposes, including, without limitation, payments for the purposes of acquisition of clear title to the Racetrack Properties and related real property, (2) the waiver of (i) the State Obligations, (ii) the repayment of any and all obligations arising from or relating to the DIP Orders and the DIP Facility, other than the Supplemental DIP Loan, and (iii) the State Claims (other than the Remaining Tax Claim and the DEC Claim, as defined in the Settlement Agreement), to the extent not otherwise withdrawn, (3) the making of (i) payments to

New NYRA during the Term necessary to support racing operations and the satisfaction of New NYRA's operating expenses, including, without limitation, the payment of New NYRA's pension plan obligations, and (ii) capital expenditure advances by the State or VLT Operator, as the case may be, to New NYRA over the Term of the Franchise, each as set forth in the Racing Law and the State of New York Tax Law, as modified by the Legislation and the Chapter Amendment, and (4) the FOB, as agent for the State, entering into the Leases providing for the lease and/or license of Aqueduct, the lease and/or license of Belmont and the lease of Saratoga, subject to the rights of the State and the FOB pursuant thereto, to New NYRA for the Term at the rate of One Dollar (\$1.00) per year, and (c) (1) Old NYRA conveyed all of its right, title and interest in and to all Intellectual Property, now existing or hereafter created and relating to the operation of the Racetracks, and all rights or interests in such assets to the People of the State of New York and (2) the FOB, as agent for the State, entered into a License Agreement providing for the grant by the FOB to New NYRA of an exclusive license to use such Intellectual Property during the Term in connection with the operation of the Racetracks and the conduct of pari-mutuel and simulcast wagering, as more specifically set forth in the License Agreement, and expressly authorizing New NYRA's use, management and operation thereof, subject to the rights of the FOB pursuant to the Legislation, at the rate of One Dollar (\$1.00) per year.

NOW, THEREFORE, IT IS HEREBY AGREED, by and among the undersigned, as follows:

## ARTICLE I DEFINITIONS

Section 1.1 Recitals. The recitals set forth above are incorporated by reference and are explicitly made a part of this Agreement.

Section 1.2 Definitions. The following definitions shall apply to and constitute part of this Agreement and all schedules, exhibits and annexes hereto:

***“Adjusted Net Income”*** shall mean the amount of New NYRA's audited net income as of December 31st of any calendar year during the Term, as defined below, plus (a) the amount of depreciation and amortization recognized for such calendar year, as set forth in New NYRA's statement of cash flows, minus (b) (i) the amount of monies received by New NYRA for capital expenditures in accordance with the Legislation, the Chapter Amendment and Section 2.9 hereof, as the case may be, and (ii) the amount of principal payments made by New NYRA for the repayment of indebtedness in the ordinary course of business, including, without limitation, payments made with respect to the Allowed IRS Claim pursuant to the Plan, all calculated in accordance with GAAP.

***“Ancillary Property”*** shall mean the parcels of property described on Exhibit “A” hereto.

**“Aqueduct Facilities Ground Lease”** shall mean the agreement to be executed by New NYRA and the FOB, as agent for the State, relating to the lease of certain portions of the Racetrack Property located at Aqueduct, all improvements thereon and all physical assets appurtenant thereto, a copy of which is annexed hereto as Exhibit “B”, as the same may be amended from time to time in accordance with its terms.

**“Aqueduct Land Ground Lease”** shall mean the agreement to be executed by New NYRA and the FOB, as agent for the State, relating to the lease of certain portions of the Racetrack Property located at Aqueduct, a copy of which is annexed hereto as Exhibit “C”, as the same may be amended from time to time in accordance with its terms.

**“Aqueduct Sublease”** shall mean the agreement to be executed by New NYRA and the VLT Operator, relating to, among other things, the lease of certain portions of the Racetrack Property located at Aqueduct, including certain facilities located in the clubhouse and grandstand at Aqueduct, a copy of which is annexed hereto as Exhibit “D”, as the same may be amended from time to time in accordance with its terms.

**“Assembly”** shall mean The Assembly of the State of New York.

**“Ballfield Properties”** shall mean (a) Lots 62, 118, 119, 127, 133, 135, 136 and 138 of Block 11535, (b) Lots 73, 110 and 113 of Block 11536, (c) Lots 5, 9, 10, 12, 14 and 110 of Block 11551 and (d) Lot 204 of Block 11652 of the Tax Map of the County of Queens in the State of New York.

**“Belmont Ground Lease”** shall mean the agreement to be executed by New NYRA and the FOB, as agent for the State, relating to the lease and/or license of Racetrack Property, all improvements thereon and all physical assets appurtenant thereto located at Belmont, a copy of which is annexed hereto as Exhibit “E”, as the same may be amended from time to time in accordance with its terms.

**“Business Day”** shall mean any day of the week other than a Saturday, Sunday or other day on which banks in the State of New York are required or permitted to close.

**“Chapter Amendment”** shall mean the amendment to the Legislation which shall correct certain technical errors and clarify certain provisions of the Legislation, including, without limitation, the distribution mechanism associated with the VLT Revenues.

**“Deeds”** shall mean, collectively, the deeds provided by Old NYRA to the People of the State of New York pursuant to which Old NYRA conveyed all of its right, title and interest in, to and under the Racetrack Properties.

**“DIP Agreements”** shall mean, collectively, that certain (a) Debtor-in-Possession Credit Agreement, dated as of November 3, 2006, between Old NYRA and the State, (b) Amended and Restated Debtor-in-Possession Loan and Security Agreement, dated as of March 16, 2007, between Old NYRA and the State and (c) Amendment No. 1 to Amended and Restated Debtor-in-Possession Loan and Security Agreement, dated as of March 28, 2008, between Old NYRA and the State.

**“DIP Facility”** shall mean the financing facility entered into by Old NYRA and the State in accordance with the terms and provisions of the DIP Orders and DIP Agreements.

**“DIP Orders”** shall mean, collectively, that certain (a) Final Order Authorizing, Nunc Pro Tunc, Debtor in Possession to Enter into Post-Petition Credit Agreement and Obtain Post-Petition Financing Pursuant to Sections 363 and 364 of the Bankruptcy Code and Granting Liens, Security Interests and Superpriority Claims, dated February 22, 2007, and (b) Order Authorizing Debtor in Possession Pursuant to Sections 363 and 364 of the Bankruptcy Code to Obtain Supplemental Postpetition Financing From the State of New York and Granting Liens, Security Interests, Superpriority Claims and Related Relief, dated March 16, 2007.

**“Effective Date”** shall mean the first (1st) Business Day after the date on which all conditions to effectiveness set forth in Section 6.2 hereof shall have been satisfied or waived in writing by each of the Parties.

**“Franchise”** shall mean the authority to conduct racing and pari-mutuel wagering thereon with respect to thoroughbred racing at the Racetracks, as provided for in Chapter 18 of the Laws of 2008.

**“GAAP”** shall mean generally accepted accounting principles in the United States in effect from time to time.

**“Ground Leases”** shall mean the Aqueduct Land Ground Lease, the Aqueduct Facilities Ground Lease, the Belmont Ground Lease and the Saratoga Ground Lease.

**“Leases”** shall mean, collectively, the Aqueduct Land Ground Lease, the Aqueduct Facilities Ground Lease, the Belmont Ground Lease, the Saratoga Ground Lease and the Aqueduct Sublease.

**“Legislature”** shall mean, jointly, the Assembly and the Senate.

**“NYRA Entities”** shall mean, collectively, Old NYRA and New NYRA.

**“Operating Cash”** shall mean (a) New NYRA’s cash, as available on December 31st of any calendar year during the Term, used exclusively for operations and expressly excluding (1) all restricted cash accounts, (2) all segregated accounts as per

audited financial statements and (3) all cash on hand necessary to fund on-track pari-mutuel operations through the vault, including, without limitation, all cash maintained in New NYRA's vault in connection therewith minus (b) forty-five (45) days of New NYRA's then current year's budgeted expenses, as calculated pursuant to GAAP, which amount shall be calculated by dividing New NYRA's then current year's budgeted annual expenses by the number of days in such calendar year and multiplying such average amount by forty-five (45).

**"Person"** shall mean an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

**"Racing and Wagering Board"** shall mean The New York State Racing and Wagering Board.

**"Racing Premises"** shall mean the premises leased or licensed to New NYRA in accordance with the terms and provisions of the Ground Leases and, as applicable, the Aqueduct Sublease; provided, however, that, upon recapture by the FOB of all or any portion of the Real Estate Development Parcels, such recaptured portions shall be deemed excluded from the term "Racing Premises".

**"Racetrack Properties"** shall mean all of the real property associated with the Racetracks and the operation thereof, including, without limitation, the land underlying each of the Racetracks, but expressly excluding the Ancillary Property and the Ballfield Properties.

**"Real Estate Development Parcels"** shall mean those parcels of land located at Aqueduct and Belmont which are expressly designated in the Aqueduct Facilities Ground Lease and the Belmont Ground Lease, respectively, as "Real Estate Development Parcels".

**"Saratoga Ground Lease"** shall mean the agreement to be executed by New NYRA and the FOB, as agent of the State, relating to the lease of Racetrack Property, all improvements thereon and all physical assets appurtenant thereto located at Saratoga, a copy of which is annexed hereto as Exhibit "F", as the same may be amended from time to time in accordance with its terms.

**"Senate"** shall mean The Senate of the State of New York.

**"Speaker"** shall mean the Speaker of the Assembly.

“**State Claims**” shall mean any and all claims of the State of New York or proofs of claim filed by the State of New York against Old NYRA in Old NYRA’s chapter 11 case, all as set forth in Recital L to the Settlement Agreement.

“**State Obligations**” shall mean the obligations of Old NYRA to revert or escheat funds to the State as a result of the non-tendering of pari-mutuel tickets relating to the period prior to the Effective Date.

“**State Parties**” shall mean, jointly, the State and the FOB.

“**Supplemental DIP Loan**” shall mean the advance in the amount of Nine Million Dollars (\$9,000,000.00) made by the State of New York to NYRA pursuant to the DIP Agreements.

“**Temporary President**” shall mean the Temporary President of the Senate.

“**VLT**” shall mean a video lottery terminal.

“**VLT Operations**” shall mean the operation of video lottery terminal gaming and related operations within the confines of the VLT Premises.

“**VLT Operator**” shall mean the entity selected by the State as the operator with respect the VLT Operations at Aqueduct, pursuant to a memorandum of understanding among the Governor, the Temporary President of the Senate, and the Speaker of the Assembly, upon prior consultation with Old NYRA or New NYRA, as the case may be.

“**VLT Premises**” shall mean that portion of Aqueduct designated for VLT Operations and referred to in the Aqueduct Sublease and which shall include (i) the gaming floor, (ii) the back-of-the-house area, (iii) gaming and non-gaming amenities related thereto and (iv) associated facilities and other portions of Aqueduct agreed upon by the State, the VLT Operator and New NYRA as necessary for the successful operation of video lottery gaming.

“**VLT Revenues**” shall mean the amount of total revenue wagered on VLTs at Aqueduct after payout for prizes won in accordance with Section 1612(b) of the New York State Tax Law.

Section 1.3 Other Terms. Other terms may be defined elsewhere in this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement. As used in this Agreement, any reference to any federal, state, local, or foreign law, including any applicable law, will be deemed also to refer to such law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. The words “**include**”, “**includes**”, and “**including**” will be deemed to be followed by “**without limitation**”. Pronouns in masculine, feminine, or neuter genders will be construed to include any other gender, and words in the singular form will be

construed to include the plural and vice versa, unless the context otherwise requires. The words “*this Agreement*”, “*herein*”, “*hereof*”, “*hereby*”, “*hereunder*”, and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

Section 1.4 Interpretation. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party hereto because of the authorship of any provision of this Agreement.

## ARTICLE II FRANCHISE TERMS

Section 2.1 Term of Franchise. As of the Effective Date, New NYRA shall be granted the Franchise for the period from the date hereof up to and including the twenty-fifth (25th) anniversary hereof (the “*Term*”). Notwithstanding anything contained herein to the contrary, during the Term, New NYRA shall perform all of the functions as may be necessary or appropriate to conduct racing, racing operations, pari-mutuel and simulcast wagering at or with respect to the Racetracks. Without in any way limiting the foregoing, during the Term, New NYRA shall have the right and responsibility to manage and operate all functions at the Racing Premises, including, but not limited to, and subject to applicable Racing Law and regulations, (a) the hiring and management of racing secretaries, stewards, race officials, backstretch employees and other equine and racing related functions, (b) establishing the purses, the stakes program and owner’s relations at the Racetracks, (c) maintenance of the Racing Premises and associated facilities, (d) the selection of vendors for food, beverage and other concessions on the Racing Premises, and (e) such other activities as may be approved by the FOB; provided, however, that New NYRA, in its discretion, may use or permit the use of the Real Estate Development Parcels or licensed premises at Belmont for business purposes unrelated to racing or racing operations; and, provided, further, that, in accordance with the Aqueduct Land Ground Lease and the Belmont Ground Lease, upon thirty (30) days’ prior written notice from the FOB to New NYRA, New NYRA shall cease or cause the cessation of such non-racing activity on the Real Estate Development Parcels, and surrender possession thereof to the FOB in order to allow any FOB-approved development to proceed or such alternative use as may be approved by the FOB to be conducted on such property; and, provided, further, that, with the consent of the VLT Operator, which consent may be granted or withheld in the sole and absolute discretion of the VLT Operator, and subject to the requisite approvals, New NYRA may operate pari-mutuel and simulcast wagering on the VLT Premises.

Section 2.2 Performance Standards. From and after the Effective Date, New NYRA shall use its best efforts to satisfy the following performance standards (collectively, the “*Performance Standards*”) with respect to racing operations against which Performance Standards New NYRA shall be evaluated by the FOB every four (4) years:

(a) Racing Dates. New NYRA shall apply to the Racing and Wagering Board to run racing a minimum of two hundred forty-six (246) total race days each calendar year, which racing days will include a minimum of (i) one hundred twenty (120) race days at Aqueduct, (ii) ninety (90) race days at Belmont and (iii) thirty-six (36) race days at Saratoga. Assignment of race days shall be subject to approval of the Racing and Wagering Board.

(b) New York Bred Races. New NYRA shall run a minimum of six hundred (600) New York bred races each year, subject to availability of a sufficient number of New York bred horses to run competitive races with customary field size. The number of New York bred races will be dependent on the State's foal crop and the continuation of State support of the State breeding industry substantially as currently operated.

(c) Stalls. New NYRA shall fill stalls at each of the Racetracks in a fair and equitable manner and subject to existing track customs so as to maximize field size and quality of horses on Racetrack grounds.

(d) Jockey and Equine Safety. New NYRA shall consider the advantages and disadvantages of installing synthetic surfaces at the Racetracks and training facilities with leading equine artificial surface experts from around the Nation to determine the advisability of such installation. Installation will be subject to FOB approval. New NYRA shall also consider other steps in consultation with industry experts to ensure jockey and equine safety.

(e) CAFO. New NYRA shall comply with the requirements of State Concentrated Animal Feeding Operation nutrient management plan and shall remediate and notify the FOB of any violation of such plan as soon as practicable.

(f) Backstretch. New NYRA shall develop and implement a plan, subject to approval of the FOB, to improve substantially over a five year period the condition of the housing and working environment for backstretch workers; provided, however, that compliance with this Performance Standard shall be conditioned on the State or the VLT Operator making required daily payments to New NYRA for track improvements and other capital expenditures in an amount equal to four percent (4%) of VLT Revenues.

(g) Saratoga Training. New NYRA shall maintain and operate the existing Saratoga training facility during the period from at least April 15 through November 1 of each year, subject to weather conditions.

(h) Handle and Attendance. New NYRA shall embrace objectives to encourage growth in on- and off-track handle through track and VLT Gaming marketing, simulcasting, and internet wagering. New NYRA shall use its reasonable best efforts to increase average daily handle at each of the Racetracks. New NYRA shall provide the FOB with such handle figures as the FOB may reasonably

request, at the conclusion of each meet, for consultation and discussion on patterns and trends that may necessarily be affecting this objective. The FOB and New NYRA shall work cooperatively to make any reasonable adjustments that may be necessary to meet the growth objectives. To the extent possible, similar objectives shall apply to on-track attendance. Recognizing patronage shifts between VLT Gaming, racing and simulcasting operations, and the long-term decline in racing attendance in the United States, New NYRA shall use its reasonable best efforts to maximize attendance at each of the Racetracks.

(i) Purses. New NYRA shall not commingle horsemen's bookkeeper funds with its other funds.

(j) Expenses. New NYRA shall operate its racing and wagering business so as to maintain (i) operating expense levels, (ii) levels of capital expenditures and the items on which such capital expenditures are spent and (iii) executive compensation at commercially reasonable levels and in accordance with racing and wagering industry standards and shall report to New NYRA and the FOB at least quarterly in each of such matters.

(k) Community. New NYRA shall use its reasonable best efforts to maintain its tracks and facilities such that their physical appearance and conditions do not detract from the community; provided, however, that the parties recognize that New NYRA's ability to make major track investments and other capital expenditures is subject to receipt of daily payments from the State or the VLT Operator in an amount equal to four percent (4%) of VLT Revenues.

In accordance with Sections 2.3(a) and 7.10 of this Agreement, New NYRA will be entitled to receive notice of failures to satisfy these Performance Standards and, where feasible, the opportunity to cure such failures and material and/or repeated breaches (which repeated breaches the FOB shall determine, in the aggregate, constitute a material breach) of the Performance Standards, which, following delivery of such notice in accordance with the provisions of Section 7.10 hereof and an opportunity to cure in accordance with the Racing Law, may constitute grounds to terminate the Franchise. Notwithstanding the foregoing, nothing contained in this Section 2.2 shall limit the FOB from exercising its rights, powers, duties and obligations in accordance with the terms and provisions of the Racing Law.

### Section 2.3 Revocation of the Franchise.

(a) Alleged Non-Compliance with Standards. During the Term, the FOB shall notify New NYRA, in writing, of any alleged material breach of the Performance Standards or alleged repeated non-material breaches of the Performance Standards which the FOB has determined, when viewed in the aggregate, constitute an alleged material breach of such Performance Standards. Prior to the commencement of any action by the FOB with respect to such alleged material breach or determined material breach, the FOB shall provide written notice to New NYRA and New NYRA

shall have a reasonable opportunity to cure any such alleged material breach of the Performance Standards or alleged repeated non-material breaches of the Performance Standards which the FOB has determined, when viewed in the aggregate, constitute a material breach of such Performance Standards. Upon a written finding by the FOB that (a) a material breach of the Performance Standards or repeated non-material breaches of the Performance Standards which, when viewed in the aggregate, constitute a material breach of the Performance Standards has occurred and (b) such material breach or determined material breach has not been cured by New NYRA after a reasonable opportunity to cure has been provided, the FOB may recommend to the Racing and Wagering Board that the Franchise be revoked and this Agreement be terminated. If so referred, the Racing and Wagering Board shall conduct a hearing in accordance with Section 245 of the Racing Law.

(b) Hearing and Review. Any hearing which may be held for the purpose of revoking the Franchise and terminating this Agreement shall be conducted in accordance with the terms and provisions of Section 245 of the Racing Law. In the event that, upon conclusion of any such hearing, the Racing and Wagering Board determines to revoke the Franchise and terminate this Agreement, the Racing and Wagering Board shall make an order and cause such order to be entered in the minutes of the Racing and Wagering Board and a copy thereof to be served upon New NYRA. Notwithstanding the foregoing, any action of the Racing and Wagering Board to revoke the Franchise and terminate this Agreement shall be reviewable by the Supreme Court of the State of New York, in the manner provided by and subject to the provisions of Article 78 of the New York Civil Practice Law and Rules.

Section 2.4 Franchise Fee. In consideration for the grant and use of the Franchise pursuant to the Legislation and this Agreement, during the Term, and on an annual basis, but in no event later than April 5th of any calendar year, New NYRA shall remit to the State a franchise fee to conduct pari-mutuel wagering at the Racetracks equal to the lesser of (a) Adjusted Net Income and (b) Operating Cash. New NYRA's failure to remit the franchise fee as required pursuant to this Section 2.4 and the Racing Law shall constitute a breach of this Agreement and Section 208 of the Racing Law and give rise to the right of the Racing and Wagering Board to seek the revocation of the Franchise and the termination of this Agreement in accordance with the terms and provisions of Sections 244 and 245 of the Racing Law.

## Section 2.5 Governance

(a) Articles/Charter/By-Laws. On or prior to the Effective Date, the NYRA Entities shall (1) have filed such documents with the State as are necessary to create New NYRA as a Type "C" New York State not-for-profit corporation, under the general supervision of the Office of the Attorney General, and transfer such assets as are necessary, and consistent with the terms and provisions of the Legislation, the Plan, the Settlement Agreement and herein, to New NYRA, (2) have filed with the Secretary of State articles of incorporation (the "*Articles*"), substantially in

form annexed hereto as Exhibit "G", and (3) have adopted by-laws (the "**By-Laws**"), substantially in the form annexed hereto as Exhibit "H".

(b) Trustees. From and after the Effective Date, New NYRA's Board of Directors shall be comprised of twenty-five (25) members: (1) fourteen (14) of whom shall be selected by Old NYRA's existing Board of Directors or, with respect to the period following the Effective Date, by New NYRA's designated directors and not by the directors appointed by the Governor, the Speaker and the Temporary President, as the case may be, (2) seven (7) of whom shall be appointed by the Governor (of whom (i) one (1) shall be a current or former officer or director of a New York State Off-Track Betting Corporation, (ii) one (1) shall be appointed upon the recommendation of New York Thoroughbred Breeder's Inc., (iii) one (1) shall be appointed upon the recommendation of the New York Thoroughbred Horsemen's Association, or such other entity as is certified and approved pursuant to Section 228 of the Racing Law, and (iv) one (1) of whom shall be appointed upon the recommendation of the New York State American Federation of Labor and Congress of Industrial Organizations), (3) two (2) of whom shall be selected by the Speaker and (4) two (2) of whom shall be selected by the Temporary President; provided, however, that, in the event that, during the Term, the Legislature amends the Racing Law, or a rule, regulation or provision is promulgated, or otherwise, to modify the aggregate number of members of New NYRA's Board of Directors, the State and the FOB agree that, under all circumstances, the number of members appointed, and to be appointed, to New NYRA's Board of Directors in accordance with the provisions of Section 2.5(b)(1) above shall be equal to or greater than that set forth above in order to maintain or increase the percentage of members selected pursuant to Section 2.5(b)(1) above to those selected pursuant to the other subsections of this Section 2.5 and, to the extent required, New NYRA shall modify the Articles and By-Laws consistent therewith.

(c) Executive Committee/Committees. The existence and powers and responsibilities of an executive committee and such other committees as are appointed by a majority of the Board of Directors shall be consistent with those set forth in the By-laws of New NYRA. Without limiting the foregoing, including, without limitation, the number of committees that may be appointed, the Board of Directors shall establish (1) a compensation committee to fix salary guidelines, such guidelines to be consistent with the operation of other first class thoroughbred racing operations in the United States, (2) a finance committee to review annual operating budgets for New NYRA and capital budgets for each of the Racetracks, (3) a nominating committee to nominate any new directors to be designated by New NYRA to replace the existing directors designated by New NYRA and (4) an executive committee (the "**Executive Committee**"); provided, however, that (i) each of the aforementioned committees shall include at least one of the directors designated by the Governor and (ii) the Executive Committee shall also include (a) at least one of the directors designated by the Speaker and (b) at least one of the directors designated by the Temporary President.

(d) Officers. New NYRA shall determine all officers of the corporation.

(e) Code of Conduct. On the Effective Date, New NYRA shall adopt, and during the Term be governed by, a Code of Conduct substantially in the form annexed hereto as Exhibit "I".

Section 2.6 Lease of Real Property. On the Effective Date, (a) (1) New NYRA and the FOB, on behalf of the State of New York, shall enter into the Ground Leases and (2) pursuant to an escrow agreement, New NYRA shall execute and deliver into escrow the Aqueduct Sublease, as sublessee, which Aqueduct Sublease shall be held in escrow and not become effective until such time as the VLT Operator is selected by the State and subject to binding and effective documentation in connection with the VLT Operations, and (b) as of the date that the VLT Operator is selected by the State and subject to binding and effective documentation in connection with the VLT Operations, which documentation shall include the execution of the Aqueduct Sublease by the VLT Operator, as lessor, (1) all rights of New NYRA in, to and under the Aqueduct Facilities Ground Lease shall be assigned to the VLT Operator, (2) New NYRA shall be relieved from any and all obligations and liabilities under the Aqueduct Facilities Ground Lease thereafter arising, (3) the Aqueduct Facilities Ground Lease shall be amended and restated between and among the FOB, on behalf of the State of New York, as lessor, and the VLT Operator, as lessee, and (4) the Aqueduct Sublease shall be deemed released from escrow and become binding on the parties thereto.

Section 2.7 Totalizator Services/Internet Wagering Platform. New NYRA (a) shall have the right to select one or more vendors to provide New NYRA with totalizator services, subject to the review and approval by the FOB of any contract or agreement in connection therewith, and (b) subject to New NYRA's unilateral right to opt out, directly or indirectly, shall have the right to integrate its internet wagering platform with any such platform of an authorized off-track betting corporation; provided, however, that, in reviewing and approving any agreement referred to in clause (a) above, the FOB shall consider a proposed vendor's ability to reduce totalizator expenses and the general development and production costs of any internet wagering platform of New NYRA and any authorized off-track betting corporation.

Section 2.8 Operational Support Payments. New NYRA and the State agree that, in the event that VLT Operations are not scheduled to commence at Aqueduct on or prior to March 31, 2009, the State and New NYRA shall negotiate in good faith to provide New NYRA with payments necessary to support racing operations and satisfaction of New NYRA's operating expenses, including, without limitation, the payment of New NYRA's pension plan obligations, until the commencement of VLT Operations at Aqueduct. Upon the commencement of VLT Operations at Aqueduct, on a daily basis, and for the term of the license to operate VLTs at Aqueduct, an amount equal to three percent (3%) of total VLT Revenues derived from VLT Operations at Aqueduct shall be deposited by the VLT Operator, or distributed by the VLT Operator for the purpose of being deposited, into a New NYRA account to be used by New NYRA for the support of New NYRA's racing operations and satisfaction of New NYRA's operating expenses, including, without limitation, the payment of New NYRA's pension plan obligations (the "**Support Fee**"); provided, however, that, in the event that legislation is

passed providing for the installation of VLTs and the commencement of VLT Operations at a location at which New NYRA operates racing and pari-mutuel wagering other than Aqueduct, prior to the installation thereof, the State and New NYRA shall negotiate in good faith to adjust the amount of the Support Fee for the benefit of New NYRA.

Section 2.9 Capital Expenditures. New NYRA and the State agree that, in the event that VLT Operations are not scheduled to commence at Aqueduct on or prior to March 31, 2009, the State and New NYRA shall negotiate in good faith to provide New NYRA with payments necessary to support New NYRA's capital expenditures in maintaining and upgrading the Racetracks. Upon commencement of VLT Operations at Aqueduct, on a daily basis, and for the term of the license to operate VLTs at Aqueduct, an amount equal to four percent (4%) (the "**CAPEX Amount**") of VLT Revenues shall be deposited by the VLT Operator, or distributed by the VLT Operator for the purpose of being deposited, into a New NYRA account designated by New NYRA (the "**CAPEX Account**") to be used by New NYRA for capital expenditures in maintaining and upgrading the Racetracks; provided, however, that, in the event that legislation is passed providing for the installation of VLTs and the commencement of VLT Operations at a location at which New NYRA operates racing and pari-mutuel wagering other than Aqueduct, prior to the installation thereof, the State and New NYRA shall negotiate in good faith to adjust the amount of the CAPEX Amount for the benefit of New NYRA; and, provided, further, that, New NYRA may use the funds in the CAPEX Account for the payment of (1) taxes associated with the receipt of the CAPEX Amount or deposit thereof in the CAPEX Account and (2) debt service associated with borrowings or other indebtedness incurred in connection with maintaining and upgrading the Racetracks.

Section 2.10 Purse Support. From and after the Effective Date, on a daily basis, and upon commencement of VLT Operations at Aqueduct and thereafter for the term of the license to operate VLTs at Aqueduct, during the Term, an amount equal to (a) six and one-half percent (6.5%) of VLT Revenues for the first (1st) year of VLT Operations at Aqueduct, (b) seven percent (7%) of VLT Revenues for the second (2nd) year of VLT Operations at Aqueduct and (c) seven and one-half percent (7.5%) of VLT Revenues for the third (3rd) year of VLT Operations at Aqueduct and thereafter, shall be deposited by the VLT Operator, or distributed by the VLT Operator for the purpose of being deposited, into a New NYRA account to be used by New NYRA solely for the enhancement and funding of purses for races run at the Racetracks.

Section 2.11 Breeder Support. From and after the Effective Date, on a daily basis, and upon commencement of VLT Operations at Aqueduct and thereafter for the term of the license to operate VLTs at Aqueduct, during the Term, an amount equal to (a) one percent (1%) of VLT Revenues for the first (1st) year of VLT Operations at Aqueduct, (b) one and one-quarter percent (1.25%) for the second (2nd) year of VLT Operations at Aqueduct and (c) one and one-half percent (1.5%) for the third (3rd) year of VLT Operations at Aqueduct and thereafter, shall be deposited by the VLT Operator, or distributed by the VLT Operator for the purpose of being deposited, into a New NYRA account to be used by New NYRA solely for the enhancement and funding of breeding for the manner of racing conducted at the Racetracks.

## Section 2.12 Financing.

(a) New NYRA Financing. Nothing contained herein shall limit New NYRA's ability to incur indebtedness, including, without limitation, the issuance of non-convertible securities in connection therewith, and grant liens on and security interests in New NYRA's assets and interests, including, without limitation, the revenue streams set forth herein; provided, however, that the incurrence of indebtedness or the granting of liens or security interests, other than those arising in the ordinary course of business, including, without limitation, materialmen's and mechanics' liens, shall require the prior approval of the FOB; and, provided, further, that, unless the prior approval of the FOB, or such other entity as may be required, is obtained, New NYRA shall not create any lien or security interest in any asset that is leased or licensed to New NYRA by the FOB or otherwise runs with the Franchise, the repayment with respect to which would extend beyond the Term.

(b) State Financing. The State, through the Urban Development Corporation, may borrow to fund capital improvements at the Racetracks and borrow, on behalf of New NYRA, pursuant to FOB approval, secured against New NYRA's right to receive payments for capital improvements in accordance with Section 2.9 hereof; provided, however, that, the indenture or other instrument or agreement executed in connection with any such borrowing shall restrict the use of net proceeds to capital expenditures at the Racetracks; and, provided, further that any such borrowing shall be secured only by such future stream of capital improvement payments payable to New NYRA pursuant to Section 2.9 hereof. The Urban Development Corporation shall initially borrow funds necessary for approved capital expenditures in years one through five of the Franchise and, then, at appropriate times as determined by the FOB, for years six through ten, years eleven through fifteen, years sixteen through twenty and years twenty-one through twenty-five. The amount of borrowing for approved capital expenditures shall not exceed the amount that would have been paid out for facility improvements in the event the full payment pursuant to subdivision "F" of Section Sixteen Hundred Twelve of the Tax Law for that purpose was made.

## Section 2.13 Racetrack Operations.

(a) Aqueduct. The State and New NYRA agree that the thoroughbred racing schedule at Aqueduct shall be substantially similar to the current racing schedule. The State reserves the right to develop, or select a third party to develop, retail, hotel and entertainment facilities (or such other uses or facilities as may be approved by the FOB) at Aqueduct on the Real Estate Development Parcels and/or the VLT Premises in conjunction with (i) the VLT Operations or (ii) otherwise; provided, however, that, any such real estate development shall prohibit the conduct of pari-mutuel and simulcast wagering at Aqueduct by any party other than New NYRA; and, provided, further, that, any such real estate development shall only be undertaken (i) if by a third party, pursuant to a competitive bidding process approved by the FOB, (ii) after consultation with the local advisory board referred to in Section 212 of the Racing Law and consideration of local zoning and planning regulation, and (iii) in a manner that will

not adversely impact any historic structure that is included in or eligible for inclusion in the National or State Register of Historic Places, and shall be subject to the unanimous approval of the FOB and all applicable statutory and regulatory requirements and permitted waivers thereof. The State shall not seek to develop any such retail, hotel entertainment facilities on the portions of Aqueduct that constitute the Racing Premises; and, provided, further, that the State or a lessee other than New NYRA may develop the shared parking area at Aqueduct if adequate substitute parking is provided to New NYRA.

(b) Belmont. The State and New NYRA agree that the thoroughbred racing schedule at Belmont shall be substantially similar to the current racing schedule. The State reserves the right to develop, or select a third party to develop, facilities at Belmont on the Real Estate Development Parcels in the manner and subject to the limitations set forth in Section 10.1 of the Belmont Ground Lease; provided, however, that, any such real estate development shall only be undertaken (i) if by a third party, pursuant to a competitive bidding process approved by the FOB, (ii) after consultation with the local advisory board referred to in Section 212 of the Racing Law, if any, and (iii) in a manner that will not adversely impact any historic structure that is included in or eligible for inclusion in the National or State Register of Historic Places, and shall be subject to the unanimous approval of the FOB and all applicable statutory and regulatory requirements and permitted waivers thereof.

(c) Saratoga. The parties hereto agree that the thoroughbred racing schedule at Saratoga shall be substantially similar to the current racing schedule. The State acknowledges that no VLT facilities will be installed at Saratoga and that the historic and unique character of Saratoga will be preserved.

Section 2.14 Real Estate Taxes. During the Term, and consistent with the provisions set forth in the Legislation, New NYRA shall not be taxable and shall have no obligation to pay real estate taxes or payments in lieu of such taxes associated with the ownership, lease or use of the Racetrack Properties, including, without limitation, the Racing Premises, any and all such obligations being the sole and exclusive obligation and responsibility of the State.

### **ARTICLE III VLT OPERATIONS**

Section 3.1 Aqueduct. The State, in consultation with New NYRA (but not subject to New NYRA's approval) shall select an entity to develop VLTs and serve as the VLT Operator to operate VLTs on the VLT Premises. The State, the FOB, the VLT Operator and New NYRA shall use their commercially reasonable best efforts to coordinate issues associated with the VLT Operations and New NYRA's racing operations, and the lease and such other agreement between the State (acting through the FOB) and the VLT Operator shall contain appropriate terms and conditions to address the joint use and occupancy of Aqueduct by the VLT Operator and New NYRA and the interests and the requirements of New NYRA with respect to its racing and pari-mutuel

operations. Without in any way limiting the foregoing, the VLT Operations at Aqueduct shall be guided by the following principles:

(a) New NYRA and the VLT Operator shall cooperate with each other on the design and construction of the VLT Premises.

(b) The VLT Premises shall be constructed by, and at the sole cost and expense of, the State, its agencies and authorities, the VLT Operator, and other public and private investors, and such construction shall be performed in accordance with the terms and provisions of Section 5.2(c) of the Aqueduct Sublease.

(c) From and after the commencement of VLT Operations at Aqueduct, no admission price shall be paid by customers for entry into Aqueduct, the Racing Premises or the VLT Premises, except for admission to movies, night clubs, gymnasiums, boxing and wrestling matches and other live performances or other leisure and entertainment activities, and, upon entry to Aqueduct, customers shall have the ability to access either the VLT Premises or the Racing Premises without any undue restrictions.

(d) The VLT Operator and New NYRA may enter into an operating agreement and form a joint operating committee to ensure that the facilities are operated in a first-class, customer-friendly, manner consistent with maximizing returns to each of the parties. Subject to government requirements, the operating agreement may address hours of operation, maintenance issues, capital improvements, etc. The parties may agree on a cost sharing agreement for common costs, which agreement may include provisions for shared services and staffing, where appropriate.

(e) The VLT Operator and New NYRA may enter into agreements that provide for an appropriate marketing plan and budget to support attendance at Aqueduct and the VLT Premises. Each entity may supplement the marketing plan with its own targeted marketing plan, provided that such supplemental plan shall not be prejudicial to the marketing efforts of the other.

(f) Any agreements between the VLT Operator and New NYRA will provide for the resolution of any disputes between the VLT Operator and New NYRA; provided, however, that, in the event that such parties are unable to resolve any particular dispute, any operating agreement shall provide for binding arbitration under the rules of the American Arbitration Association or such other appropriate organization

(g) With the consent of the VLT Operator, which consent may be granted or withheld in the sole and absolute discretion of the VLT Operator, and subject to the requisite approvals, New NYRA may conduct pari-mutuel and simulcast wagering on the VLT Premises.

## ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 4.1 Representation and Warranties of the FOB. The FOB hereby represents and warrants that: (a) it is duly organized and validly existing under the Legislation, which constitutes the articles of organization of the FOB, with all requisite power and authority to execute this Agreement and to consummate the transactions contemplated hereby; (b) it has full requisite power and authority to execute and deliver and to perform its obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith (i) have been duly and validly authorized by it and (ii) are not in contravention of its articles of organization or any agreements specifically applicable to it; and (c) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against it which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder.

Section 4.2 Representations and Warranties of the State. The State hereby represents and warrants that: (a) it has full requisite power and authority to execute and deliver and to perform its obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith (i) have been duly and validly authorized by it and (ii) are not in contravention of any agreements specifically applicable to it, including, without limitation, the Constitution of the State of New York, which constitutes the State's articles of organization, or any existing New York State law, court or administrative regulation, decree or order, to which the State is subject or by which it is bound; (b) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against it which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder; and (c) it, or one of its affiliated State Parties, directly or indirectly, has the power and authority to bind each other State Entity to the terms of this Agreement or otherwise has been duly authorized by such other State Entity to execute and deliver this Agreement on its behalf.

Section 4.3 Representation and Warranties of New NYRA. New NYRA hereby represents and warrants that: (a) subject to entry of the Approval Order, it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with all requisite power and authority to carry on the business in which it is engaged, to own the properties it owns, to execute this Agreement and to consummate the transactions contemplated hereby; (b) subject to entry of the Approval Order, it has full requisite power and authority to execute and deliver and to perform its obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith (i) have been duly and validly authorized by it and (ii) are not in contravention of its organization documents or any material agreement specifically applicable to it; and (c) no proceeding, litigation or adversary proceeding before any court, arbitrator or

administrative or governmental body is pending against it which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder.

## **ARTICLE V COVENANTS**

Section 5.1 Covenants of the FOB. The FOB hereby covenants and agrees as follows:

(a) On the Effective Date, the FOB shall provide New NYRA with a certificate to the effect that each of the representations and warranties set forth in Section 4.1 of this Agreement is true and correct as of the Effective Date.

Section 5.2 Covenants of New NYRA. New NYRA hereby covenants and agrees as follows:

(a) On the Effective Date, New NYRA shall provide the FOB with a certificate to the effect that each of the representations and warranties set forth in Section 4.2 of this Agreement is true and correct as of the Effective Date.

(b) From and after the Effective Date, New NYRA shall operate its business and conduct racing operations at the Racetracks, including, without limitation, running races, steeplechases and race meetings and conducting pari-mutuel and simulcast wagering thereon, in accordance with the applicable provisions of this Agreement, the Legislation, the Chapter Amendment and the Racing Law and the applicable rules and regulations of the Racing and Wagering Board.

(c) Unless otherwise agreed to by the FOB and New NYRA, during the period from and after the Effective Date, New NYRA shall fund purses for races run at the Racetracks in an amount, calculated in the aggregate on an annual basis for the preceding year as of December 31 of each year, not greater than (1) such amount as may be required by the Laws of New York State plus (2) such additional amount as may be required to reduce Old NYRA's "purse cushion" pursuant to the terms and conditions of the Racing Law and any order of the Bankruptcy Court.

## **ARTICLE VI EFFECTIVENESS AND TERMINATION OF AGREEMENT**

Section 6.1 Closing. The consummation of the transactions contemplated hereby shall take place at a closing to be held at 10:00 am., New York time, on the Effective Date at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, or such other date or place as is mutually agreed upon in writing by the Parties hereto.

Section 6.2 Conditions to Effective Date. The effectiveness of the terms and provisions of this Agreement are expressly subject to the following conditions unless and to the extent waived in writing by the Parties:

(a) The execution and delivery of this Agreement by each of the entities identified on the signature pages of this Agreement.

(b) The effectiveness of the Approval Order and the consummation of the Modified Plan have not been enjoined or otherwise stayed.

(c) The filing of the Articles with the Secretary of State of the State of New York and confirmation of acceptance of such filing has been filed with the Racing and Wagering Board and the FOB.

(d) The execution and delivery of such documents as necessary to convey all of Old NYRA's right, title and interest in the Racetrack Properties and such other Transferred Property to the People of the State of New York.

(e) The execution and delivery of the Leases.

(f) The contemporaneous substantial consummation of the transactions contemplated by the Plan.

(g) The payment of funds and the waiver of obligations required pursuant to Section 2.4 of the Settlement Agreement.

(h) The execution and delivery of the License Agreement.

(i) The entry by the Bankruptcy Court of an order in aid of consummation of the Modified Plan and approving the form and substance of this Agreement and the Settlement Agreement, in form and substance reasonably satisfactory to the State and the FOB.

Section 6.3 Termination of Agreement. In the event that the Franchise (i) shall be duly revoked by a Final Order, (ii) shall expire and the Term not be otherwise renewed or extended, or (iii) shall otherwise terminate in accordance with the provisions of the Racing Law, then (a) this Agreement, the License Agreement and the Leases shall be deemed, automatically, without further notice or legal action, terminated as of such date, and, except as provided herein, neither New NYRA nor the FOB shall have any further obligations to the other party under this Agreement, the License Agreement or the Leases to the extent arising from and after the date thereof, and (b) all property of New NYRA shall be deemed irrevocably relinquished to the State, including, without limitation, any then-present or future rights that New NYRA may have, or might claim with respect to thoroughbred racing facilities and associated assets located, or subsequently located, at the Racetracks, including (i) the land underlying the Racetracks, (ii) all improvements thereon and all physical assets thereon, including, without

limitation, all capital improvements made by New NYRA to the Racetracks during the Term and (iii) all assets associated with the Franchise and the operation of the Racetracks, including, without limitation, all rights to Intellectual Property now existing or hereafter created, and any and all Franchise rights or interests in such assets, including, but not limited to, leasehold improvements and interests, contracts and contractual rights, works of art, and all other personalty then in New NYRA's possession or control.

## ARTICLE VII MISCELLANEOUS

Section 7.1 Amendments. This Agreement may not be modified, amended or supplemented except by a written agreement executed by each Party to be affected by such modification, amendment or supplement; provided, however, that (a) the agreement to pay, or cause the payment of, the Support Fee and the CAPEX Amount to New NYRA in accordance with Sections 2.8 and 2.9 hereof, respectively, (upon which payments and levels Old NYRA relied upon in connection with the proposal, confirmation and consummation of the Modified Plan) is not intended, nor shall it be construed, to limit the rights and authority of the Legislature to take such actions, including, without limitation, the passage of legislation during the Term, as the Legislature deems appropriate, necessary and in the best interests of racing, racing operations, the racing industry or otherwise and (b) in the event that any of the levels of consideration set forth in Sections 2.8 and 2.9 of this Agreement are increased or decreased pursuant to legislation passed by the Senate and the Assembly and enacted into law, the terms and provisions of Sections 2.8 and 2.9 hereof shall be deemed modified, amended or supplemented, without action necessary by any Party hereto, solely to reflect such increased or decreased levels of consideration; provided, however, that, in the event that such levels of consideration are decreased pursuant to legislation passed by the Senate and Assembly and enacted into law, (i) nothing contained herein or in any other agreement, instrument or document executed and delivered in connection herewith is intended, nor should it be construed, to limit or otherwise waive the rights, claims or causes of action of the NYRA Entities to recover from, among others, the State (but not the VLT Operator) the amounts of VLT Revenues to be paid to New NYRA in accordance with the provisions of Section 1612, Subdivisions (f)(1) and (2) of the New York State Tax Law as in existence as of the enactment of the Legislation and (ii) New NYRA shall have the right to commence an action against, among others, the State (but not the VLT Operator) for damages based upon the amount of such decreased levels of consideration.

Section 7.2 Good Faith Negotiations. The Parties further recognize and acknowledge that each of the Parties hereto is represented by counsel, and such Party received independent legal advice with respect to the advisability of entering into this Agreement. Each of the Parties acknowledges that the negotiations leading up to this Agreement were conducted regularly and at arm's length; this Agreement is made and executed by and of each Party's own free will; that each knows all of the relevant facts and his or its rights in connection therewith, and that he or it has not been improperly influenced or induced to make this settlement as a result of any act or action on the part

of any party or employee, agent, attorney or representative of any party to this Agreement.

Section 7.3 Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any Person other than the Parties hereto and their respective successors and assigns, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof; and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the Parties hereto and their respective successors and assigns.

Section 7.4 Governing Law and Service of Process. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to any principles of conflicts of law. Any legal action, suit or proceeding between New NYRA and either of the FOB or the State with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought in any court of competent jurisdiction within the State of New York. The Parties hereby agree and consent that service of process therein may be made, and personal jurisdiction over any Party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the Party at the address of such Party set forth in Section 7.10 hereof, unless another address has been designated by such Party in a notice given to the other Parties in accordance with Section 7.10 hereof.

Section 7.5 Specific Performance. It is understood and agreed by the Parties that money damages may not be a sufficient remedy for any breach of this Agreement by any Party and each non-breaching Party may be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach; provided, however, that the Parties agree that New NYRA shall be entitled to specific performance and injunctive or other equitable relief in order to enforce the provisions of Section 2.5 hereof regarding the composition of New NYRA's Board of Directors.

Section 7.6 Headings. The headings of the sections, paragraphs and subsections of this Agreement are inserted for convenience only and are not part of this Agreement and do not in any way limit or modify the terms or provisions of this Agreement and shall not affect the interpretation hereof.

Section 7.7 Binding Agreement Successors and Assigns; Joint and Several Obligations. This Agreement shall be binding upon New NYRA, the State and the FOB only upon the execution and delivery of this Agreement by the Parties listed on the signature pages hereto. This Agreement is intended to bind and inure to the benefit of the State, the FOB and New NYRA and their respective successors, assigns, administrators, constituents and representatives; provided, however, that this Agreement shall not be assignable by New NYRA without the prior written consent of the State and the FOB; and, provided, further, that any assignment of this Agreement and the rights and

obligations set forth herein by the State or the FOB shall not impair any of the rights provided to New NYRA hereunder or pursuant to the Laws of New York State.

Section 7.8 Entire Agreement. This Agreement, together with all documents and agreements entered into pursuant to this Agreement, including, but not limited to, the Approval Order, the Modified Plan, the Legislation, the Chapter Amendment and the State Settlement Agreement, constitute the full and entire agreement between the Parties with regard to the subject hereof, and supersedes all prior negotiations, representations, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof. No Party has entered into this Agreement in reliance on any other Party's prior representation, promise or warranty (oral or otherwise) except for those that are expressly set forth in this Agreement.

Section 7.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

Section 7.10 Notices. All demands, notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given (i), when personally delivered by courier service or messenger, (ii) upon actual receipt (as established by confirmation of receipt or otherwise) during normal business hours, otherwise on the first business day thereafter if transmitted by facsimile, electronic mail or telecopier with confirmation of receipt, or (iii) three (3) Business Days after being duly deposited in the mail, by certified or registered mail, postage prepaid-return receipt requested, to the following addresses, or such other addresses as may be furnished hereafter by notice in writing, to the following Parties:

If to New NYRA, to:

The New York Racing Association, Inc.  
Aqueduct Racetrack  
110-00 Rockaway Boulevard  
South Ozone Park, New York 11417  
Attention: General Counsel  
Telecopy: (718) 835-2432

with a copy to:

WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Brian S. Rosen, Esq.  
Telecopy: (212) 310-8007

If to the State or the FOB, to:

Franchise Oversight Board  
c/o Executive Chamber  
The Capitol  
Albany, New York 12224  
Attention: Counsel  
Telecopy: (518) 486-9652

with a copy to:

Empire State Development Corporation  
633 Third Avenue  
New York, New York 10017  
Attention: President  
Telecopy: (212) 803-3715

-and-

New York State Office of the Attorney General  
Litigation Bureau (Bankruptcy Section)  
The Capitol  
Albany, New York 12224  
Attention: Counsel  
Telecopy: (518) 473-1572

-and-

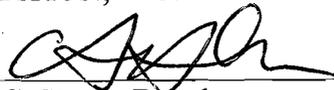
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP  
1285 Avenue of the Americas  
New York, New York 10019  
Attention: Alan W. Kornberg, Esq.  
Telecopy: (212) 757-3990

Section 7.11 Further Assurances. Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.

Section 7.12 State Appendix. New York State Appendix A, a copy of which is annexed hereto as Exhibit "J", is incorporated herein and made a part of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

THE NEW YORK RACING  
ASSOCIATION, INC.

By:   
Name: C. Steven Duncker  
Title: Chairman

THE NEW YORK STATE FRANCHISE  
OVERSIGHT BOARD

By:   
Name: Gabriel L. Aglieri  
Title: Chairperson

THE STATE OF NEW YORK

By: \_\_\_\_\_  
Name:  
Title:

Approved as to form by:

THE OFFICE OF THE ATTORNEY  
GENERAL OF THE STATE OF NEW  
YORK

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

THE NEW YORK RACING  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Name: C. Steven Duncker  
Title: Chairman

THE NEW YORK STATE FRANCHISE  
OVERSIGHT BOARD

By: \_\_\_\_\_  
Name:  
Title:

THE STATE OF NEW YORK

By: David A. Paterson  
Name: David A. Paterson  
Title: Governor

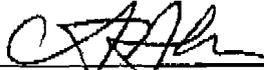
Approved as to form by:

THE OFFICE OF THE ATTORNEY  
GENERAL OF THE STATE OF NEW  
YORK

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

THE NEW YORK RACING  
ASSOCIATION, INC.

By:   
Name: C. Steven Duncker  
Title: Chairman

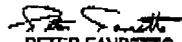
THE NEW YORK STATE FRANCHISE  
OVERSIGHT BOARD

By:   
Name: Laura L. Anglin  
Title: Chairperson

THE STATE OF NEW YORK

By: \_\_\_\_\_  
Name:  
Title:

Approved as to form by:

THE OFFICE OF THE GENERAL OF THE ATTORNEY YORK	<p>APPROVED AS TO FORM BY THE ATTORNEY GENERAL</p> <p>SEP 12 2008</p> <p> PETER FAVRETTO ASSOCIATE ATTORNEY</p>
By: _____ Name: Title:	

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

THE NEW YORK RACING  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Name: C. Steven Duncker  
Title: Chairman

THE NEW YORK STATE FRANCHISE  
OVERSIGHT BOARD

By: \_\_\_\_\_  
Name:  
Title:

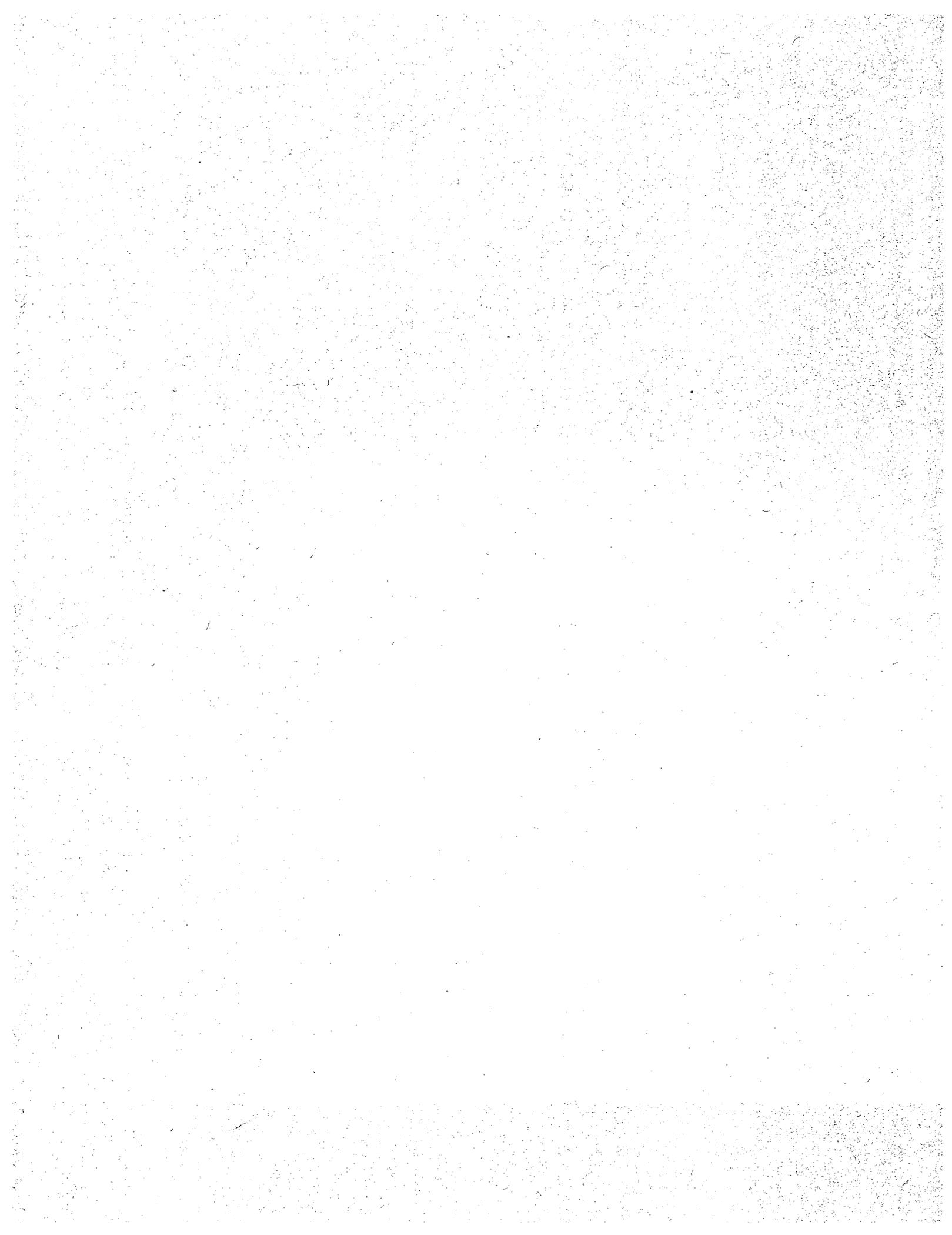
THE STATE OF NEW YORK

By: David A. Paterson  
Name:  
Title:

Approved as to form by:

THE OFFICE OF THE ATTORNEY  
GENERAL OF THE STATE OF NEW  
YORK

By: _____ Name: Title:	APPROVED AS TO FORM NYS ATTORNEY GENERAL
	SEP 12 2008   PETER FAVRETTO ASSOCIATE ATTORNEY



**EXHIBIT A**  
**SCHEDULE OF ANCILLARY PROPERTY**

Tax Block 11535, Tax Lot 1

ALL the certain plot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at the corner formed by the intersection of the easterly side of Centerville Street and the northerly side of 135<sup>th</sup> Drive;

Running thence easterly along the northerly side of 135<sup>th</sup> Drive, 100 feet;

Running thence northerly at right angles to the northerly side of 135<sup>th</sup> Drive, 100 feet;

Running thence westerly forming an interior angle of 90° 08' 25" to the last mentioned course, 33.42 feet;

Running thence westerly along the southerly side of Pitkin Avenue, forming an angle of 152° 04' 25.5" with the last mentioned course, 75.26 feet;

Running thence southerly along the easterly side of Centerville Street, 65 feet to the point or place of Beginning.

Tax Block 11535, Tax Lot 7

ALL the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the Southerly side of Pitkin Avenue, distance 75.26 feet easterly from the corner formed by the intersection of the easterly side of Centerville Street and the southerly side of Pitkin Avenue;

Running thence Easterly on a line forming an interior angle of 27° 55' 34.5" with the southerly side of Pitkin Avenue, 33.42 feet;

Running thence northerly on a line forming an angle of 89° 51' 35" with the last mentioned course, 17.69 feet;

Running thence westerly along the southerly side of Pitkin Avenue, 37.77 feet to the point or place of Beginning.

Tax Block 11535, Tax Lot 129

ALL the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Centerville Street, distance 163.5 feet southerly from the corner formed by the intersection of the southerly side of 135<sup>th</sup> Drive and the easterly side of Centerville Street;

Running thence easterly at right angles to the easterly side of Centerville Street, 100 feet;

Running thence southerly at right angles to the last mentioned course, 47.34 feet;

Running thence westerly at right angles to the easterly side of Centerville Street, 100 feet;

Running thence northerly along the easterly side of Centerville Street 47.34 feet to the point or place of Beginning.

Tax Block 11551, Tax Lot 18

ALL the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Bristol Avenue, distance 328.3 feet easterly from the corner formed by the intersection of the easterly side of Centerville Street and the northerly side of Bristol Avenue;

Running thence northerly forming an interior angle of 84° 49' 00" with the northerly side of Bristol Avenue, 125 feet;

Running thence easterly forming an angle of 95° 11' 00" with the last mentioned course, 48 feet;

Running thence southerly forming an angle of 84° 49' 00" with the last mentioned course, 125 feet to Bristol Avenue;

Running thence westerly along the northerly side of Bristol Avenue, 48 feet to the point and place of beginning.

Tax Block 11551, Tax Lot 21

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Bristol Avenue, distance 376.3 feet easterly from the corner formed by the intersection of the easterly side of Centerville Street and the northerly side of Bristol Avenue;

Running thence northerly forming an interior angle of  $84^{\circ} 49' 00''$  with the northerly side of Bristol Avenue, 125 feet;

Running thence easterly forming an angle of  $95^{\circ} 11' 00''$  with the last mentioned course, 24 feet;

Running thence southerly forming an angle of  $84^{\circ} 49' 00''$  with the last mentioned course, 125 feet to Bristol Avenue;

Running thence westerly along the northerly side of Bristol Avenue, 24 feet to the point and place of Beginning.

Tax Block 11551, Tax Lot 22

ALL the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Bristol Avenue, distance 400.3 feet easterly from the corner formed by the intersection of the easterly side of Centerville Street and the northerly side of Bristol Avenue;

Running thence northerly forming an interior angle of  $84^{\circ} 49' 00''$  with the northerly side of Bristol Avenue, 125 feet;

Running thence easterly forming an angle of  $95^{\circ} 11' 00''$  with the last mentioned course, 24 feet;

Running thence southerly forming an angle of  $84^{\circ} 49' 00''$  with the last mentioned course, 125 feet to Bristol Avenue;

Running thence westerly along the northerly side of Bristol Avenue, 24 feet to the point and place of Beginning.

Tax Block 11551, Tax Lot 25

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Bristol Avenue, distance 472.3 feet easterly from the corner formed by the intersection of the easterly side of Centerville Street and the northerly side of Bristol Avenue;

Running thence northerly forming an interior angle of  $84^{\circ} 49' 00''$  with the northerly side of Bristol Avenue, 125 feet;

Running thence easterly forming an angle of  $95^{\circ} 11' 00''$  with the last mentioned course, 24 feet;

Running thence southerly forming an angle of  $84^{\circ} 49' 00''$  with the last mentioned course, 125 feet to Bristol Avenue;

Running thence westerly along the northerly side of Bristol Avenue, 24 feet to the point and place of Beginning.

Tax Block 11551, Tax Lot 26

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Bristol Avenue, distance 496.3 feet easterly from the corner formed by the intersection of the easterly side of Centerville Street and the northerly side of Bristol Avenue;

Running thence northerly forming an interior angle of  $84^{\circ} 49' 00''$  with the northerly side of Bristol Avenue, 125 feet;

Running thence easterly forming an angle of  $95^{\circ} 11' 00''$  with the last mentioned course, 24 feet;

Running thence southerly forming an angle of  $84^{\circ} 49' 00''$  with the last mentioned course, 125 feet to Bristol Avenue;

Running thence westerly along the northerly side of Bristol Avenue, 24 feet to the point and place of Beginning.

Tax Block 11551, Tax Lot 27

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Bristol Avenue, distance 520.3 feet easterly from the corner formed by the intersection of the easterly side of Centerville Street and the northerly side of Bristol Avenue;

Running thence northerly forming an interior angle of  $84^{\circ} 49' 00''$  with the northerly side of Bristol Avenue, 68.81 feet to the centerline of the proposed Hawtree Street (70' wide);

Running thence southeasterly forming an interior angle of  $42^{\circ} 29' 24''$  with the last mentioned course and along the centerline of the proposed Hawtree Street (70' wide), 35.39 feet;

Running thence southerly forming an interior angle of  $137^{\circ} 30' 36''$  with the last mentioned course, 40.55 feet, to the northerly side of Bristol Avenue;

Running thence westerly along the northerly side of Bristol Avenue, 24 feet to the point and place of Beginning.

Tax Block 11552, Tax Lot 30

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the southerly side of Bristol Avenue, distance 517.45 feet easterly from the corner formed by the intersection of the easterly side of Centerville Avenue and the southerly side of Bristol Avenue;

Running thence southerly forming an interior angle of  $95^{\circ} 11' 00''$  with the southerly side of Bristol Avenue, 125 feet;

Running thence easterly forming interior angle of  $84^{\circ} 49' 00''$  with the last mentioned course, 24 feet;

Running thence northerly forming an interior angle of  $95^{\circ} 11' 00''$  with the last mentioned course, 125 feet to the southerly side of Bristol Avenue;

Running thence westerly along the southerly side of Bristol Avenue, 24 feet to the point or place of Beginning.

Tax Block 11552, Tax Lot 31

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the southerly side of Bristol Avenue, distance 493.45 feet easterly from the corner formed by the intersection of the easterly side of Centreville Avenue and the southerly side of Bristol Avenue;

Running thence southerly forming an interior angle of  $95^{\circ} 11' 00''$  with the southerly side of Bristol Avenue, 125 feet;

Running thence easterly forming an interior angle of  $84^{\circ} 49' 00''$  with the last mentioned course, 24 feet;

Running thence northerly forming an interior angle of  $95^{\circ} 11' 00''$  with the last mentioned course, 125 feet to the southerly side of Bristol Avenue;

Running thence westerly along the southerly side of Bristol Avenue, 24 feet to the point or place of Beginning.

Tax Block 11552, Tax Lot 35

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the southerly side of Bristol Avenue, distance 421.45 feet easterly from the corner formed by the intersection of the easterly side of Centreville Avenue and the southerly side of Bristol Avenue;

Running thence southerly at an interior angle of  $95^{\circ} 11' 00''$  with the southerly side of Bristol Avenue, a distance of 125 feet;

Running thence easterly at an interior angle of  $84^{\circ} 49' 00''$  to the last mentioned course a distance of 24 feet;

Running thence northerly at an interior angle of  $95^{\circ} 11' 00''$  to the last mentioned course, a distance of 125 feet to the southerly side of Bristol Avenue;

Running thence westerly along the southerly side of Bristol Avenue, a distance of 24 feet to the point or place of Beginning.

Tax Block 11552, Tax Lot 36

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the southerly side of Bristol Avenue, distance 397.45 feet easterly from the corner formed by the intersection of the easterly side of Centreville Avenue and the southerly side of Bristol Avenue;

Running thence southerly forming an interior angle of  $95^{\circ} 11' 00''$  with the southerly side of Bristol Avenue, 125 feet;

Running thence easterly forming an interior angle of  $84^{\circ} 49' 00''$  with the last mentioned course, 24 feet;

Running thence northerly forming an interior angle of  $95^{\circ} 11' 00''$  to the last mentioned course, 125 feet to the southerly side of Bristol Avenue;

Running thence westerly along the southerly side of Bristol Avenue, 24 feet to the point or place of Beginning.

Tax Block 11552, Tax Lot 37

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the southerly side of Bristol Avenue, distance 373.45 feet easterly from the corner formed by the intersection of the easterly side of Centreville Avenue and the southerly side of Bristol Avenue;

Running thence southerly forming an interior angle of  $95^{\circ} 11' 00''$  with the southerly side of Bristol Avenue, 125 feet;

Running thence easterly forming an interior angle of  $84^{\circ} 49' 00''$  with the last mentioned course, 24 feet;

Running thence northerly forming an interior angle of  $95^{\circ} 11' 00''$  with the last mentioned course, 125 feet to the southerly side of Bristol Avenue;

Running thence westerly along the southerly side of Bristol Avenue, 24 feet to the point or place of Beginning.

Tax Block 11552, Tax Lot 39

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the southerly side of Bristol Avenue, distance 325.45 feet easterly from the corner formed by the intersection of the easterly side of Centreville Avenue and the southerly side of Bristol Avenue;

Running thence southerly forming an interior angle of  $95^{\circ} 11' 00''$  with the southerly side of Bristol Avenue, 125 feet;

Running thence easterly forming an interior angle of  $84^{\circ} 49' 00''$  to the last mentioned course, 24 feet;

Running thence northerly forming an interior angle of  $95^{\circ} 11' 00''$  with the last mentioned course, 125 feet to the southerly side of Bristol Avenue;

Running thence westerly along the southerly side of Bristol Avenue, 24 feet to the point or place of Beginning.

Tax Block 11552, Tax Lot 41

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the southerly side of Bristol Avenue, distance 301.45 feet easterly from the corner formed by the intersection of the easterly side of Centreville Avenue and the southerly side of Bristol Avenue;

Running thence southerly forming an interior angle of  $95^{\circ} 11' 00''$  with the southerly side of Bristol Avenue, 125 feet;

Running thence easterly forming an interior angle of  $84^{\circ} 49' 00''$  to the last mentioned course, 24 feet;

Running thence northerly forming an interior angle of  $95^{\circ} 11' 00''$  with the last mentioned course, 125 feet to the southerly side of Bristol Avenue;

Running thence westerly along the southerly side of Bristol Avenue, 24 feet to the point or place of Beginning.

Tax Block 11552, Tax Lot 85

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Eckford Avenue, distance 500 feet easterly from the corner formed by the intersection of the easterly side of Centreville Avenue and the northerly side of Eckford Avenue;

Running thence northerly at right angles to the northerly side of Eckford Avenue, 100 feet;

Running thence easterly at right angles to the last mentioned course, 40 feet;

Running thence southerly at right angles to the northerly side of Eckford Avenue, 100 feet;

Running thence westerly along the northerly side of Eckford Avenue, 40 feet to the point or place of Beginning.

Tax Block 11552, Tax Lot 89

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Eckford Avenue, distance 580 feet easterly from the corner formed by the intersection of the easterly side of Centreville Avenue and the northerly side of Eckford Avenue;

Running thence northerly at right angles to the northerly side of Eckford Avenue, 100 feet;

Running thence easterly at right angles to the last mentioned course, 40 feet;

Running thence southerly at right angles to the northerly side of Eckford Avenue, 100 feet;

Running thence westerly along the northerly side of Eckford Avenue, 40 feet to the point or place of Beginning.

Tax Block 11552, Tax Lot 91

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Eckford Avenue, distance 620 feet easterly from the corner formed by the intersection of the easterly side of Centreville Avenue and the northerly side of Eckford Avenue;

Running thence northerly at right angles to the northerly side of Eckford Avenue, 100 feet;

Running thence easterly at right angles to the last mentioned course, 60 feet;

Running thence southerly at right angles to the northerly side of Eckford Avenue, 100 feet;

Running thence westerly along the northerly side of Eckford Avenue, 60 feet to the point or place of Beginning.

Tax Block 11552, Tax Lot 94

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Eckford Avenue, distance 680 feet easterly from the corner formed by the intersection of the easterly side of Centreville Avenue and the northerly side of Eckford Avenue;

Running thence northerly at right angles to the northerly side of Eckford Avenue, 100 feet;

Running thence easterly at right angles to the last mentioned course, 38 feet;

Running thence southerly forming an interior angle of  $79^{\circ} 14' 31.3''$  with the last mentioned course, 101.80 feet

Running thence westerly along the northerly side of Eckford Avenue, 19 feet to the point or place of Beginning.

Tax Block 11552, Tax Lot 95

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Eckford Avenue, distance 699 feet easterly from the corner formed by the intersection of the easterly side of Centreville Avenue and the northerly side of Eckford Avenue;

Running thence northerly forming an interior angle of  $100^{\circ} 45' 28.7''$  to the northerly side of Eckford Avenue, 47.13 feet;

Running thence southerly forming an interior angle of  $14^{\circ} 29' 41.4''$  to the last mentioned course, 46.4 feet;

Running thence westerly along the northerly side of Eckford Avenue 11.82 feet to the point or place of Beginning.

Tax Block 11552, Tax Lot 100

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point, which point of beginning is formed by the following courses and distances:

Commencing at a point at the corner formed by the intersection of the easterly side of Centreville Street and the northerly side of Eckford Avenue;

Running thence northerly along the easterly side of Centreville Street, 100 feet;

Running thence easterly at right angles to the easterly side of Centreville Street and along the centerline of the block, 563.04 feet to the point or place of beginning;

Running thence northerly forming an exterior angle of  $95^{\circ} 55' 49''$  with the last mentioned course to the centerline of the proposed Hawtree Street (70' wide), 158.16 feet;

Running thence southeasterly forming an interior angle of  $43^{\circ} 14' 13.2''$  with the last mentioned course and along the centerline of Hawtree Street (70' wide), 197.78 feet;

Running thence westerly forming an angle of  $52^{\circ} 41' 35.8''$  with the last mentioned course, 136.21 feet to the point or place of Beginning.

Tax Block 11555, Tax Lot 7

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the southerly side of Eckford Avenue, distance 100 feet easterly from the corner formed by the intersection of the easterly side of Raleigh Street and the southerly side of Eckford Street;

Running thence southerly at right angles to the southerly side of Eckford Avenue, 100 feet;

Running thence easterly at right angles to the last mentioned course, 61.51 feet;

Running thence northeasterly forming an interior angle of  $104^{\circ} 16' 43''$  with the last mentioned course, 103.19 feet;

Running thence westerly along the southerly side of Eckford Avenue, 86.96 feet to the point or place of Beginning.

Tax Block 11555, Tax Lot 16

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at the corner formed by the intersection of the southerly side of Eckford Avenue and the westerly side of Huron Street;

Running thence southerly along the westerly side of Huron Street, 148.08 feet;

Running thence westerly at right angles to the westerly side of Huron Street, 75.80 feet (actual); 78 feet (tax map);

Running thence northerly forming an interior angle of  $71^{\circ} 59' 04''$  with the last mentioned course, 157.57 feet;

Running thence easterly along the southerly side of Eckford Avenue, 27.13 feet to the point or place of Beginning.

Tax Block 11555, Tax Lot 30

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point, which point of beginning is formed by the following courses and distances:

Commencing at a point at the corner formed by the intersection of the southerly side of Eckford Avenue and the easterly side of Raleigh Street;

Running thence easterly along the southerly side of Eckford Avenue, 100 feet;  
Running thence southerly at right angles to the last mentioned course, 100 feet;

Running thence easterly at right angles to the last mentioned course, 61.51 feet;

Running thence southerly forming an interior angle of 75° 43' 17" with the last mentioned course, 103.19 feet;

Running thence westerly forming an interior angle of 104° 16' 43" with the last mentioned course, a distance 36.06 feet;

Running thence northerly at right angles to the last mentioned course, a distance of 100 feet to the point or place of Beginning.

Tax Block 11555, Tax Lot 38

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the westerly side of Huron Street, distance 187.92 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the westerly side of Huron Street;

Running thence westerly at right angles to the westerly side of Huron Street, 100 feet;

Running thence northerly at right angles to the last mentioned course, 40 feet;

Running thence easterly at right angles to the westerly side of Huron Street, 100 feet;

Running thence southerly along the westerly side of Huron Street, 40 feet to the point or place of Beginning.

Tax Block 11555, Tax Lot 40

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the westerly side of Huron Street, distance 147.92 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the westerly side of Huron Street;

Running thence westerly at right angles to the westerly side of Huron Street, 100 feet;

Running thence northerly at right angles to the last mentioned course, 40 feet;

Running thence easterly at right angles to the westerly side of Huron Street, 100 feet;

Running thence southerly along the westerly side of Huron Street, a distance of 40 feet to the point or place of Beginning.

Tax Block 11555, Tax Lot 42

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at the corner formed by the intersection of the northerly side of Albert Road and the westerly side of Huron Street;

Running thence westerly along the northerly side of Albert Road, 168.56 feet;

Running thence northerly forming an interior angle of  $123^{\circ} 50' 45''$  with the northerly side of Albert Road, 134.04 feet;

Running thence easterly at right angles to the last mentioned course, 40 feet;

Running thence southerly at right angles to the last mentioned course, 80 feet;

Running thence easterly at right angles to the westerly side of Huron Street, 100 feet;

Running thence southerly along the westerly side of Huron Street, 147.92 feet to the point or place of Beginning.

Tax Block 11559, Tax Lot 3

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Huron Street, distance 308.15 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the easterly side of Huron Street;

Running thence easterly at right angles to the easterly side of Huron Street, 40 feet;

Running thence northerly at right angles to the last mentioned course, 100 feet;

Running thence westerly at right angles to the easterly side of Huron Street, 40 feet;

Running thence southerly along the easterly side of Huron Street, a distance of 100 feet to the point or place of Beginning.

Tax Block 11559, Tax Lot 1

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point, which point of beginning is formed by the following courses and distances:

Commencing at a point at the corner formed by the intersection of the northerly side of Albert Road and the easterly side of Huron Street;

Running thence northerly along the easterly side of Huron Street, 348.15 feet;

Running thence easterly at right angles to Huron Street, 40 feet;

Running thence southerly at right angles to the last mentioned course, 100 feet;

Running thence easterly at right angles to the last mentioned course, 40 feet;

Running thence northerly at right angles to the last mentioned course, 100 feet;

Running thence westerly at right angles to the last mentioned course, a distance of 40 feet to the point or place of Beginning.

Tax Block 11559, Tax Lot 5

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point, which point of beginning is formed by the following courses and distances:

Commencing at a point at the corner formed by the intersection of the northerly side of Albert Road and the westerly side of Bridgeton Street;

Running thence northerly along the westerly side of Bridgeton Street, 541.60 feet;

Running thence westerly at right angles to the last mentioned course, 80 feet;

Running thence southerly at right angles to the last mentioned course, 100 feet;

Running thence westerly at right angles to the last mentioned course, 40 feet;

Running thence northerly at right angles to the last mentioned course, 100 feet;

Running thence easterly at right angles to the last mentioned course, 40 feet to the point or place of Beginning.

Tax Block 11559, Tax Lot 7

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point, which point of beginning is formed by the following courses:

Commencing at a point at the corner formed by the intersection of the northerly side of Albert Road and the westerly side of Bridgeton Street;

Running thence northerly along the westerly side of Bridgeton Street, 541.60 feet;

Running thence westerly at right angles to the last mentioned course, 40 feet;

Running thence southerly at right angles to the last mentioned course, 100 feet;

Running thence westerly at right angles to the last mentioned course, 40 feet;

Running thence northerly at right angles to the last mentioned course, 100 feet;

Running thence easterly at right angles to the last mentioned course, 40 feet to the point or place of Beginning.

Tax Block 11559, Tax Lot 9

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the westerly side of Bridgeton Street, distance 441.60 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the westerly side of Bridgeton Street;

Running thence westerly at right angles to the westerly side of Bridgeton Street, 40 feet;

Running thence northerly at right angles to the last mentioned course, 100 feet;

Running thence easterly at right angles to the westerly side of Bridgeton Street, 40 feet;

Running thence southerly along the westerly side of Bridgeton Street, 100 feet to the point or place of Beginning.

Tax Block 11559, Tax Lot 12

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the Westerly side of Bridgeton Street, distance 421.60 feet Northerly from the corner formed by the intersection of the Northerly side of Albert Road and the Westerly side of Bridgeton Street;

Running thence Westerly at right angles to the Westerly side of Bridgeton Street, 100 feet;

Running thence Northerly at right angles to the last mentioned course, 20 feet;

Running thence Easterly at right angles to the Westerly side of Bridgeton Street, 100 feet;

Running thence Southerly along the Westerly side of Bridgeton Street, 20 feet to the point or place of beginning.

TAX BLOCK 11559, Tax Lot 19

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the Westerly side of Bridgeton Street, distance 221.60 feet Northerly from the corner formed by the intersection of the Northerly side of Albert Road and the Westerly side of Bridgeton Street;

Running thence Westerly at right angles to the Westerly side of Bridgeton Street, 100 feet;

Running thence Northerly at right angles to the last mentioned course, 80 feet;

Running thence Easterly at right angles to the Westerly side of Bridgeton Street, 100 feet;

Running thence Southerly along the Westerly side of Bridgeton Street, a distance 80 feet to the point or place of beginning.

Tax Block 11559, Tax Lot 23

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the westerly side of Bridgeton Street, distance 181.60 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the westerly side of Bridgetown Street;

Running thence westerly at right angles to the westerly side of Bridgeton Street, 100 feet;

Running thence northerly at right angles to the last mentioned course, 40 feet;

Running thence easterly at right angles to the westerly side of Bridgeton Street, 100 feet;

Running thence southerly along the westerly side of Bridgeton Street, 40 feet to the point or place of Beginning.

Tax Block 11559, Tax Lot 25

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the westerly side of Bridgeton Street, distance 141.60 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the westerly side of Bridgeton Street;

Running thence westerly at right angles to the westerly side of Bridgeton Street, 100 feet;

Running thence northerly at right angles to the last mentioned course, 40 feet;

Running thence easterly at right angles to the westerly side of Bridgeton Street, 100 feet;

Running thence southerly along the westerly side of Bridgeton Street, 40 feet to the point or place of Beginning.

Tax Block 11559, Tax Lot 30

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Albert Road and the westerly side of Bridgeton Street;

Running thence northerly along the westerly side of Bridgeton Street, 141.60 feet;

Running thence westerly at right angles to the westerly side of Bridgeton Street, 40 feet;

Running thence southerly at right angles to the last mentioned course, 115.44 feet;

Running thence easterly along the northerly side of Albert Road, a line forming an interior angle of  $123^{\circ} 50' 45''$  with the last mention course, 43.37 feet;

Running thence easterly along the northerly side of Albert Road, 4.46 feet to the point or place of Beginning.

Tax Block 11559, Tax Lot 32

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Albert Road, distance 168.56 feet easterly from the corner formed by the intersection of the easterly side of Huron Street and the northerly side of Albert Road;

Running thence northerly at a line forming an exterior angle of  $56^{\circ} 09' 15''$  with the northerly side of Albert Road, 102 feet;

Running thence easterly at right angles to the last mentioned course, 20 feet;

Running thence southerly at right angles to the last mentioned course 115.44 feet;

Running thence westerly along the northerly side of Albert Road, 24.08 feet to the point or place of Beginning.

Tax Block 11559, Tax Lot 33

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Albert Road, distance 120.4 feet easterly from the corner formed by the intersection of the easterly side of Huron Street and the northerly side of Albert Road;

Running thence northerly at a line forming an exterior angle of  $56^{\circ} 09' 15''$  with the northerly side of Albert Road, 75.21 feet;

Running thence easterly at right angles to the last mentioned course; 40 feet;

Running thence southerly at right angles to the last mentioned course, 102 feet;

Running thence westerly along the northerly side of Albert Road, 48.16 feet to the point or place of Beginning.

Tax Block 11559, Tax Lot 35

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Albert Road, distance 48.16 feet easterly from the corner formed by the intersection of the easterly side of Huron Street and northerly side of Albert Road

Running thence northerly forming an exterior angle of  $56^{\circ} 09' 15''$  with the northerly side of Albert Road, 94.97 feet;

Running thence easterly at right angles to the last mentioned course, 60 feet;

Running thence southerly at right angles to the last mentioned course, 135.21 feet;

Running thence westerly along the northerly side of Albert Road, 72.24 feet to the point or place of Beginning.

Tax Block 11559, Tax Lot 38

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Huron Street and the northerly side of Albert Road

Running thence northerly along the easterly side of Huron Street, 68.15 feet;

Running thence easterly at right angles to the easterly side of Huron Street, 40 feet;

Running thence southerly at right angles to the last mentioned course, 94.97 feet;

Running thence westerly along the northerly side of Albert Road, 48.16 feet to the point or place of beginning.

Tax Block 11559, Tax Lot 45

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Huron Street, distance 168.15 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the easterly side of Huron Street;

Running thence easterly at right angles to the easterly side of Huron Street, 100 feet;

Running thence northerly at right angles to the last mentioned course, 60 feet;

Running thence westerly at right angles to the easterly side of Huron Street, 100 feet;

Running thence southerly along the easterly side of Huron Street, 60 feet to the point or place of beginning.

Tax Block 11559, Tax Lot 60

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Huron Street, distance 488.15 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the easterly side of Huron Street;

Running thence easterly at right angles to the easterly side of Huron Street, 100 feet;

Running thence northerly at right angles to the last mentioned course to the centerline of the proposed Hawtree Street (70' wide), 49.27 feet;

Running thence westerly forming interior angles of  $146^{\circ} 25' 49''$  to the last mentioned course along the centerline of the proposed Hawtree Street (70' wide), 156.9 feet;

Running thence westerly at right angles to the easterly side of Huron Street, 13.24 feet;

Running thence southerly along the easterly side of Huron Street, 180 feet to the point or place of Beginning.

Tax Block 11560, Tax Lot 11

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, known and designated on the Tax Map of the City of New York for the Borough of Queens as Section 50 in Block 11560, Lot 11.

Tax Block 11561, Tax Lot 1

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point formed by the intersection of the northerly side of Albert Road and the westerly side of Cohancy Street;

Running thence westerly along the northerly side of Albert Road, 43.59 feet;

Running thence northerly forming an interior angle of  $113^{\circ} 25' 04.5''$  with the northerly side of Albert Road, 94.23 feet;

Running thence easterly at right angles to the last mentioned course, 40 feet to the westerly side of Cohancy Street;

Running thence southerly along the westerly side of Cohancy Street, 111.55 feet to the point or place of Beginning.

Tax Block 11561, Tax Lot 3

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Albert Road, distance 43.59 feet westerly from the corner formed by the intersection of the westerly side of Cohancy Street and the northerly side of Albert Road;

Running thence westerly along the northerly side of Albert Road, 43.59 feet;

Running thence northerly forming an interior angle of  $113^{\circ} 25' 04.5''$  with the northerly side of Albert Road, 76.90 feet;

Running thence easterly at right angles to the last mentioned course, 40 feet;

Running thence southerly at right angles to the last mentioned course, 94.23 feet to the point or place Beginning.

Tax Block 11561, Tax Lot 5

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Albert Road, distance 87.18 feet westerly from the corner formed by the intersection of the westerly side of Cohancy Street and the northerly side of Albert Road,

Running thence westerly along the northerly side of Albert Road, 21.79 feet;

Running thence northerly forming an interior angle of  $113^{\circ} 25' 04.5''$  with the northerly side of Albert Road, 68.24 feet;

Running thence easterly at right angles to the last mentioned course, a distance of 20 feet;

Running thence southerly at right angles to the last mentioned course 76.90 feet to the point or place of Beginning.

Tax Block 11561, Tax Lot 8

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the northerly side of Albert Road, distance 43.59 feet easterly from the corner formed by the intersection of the easterly side of Bridgeton Street and the northerly side of Albert Road;

Running thence northerly at a line forming an interior angle of  $113^{\circ} 25' 04.5''$  with the northerly side of Albert Road a distance of 82.25 feet;

Running thence easterly at right angles to the last mentioned course, 20 feet;

Running thence southerly at right angles to the last mentioned course, 90.92 feet;

Running thence westerly along the northerly side of Albert Road, 21.80 feet to the point or place of Beginning.

Tax Block 11561, Tax Lot 12

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Bridgeton Street, distance 64.93 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the easterly side of Bridgeton Street;

Running thence easterly at right angles to the easterly side of Bridgeton Street, 100 feet;

Running thence northerly at right angles to the last mentioned course, 60 feet;

Running thence westerly at right angles to the easterly side of Bridgeton Street, 100 feet;

Running thence southerly along the easterly side of Bridgeton Street, 60 feet to the point or place of Beginning.

Tax Block 11561, Tax Lot 22

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Bridgetown Street, distance 264.93 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the easterly side of Bridgeton Street;

Running thence easterly at right angles to the easterly side of Bridgeton Street, 100 feet;

Running thence northerly at right angles to the last mentioned course, 140 feet;

Running thence westerly at right angles to the easterly side of Bridgeton Street, 100 feet;

Running thence southerly along the easterly side of Bridgeton Street, 140 feet to the point or place of Beginning.

Tax Block 11561, Tax Lot 35

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the westerly side of Cohancy Street, distance 191.55 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the westerly side of Cohancy Street;

Running thence westerly at right angles to the westerly side of Cohancy Street, 100 feet;

Running thence northerly at right angles to the last mentioned course, 197.48 feet;

Running thence southeasterly forming an interior angle of 33° 34' 11" with the last mentioned course, 180.85 feet along the centerline of the proposed Hawtree Street (70' wide) to the westerly side of Cohancy Street;

Running thence southerly along the westerly side of Cohancy Street, 46.81 feet to the point or place of Beginning.

Tax Block 11561, Tax Lot 36

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the westerly side of Cohancy Street, distance 151.55 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the westerly side of Cohancy Street;

Running thence westerly at right angles to the westerly side of Cohancy Street, 100 feet;

Running thence northerly at right angles to the last mentioned course, 40 feet;

Running thence easterly at right angles to the westerly side of Cohancy Street, 100 feet;

Running thence southerly along the westerly side of Cohancy Street, 40 feet to the point or place of Beginning.

Tax Block 11561, Tax Lot 37

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the westerly side of Cohancy Street, distance 111.55 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the westerly side of Cohancy Street;

Running thence westerly at right angles to the westerly side of Cohancy Street, 100 feet;

Running thence northerly at right angles to the last mentioned course, 40 feet;

Running thence easterly at right angles to the westerly side of Cohancy Street, 100 feet;

Running thence southerly along the westerly side of Cohancy Street, 40 feet to the point or place of Beginning.

Tax Block 11561, Tax Lot 122

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Bridgeton Street, distance 254.93 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the easterly side of Bridgeton Street;

Running thence easterly at right angles to the easterly side of Bridgeton Street, 100 feet;

Running thence northerly at right angles to the last mentioned course, 10 feet;

Running thence westerly at right angles to the easterly side of Bridgeton Street, 100 feet;

Running thence southerly along the easterly side of Bridgeton Street, 10 feet to the point or place of Beginning.

Tax Block 11562, Tax Lot 140

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the westerly side of Cohancy Street, distance 238.36 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the westerly side of Cohancy Street;

Running thence westerly forming an interior angle of 33° 34' 11" with the westerly side of Cohancy Street and along the centerline of the proposed Hawtree Street (70' wide), 180.85 feet;

Running thence northerly forming an interior angle of 146° 25' 49" with the last mentioned course, 102.52 feet;

Running thence easterly at right angles to the last mentioned course, 48.45 feet to the land now or formerly belonging to City Transit Authority Independent System;

Running thence easterly forming an interior angle of 123° 35' 30" with the last mentioned course, 93.18 feet, along the land now or formerly belonging to City Transit Independent System;

Running thence southerly along the westerly side of Cohancy Street, 175.58 feet to the point or place of Beginning.

Tax Block 11562, Tax Lot 152

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Bridgeton Street, distance 404.93 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the easterly side of Bridgeton Street;

Running thence easterly at right angles to the easterly side of Bridgeton Street, 148.45 feet to the land now or formerly belonging to City Transit Authority Independent System;

Running thence northerly forming an interior angle of 56° 24' 30" with the last mentioned course, 24.01 feet along the land now or formerly belonging to City Transit Authority Independent System;

Running thence westerly at right angles to the easterly side of Bridgeton Street, 135.16 feet;

Running thence southerly along the easterly side of Bridgeton Street, 20 feet to the point or place of Beginning.

Tax Block 11562, Tax Lot 153

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Bridgeton Street, distance 424.93 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the easterly side of Bridgeton Street;

Running thence easterly at right angles to the easterly side of Bridgeton Street, 135.16 feet to the land now or formerly belonging to City Transit Authority Independent System;

Running thence northerly forming an interior angle of 56° 24' 30" with the last mentioned course, 120.05 feet along the land now or formerly belonging to City Transit Authority Independent System;

Running thence westerly at right angles to the easterly side of Bridgeton Street, 68.74 feet;

Running thence southerly along the easterly side of Bridgeton Street, 100 feet to the point or place of Beginning.

Tax Block 11562, Tax Lot 157

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Bridgeton Street, distance 524.93 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the easterly side of Bridgeton Street;

Running thence easterly at right angles to the easterly side of Bridgeton Street, 68.74 feet to the land now or formerly belonging to City Transit Authority Independent System;

Running thence northerly forming an interior angle of  $56^{\circ} 24' 30''$  with the last mentioned course, 48.02 feet along the land now or formerly belonging to City Transit Authority Independent System;

Running thence westerly at right angles to the easterly side of Bridgeton Street, 42.18 feet;

Running thence southerly along the easterly side of Bridgeton Street, 40 feet to the point or place of Beginning.

Tax Block 11562, Tax Lot 175

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point which point of beginning is formed by the following courses and distances;

Commencing at a point at the corner formed by the intersection of the northerly side of Albert Road and the easterly side of Huron Street;

Running thence northerly along the easterly side of Huron Street, 668.15 feet;

Running thence easterly at right angles to the easterly side of Huron Street, 13.24 feet to the point or place of beginning;

Running thence southeasterly forming an exterior angle of  $123^{\circ} 34' 11''$  with the last mentioned course and along the centerline of the proposed Hawtree Street (70' wide), 156.9 feet;

Running thence northerly forming an angle of  $33^{\circ} 34' 11''$  with the last mentioned course, 130.73 feet;

Running thence westerly at right angles to the last mentioned course, 86.76 feet to the point or place of Beginning.

Tax Block 11562, Tax Lot 179

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point on the easterly side of Huron Street, distance 668.15 feet northerly from the corner formed by the intersection of the northerly side of Albert Road and the easterly side of Huron Street;

Running thence easterly at right angles to the easterly side of Huron Street, a distance of 129.49 feet to the land now or formerly belonging to City Transit Authority Independent System;

Running thence northwesterly forming an interior angle of  $56^{\circ} 24' 30''$  with the last mentioned course, a distance 234.02 feet (actual), 234.18 feet (tax map) along a land now or formerly belonging to City Transit Authority Independent System, to the easterly side of Huron Street;

Running thence southerly along the easterly side of Huron Street, 194.93 feet, to the point or place of Beginning.

Tax Block 11562, Tax Lot 188

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point which point of beginning is formed by the following courses and distances;

Commencing at a point at the corner formed by the intersection of the easterly side of Centreville Street and the northerly side of Eckford Avenue;

Running thence northerly along the easterly side of Centreville Street, 100 feet;

Running thence easterly at right angles to the easterly side of Centreville Street and along the centerline of the block, 563.04 feet;

Running thence northerly forming an exterior angle of  $95^{\circ} 55' 49''$  with the last mentioned course and the centerline of the proposed Hawtree Street (70' wide), 158.16 feet to the point or place of Beginning.

Running thence southeasterly forming an exterior angle of  $43^{\circ} 14' 13.2''$  with the last mentioned course along the centerline of the proposed Hawtree Street (70' wide), 197.78 feet;

Running thence easterly forming an interior angle of  $127^{\circ} 18' 24.2''$  with the last mentioned course, 18.75 feet;

Running thence northerly forming an interior angle of  $98^{\circ} 09' 25.2''$  with the last mentioned course, 114.81 feet to a land now or formerly belonging to City Transit Authority Independent System;

Running thence northwesterly forming an angle of  $134^{\circ} 30' 52.2''$  with the last mentioned course, 142.68 feet along a land now or formerly belonging to City Transit Authority Independent System;

Running thence westerly forming an angle of  $132^{\circ} 48' 37.9''$  with the last mentioned course, 60.82 feet;

Running thence northwesterly forming an interior angle of  $90^{\circ} 26' 53.6''$  with the last mentioned course, 76.01 feet to the point or place of Beginning.

Tax Block 11562, Tax Lot 200

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point which point of beginning is formed by the following courses and distances;

Commencing at a point at the corner formed by the intersection of the easterly side of Centreville Street and the northerly side of Eckford Avenue;

Running thence northerly along the easterly side of Centreville Street, 100 feet;

Running thence easterly at right angles to the easterly side of Centreville Street, 563.04 feet;

Running thence northerly forming an exterior angle of  $95^{\circ} 55' 49''$  with the last mentioned course, 234.17 feet to the point or place of Beginning.

Running thence easterly forming an exterior angle of  $90^{\circ} 26' 53.6''$  with the last mentioned course 60.82 feet to a land now or formerly belonging to City Transit Authority Independent System;

Running thence northerly forming an interior angle of  $47^{\circ} 11' 22.1''$  with the last mentioned course, 69.85 feet along a land now or formerly belonging to City Transit Authority Independent System;

Running thence westerly forming an interior angle of  $127^{\circ} 19' 42.9''$  with the last mentioned course, 13.02 feet;

Running thence southerly forming an interior angle of  $95^{\circ} 55' 48.7''$  with the last mentioned course, 50 feet to the point or place of Beginning.

Tax Block 11562, Tax Lot 202

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

Beginning at a point at which point of beginning is formed by the following courses;

Commencing at a point at the corner formed by the intersection of the easterly side of Centerville Street and the northerly side of Bristol Avenue;

Running thence easterly along the northerly line of Bristol Avenue, 520.3 feet;

Running thence northerly forming an interior angle of  $84^{\circ} 49' 00''$  with the northerly side of Bristol Avenue and to the centerline of the proposed Hawtree Street (70' wide), 68.81 feet to the point or place of Beginning.

Running thence southeasterly forming an exterior angle of  $42^{\circ} 29' 24''$  with the last mentioned course and along the centerline of the proposed Hawtree Street (70' wide), 35.39 feet;

Running thence northerly forming an interior angle of  $42^{\circ} 29' 24''$  with the last mentioned course, 84.45 feet;

Running thence westerly forming an interior angle of  $84^{\circ} 49' 00''$  with the last mentioned course, 24 feet;

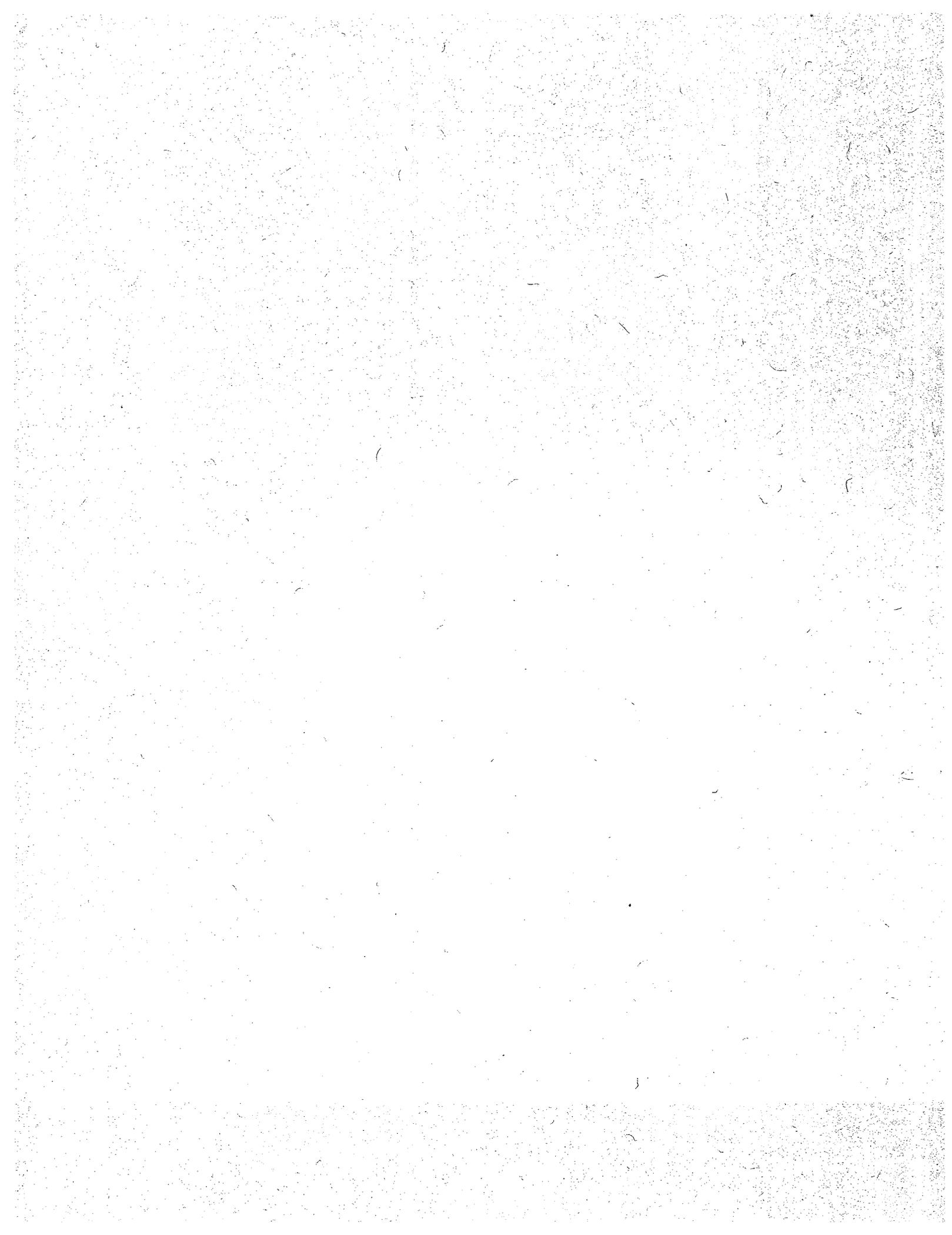
Running thence southerly forming an interior angle of  $95^{\circ} 11' 00''$  with the last mentioned course 56.19 feet to the point and place of beginning.

Tax Block 11558, Tax Lot 1

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York.

Tax Block 11560, Tax Lot 1

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York.



**EXHIBIT B**  
**AQUEDUCT FACILITIES GROUND LEASE**

**AQUEDUCT RACETRACK**

**FACILITIES GROUND LEASE AGREEMENT**

**between**

**THE PEOPLE OF THE STATE OF NEW YORK ACTING BY AND  
THROUGH THE STATE FRANCHISE OVERSIGHT BOARD  
PURSUANT TO CHAPTER 18 OF THE LAWS OF 2008  
as Lessor,**

**and**

**THE NEW YORK RACING ASSOCIATION, INC.**

**as Lessee**

**September \_\_, 2008**

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## FACILITIES GROUND LEASE AGREEMENT

FACILITIES GROUND LEASE AGREEMENT (this "Lease"), dated as of September \_\_, 2008, by and between THE PEOPLE OF THE STATE OF NEW YORK ACTING BY AND THROUGH THE STATE FRANCHISE OVERSIGHT BOARD PURSUANT TO CHAPTER 18 OF THE LAWS OF 2008, having an address at c/o Executive Chamber, The Capitol, Albany, New York 12224, Attn: Chairman (the "Lessor"), and THE NEW YORK RACING ASSOCIATION, INC., a not-for profit racing corporation incorporated pursuant to Section 402 of the Not-For-Profit Corporation Law of the State of New York, as authorized by Chapter 18 of the Laws of 2008, with a place of business at 110-00 Rockaway Boulevard, South Ozone Park, New York 11417 (the "Lessee"), sometimes collectively referred to herein as the "Parties" or singularly as a "Party."

### RECITALS

Contemporaneously with the execution of this Lease, and pursuant to (i) the authority granted by Chapter 18 of the Laws of 2008 passed February 13, 2008, by the New York State Senate and the New York State Assembly, and signed into law by the Governor of the State on February 19, 2008 (as the same may hereafter be amended, the "Legislation"), (ii) the Chapter 11 plan filed by the New York Racing Association Inc. ("Old NYRA") pursuant to section 1121(a) of the Bankruptcy Code (the "Plan"), as confirmed by an order, dated April 28, 2008, of the United States Bankruptcy Court for the Southern District of New York and (iii) the State Settlement Agreement made by and among Lessee, Old NYRA and the State of New York, the New York State Racing and Wagering Board, the New York State Non-Profit Racing Association Oversight Board and the New York State Division of the Lottery (the "Settlement Agreement"), Old NYRA is conveying all right, title and interest in and to the Leased Premises (as hereinafter defined) to Lessor. Lessor and Lessee are concurrently herewith entering into that certain Franchise Agreement (as hereinafter defined) pursuant to which Lessee is granted the Franchise (as hereinafter defined) to conduct thoroughbred racing and pari-mutuel wagering with respect to thoroughbred racing at the Leased Premises.

In order for Lessee to operate the Franchise granted pursuant to the Franchise Agreement, Lessor is authorized pursuant to the Legislation to lease to Lessee the Aqueduct Racing Premises (as defined in the Franchise Agreement). Lessor desires to lease the Aqueduct Racing Premises to Lessee, for such rentals, and upon such terms and conditions, contained in this Lease.

Concurrently herewith, Lessor and Lessee are also entering into that certain "Ground Lease" pursuant to which Lessor is leasing to Lessee the remaining portions of the Aqueduct Racing Premises, for such rentals, and upon such terms and conditions, contained in the Ground Lease.

The Parties hereto intend that (i) Lessee will assign its right, title and interest as lessee under this Lease to the VLT Operator (hereinafter defined) pursuant to the terms and conditions of that certain "Assignment and Assumption of Facilities Ground Lease Agreement" to be entered into by Lessee as assignor and the VLT Operator as assignee; (ii) VLT Operator as lessee and Lessor, as lessor, will amend and restate this Lease; (iii) VLT Operator, as sublessor and Lessee will enter into a Sublease Agreement (the "Sublease Agreement") for a portion of the Leased Premises, as more particularly set forth in the Sublease Agreement; (iv) Lessor as landlord under the Facilities Ground Lease will enter into a Non-disturbance and Attornment Agreement and an Omnibus Agreement (the "Omnibus Agreement") with Lessee, as sublessee under the Sublease Agreement. The Parties agree that none of the actions listed in the preceding sentence shall be effective unless they all occur and occur one immediately after the other in the order in which they are listed in the preceding sentence.

## ARTICLE I

### Grant, Term of Lease and Certain Definitions

1.1 Leasing Clause. Upon and subject to the terms, provisions and conditions hereinafter set forth, Lessor does hereby LEASE, DEMISE and LET unto Lessee, and Lessee does hereby take and lease from Lessor, the Leased Premises, TO HAVE AND TO HOLD, together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to the Leased Premises (including the Art Work (hereinafter defined)), for the term hereinafter provided, upon and subject to the terms, conditions and agreements contained herein.

1.2 Term. The term of this Lease (the "Term") shall be for a period commencing on the Commencement Date (hereinafter defined), and terminating on the date on which the Franchise Agreement terminates pursuant to the terms thereof, or upon the sooner termination of this Lease as set forth herein (the "Expiration Date").

1.3 Certain Definitions. Capitalized terms not otherwise defined herein shall have the respective meanings given them in the Franchise Agreement. The following terms shall have the respective meanings set forth below in this Section 1.3 for purposes of this Lease:

(a) Additional Charges. All other taxes, levies impositions, assessments of whatever type or nature levied or assessed against the Leased Premises, Improvements, and /or Lessee, other than Impositions.

(b) Art Work. All art work transferred from Old NYRA to Lessor, including, but not limited to, the items listed on Exhibit C hereto.

(c) Base Rental. The base rental for the Leased Premises as defined in Section 2.1 of this Lease.

(d) Commencement Date. The date first above written, on which date this Lease has been fully executed by Lessor and Lessee and approved and filed in the Office of the State Comptroller pursuant to Section 112 of the State Finance Law.

(e) Contaminants. Any material, substance or waste classified, characterized or regulated as toxic, hazardous or a pollutant or contaminant under any Requirements, including asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or the equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million.

(f) Contractor. Any construction manager, contractor, subcontractor, laborer or materialman who shall supply goods, services, labor or materials in connection with the development, construction, management, maintenance or operation of any part of the Leased Premises.

(g) Default Rate. The rate of interest per annum applicable to judgment claims in the State of New York.

(h) Franchise. The authority granted to Lessee to conduct racing and pari-mutuel wagering with respect to thoroughbred racing, as provided for in the Legislation and the Franchise Agreement.

(i) Franchise Agreement. That certain Franchise Agreement between Lessor and Lessee of even date herewith which is annexed hereto as Exhibit B.

(j) Impositions. All taxes set forth in Paragraph 8.a. of the Legislation, as the same is amended by Subdivision 3 of Section 530 of the Real Property Tax Law and constructed through Sections 102, 530 and 532 of the Real Property Tax Law, levied or assessed against the Leased Premises and Improvements and coming due during the Term, now or hereafter located thereon associated with the ownership, which are required, pursuant to the above referenced sections, to be paid by Lessor. In no event shall Impositions include any personal or corporate income or franchise taxes imposed upon Lessee, or other taxes imposed on the income or revenues from the operation of the Leased Premises or other activities of Lessee.

(k) Improvements. All buildings, structures, improvements and other real and personal property associated therewith from time to time situated on the Leased Premises.

(l) Insurance Trustee. An institutional lender with offices located in the State of New York, proposed by Lessee and reasonably satisfactory to Lessor, which agrees to serve as the Insurance Trustee for purposes of this Lease on terms reasonably satisfactory to Lessor and Lessee.

(m) Land. Those certain tracts of land underlying the Leased Premises.

(n) Lease. This Lease Agreement by and between Lessor, as lessor, and Lessee, as lessee.

(o) Lease Year. Each calendar year during the Term of this Lease, with the first Lease Year being the partial year beginning on the Commencement Date and ending on December 31 of the year in which the Commencement Date occurs, and the final Lease Year expiring on the Expiration Date.

(p) Leased Premises. The Land, together with all present and future improvements on the Land, including, without limitation, rights, privileges, easements and appurtenances benefiting, belonging to or in any way appertaining thereto, including, but not limited to, (i) any and all rights, privileges, easements and appurtenances of Lessor as the owner of fee simple title to the Land now or hereafter existing in, to, over or under adjacent streets, parking lots, sidewalks, alleys and property contiguous to the Land, and (ii) any and all strips and gores relating to the Land, commonly referred to as the Aqueduct Racetrack, New York, all as more particularly described in Exhibit A annexed hereto. All property demised under the Ground Lease is excluded from the Leased Premises.

(q) Legislation. As defined in the Recitals.

(r) Lessee. As defined in the Recitals.

(s) Lessor. As defined in the Recitals.

(t) Person. A corporation, an association, a partnership (general or limited), a limited liability company, a joint venture, a limited liability partnership, a private company, a public company, a limited life public company, a trust or fund (including but not limited to a business trust), an organization or any other legal entity, an individual or a government or any agency or political subdivision thereof.

(u) Phase II Developer. Shall have the meaning given it in Section 3 of the Omnibus Agreement.

(v) Phase II Development. The development of one or more of the Real Estate Development Parcels undertaken by the Phase II Developer.

(w) Real Estate Development Parcels. Certain parcels as depicted in the Sublease Agreement.

(x) Rental. The rent payable during the Term.

(y) Requirements. All applicable laws, rules, regulations or other legal requirements enacted by a governmental authority having jurisdiction over the

Leased Premises or the operations or the activity at the Leased Premises, including, but not limited to, the protection of the environment.

- (z) State. The People of the State of New York.
- (aa) Sublessee. Any permitted sublessee or user under Section 7.2 of this Lease.
- (bb) Term. The term of this Lease as provided in Section 1.2 of this Lease.
- (cc) VLT Operations. The operation at the VLT Premises (hereinafter defined) of video lottery gaming terminals and activities and uses associated with such operations.
- (dd) VLT Operator. Shall mean the entity selected by the State as the operator with respect to the video lottery gaming terminals at the Aqueduct Racing Premises.
- (ee) VLT Premises. That portion of the Leased Premises designated for VLT Operations.

## ARTICLE II

### Rental

2.1 Base Rental. Lessee shall pay to Lessor the Base Rental for the Leased Premises in an amount equal to One Dollar (\$1.00) per annum, which Base Rental has been paid in full for the entire Term, in advance, on the date hereof (the "Base Rental"). Notwithstanding the foregoing, Lessee shall pay other charges and costs due under this Lease as additional rent throughout the term of this Lease.

## ARTICLE III

### Impositions and Utilities

3.1 Payment of Impositions. Lessor shall be solely responsible for the payment of all Impositions before the same become delinquent. Lessee agrees to cooperate with Lessor in seeking the delivery of all notices of Impositions to Lessor directly from the applicable taxing authorities. Lessor shall be entitled to contest the amount or validity of any Impositions, at Lessor's expense; provided that such contest does not materially adversely affect Lessee's use of and operations upon the Leased Premises.

3.2 Additional Charges and Utilities. Lessee shall be solely responsible to pay all charges when due for (i) Additional Charges and (ii) utilities

furnished to the Leased Premises, including, but not limited to, electricity, gas, heat, light and power, telephone and any and all other services and utilities furnished to the Leased Premises (the "Utilities"), including, without limitation, charges for Additional Charges and Utilities incurred prior to the Commencement Date. Lessee may, at Lessee's sole cost and expense, dispute and contest any and all charges for Additional Charges and Utilities for which Lessee is responsible for payment, provided there is no danger of an imminent threat of Lessor losing title to the Leased Premises. If there is the threat of the Leased Premises becoming subject to any lien, encumbrance or charge, Lessor may require Lessee to deposit with Lessor a surety bond issued by a surety company of recognized responsibility, guaranteeing and securing payment in full of such charges for Additional Charges or Utilities.

3.3 Operating Expenses. Lessee shall be solely responsible for the payment of all operating expenses for the Leased Premises, including without limitation repair and maintenance charges, insurance charges, and all other charges incurred in connection with the operation of the Leased Premises pursuant to this Lease (the "Operating Expenses").

## ARTICLE IV

### Improvements and Alterations

#### 4.1 Improvement Rights and Alterations; Capital Plan.

(a) Lessee shall have the right, subject to the restrictions imposed by the Legislation, the Franchise Agreement and the applicable Requirements, to develop, redevelop, refurbish, renovate or make such other improvements, capital expenditures or otherwise ("Alterations"), to the Leased Premises and the fixtures and improvements thereon, as shall be necessary or desirable for the operation of the Leased Premises for the uses permitted under this Lease and the Franchise Agreement.

(b) Intentionally Omitted.

(c) Lessee has heretofore delivered to Lessor, and Lessor, concurrently with the execution of this Lease, hereby approves, a five-year capital expenditure plan (the "Capital Plan") setting forth in reasonable detail the capital expenditures and the budgeted costs therefor which Lessee proposes to make with respect to the Leased Premises for the Lease Years 2008-2013. Lessee shall be entitled to perform all Alterations which are set forth in an approved Capital Plan, without further approval from Lessor. If Lessee desires to perform any Alterations which are not set forth in an approved Capital Plan, Lessee shall obtain the prior written consent of Lessor, not to be unreasonably withheld or delayed, to such Alterations, unless such Alterations (y) will not, in the good faith estimation of Lessee's architect or engineer, cost more than \$100,000 to complete and (z) do not affect any structural elements or building systems of the Improvements which, in the case of (y) and (z) above, Lessor's prior written consent shall not be required.

(d) Prior to performing any proposed Alterations to which Lessor's consent has been obtained, including those set forth in an approved Capital Plan, Lessee shall, at Lessee's expense, procure and maintain in its possession: (w) detailed plans and specifications for such Alterations, (x) a construction budget setting forth the cost to perform and complete such Alterations, (y) insurance certificates from all Contractors evidencing the insurance coverages required under this Lease and (z) all permits, approvals and certifications required by any governmental authorities having jurisdiction over the Leased Premises. Upon completion of any Alterations, Lessee shall obtain any certificates of final approval of such Alterations required by any governmental authority, together with the "as-built" plans and specifications for such Alterations (together, the "Completion Documents"). Upon Lessor's request, Lessee shall promptly provide to Lessor, in hard copy or electronic form (as Lessor may request), any or all of the documents required to be obtained under this Section 4.1(d), including the Completion Documents upon completion of the Alteration.

(e) All Alterations shall be made and performed, in all material respects, in accordance with the plans and specifications therefor (as submitted to Lessor, if applicable), as same may be modified from time to time. All Alterations shall be made and performed in a good and workmanlike manner, using materials substantially similar in quality to the existing materials at the Leased Premises, and in compliance with all applicable Requirements, as well as requirements of insurance bodies having jurisdiction over the Leased Premises. No Alterations shall impair the structural integrity or soundness of any Improvements.

(f) All Alterations made by Lessee shall become the property of Lessor upon the expiration of the Lease. Throughout the Term of this Lease, to the extent permitted under the applicable tax laws, rules and regulations, Lessee shall have the sole and exclusive right to take depreciation of all Alterations made by Lessee to the Leased Premises.

4.2 Easements and Dedications. In order to maintain and/or improve the Leased Premises, it may be necessary or desirable that street, water, sewer, drainage, gas, power lines, set back lines, and other easements, and dedications and similar rights be granted or dedicated over or within portions of the Leased Premises by plat, replat, grant, deed or other appropriate instrument (collectively, "Easements and Dedications"). Lessor, shall, within thirty (30) days following written request by Lessee to Lessor, and to the extent reasonably necessary as fee owner of the Leased Premises, join with Lessee in executing and delivering such Easements and Dedications, as may be appropriate or reasonably required for the future improvement of the Leased Premises, provided that Lessor reasonably determines that the said Easements and Dedications will not interfere in a material adverse way with the future development, use and occupancy of, and operations on the Leased Premises by the VLT Operator or Phase II Developer. In order to cooperate and to assist with the compliance of this provision, if the Parties determine that any proposed Easements and Dedications are reasonably likely to interfere in a material adverse way with such future development, use and occupancy of, and

operations on the Leased Premises, the Parties shall cooperate with each other to take appropriate measures to minimize the likelihood and extent of such interference.

4.3 Zoning. In the event that Lessee deems it necessary or appropriate to obtain use, zoning, site plan approval or any permit from the appropriate governmental entity having jurisdiction over the Leased Premises, or any part thereof, Lessor shall, within thirty (30) days following written request by Lessee to Lessor, and to the extent reasonably necessary as fee owner of the Leased Premises, execute such document, or join in such petitions, applications and authorizations as may be appropriate or reasonably required by Lessee, and cooperate in good faith with Lessee in any such reasonable efforts, provided that Lessor reasonably determines that the matter will not interfere in a material adverse way with the future development, use and occupancy of, and operations on the Leased Premises by the VLT Operator or Phase II Developer. In order to cooperate and assist with the compliance of this provision, if the Parties determine that the proposed matter is reasonably likely to interfere in a material adverse way with such future development, use and occupancy of, and operations on the Leased Premises, the Parties shall cooperate with each other to take appropriate measures to minimize the likelihood and extent of such interference.

4.4 Indemnification for Mechanics' Liens. Lessee will pay or cause to be paid all costs and charges for work performed by Lessee or caused to be performed by Lessee in or to the Leased Premises. Lessee will indemnify Lessor against, and hold Lessor and the Leased Premises free, clear and harmless of and from, any and all vendors', mechanics', laborers', or materialmans' liens and claims of liens, and all other liabilities, liens, claims and demands on account of such work by or on behalf of Lessee. If any such lien, at any time, is filed against the Leased Premises, or any part thereof, on account of work performed or caused to be performed by Lessee in or to the Leased Premises, Lessee will cause such lien to be discharged of record within forty-five (45) days after Lessee has received actual notice of the filing of such lien. If Lessee fails to pay any charge for which a mechanic's lien has been filed, and has not discharged same of record as described above, Lessor may, at its option, upon ten (10) days' prior written notice to Lessee and in addition to exercising any other remedies Lessor has under this Lease on account of a default by Lessee, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with the removal of such lien, will be immediately due from Lessee to Lessor.

## ARTICLE V

### Use of Leased Premises

5.1 Permitted Uses. Lessee's use of the Leased Premises shall be primarily for the management and operations of all functions as may be necessary or appropriate to conduct racing, racing operations, pari-mutuel and simulcast wagering

(collectively, "Uses"), together with various activities related thereto, including without limitation, live wagering and retail, food, beverage, trade expositions and entertainment facilities, racing, equestrian, social and community activities, and other uses and activities historically conducted on the Leased Premises (collectively, "Ancillary Uses" and, taken together with the Uses, the "Permitted Uses") at or with respect to the Leased Premises, subject to and in compliance with the provisions of the Franchise Agreement, applicable Requirements including without limitation the Legislation, and the Certificate of Occupancy for the Leased Premises. Lessee shall not conduct, manage or otherwise operate VLT Operations at the Leased Premises.

## 5.2 Compliance with Laws.

(a) Lessee shall use, operate and maintain the Leased Premises and the Improvements situated thereon in compliance with all applicable laws, regulations or ordinances of the United States, the State of New York, the City of New York or other lawful authority having jurisdiction over the Leased Premises, as applicable (collectively, "Requirements").

(b) Lessee shall have the right to contest the validity, enforceability or applicability of any Requirements applicable to the Land, Building and Improvements constituting the Leased Premises and Improvements, provided that there is no danger of an imminent threat of Lessor losing title to the Leased Premises or criminal liability to Lessor. During such contest, compliance with any such contested Requirements may be deferred by Lessee; provided, however, that Lessee shall promptly comply with the final determination of any such contest. If non-compliance (x) shall result in a lien being filed against the Leased Premises or (y) may reasonably be expected (in Lessor's reasonable judgment) to result in civil liability to Lessor, Lessor may require Lessee to deposit with Lessor a surety bond issued by a surety company of recognized responsibility guaranteeing and securing the payment in full of such lien. Prior to instituting such proceeding, Lessee shall provide notice to the Attorney General of the State of New York, which may choose to be a party in such contest. Any such proceeding instituted by Lessee shall be commenced as soon as is reasonably possible after the issuance of any such contested matters, or after actual notice to Lessee of the applicability of such matters to the Leased Premises, and shall be prosecuted with reasonable dispatch. In the event that Lessee shall institute any such proceeding, Lessor shall cooperate with Lessee in connection therewith, and Lessee shall be responsible for the reasonable and actual out-of-pocket costs and expenses incurred by Lessor in connection with such cooperation.

5.3 Maintenance and Repairs. Lessee shall perform all maintenance, repair and upkeep of the Leased Premises, including the Improvements thereon, so as to keep the same in good order and repair in compliance with all Requirements (subject to Lessee's right to contest pursuant to Section 5.2(b)). The costs of such maintenance shall be borne solely by Lessee.

5.4 Disposition of Personal Property. Lessee shall have the right to dispose of any personal property or Alterations during the term of this Lease in the ordinary course of business, but Lessee agrees that it will not purposefully remove any such personal property or Alterations to circumvent the intent that the same shall become the property of Lessor at the end of the Term and Lessee further agrees that it shall replace any such personal property or Alterations to the extent they are required to conduct racing operations. Notwithstanding the foregoing, the Art Work may not be disposed of by Lessee without the prior written consent of Lessor, which consent Lessor may withhold in its sole discretion.

## ARTICLE VI

### Insurance

#### 6.1 Required Coverages of Lessee.

(a) Lessee, throughout the Term, or as otherwise required by this Lease, shall obtain and maintain Insurance, in full force and effect, from an insurance company licensed or authorized to do business in the State of New York, in accordance with the terms, coverages and requirements set forth in Exhibit D attached hereto.

## ARTICLE VII

### Assignment and Subletting

7.1 Assignment. Lessee may, subject to the prior written approval of Lessor as required by Section 138 of the State Finance Law and the receipt of all required governmental approvals in connection with any assignment of Lessee's rights and obligations under the Franchise Agreement, assign (or sublease, license or otherwise transfer) to any party to which the Franchise is assigned, Lessee's leasehold interest granted to Lessee under this Lease, in whole only. It is understood and agreed that Lessee's interest in the Lease may only be assigned or transferred to a party in which the Franchise is being assigned and which party shall hold the Franchise at the time of assignment, or any successor thereto. Upon any such assignment, the assignee shall execute and deliver to Lessor a written assumption, in form and substance satisfactory to the Lessor in its reasonable judgment, of all of the obligations of Lessee under this Lease. Lessee shall be released from any obligations arising under this Lease which accrue from and after such an assignment, but not those accruing prior to the date of such assignment. For purposes of this Section 7.1, approval of the Franchise Oversight Board of an assignment of the Franchise Agreement shall be deemed to constitute approval by the Lessor of Lessee's assignment of this Lease.

7.2 Concessions, Subletting and Licensing. (a) Lessee shall have the right from time to time, with the prior written consent of Lessor to the extent required by

the Legislation (including without limitation Section 206 thereof), to grant concessions at the Leased Premises as Lessee may deem proper for the conduct at the Leased Premises of Ancillary Uses as permitted in Section 5.1 hereof (“Concessions”). All Concessions shall be entered into in compliance with the Legislation (including, without limitation, Section 208-6 thereof), and other Requirements. Agreements for the operation of Concessions may, at the election of Lessee, be in the form of subleases, licenses or concession agreements; provided, that no subletting or licensing shall relieve Lessee of any of its obligations under the Lease, and all Concessions, whether in the form of subleases, licenses or concession agreements, shall be strictly subject and subordinate to the terms and provisions of this Lease.

(b) Other than with respect to the grant of Concessions, Lessee may not sublet all or any portion of the Leased Premises without the prior written consent of Lessor, in Lessor’s sole discretion, as required by Section 138 of the State Finance Law and the receipt of all required governmental approvals in connection with any sublease or transfer. Notwithstanding anything to the contrary contained herein, (x) the stabling of horses belonging to third parties shall not constitute a sublease under the terms of this Lease and (y) those subleases set forth on Exhibit E hereto (the “Permitted Subleases”) shall not be subject to the general subleasing prohibition set forth in this Section 7.2 and Lessor hereby consents to the Permitted Subleases. In addition to the foregoing, Lessee shall also have the right to enter into any sublease or occupancy agreement with The New York Thoroughbred Breeders Inc., The New York Thoroughbred Horsemen’s Association (or such other entity as is certified and approved pursuant to Section 228 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law, as amended), The New York State Racing and Wagering Board, The New York State Department of Taxation and Finance, and with any governmental authorities, agencies, boards or regulators of the State, with the prior written consent of Lessor, such consent not to be unreasonably withheld, conditioned or delayed.

7.3 General Provisions. Lessee shall, in connection with any Concession, whether or not Lessor’s consent is required thereto, provide written notice to Lessor of the name, legal composition and address of any Concessionaire, together with a complete copy of the agreement under which such Concession is granted, and a description of the nature of the Concessionaire’s business to be carried on in the Leased Premises.

7.4 Transfer by Lessor of the Leased Premises. Lessor and Lessee acknowledge and agree that certain benefits accrue to Lessor and Lessee by virtue of Lessor’s ownership of fee title to the Leased Premises and that such benefits are material inducements to Lessor and Lessee to enter into this Lease. Accordingly, Lessor covenants and agrees that, during the Term of this Lease and any renewals or extensions thereof, and prior to the termination of this Lease, whether through expiration of the Term or the earlier termination thereof pursuant to a right to so terminate this Lease, it will at all times own and hold title to the Leased Premises, as encumbered by this Lease, for the benefit of and on behalf of the State in accordance with the Legislation, and

further covenants and agrees that it will not, if and to the extent prohibited by the Legislation, sell, transfer or otherwise convey all or any portion of the Leased Premises to any Person or entity, other than an agency, division, subdivision or department of the State of New York, or a public benefit corporation, local development corporation, municipal corporation or public authority constituting a political subdivision of the State of New York.

## ARTICLE VIII

### Leasehold Mortgages/Subordination

8.1 Lessor's Consent to Leasehold Mortgage. Lessee may not mortgage or encumber its leasehold interest under this Lease.

## ARTICLE IX

### Default of Lessee

9.1 Non-Revocation Events of Default. The following events shall each constitute a "Non-Revocation Event of Default" under this Lease:

(a) Monetary Defaults. Failure on the part of Lessee to pay Rental or any other sums and charges when due to Lessor hereunder and the continuation of such failure for thirty (30) days after written notice to Lessee.

(b) Nonmonetary Defaults. Failure on the part of Lessee to perform any of the terms or provisions of this Lease other than the provisions (x) requiring the payment of Rental and (y) breach of which would give rise to the revocation of the Franchise Agreement pursuant to the terms thereof, and the continuation of such failure for thirty (30) days after written notice to Lessee, provided that if the default is of such character as to require more than thirty (30) days to cure, if Lessee shall fail to commence curing such default within thirty (30) days following Lessor's notice and thereafter fail to use reasonable diligence in curing such default.

9.2 Remedies for Non-Revocation Event of Default. If a Non-Revocation Event of Default shall occur, Lessor shall be entitled, at Lessor's election, to exercise any remedies available at law or in equity on account of such Non-Revocation Event of Default, including without limitation to bring one or more successive suits for monetary damages and/or specific performance, but Lessor shall not be entitled to terminate this Lease and remove Lessee from possession of the Leased Premises. In addition to the foregoing, Lessor may undertake to cure such Non-Revocation Event of Default for the account of and at the cost and expense of Lessee, and the full amount so expended by Lessor (with interest accruing at the Default Rate) shall immediately be owing by Lessee to Lessor.

9.3 Revocation of Franchise Agreement. Notwithstanding anything in this Lease to the contrary, if Lessee's Franchise shall be duly revoked pursuant to Racing Law §§ 244 and 245, then this Lease shall be deemed automatically, without further notice or legal action, terminated as of the date of such Franchise revocation, and Lessor shall have the right, at Lessor's election, to exercise any of the remedies set forth in Section 9.4 of this Lease which are applicable following termination of the Lease. Lessee shall have the right to remain in possession of the Leased Premises for a period of not more than thirty (30) days following the termination of the Lease, solely for the purposes of orderly vacating the Leased Premises in the condition required by this Lease, TIME BEING OF THE ESSENCE to the obligation of Lessee to vacate the Leased Premises as provided in this Lease no later than the thirtieth (30<sup>th</sup>) day following Lease termination.

9.4 Lease Termination Following Revocation of Franchise Agreement.

(a) If this Lease shall be terminated as provided in Section 9.3, Lessor, without notice, may re-enter and repossess the Leased Premises using such force for that purpose as may be necessary and permissible pursuant to applicable laws, without being liable for indictment, prosecution or damages therefor and may dispossess Lessee by summary proceedings or otherwise.

(b) No termination of this Lease pursuant to Section 9.3, or taking possession of or reletting the Leased Premises or any part thereof, shall relieve Lessee of its liabilities and obligations under this Lease arising prior to the date of termination.

9.5 No Waiver. No failure by Lessor to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition, unless Lessor agrees in writing to waive such breach at the time of its occurrence or anytime thereafter. No covenant, agreement, term or condition of this Lease to be performed or complied with by Lessee, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease still continue in full force and effect with respect to any other then existing or subsequent breach thereof.

9.6 Remedies Cumulative. All amounts expended by Lessor to cure any default or to pursue remedies hereunder shall be paid by Lessee to Lessor upon demand and shall be in addition to the Rentals otherwise payable hereunder. Each right and remedy of Lessor provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not

preclude the simultaneous or later exercise by Lessor of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

**ARTICLE X**  
**Intentionally Omitted**

**ARTICLE XI**  
**Casualty Restoration**

11.1 Notice of Damage. If all or any part of any of the Leased Premises shall be destroyed or damaged in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen (a "Casualty"), Lessee, upon actual knowledge of the occurrence of such Casualty, shall give to Lessor prompt notice thereof.

11.2 Obligation to Restore.

(a) Lessee Obligation to Restore. In the event of a Casualty, Lessee shall be obligated to repair, alter, restore, replace and rebuild (collectively, "Restore" and the act of Restoring, a "Restoration") the Leased Premises, as nearly as possible equal to the condition, quality, character and class of the Leased Premises existing immediately prior to such occurrence. Notwithstanding the foregoing, Lessee, with the consent of Lessor, not to be unreasonably withheld, conditioned or delayed, may Restore the Leased Premises with such changes and modifications that Lessee may deem desirable in the exercise of its sound business judgment, for use for racing operations and to accommodate the Permitted Uses; it being agreed that Lessee shall not be required to rebuild such facilities that Lessee deems are no longer useful or necessary for the continued operation of racing at the Leased Premises (the "Unnecessary Facilities") and accordingly that withholding, conditioning or delaying consent for failure to rebuild the Unnecessary Facilities will be deemed unreasonable. Provided that Lessee's Property Insurance at the time of a Casualty is in full force and effect and is in compliance with the requirements of this Lease, including policy limits equal to the full replacement cost of the Improvements, Lessee shall not be obligated or required to expend any funds in connection with a restoration (x) in excess of the Insurance Proceeds, plus (y) the deductible amount under Lessee's Property Insurance.

(b) No Obligation of Lessor to Restore. Lessor shall have no obligation to Restore the Leased Premises.

(c) Non-Interference During Restoration. In the event of a Restoration whereby the Leased Premises are being restored in a manner substantially different than that existing immediately prior to the time of the occurrence of the Casualty (the "Alternate Restoration"), and (i) if such Alternate Restoration is to occur prior to any future development of the VLT Premises or the Real Estate Development

Parcels, Lessor may withhold its consent to such Alternate Restoration if Lessor reasonably determines that said Alternate Restoration is of a design and construction that will interfere in a material way with any such future development, and (ii) if such Alternate Construction is to occur after any such future development, the design and construction of the Alternate Restoration shall not interfere in a material way with either the VLT Operator or the Phase II Developer or their respective uses and occupancy of and operations on the VLT Premises or the Real Estate Development Parcels.

### 11.3 Restoration Funds.

(a) In the event of a Restoration which is subject to Section 11.2(a) and which cost thereof is to exceed \$1,000,000, Lessee shall cause to be deposited with the Insurance Trustee all proceeds of Lessee's Property Insurance, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (hereinafter referred to as the "Insurance Proceeds"). Prior to commencing any Restoration, Lessee shall furnish Lessor with an estimate of the cost of such Restoration, prepared by an independent licensed professional engineer or registered architect selected by Lessee and reasonably approved by Lessor (the "Approved Engineer"). The Insurance Proceeds shall be applied by the Insurance Trustee to the payment of the cost of the Restoration, and shall be paid to, or for the account of, Lessee from time to time, as the Restoration progresses, but not more frequently than once in any calendar month. Said Insurance Trustee shall make such payments upon written request of Lessee accompanied by the following:

(i) a certificate, dated not more than fifteen (15) days prior to such request, signed by Lessee and by an architect in charge of the Restoration who shall be selected by Lessee and reasonably satisfactory to Lessor setting forth that:

(A) the sum then requested either has been paid by Lessee or is justly due to contractors, subcontractors, materialmen, architects or other persons who have rendered services or furnished materials in connection with the Restoration, giving a brief description of the services and materials and the several amounts so paid or due and stating that no part of such sum has been made the basis for a withdrawal of Insurance Proceeds in any previous or then pending request or has been paid out of any Insurance Proceeds received by Lessee, and that the sum requested does not exceed the value of the services and materials described in the certificate.

(B) the cost, as estimated by the persons signing such certificate, of the Restoration remaining to be done subsequent to the date of such certificate, does not exceed the amount of Insurance Proceeds remaining deposited with the Insurance Trustee after the payment of the sum so requested; and

(ii) a certificate dated not more than fifteen (15) days prior to such request of a reputable national title company then doing business in the State of New York, covering the period from the date of this Lease to the date of such certificate, setting forth that there are no liens or encumbrances of record of any kind on the Leased Premises or Lessee's interest therein other than those that Lessee is contesting in good faith, those permitted by the terms of this Lease, and except such as will be discharged by payment of the amount then requested.

(b) Upon compliance with the foregoing provisions of this Section 11.3, the Insurance Trustee shall, out of such Insurance Proceeds, pay or cause to be paid to Lessee or to the Persons named in the certificate, the respective amounts stated therein to have been paid by Lessee or to be due to said Persons, as the case may be. All sums so paid to Lessee and any other Insurance Proceeds received or collected by or for the account of Lessee, and the right to receive the same, shall be held by Lessee in trust for the purpose of paying the cost of the Restoration.

(c) When the Insurance Trustee shall receive evidence satisfactory to it of the character required by subparagraph (a) of this Section 11.3 and that the Restoration has been completed and paid for in full and that there are no liens of the character referred to herein, the Insurance Trustee shall pay any remaining balance of the Insurance Proceeds to Lessee, unless Lessor has notified the Insurance Trustee that there has been a Non-Revocation Event of Default by Lessee under this Lease, in which case the Insurance Trustee shall refrain from paying to Lessee any remaining balance of the Insurance Proceeds until the Insurance Trustee shall have received (i) notice from Lessor that the Non-Revocation Event of Default has been cured (which Lessor shall give to Insurance Trustee within fifteen (15) Business Days from the date of determination), or (ii) notice from Lessee or Lessor of an official determination by a court of competent jurisdiction that there was no such Non-Revocation Event of Default by Lessee under this Lease as claimed by Lessor. Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, Lessor hereby agrees to indemnify Lessee for any claims against Lessee and for any loss, cost or expense incurred by Lessee by reason of Lessor claiming a Non-Revocation Event of Default causing the Insurance Trustee to withhold the Insurance Proceeds and preventing Lessee from making payments when due, where a court of competent jurisdiction makes an official determination that there was no such Non-Revocation Event of Default by Lessee under this Lease.

(d) It is expressly understood that the requirements under this Article XI are for the benefit only of Lessor, and no contractor or other person shall have or acquire any claim against Lessee as a result of any failure of Lessee actually to undertake or complete any Restoration or to obtain the evidence, certifications and other documentation provided for herein.

11.4 No Termination or Abatement. This Lease shall not terminate or be forfeited or be affected in any manner by reason of damage to or total, substantial or partial destruction of any of the Building or any part thereof or by reason of the

untenantability of the same or any part thereof, for or due to any reason or cause whatsoever, and Lessee, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender any part of the Leased Premises thereof. It is the intention of Lessor and Lessee that the foregoing is an “express agreement to the contrary” as provided in Section 227 of the Real Property Law of the State of New York.

## ARTICLE XII

### Representations, Warranties and Special Covenants

#### 12.1 Lessor’s Representations, Warranties and Special Covenants.

Lessor hereby represents, warrants and covenants as follows:

(a) Existence. Lessor has been established and exists pursuant to the Legislation.

(b) Authority. Pursuant to the Legislation, Lessor has all requisite power and authority to own its property and the Leased Premises, effectuate its mandate, enter into this Lease and consummate the transactions herein contemplated, and by proper action in accordance with all applicable law has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Lease will be a valid obligation of Lessor and is binding upon Lessor in accordance with its terms once approved by the applicable state authorities.

(d) No Defaults. The execution by Lessor of this Lease and the consummation by Lessor of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or a condition which upon notice or lapse of time or both would ripen into a default under the Legislation, which constitutes the articles of organization of Lessor, or under any resolution, indenture, agreement, instrument or obligation to which Lessor is a party or by which the Leased Premises or any portion thereof is bound; and does not to the knowledge of Lessor, constitute a violation of any order, rule or regulation applicable to Lessor or any portion of the Leased Premises of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessor or any portion of the Leased Premises.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities, other than those that have already been obtained, is required in order for Lessor to enter into this Lease, make the agreements herein contained, other than those which have been obtained.

(f) Quiet Enjoyment. So long as the Franchise Agreement is in full force and effect, Lessee shall have the quiet enjoyment and peaceable possession

of the Leased Premises during the Term of this Lease, against hindrance or disturbance of any person or persons whatsoever claiming by, through or under Lessor.

(g) Proceedings. To the knowledge of Lessor, there are no actions, suits or proceedings pending or threatened in writing against Lessor which would, if successful, prevent Lessor from entering into this Lease or performing its obligations hereunder.

(h) Limitations. Except as otherwise expressly provided herein, this Lease is made by Lessor without representation or warranty of any kind, either express or implied, as to the condition of the Leased Premises, title to the Leased Premises, its merchantability, its condition or its fitness for Lessee's intended use or for any particular purpose and all of the Leased Premises is leased on an "as is" basis with all faults.

#### 12.2 Lessee's Representations, Warranties and Special Covenants.

Lessee hereby represents, warrants and covenants as follows:

(a) Existence. Lessee is a not-for-profit racing corporation incorporated pursuant to Section 402 of the Not-for-Profit Corporation Law of the State of New York, as authorized by Chapter 18 of the Laws of 2008, validly existing and in good standing under the laws of the State of New York and its adopted and currently effective articles of incorporation.

(b) Authority. Lessee has all requisite power and authority to own its property, operate its business, enter into this Lease and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligations. This Lease constitutes a valid and legally binding obligation of Lessee and is enforceable against Lessee in accordance with its terms.

(d) No Defaults. The execution by Lessee of this Lease and the consummation by Lessee of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or a condition which upon notice or lapse of time or both would ripen into a default under the Legislation, the articles of organization of Lessee, or under any resolution, indenture, agreement, instrument or obligation to which Lessee is a party or by which the Leased Premises or any portion thereof is bound; and does not to the knowledge of Lessee, constitute a violation of any order, rule or regulation applicable to Lessee or any portion of the Leased Premises of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessee or any portion of the Leased Premises.

(e) Consents. No other permission, approval or consent by third parties or any other governmental authorities is required in order for Lessee to enter into this Lease or consummate the transactions herein contemplated, other than those which have been obtained.

(f) Proceedings. To the knowledge of Lessee, there are no actions, suits or proceedings pending or threatened in writing against Lessee which would, if successful, prevent Lessee from entering into this Lease or performing its obligations hereunder.

## ARTICLE XIII

### Indemnification, Waiver and Release

13.1 Lessee Indemnification. Lessee shall indemnify, defend and hold harmless the Lessor, Empire State Development Corporation, the Franchise Oversight Board, the Racing and Wagering Board, and their respective officers, directors, trustees, employees, members, managers, and agents (the "Lessor Indemnitees"), from and against any and all claims, actions, damages, liability and expense, arising from or out of (i) the negligence or intentional acts or omissions of Lessee, its officers, directors, agents or employees at the Leased Premises ("Lessee Parties") in connection with the occupancy or use by Lessee of the Leased Premises or any part thereof, and (ii) any occurrence at the Leased Premises not arising out of the negligence or intentional acts or omissions of a Lessee Party, but which is covered by the insurance which Lessee is required to maintain pursuant to the terms of this Lease (or any additional insurance which Lessee actually carries). Lessee's liability arising out of (ii) above shall be limited to the actual amount of proceeds available under such insurance. In case any Lessor Indemnitee shall be made a party to any litigation covered by this indemnity, whether or not also commenced by or against Lessee, then Lessee shall indemnify, defend and hold the Lessor Indemnitees harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by the Lessor Indemnitees in connection with such litigation.

13.2 Lessor's Indemnification. Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, Lessor shall hold Lessee and its officers, directors, trustees, employees, members, managers, and agents (the "Lessee Indemnitees"), harmless from any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Lessor and its officers or employees when acting within the course and scope of their employment.

13.3 Survival. The provisions of this Article XIII shall survive the expiration or termination of this Lease with respect to matters that accrued prior to the Expiration Date, whether or not claims in respect of such matters are brought prior to or following the Expiration Date.

## ARTICLE XIV

### Miscellaneous

14.1 Inspection. Lessee shall permit Lessor and its agents, upon no less than twenty-four (24) hours' prior notice, to enter into and upon the Leased Premises during normal business hours for the purpose of inspecting the same on the condition that Lessor and its agents shall use reasonable efforts to ensure that Lessee's and Lessee's invitees' use and quiet enjoyment of the Leased Premises is not interfered with.

14.2 Estoppel Certificates. Either Party shall, at any time and from time to time upon not less than ten (10) days' prior request by the other Party, execute, acknowledge and deliver to such requesting party, a statement in writing certifying (i) its ownership of its interest hereunder, (ii) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (iii) the dates to which the Rental and any other charges have been paid, and (iv) that, to the best of their knowledge, no default hereunder on the part of the other Party exists (except that if any such default does exist, then such default shall be specified).

14.3 Lease Termination Agreement. If requested by Lessor or Lessee, Lessor and Lessee shall, upon termination of this Lease, execute and deliver to one another an appropriate release, cancellation and termination of the Lease, in form proper for recording, of all Lessee's interest in the Leased Premises and all of Lessee's obligations under the Lease, other than such obligations as survive the termination hereof.

14.4 Notices. All notices hereunder to the respective Parties will be in writing and will be served by personal delivery or by prepaid, express mail (next day) via a reputable courier service, or by prepaid, registered or certified mail, return receipt requested, addressed to the respective parties at their addresses set forth below. Any such notice to Lessor or Lessee will be deemed to be given and effective: (i) if personally delivered, then on the date of such delivery, (ii) if sent via express mail (next day), then one (1) business day after the date such notice is sent, or (iii) if sent by registered or certified mail, then three (3) business days following the date on which such notice is deposited in the United States mail addressed as aforesaid. For purposes of this Lease, a business day shall be deemed to mean a day of the week other than a Saturday or Sunday or other holiday recognized by banking institutions of the State of New York. Copies of all notices will be sent to the following:

If to Lessee:

The New York Racing Association, Inc.  
Aqueduct Racetrack  
110-00 Rockaway Boulevard  
South Ozone Park, New York 11417  
Attn: General Counsel

With a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attn: Brian S. Rosen, Esq.

If to Lessor:

The New York State Franchise Oversight Board  
Franchise Oversight Board  
c/o Executive Chamber  
The Capitol  
Albany, NY 12224  
Attention: Chairman  
Telecopy: (518) 486-9652

With a copy to:

The New York State Office of General Services  
State of New York State Office of General Services  
Legal Services Bureau  
41st Floor, Corning Tower  
The Governor Nelson A. Rockefeller Empire State Plaza  
Albany, New York 12242

With a copy to:

Charities Bureau  
Department of Law  
120 Broadway - 3rd Floor  
New York, New York 10271

With a copy to:

The Racing and Wagering Board  
Chairman  
N.Y.S. Racing and Wagering Board  
1 Broadway Center, Suite 600  
Schenectady, New York 12305  
Telecopy: (518) 347-1250

With a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Attn: Alan S. Kornberg, Esq.

14.5 Modifications. This Lease may be modified only by written agreement signed by Lessor and Lessee and approval of the State Comptroller.

14.6 Descriptive Headings. The descriptive headings of this Lease are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Lease.

14.7 Force Majeure. The time within which either Party hereto shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the party seeking the delay.

14.8 Partial Invalidity. If any term, provision, condition or covenant of this Lease or the application thereof to any Party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

14.9 Applicable Law and Venue. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

14.10 Attorneys' Fees. If any Party to this Lease brings an action against the other party based on an alleged breach by the other party of its obligations under this Lease, the prevailing party may seek to recover all reasonable expenses incurred, including reasonable attorneys' fees and expenses. In the event that Lessee fails to quit and surrender to Lessor the Premises upon the termination of this Lease as provided herein, Lessee shall be responsible for all costs and expenses, including reasonable attorneys' fees and expenses, incurred by Lessor in regaining possession of the Leased Premises following the Expiration Date.

14.11 Net Rental. It is the intention of Lessor and Lessee that the Rental payable under this Lease after the Commencement Date and other costs related to Lessee's use or operation of the Leased Premises, other than Impositions, shall be absolutely net to Lessor, and that Lessee shall pay during the Term, without any offset or deduction whatsoever, all such costs.

14.12 No Broker. Lessor and Lessee represent and warrant one to the other that no broker commission, finder's fees or similar compensation is due to any party claiming through Lessor or Lessee, as applicable, and Lessor and Lessee agree to hold the other Party harmless from any liability to pay any such brokerage commission, finder's fees or similar compensation to any parties claiming same through the indemnifying Party.

14.13 Memorandum of Lease. Lessor and Lessee agree to execute and deliver to each other a short form of this Lease in recordable form which incorporates all of the terms and conditions of this Lease by reference in the form mutually agreed upon by Lessor and Lessee ("Memorandum of Lease"). Lessor and Lessee agree that at Lessee's option, and at Lessee's cost, Lessee may record such Memorandum of Lease, in the office of the county clerk in which the Leased Premises is located.

14.14 No Waiver. No waiver of any of the provisions of this Lease shall be deemed, or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, nor shall a waiver in any instance constitute a continuing waiver, nor shall a waiver in any instance constitute a waiver in any subsequent instance.

14.15 Consents.

(a) Wherever in this Lease Lessor's consent or approval is required and Lessor agrees that such consent or approval shall not be unreasonably withheld, conditioned or delayed, if Lessor shall refuse such consent or approval, Lessee in no event shall be entitled to and shall not make any claim, and Lessee hereby waives any claim, for money damages (nor shall Lessee claim any money damages by way of set-off, counterclaim or defense) based upon any assertion by Lessee that Lessor unreasonably withheld or unreasonably delayed its consent or approval. Lessee's sole remedy in such circumstance shall be an action or proceeding to enforce any such provision by way of specific performance, injunction or declaratory judgment.

(b) If Lessor fails to approve or disapprove a request for consent within thirty (30) days (provided, that if Lessee requires a response from Lessor prior to such thirtieth (30<sup>th</sup>) day in order to ensure the orderly operation of the Franchise and the Leased Premises, Lessee may, in its initial submission to Lessor, request that Lessor respond with a shorter period of time, but in no event less than fifteen (15) Business Days), Lessee shall have the right to provide Lessor with a second written request for consent (a "Second Consent Request"), which shall set forth in bold capital letters the following statement: "IF LESSOR FAILS TO RESPOND WITHIN TEN (10)

BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN LESSEE SHALL BE ENTITLED TO TAKE THE ACTION LESSEE HAS REQUESTED LESSOR'S CONSENT TO PREVIOUSLY AND TO WHICH LESSOR HAS FAILED TO TIMELY RESPOND." In the event that Lessor fails to respond to a Second Consent Request within ten (10) Business Days after receipt by Lessor, the action for which the Second Consent Request is submitted shall be deemed to be approved by Lessor. Notwithstanding the foregoing, in no event shall this Section 14.15 (b) apply to a request by Lessee to assign the Lease or sublet the Leased Premises pursuant to Section 7.1 hereof or to mortgage or encumber its leasehold interest in the Leased Premises pursuant to Section 8.1 hereof.

14.16 Non-Interference. Lessor will use reasonable efforts to ensure that neither Lessor nor any tenants, licensees or occupants of the Premises or any adjacent property owned by Lessor, interferes in a material adverse manner with Lessee's use and occupancy of and the conduct of its operations at the Leased Premises.

14.17 Primacy of Documents. In the event of a conflict between the provisions of the Legislation and the provisions of this Lease or the Franchise Agreement, the provisions of the Legislation shall prevail. In the event of a conflict between the provisions of this Lease and the Franchise Agreement, the provisions of the Franchise Agreement shall prevail. Notwithstanding the foregoing, the description of the Leased Premises set forth in this Lease shall prevail over any contrary provision in the Franchise Agreement.

14.18 Counterparts. This Lease may be executed in two or more fully or partially executed counterparts, each of which shall be deemed an original, binding the signer thereof against the other signing Party, but all counterparts together will constitute one and the same instrument.

14.19 State Appendix. New York State Appendix A, attached hereto as Exhibit F, is incorporated herein and made a part of this Lease.

14.20 Regulatory Space. Lessee acknowledges that certain agencies of the State of New York relating to racing and wagering (the "Agencies") occupy space on the Leased Premises, and Lessee agrees that the Agencies may continue to occupy such space, free of charge, for the Term hereof. In the event that Lessee desires to relocate the Agencies within the Leased Premises, Lessee shall provide facilities of comparable size, character, quality and utility and reasonably convenient location to the Agencies, and shall pay all reasonable costs of relocating the Agencies to such replacement space.

14.21 Condition Precedent to Future Development of Real Estate Development Parcels. Notwithstanding anything to the contrary contained herein, in no event shall Lessor permit the Phase II Developer to undertake any Phase II Development prior to the Sublease Agreement and the Omnibus Agreement being in full force and effect.

14.22 Lessor Mortgage of Leased Premises. Lessor represents and warrants that as of the date hereof it has not mortgaged or encumbered its fee interest in the Leased Premises. Lessor may not mortgage or encumber its fee interest in the Leased Premises without obtaining a non-disturbance agreement in favor of Lessee, which must be in form and content reasonably satisfactory to Lessee.

14.23 Non-Competition Pari-Mutuel Wagering. Lessor acknowledges and agrees that there shall be no pari-mutuel or simulcast wagering or horse racing conducted at the Aqueduct Racetrack by any party other than Lessee.

14.24 Successors and Assigns. The provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**SIGNATURE PAGES TO FOLLOW**

Lessor and Lessee have executed this Lease as of the day and year first above written.

**LESSOR:**

**THE PEOPLE OF THE STATE OF  
NEW YORK ACTING BY AND  
THROUGH THE STATE FRANCHISE  
OVERSIGHT BOARD PURSUANT TO  
CHAPTER 18 OF THE LAWS OF 2008**

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**Approved as to form by:**

**THE OFFICE OF THE ATTORNEY  
GENERAL OF THE STATE OF NEW  
YORK**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

**LESSEE:**

**THE NEW YORK RACING  
ASSOCIATION, INC.**

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**By: Patrick L. Kehoe  
Title: General Counsel**

State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

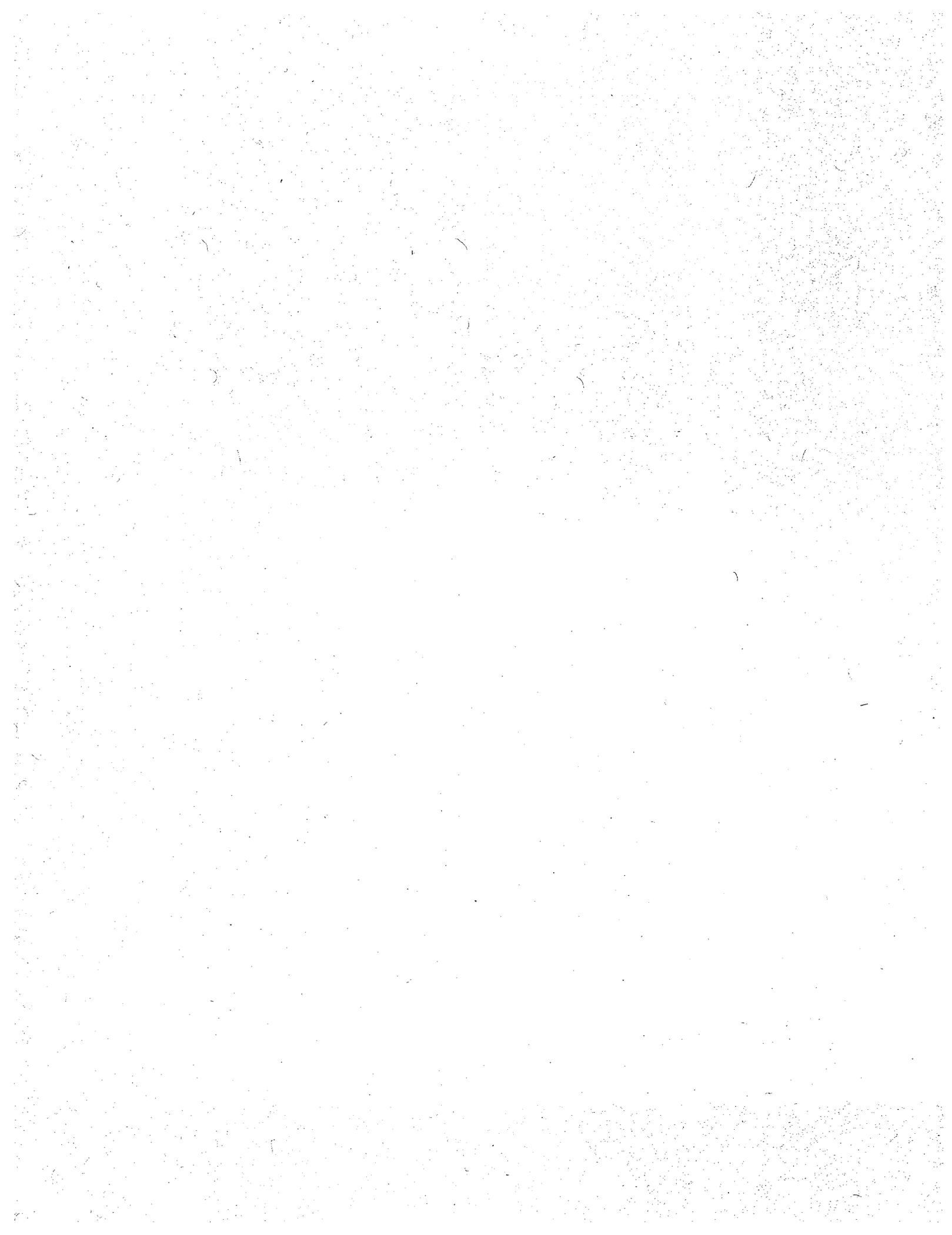
\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment



**EXHIBIT C**  
**AQUEDUCT LAND GROUND LEASE**

**AQUEDUCT RACETRACK**

**GROUND LEASE AGREEMENT**

**between**

**THE PEOPLE OF THE STATE OF NEW YORK ACTING BY AND  
THROUGH THE STATE FRANCHISE OVERSIGHT BOARD  
PURSUANT TO CHAPTER 18 OF THE LAWS OF 2008  
as Lessor,**

**and**

**THE NEW YORK RACING ASSOCIATION, INC.**

**as Lessee**

**September \_\_, 2008**

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## GROUND LEASE AGREEMENT

GROUND LEASE AGREEMENT (this "Lease"), dated as of September \_\_, 2008, by and between THE PEOPLE OF THE STATE OF NEW YORK ACTING BY AND THROUGH THE STATE FRANCHISE OVERSIGHT BOARD PURSUANT TO CHAPTER 18 OF THE LAWS OF 2008 having an address at having an address at c/o Executive Chamber, The Capitol, Albany, New York 12224, Attn: Chairman (the "Lessor"), and THE NEW YORK RACING ASSOCIATION, INC., a not-for-profit racing corporation incorporated pursuant to Section 402 of the Not-For-Profit Corporation Law of the State of New York, as authorized by Chapter 18 of the Laws of 2008, with a place of business at 110-00 Rockaway Boulevard, South Ozone Park, New York 11417 (the "Lessee"), sometimes collectively referred to herein as the "Parties" or singularly as a "Party."

### RECITALS

Contemporaneously with the execution of this Lease, and pursuant to (i) the authority granted by Chapter 18 of the Laws of 2008 passed February 13, 2008, by the New York State Senate and the New York State Assembly, and signed into law by the Governor of the State on February 19, 2008 (as the same may hereafter be amended, the "Legislation"), (ii) the Chapter 11 plan filed by the New York Racing Association Inc. ("Old NYRA") pursuant to section 1121(a) of the Bankruptcy Code (the "Plan"), as confirmed by an order, dated April 28, 2008, of the United States Bankruptcy Court for the Southern District of New York and (iii) the State Settlement Agreement made by and among Lessee, Old NYRA and the State of New York, the New York State Racing and Wagering Board, the New York State Non-Profit Racing Association Oversight Board and the New York State Division of the Lottery (the "Settlement Agreement"), Old NYRA is conveying all right, title and interest in and to the Leased Premises (as hereinafter defined) to Lessor. Lessor and Lessee are concurrently herewith entering into that certain Franchise Agreement (as hereinafter defined) pursuant to which Lessee is granted the Franchise (as hereinafter defined) to conduct thoroughbred racing and pari-mutuel wagering with respect to thoroughbred racing at the Leased Premises.

In order for Lessee to operate the Franchise granted pursuant to the Franchise Agreement, Lessor is authorized pursuant to the Legislation to lease to Lessee the Aqueduct Racing Premises (as defined in the Franchise Agreement). Lessor desires to lease the Aqueduct Racing Premises to Lessee, for such rentals, and upon such terms and conditions, contained in this Lease.

Concurrently herewith, Lessor and Lessee are also entering into that certain "Facilities Ground Lease" pursuant to which Lessor is leasing to Lessee the remaining portions of the Aqueduct Racing Premises, for such rentals, and upon such terms and conditions, contained in the Facilities Ground Lease.

## ARTICLE I

### Grant, Term of Lease and Certain Definitions

1.1 Leasing Clause. Upon and subject to the terms, provisions and conditions hereinafter set forth, Lessor does hereby LEASE, DEMISE and LET unto Lessee, and Lessee does hereby take and lease from Lessor, the Leased Premises, TO HAVE AND TO HOLD, together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to the Leased Premises (including the Art Work (hereinafter defined)), for the term hereinafter provided, upon and subject to the terms, conditions and agreements contained herein.

1.2 Term. The term of this Lease (the "Term") shall be for a period commencing on the Commencement Date (hereinafter defined), and terminating on the date on which the Franchise Agreement terminates pursuant to the terms thereof, or upon the sooner termination of this Lease as set forth herein (the "Expiration Date").

1.3 Certain Definitions. Capitalized terms not otherwise defined herein shall have the respective meanings given them in the Franchise Agreement. The following terms shall have the respective meanings set forth below in this Section 1.3 for purposes of this Lease:

(a) Additional Charges. All other taxes, levies impositions, assessments of whatever type or nature levied or assessed against the Leased Premises, Improvements, and /or Lessee, other than Impositions.

(b) Art Work. All art work transferred from Old NYRA to Lessor, including, but not limited to, the items listed on Exhibit C hereto.

(c) Base Rental. The base rental for the Leased Premises as defined in Section 2.1 of this Lease.

(d) Commencement Date. The date first above written, on which date this Lease has been fully executed by Lessor and Lessee and approved and filed in the Office of the State Comptroller pursuant to Section 112 of the State Finance Law.

(e) Contaminants. Any material, substance or waste classified, characterized or regulated as toxic, hazardous or a pollutant or contaminant under any Requirements, including asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or the equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million.

(f) Contractor. Any construction manager, contractor, subcontractor, laborer or materialman who shall supply goods, services, labor or

materials in connection with the development, construction, management, maintenance or operation of any part of the Leased Premises.

(g) Default Rate. The rate of interest per annum applicable to judgment claims in the State of New York.

(h) Facilities Ground Lease Premises: The premises demised to Lessee under the Facilities Ground Lease.

(i) Franchise. The authority granted to Lessee to conduct racing and pari-mutuel wagering with respect to thoroughbred racing, as provided for in the Legislation and the Franchise Agreement.

(j) Franchise Agreement. That certain Franchise Agreement between Lessor and Lessee of even date herewith which is annexed hereto as Exhibit B.

(k) Impositions. All taxes set forth in Paragraph 8.a. of the Legislation, as the same is amended by Subdivision 3 of Section 530 of the Real Property Tax Law and constructed through Sections 102, 530 and 532 of the Real Property Tax Law, levied or assessed against the Leased Premises and Improvements and coming due during the Term, now or hereafter located thereon associated with the ownership, which are required, pursuant to the above referenced sections, to be paid by Lessor. In no event shall Impositions include any personal or corporate income or franchise taxes imposed upon Lessee, or other taxes imposed on the income or revenues from the operation of the Leased Premises or other activities of Lessee.

(l) Improvements. All buildings, structures, improvements and other real and personal property associated therewith from time to time situated on the Leased Premises.

(m) Insurance Trustee. An institutional lender with offices located in the State of New York, proposed by Lessee and reasonably satisfactory to Lessor, which agrees to serve as the Insurance Trustee for purposes of this Lease on terms reasonably satisfactory to Lessor and Lessee.

(n) Land. Those certain tracts of land underlying the Leased Premises.

(o) Lease. This Lease Agreement by and between Lessor, as lessor, and Lessee, as lessee.

(p) Lease Year. Each calendar year during the Term of this Lease, with the first Lease Year being the partial year beginning on the Commencement Date and ending on December 31 of the year in which the Commencement Date occurs, and the final Lease Year expiring on the Expiration Date.

(q) Leased Premises. The Land, together with all present and future improvements on the Land, including, without limitation, rights, privileges, easements and appurtenances benefiting, belonging to or in any way appertaining thereto, including, but not limited to, (i) any and all rights, privileges, easements and appurtenances of Lessor as the owner of fee simple title to the Land now or hereafter existing in, to, over or under adjacent streets, parking lots, sidewalks, alleys and property contiguous to the Land, and (ii) any and all strips and gores relating to the Land, commonly referred to as the Aqueduct Racetrack, New York, all as more particularly described in Exhibit A annexed hereto. All property demised under the Facilities Ground Lease is excluded from the Leased Premises.

(r) Legislation. As defined in the Recitals.

(s) Lessee. As defined in the Recitals.

(t) Lessor. As defined in the Recitals.

(u) Omnibus Agreement. Shall mean the agreement to be entered into by Lessor as landlord under the Facilities Ground Lease and Lessee as sublessee under the Sublease Agreement (hereinafter defined).

(v) Person. A corporation, an association, a partnership (general or limited), a limited liability company, a joint venture, a limited liability partnership, a private company, a public company, a limited life public company, a trust or fund (including but not limited to a business trust), an organization or any other legal entity, an individual or a government or any agency or political subdivision thereof.

(w) Phase II Developer. Shall have the meaning given it in Section 3 of the Omnibus Agreement.

(x) Phase II Development. The development of one or more of the Real Estate Development Parcels undertaken by the Phase II Developer.

(y) Real Estate Development Parcels. Certain parcels as depicted in the Sublease Agreement.

(z) Rental. The rent payable during the Term.

(aa) Requirements. All applicable laws, rules, regulations or other legal requirements enacted by a governmental authority having jurisdiction over the Leased Premises or the operations or the activity at the Leased Premises, including, but not limited to, the protection of the environment.

(bb) State. The People of the State of New York.

(cc) Sublease Agreement. Shall mean the sublease agreement to be entered into by the VLT Operator (hereinafter defined) as sublessor and Lessee as

sublessee for a portion of the Facilities Ground Lease Premises as more particularly described in the Sublease Agreement.

(dd) Sublessee. Any permitted sublessee or user under Section 7.2 of this Lease.

(ee) Term. The term of this Lease as provided in Section 1.2 of this Lease.

(ff) VLT Operations. The operation at the VLT Premises (hereinafter defined) of video lottery gaming terminals and activities and uses associated with such operations.

(gg) VLT Operator. Shall mean the entity selected by the State as the operator with respect to the video lottery gaming terminals at the Aqueduct Racing Premises.

(hh) VLT Premises. That portion of the Facilities Ground Lease Premises designated for VLT Operations.

## ARTICLE II

### Rental

2.1 Base Rental. Lessee shall pay to Lessor the Base Rental for the Leased Premises in an amount equal to One Dollar (\$1.00) per annum, which Base Rental has been paid in full for the entire Term, in advance, on the date hereof (the "Base Rental"). Notwithstanding the foregoing, Lessee shall pay other charges and costs due under this Lease as additional rent throughout the term of this Lease.

## ARTICLE III

### Impositions and Utilities

3.1 Payment of Impositions. Lessor shall be solely responsible for the payment of all Impositions before the same become delinquent. Lessee agrees to cooperate with Lessor in seeking the delivery of all notices of Impositions to Lessor directly from the applicable taxing authorities. Lessor shall be entitled to contest the amount or validity of any Impositions, at Lessor's expense; provided that such contest does not materially adversely affect Lessee's use of and operations upon the Leased Premises.

3.2 Additional Charges and Utilities. Lessee shall be solely responsible to pay all charges when due for (i) Additional Charges and (ii) utilities furnished to the Leased Premises, including, but not limited to, electricity, gas, heat, light and power, telephone and any and all other services and utilities furnished to the Leased

Premises (the "Utilities"), including, without limitation, charges for Additional Charges and Utilities incurred prior to the Commencement Date. Lessee may, at Lessee's sole cost and expense, dispute and contest any and all charges for Additional Charges and Utilities for which Lessee is responsible for payment, provided there is no danger of an imminent threat of Lessor losing title to the Leased Premises. If there is the threat of the Leased Premises becoming subject to any lien, encumbrance or charge, Lessor may require Lessee to deposit with Lessor a surety bond issued by a surety company of recognized responsibility, guaranteeing and securing payment in full of such charges for Additional Charges or Utilities.

3.3 Operating Expenses. Lessee shall be solely responsible for the payment of all operating expenses for the Leased Premises, including without limitation repair and maintenance charges, insurance charges, and all other charges incurred in connection with the operation of the Leased Premises pursuant to this Lease (the "Operating Expenses").

## ARTICLE IV

### Improvements and Alterations

#### 4.1 Improvement Rights and Alterations; Capital Plan.

(a) Lessee shall have the right, subject to the restrictions imposed by the Legislation, the Franchise Agreement and the applicable Requirements, to develop, redevelop, refurbish, renovate or make such other improvements, capital expenditures or otherwise ("Alterations"), to the Leased Premises and the fixtures and improvements thereon, as shall be necessary or desirable for the operation of the Leased Premises for the uses permitted under this Lease and the Franchise Agreement.

(b) Intentionally Omitted.

(c) Lessee has heretofore delivered to Lessor, and Lessor, concurrently with the execution of this Lease, hereby approves, a five-year capital expenditure plan (the "Capital Plan") setting forth in reasonable detail the capital expenditures and the budgeted costs therefor which Lessee proposes to make with respect to the Leased Premises for the Lease Years 2008-2013. Lessee shall be entitled to perform all Alterations which are set forth in an approved Capital Plan, without further approval from Lessor. If Lessee desires to perform any Alterations which are not set forth in an approved Capital Plan, Lessee shall obtain the prior written consent of Lessor, not to be unreasonably withheld or delayed, to such Alterations, unless such Alterations (y) will not, in the good faith estimation of Lessee's architect or engineer, cost more than \$100,000 to complete and (z) do not affect any structural elements or building systems of the Improvements which, in the case of (y) and (z) above, Lessor's prior written consent shall not be required.

(d) Prior to performing any proposed Alterations to which Lessor's consent has been obtained, including those set forth in an approved Capital Plan, Lessee shall, at Lessee's expense, procure and maintain in its possession: (w) detailed plans and specifications for such Alterations, (x) a construction budget setting forth the cost to perform and complete such Alterations, (y) insurance certificates from all Contractors evidencing the insurance coverages required under this Lease and (z) all permits, approvals and certifications required by any governmental authorities having jurisdiction over the Leased Premises. Upon completion of any Alterations, Lessee shall obtain any certificates of final approval of such Alterations required by any governmental authority, together with the "as-built" plans and specifications for such Alterations (together, the "Completion Documents"). Upon Lessor's request, Lessee shall promptly provide to Lessor, in hard copy or electronic form (as Lessor may request), any or all of the documents required to be obtained under this Section 4.1(d), including the Completion Documents upon completion of the Alteration.

(e) All Alterations shall be made and performed, in all material respects, in accordance with the plans and specifications therefor (as submitted to Lessor, if applicable), as same may be modified from time to time. All Alterations shall be made and performed in a good and workmanlike manner, using materials substantially similar in quality to the existing materials at the Leased Premises, and in compliance with all applicable Requirements, as well as requirements of insurance bodies having jurisdiction over the Leased Premises. No Alterations shall impair the structural integrity or soundness of any Improvements.

(f) All Alterations made by Lessee shall become the property of Lessor upon the expiration of the Lease. Throughout the Term of this Lease, to the extent permitted under the applicable tax laws, rules and regulations, Lessee shall have the sole and exclusive right to take depreciation of all Alterations made by Lessee to the Leased Premises.

4.2 Easements and Dedications. In order to maintain and/or improve the Leased Premises, it may be necessary or desirable that street, water, sewer, drainage, gas, power lines, set back lines, and other easements, and dedications and similar rights be granted or dedicated over or within portions of the Leased Premises by plat, replat, grant, deed or other appropriate instrument (collectively, "Easements and Dedications"). Lessor, shall, within thirty (30) days following written request by Lessee to Lessor, and to the extent reasonably necessary as fee owner of the Leased Premises, join with Lessee in executing and delivering such Easements and Dedications, as may be appropriate or reasonably required for the future improvement of the Leased Premises, provided that Lessor reasonably determines that the said Easements and Dedications will not interfere in a material adverse way with the future development, use and occupancy of, and operations on the Facilities Ground Lease Premises by the VLT Operator or Phase II Developer. In order to cooperate and to assist with the compliance of this provision, if the Parties determine that any proposed Easements and Dedications are reasonably likely to interfere in a material adverse way with such future development, use and occupancy of, and operations on the Facilities Ground Lease Premises, the Parties shall cooperate

with each other to take appropriate measures to minimize the likelihood and extent of such interference.

4.3 Zoning. In the event that Lessee deems it necessary or appropriate to obtain use, zoning, site plan approval or any permit from the appropriate governmental entity having jurisdiction over the Leased Premises, or any part thereof, Lessor shall, within thirty (30) days following written request by Lessee to Lessor, and to the extent reasonably necessary as fee owner of the Leased Premises, execute such document, or join in such petitions, applications and authorizations as may be appropriate or reasonably required by Lessee, and cooperate in good faith with Lessee in any such reasonable efforts, provided that Lessor reasonably determines that the matter will not interfere in a material adverse way with the future development, use and occupancy of, and operations on the Facilities Ground Lease Premises by the VLT Operator or Phase II Developer. In order to cooperate and assist with the compliance of this provision, if the Parties determine that the proposed matter is reasonably likely to interfere in a material adverse way with such future development, use and occupancy of, and operations on the Facilities Ground Lease Premises, the Parties shall cooperate with each other to take appropriate measures to minimize the likelihood and extent of such interference.

4.4 Indemnification for Mechanics' Liens. Lessee will pay or cause to be paid all costs and charges for work performed by Lessee or caused to be performed by Lessee in or to the Leased Premises. Lessee will indemnify Lessor against, and hold Lessor and the Leased Premises free, clear and harmless of and from, any and all vendors', mechanics', laborers', or materialmans' liens and claims of liens, and all other liabilities, liens, claims and demands on account of such work by or on behalf of Lessee. If any such lien, at any time, is filed against the Leased Premises, or any part thereof, on account of work performed or caused to be performed by Lessee in or to the Leased Premises, Lessee will cause such lien to be discharged of record within forty-five (45) days after Lessee has received actual notice of the filing of such lien. If Lessee fails to pay any charge for which a mechanic's lien has been filed, and has not discharged same of record as described above, Lessor may, at its option, upon ten (10) days' prior written notice to Lessee and in addition to exercising any other remedies Lessor has under this Lease on account of a default by Lessee, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with the removal of such lien, will be immediately due from Lessee to Lessor.

## ARTICLE V

### Use of Leased Premises

5.1 Permitted Uses. Lessee's use of the Leased Premises shall be primarily for the management and operations of all functions as may be necessary or appropriate to conduct racing, racing operations, pari-mutuel and simulcast wagering

(collectively, "Uses"), together with various activities related thereto, including without limitation, live wagering and retail, food, beverage, trade expositions and entertainment facilities, racing, equestrian, social and community activities, and other uses and activities historically conducted on the Leased Premises (collectively, "Ancillary Uses" and, taken together with the Uses, the "Permitted Uses") at or with respect to the Leased Premises, subject to and in compliance with the provisions of the Franchise Agreement, applicable Requirements including without limitation the Legislation, and the Certificate of Occupancy for the Leased Premises. Lessee shall not conduct, manage or otherwise operate VLT Operations at the Leased Premises.

## 5.2 Compliance with Laws.

(a) Lessee shall use, operate and maintain the Leased Premises and the Improvements situated thereon in compliance with all applicable laws, regulations or ordinances of the United States, the State of New York, the City of New York or other lawful authority having jurisdiction over the Leased Premises, as applicable (collectively, "Requirements").

(b) Lessee shall have the right to contest the validity, enforceability or applicability of any Requirements applicable to the Land, Building and Improvements constituting the Leased Premises and Improvements, provided that there is no danger of an imminent threat of Lessor losing title to the Leased Premises or criminal liability to Lessor. During such contest, compliance with any such contested Requirements may be deferred by Lessee; provided, however, that Lessee shall promptly comply with the final determination of any such contest. If non-compliance (x) shall result in a lien being filed against the Leased Premises or (y) may reasonably be expected (in Lessor's reasonable judgment) to result in civil liability to Lessor, Lessor may require Lessee to deposit with Lessor a surety bond issued by a surety company of recognized responsibility guaranteeing and securing the payment in full of such lien. Prior to instituting such proceeding, Lessee shall provide notice to the Attorney General of the State of New York, which may choose to be a party in such contest. Any such proceeding instituted by Lessee shall be commenced as soon as is reasonably possible after the issuance of any such contested matters, or after actual notice to Lessee of the applicability of such matters to the Leased Premises, and shall be prosecuted with reasonable dispatch. In the event that Lessee shall institute any such proceeding, Lessor shall cooperate with Lessee in connection therewith, and Lessee shall be responsible for the reasonable and actual out-of-pocket costs and expenses incurred by Lessor in connection with such cooperation.

5.3 Maintenance and Repairs. Lessee shall perform all maintenance, repair and upkeep of the Leased Premises, including the Improvements thereon, so as to keep the same in good order and repair in compliance with all Requirements (subject to Lessee's right to contest pursuant to Section 5.2(b)). The costs of such maintenance shall be borne solely by Lessee.

5.4 Disposition of Personal Property. Lessee shall have the right to dispose of any personal property or Alterations during the term of this Lease in the ordinary course of business, but Lessee agrees that it will not purposefully remove any such personal property or Alterations to circumvent the intent that the same shall become the property of Lessor at the end of the Term and Lessee further agrees that it shall replace any such personal property or Alterations to the extent they are required to conduct racing operations. Notwithstanding the foregoing, the Art Work may not be disposed of by Lessee without the prior written consent of Lessor, which consent Lessor may withhold in its sole discretion.

## ARTICLE VI

### Insurance

#### 6.1 Required Coverages of Lessee.

(a) Lessee, throughout the Term, or as otherwise required by this Lease, shall obtain and maintain Insurance, in full force and effect, from an insurance company licensed or authorized to do business in the State of New York, in accordance with the terms, coverages and requirements set forth in Exhibit D attached hereto.

## ARTICLE VII

### Assignment and Subletting

7.1 Assignment. Lessee may, subject to the prior written approval of Lessor as required by Section 138 of the State Finance Law and the receipt of all required governmental approvals in connection with any assignment of Lessee's rights and obligations under the Franchise Agreement, assign (or sublease, license or otherwise transfer) to any party to which the Franchise is assigned, Lessee's leasehold interest granted to Lessee under this Lease, in whole only. It is understood and agreed that Lessee's interest in the Lease may only be assigned or transferred to a party in which the Franchise is being assigned and which party shall hold the Franchise at the time of assignment, or any successor thereto. Upon any such assignment, the assignee shall execute and deliver to Lessor a written assumption, in form and substance satisfactory to the Lessor in its reasonable judgment, of all of the obligations of Lessee under this Lease. Lessee shall be released from any obligations arising under this Lease which accrue from and after such an assignment, but not those accruing prior to the date of such assignment. For purposes of this Section 7.1, approval of the Franchise Oversight Board of an assignment of the Franchise Agreement shall be deemed to constitute approval by the Lessor of Lessee's assignment of this Lease.

7.2 Concessions, Subletting and Licensing. (a) Lessee shall have the right from time to time, with the prior written consent of Lessor to the extent required by the Legislation (including without limitation Section 206 thereof), to grant concessions at the Leased Premises as Lessee may deem proper for the conduct at the Leased Premises of Ancillary Uses as permitted in Section 5.1 hereof (“Concessions”). All Concessions shall be entered into in compliance with the Legislation (including, without limitation, Section 208-6 thereof), and other Requirements. Agreements for the operation of Concessions may, at the election of Lessee, be in the form of subleases, licenses or concession agreements; provided, that no subletting or licensing shall relieve Lessee of any of its obligations under the Lease, and all Concessions, whether in the form of subleases, licenses or concession agreements, shall be strictly subject and subordinate to the terms and provisions of this Lease.

(b) Other than with respect to the grant of Concessions, Lessee may not sublet all or any portion of the Leased Premises without the prior written consent of Lessor, in Lessor’s sole discretion, as required by Section 138 of the State Finance Law and the receipt of all required governmental approvals in connection with any sublease or transfer. Notwithstanding anything to the contrary contained herein, (x) the stabling of horses belonging to third parties shall not constitute a sublease under the terms of this Lease and (y) those subleases set forth on Exhibit E hereto (the “Permitted Subleases”) shall not be subject to the general subleasing prohibition set forth in this Section 7.1 and Lessor hereby consents to the Permitted Subleases. In addition to the foregoing, Lessee shall also have the right to enter into any sublease or occupancy agreement with The New York Thoroughbred Breeders Inc., The New York Thoroughbred Horsemen’s Association (or such other entity as is certified and approved pursuant to Section 228 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law, as amended), The New York State Racing and Wagering Board, The New York State Department of Taxation and Finance, and with any governmental authorities, agencies, boards or regulators of the State, with the prior written consent of Lessor, such consent not to be unreasonably withheld, conditioned or delayed.

7.3 General Provisions. Lessee shall, in connection with any Concession, whether or not Lessor’s consent is required thereto, provide written notice to Lessor of the name, legal composition and address of any Concessionaire, together with a complete copy of the agreement under which such Concession is granted, and a description of the nature of the Concessionaire’s business to be carried on in the Leased Premises.

7.4 Transfer by Lessor of the Leased Premises. Lessor and Lessee acknowledge and agree that certain benefits accrue to Lessor and Lessee by virtue of Lessor’s ownership of fee title to the Leased Premises and that such benefits are material inducements to Lessor and Lessee to enter into this Lease. Accordingly, Lessor covenants and agrees that, during the Term of this Lease and any renewals or extensions thereof, and prior to the termination of this Lease, whether through expiration of the

Term or the earlier termination thereof pursuant to a right to so terminate this Lease, it will at all times own and hold title to the Leased Premises, as encumbered by this Lease, for the benefit of and on behalf of the State in accordance with the Legislation, and further covenants and agrees that it will not, if and to the extent prohibited by the Legislation, sell, transfer or otherwise convey all or any portion of the Leased Premises to any Person or entity, other than an agency, division, subdivision or department of the State of New York, or a public benefit corporation, local development corporation, municipal corporation or public authority constituting a political subdivision of the State of New York.

## ARTICLE VIII

### Leasehold Mortgages/Subordination

8.1 Lessor's Consent to Leasehold Mortgage. Lessee shall have the right, subject to the prior written consent of Lessor as provided in the Legislation, to mortgage or encumber this Lease (and Lessee's interest in the Leased Premises) and/or in any improvements made and owned by Lessee and/or in Lessee's personal property, furniture, fixtures and equipment. In no event shall Lessee's mortgage encumber or affect Lessor's fee title to the Land or Improvements. Each mortgage of Lessee's interest shall provide that the terms and conditions of this Lease, and Lessor's title to the Improvements at the expiration of this Lease, remains superior, and any mortgage of Lessee's interest is subordinate to the rights of Lessor hereunder.

## ARTICLE IX

### Default of Lessee

9.1 Non-Revocation Events of Default. The following events shall each constitute a "Non-Revocation Event of Default" under this Lease:

(a) Monetary Defaults. Failure on the part of Lessee to pay Rental or any other sums and charges when due to Lessor hereunder and the continuation of such failure for thirty (30) days after written notice to Lessee.

(b) Nonmonetary Defaults. Failure on the part of Lessee to perform any of the terms or provisions of this Lease other than the provisions (x) requiring the payment of Rental and (y) breach of which would give rise to the revocation of the Franchise Agreement pursuant to the terms thereof, and the continuation of such failure for thirty (30) days after written notice to Lessee, provided that if the default is of such character as to require more than thirty (30) days to cure, if Lessee shall fail to commence curing such default within thirty (30) days following Lessor's notice and thereafter fail to use reasonable diligence in curing such default.

9.2 Remedies for Non-Revocation Event of Default. If a Non-Revocation Event of Default shall occur, Lessor shall be entitled, at Lessor's election, to

exercise any remedies available at law or in equity on account of such Non-Revocation Event of Default, including without limitation to bring one or more successive suits for monetary damages and/or specific performance, but Lessor shall not be entitled to terminate this Lease and remove Lessee from possession of the Leased Premises. In addition to the foregoing, Lessor may undertake to cure such Non-Revocation Event of Default for the account of and at the cost and expense of Lessee, and the full amount so expended by Lessor (with interest accruing at the Default Rate) shall immediately be owing by Lessee to Lessor.

9.3 Revocation of Franchise Agreement. Notwithstanding anything in this Lease to the contrary, if Lessee's Franchise shall be duly revoked pursuant to Racing Law §§ 244 and 245, then this Lease shall be deemed automatically, without further notice or legal action, terminated as of the date of such Franchise revocation, and Lessor shall have the right, at Lessor's election, to exercise any of the remedies set forth in Section 9.4 of this Lease which are applicable following termination of the Lease. Lessee shall have the right to remain in possession of the Leased Premises for a period of not more than thirty (30) days following the termination of the Lease, solely for the purposes of orderly vacating the Leased Premises in the condition required by this Lease, TIME BEING OF THE ESSENCE to the obligation of Lessee to vacate the Leased Premises as provided in this Lease no later than the thirtieth ( 30<sup>th</sup>) day following Lease termination.

9.4 Lease Termination Following Revocation of Franchise Agreement.

(a) If this Lease shall be terminated as provided in Section 9.3, Lessor, without notice, may re-enter and repossess the Leased Premises using such force for that purpose as may be necessary and permissible pursuant to applicable laws, without being liable for indictment, prosecution or damages therefor and may dispossess Lessee by summary proceedings or otherwise.

(b) No termination of this Lease pursuant to Section 9.3, or taking possession of or reletting the Leased Premises or any part thereof, shall relieve Lessee of its liabilities and obligations under this Lease arising prior to the date of termination.

9.5 No Waiver. No failure by Lessor to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition, unless Lessor agrees in writing to waive such breach at the time of its occurrence or anytime thereafter. No covenant, agreement, term or condition of this Lease to be performed or complied with by Lessee, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease still continue in full force and effect with respect to any other then existing or subsequent breach thereof.

9.6 Remedies Cumulative. All amounts expended by Lessor to cure any default or to pursue remedies hereunder shall be paid by Lessee to Lessor upon demand and shall be in addition to the Rentals otherwise payable hereunder. Each right and remedy of Lessor provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

## **ARTICLE X Intentionally Omitted**

## **ARTICLE XI Casualty Restoration**

11.1 Notice of Damage. If all or any part of any of the Leased Premises shall be destroyed or damaged in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen (a "Casualty"), Lessee, upon actual knowledge of the occurrence of such Casualty, shall give to Lessor prompt notice thereof.

### 11.2 Obligation to Restore.

(a) Lessee Obligation to Restore. In the event of a Casualty, Lessee shall be obligated to repair, alter, restore, replace and rebuild (collectively, "Restore" and the act of Restoring, a "Restoration") the Leased Premises, as nearly as possible equal to the condition, quality, character and class of the Leased Premises existing immediately prior to such occurrence. Notwithstanding the foregoing, Lessee, with the consent of Lessor, not to be unreasonably withheld, conditioned or delayed, may Restore the Leased Premises with such changes and modifications that Lessee may deem desirable in the exercise of its sound business judgment, for use for racing operations and to accommodate the Permitted Uses; it being agreed that Lessee shall not be required to rebuild such facilities that Lessee deems are no longer useful or necessary for the continued operation of racing at the Leased Premises (the "Unnecessary Facilities") and accordingly that withholding, conditioning or delaying consent for failure to rebuild the Unnecessary Facilities will be deemed unreasonable. Provided that Lessee's Property Insurance at the time of a Casualty is in full force and effect and is in compliance with the requirements of this Lease, including policy limits equal to the full replacement cost of the Improvements, Lessee shall not be obligated or required to expend any funds in connection with a restoration (x) in excess of the Insurance Proceeds, plus (y) the deductible amount under Lessee's Property Insurance.

(b) No Obligation of Lessor to Restore. Lessor shall have no obligation to Restore the Leased Premises.

(c) Non-Interference During Restoration. In the event of a Restoration whereby the Leased Premises are being restored in a manner substantially different than that existing immediately prior to the time of the occurrence of the Casualty (the "Alternate Restoration"), and (i) if such Alternate Restoration is to occur prior to any future development of the VLT Premises or the Real Estate Development Parcels, Lessor may withhold its consent to such Alternate Restoration if Lessor reasonably determines that said Alternate Restoration is of a design and construction that will interfere in a material way with any such future development, and (ii) if such Alternate Construction is to occur after any such future development, the design and construction of the Alternate Restoration shall not interfere in a material way with either the VLT Operator or the Phase II Developer or their respective uses and occupancy of and operations on the VLT Premises or the Real Estate Development Parcels

### 11.3 Restoration Funds.

(a) In the event of a Restoration which is subject to Section 11.2(a) and which cost thereof is to exceed \$1,000,000, Lessee shall cause to be deposited with the Insurance Trustee all proceeds of Lessee's Property Insurance, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (hereinafter referred to as the "Insurance Proceeds"). Prior to commencing any Restoration, Lessee shall furnish Lessor with an estimate of the cost of such Restoration, prepared by an independent licensed professional engineer or registered architect selected by Lessee and reasonably approved by Lessor (the "Approved Engineer"). The Insurance Proceeds shall be applied by the Insurance Trustee to the payment of the cost of the Restoration, and shall be paid to, or for the account of, Lessee from time to time, as the Restoration progresses, but not more frequently than once in any calendar month. Said Insurance Trustee shall make such payments upon written request of Lessee accompanied by the following:

(i) a certificate, dated not more than fifteen (15) days prior to such request, signed by Lessee and by an architect in charge of the Restoration who shall be selected by Lessee and reasonably satisfactory to Lessor setting forth that:

(A) the sum then requested either has been paid by Lessee or is justly due to contractors, subcontractors, materialmen, architects or other persons who have rendered services or furnished materials in connection with the Restoration, giving a brief description of the services and materials and the several amounts so paid or due and stating that no part of such sum has been made the basis for a withdrawal of Insurance Proceeds in any previous or then pending request or has been paid out of any Insurance Proceeds received by Lessee, and that the sum requested does not exceed the value of the services and materials described in the certificate.

(B) the cost, as estimated by the persons signing such certificate, of the Restoration remaining to be done subsequent to the date of such certificate, does not exceed the amount of Insurance Proceeds remaining deposited with the Insurance Trustee after the payment of the sum so requested; and

(ii) a certificate dated not more than fifteen (15) days prior to such request of a reputable national title company then doing business in the State of New York, covering the period from the date of this Lease to the date of such certificate, setting forth that there are no liens or encumbrances of record of any kind on the Leased Premises or Lessee's interest therein other than those that Lessee is contesting in good faith, those permitted by the terms of this Lease, and except such as will be discharged by payment of the amount then requested.

(b) Upon compliance with the foregoing provisions of this Section 11.3, the Insurance Trustee shall, out of such Insurance Proceeds, pay or cause to be paid to Lessee or to the Persons named in the certificate, the respective amounts stated therein to have been paid by Lessee or to be due to said Persons, as the case may be. All sums so paid to Lessee and any other Insurance Proceeds received or collected by or for the account of Lessee, and the right to receive the same, shall be held by Lessee in trust for the purpose of paying the cost of the Restoration.

(c) When the Insurance Trustee shall receive evidence satisfactory to it of the character required by subparagraph (a) of this Section 11.3 and that the Restoration has been completed and paid for in full and that there are no liens of the character referred to herein, the Insurance Trustee shall pay any remaining balance of the Insurance Proceeds to Lessee, unless Lessor has notified the Insurance Trustee that there has been a Non-Revocation Event of Default by Lessee under this Lease, in which case the Insurance Trustee shall refrain from paying to Lessee any remaining balance of the Insurance Proceeds until the Insurance Trustee shall have received (i) notice from Lessor that the Non-Revocation Event of Default has been cured (which Lessor shall give to Insurance Trustee within fifteen (15) Business Days from the date of determination), or (ii) notice from Lessee or Lessor of an official determination by a court of competent jurisdiction that there was no such Non-Revocation Event of Default by Lessee under this Lease as claimed by Lessor. Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, Lessor hereby agrees to indemnify Lessee for any claims against Lessee and for any loss, cost or expense incurred by Lessee by reason of Lessor claiming a Non-Revocation Event of Default causing the Insurance Trustee to withhold the Insurance Proceeds and preventing Lessee from making payments when due, where a court of competent jurisdiction makes an official determination that there was no such Non-Revocation Event of Default by Lessee under this Lease.

(d) It is expressly understood that the requirements under this Article XI are for the benefit only of Lessor, and no contractor or other person shall have or acquire any claim against Lessee as a result of any failure of Lessee actually to

undertake or complete any Restoration or to obtain the evidence, certifications and other documentation provided for herein.

11.4 No Termination or Abatement. This Lease shall not terminate or be forfeited or be affected in any manner by reason of damage to or total, substantial or partial destruction of any of the Building or any part thereof or by reason of the untenability of the same or any part thereof, for or due to any reason or cause whatsoever, and Lessee, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender any part of the Leased Premises thereof. It is the intention of Lessor and Lessee that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

## ARTICLE XII

### Representations, Warranties and Special Covenants

#### 12.1 Lessor's Representations, Warranties and Special Covenants.

Lessor hereby represents, warrants and covenants as follows:

(a) Existence. Lessor has been established and exists pursuant to the Legislation.

(b) Authority. Pursuant to the Legislation, Lessor has all requisite power and authority to own its property and the Leased Premises, effectuate its mandate, enter into this Lease and consummate the transactions herein contemplated, and by proper action in accordance with all applicable law has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Lease will be a valid obligation of Lessor and is binding upon Lessor in accordance with its terms once approved by the applicable state authorities.

(d) No Defaults. The execution by Lessor of this Lease and the consummation by Lessor of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or a condition which upon notice or lapse of time or both would ripen into a default under the Legislation, which constitutes the articles of organization of Lessor, or under any resolution, indenture, agreement, instrument or obligation to which Lessor is a party or by which the Leased Premises or any portion thereof is bound; and does not to the knowledge of Lessor, constitute a violation of any order, rule or regulation applicable to Lessor or any portion of the Leased Premises of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessor or any portion of the Leased Premises.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities, other than those that have already been

obtained, is required in order for Lessor to enter into this Lease, make the agreements herein contained, other than those which have been obtained.

(f) Quiet Enjoyment. So long as the Franchise Agreement is in full force and effect, Lessee shall have the quiet enjoyment and peaceable possession of the Leased Premises during the Term of this Lease, against hindrance or disturbance of any person or persons whatsoever claiming by, through or under Lessor.

(g) Proceedings. To the knowledge of Lessor, there are no actions, suits or proceedings pending or threatened in writing against Lessor which would, if successful, prevent Lessor from entering into this Lease or performing its obligations hereunder.

(h) Limitations. Except as otherwise expressly provided herein, this Lease is made by Lessor without representation or warranty of any kind, either express or implied, as to the condition of the Leased Premises, title to the Leased Premises, its merchantability, its condition or its fitness for Lessee's intended use or for any particular purpose and all of the Leased Premises is leased on an "as is" basis with all faults.

#### 12.2 Lessee's Representations, Warranties and Special Covenants.

Lessee hereby represents, warrants and covenants as follows:

(a) Existence. Lessee is a not-for-profit racing corporation incorporated pursuant to Section 402 of the Not-for-Profit Corporation Law of the State of New York, as authorized by Chapter 18 of the Laws of 2008, validly existing and in good standing under the laws of the State of New York and its adopted and currently effective articles of incorporation.

(b) Authority. Lessee has all requisite power and authority to own its property, operate its business, enter into this Lease and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligations. This Lease constitutes a valid and legally binding obligation of Lessee and is enforceable against Lessee in accordance with its terms.

(d) No Defaults. The execution by Lessee of this Lease and the consummation by Lessee of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or a condition which upon notice or lapse of time or both would ripen into a default under the Legislation, the articles of organization of Lessee, or under any resolution, indenture, agreement, instrument or obligation to which Lessee is a party or by which the Leased Premises or any portion thereof is bound; and does not to the knowledge of Lessee, constitute a violation of any order, rule or regulation applicable to

Lessee or any portion of the Leased Premises of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessee or any portion of the Leased Premises.

(e) Consents. No other permission, approval or consent by third parties or any other governmental authorities is required in order for Lessee to enter into this Lease or consummate the transactions herein contemplated, other than those which have been obtained.

(f) Proceedings. To the knowledge of Lessee, there are no actions, suits or proceedings pending or threatened in writing against Lessee which would, if successful, prevent Lessee from entering into this Lease or performing its obligations hereunder.

### ARTICLE XIII

#### Indemnification, Waiver and Release

13.1 Lessee Indemnification. Lessee shall indemnify, defend and hold harmless the Lessor, Empire State Development Corporation, the Franchise Oversight Board, the Racing and Wagering Board, and their respective officers, directors, trustees, employees, members, managers, and agents (the "Lessor Indemnitees"), from and against any and all claims, actions, damages, liability and expense, arising from or out of (i) the negligence or intentional acts or omissions of Lessee, its officers, directors, agents or employees at the Leased Premises ("Lessee Parties") in connection with the occupancy or use by Lessee of the Leased Premises or any part thereof, and (ii) any occurrence at the Leased Premises not arising out of the negligence or intentional acts or omissions of a Lessee Party, but which is covered by the insurance which Lessee is required to maintain pursuant to the terms of this Lease (or any additional insurance which Lessee actually carries). Lessee's liability arising out of (ii) above shall be limited to the actual amount of proceeds available under such insurance. In case any Lessor Indemnitee shall be made a party to any litigation covered by this indemnity, whether or not also commenced by or against Lessee, then Lessee shall indemnify, defend and hold the Lessor Indemnitees harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by the Lessor Indemnitees in connection with such litigation.

13.2 Lessor's Indemnification. Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, Lessor shall hold Lessee and its officers, directors, trustees, employees, members, managers, and agents (the "Lessee Indemnitees"), harmless from any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Lessor and its officers or employees when acting within the course and scope of their employment.

13.3 Survival. The provisions of this Article XIII shall survive the expiration or termination of this Lease with respect to matters that accrued prior to the

Expiration Date, whether or not claims in respect of such matters are brought prior to or following the Expiration Date.

## ARTICLE XIV

### Miscellaneous

14.1 Inspection. Lessee shall permit Lessor and its agents, upon no less than twenty-four (24) hours' prior notice, to enter into and upon the Leased Premises during normal business hours for the purpose of inspecting the same on the condition that Lessor and its agents shall use reasonable efforts to ensure that Lessee's and Lessee's invitees' use and quiet enjoyment of the Leased Premises is not interfered with.

14.2 Estoppel Certificates. Either Party shall, at any time and from time to time upon not less than ten (10) days' prior request by the other Party, execute, acknowledge and deliver to such requesting party, a statement in writing certifying (i) its ownership of its interest hereunder, (ii) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (iii) the dates to which the Rental and any other charges have been paid, and (iv) that, to the best of their knowledge, no default hereunder on the part of the other Party exists (except that if any such default does exist, then such default shall be specified).

14.3 Lease Termination Agreement. If requested by Lessor or Lessee, Lessor and Lessee shall, upon termination of this Lease, execute and deliver to one another an appropriate release, cancellation and termination of the Lease, in form proper for recording, of all Lessee's interest in the Leased Premises and all of Lessee's obligations under the Lease, other than such obligations as survive the termination hereof.

14.4 Notices. All notices hereunder to the respective Parties will be in writing and will be served by personal delivery or by prepaid, express mail (next day) via a reputable courier service, or by prepaid, registered or certified mail, return receipt requested, addressed to the respective parties at their addresses set forth below. Any such notice to Lessor or Lessee will be deemed to be given and effective: (i) if personally delivered, then on the date of such delivery, (ii) if sent via express mail (next day), then one (1) business day after the date such notice is sent, or (iii) if sent by registered or certified mail, then three (3) business days following the date on which such notice is deposited in the United States mail addressed as aforesaid. For purposes of this Lease, a business day shall be deemed to mean a day of the week other than a Saturday or Sunday or other holiday recognized by banking institutions of the State of New York. Copies of all notices will be sent to the following:

If to Lessee:

The New York Racing Association, Inc.  
Aqueduct Racetrack  
110-00 Rockaway Boulevard  
South Ozone Park, New York 11417  
Attn: General Counsel

With a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attn: Brian S. Rosen, Esq.

If to Lessor:

The New York State Franchise Oversight Board  
Franchise Oversight Board  
c/o Executive Chamber  
The Capitol  
Albany, NY 12224  
Attention: Chairman  
Telecopy: (518) 486-9652

With a copy to:

The New York State Office of General Services  
State of New York State Office of General Services  
Legal Services Bureau  
41st Floor, Corning Tower  
The Governor Nelson A. Rockefeller Empire State Plaza  
Albany, New York 12242

With a copy to:

Charities Bureau  
Department of Law  
120 Broadway - 3rd Floor  
New York, New York 10271

With a copy to:

The Racing and Wagering Board  
Chairman  
N.Y.S. Racing and Wagering Board  
1 Broadway Center, Suite 600  
Schenectady, New York 12305  
Telecopy: (518) 347-1250

With a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Attn: Alan S. Kornberg, Esq.

14.5 Modifications. This Lease may be modified only by written agreement signed by Lessor and Lessee and approval of the State Comptroller.

14.6 Descriptive Headings. The descriptive headings of this Lease are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Lease.

14.7 Force Majeure. The time within which either Party hereto shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the party seeking the delay.

14.8 Partial Invalidity. If any term, provision, condition or covenant of this Lease or the application thereof to any Party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

14.9 Applicable Law and Venue. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

14.10 Attorneys' Fees. If any Party to this Lease brings an action against the other party based on an alleged breach by the other party of its obligations under this Lease, the prevailing party may seek to recover all reasonable expenses incurred, including reasonable attorneys' fees and expenses. In the event that Lessee fails to quit and surrender to Lessor the Premises upon the termination of this Lease as provided herein, Lessee shall be responsible for all costs and expenses, including reasonable attorneys' fees and expenses, incurred by Lessor in regaining possession of the Leased Premises following the Expiration Date.

14.11 Net Rental. It is the intention of Lessor and Lessee that the Rental payable under this Lease after the Commencement Date and other costs related to Lessee's use or operation of the Leased Premises, other than Impositions, shall be absolutely net to Lessor, and that Lessee shall pay during the Term, without any offset or deduction whatsoever, all such costs.

14.12 No Broker. Lessor and Lessee represent and warrant one to the other that no broker commission, finder's fees or similar compensation is due to any party claiming through Lessor or Lessee, as applicable, and Lessor and Lessee agree to hold the other Party harmless from any liability to pay any such brokerage commission, finder's fees or similar compensation to any parties claiming same through the indemnifying Party.

14.13 Memorandum of Lease. Lessor and Lessee agree to execute and deliver to each other a short form of this Lease in recordable form which incorporates all of the terms and conditions of this Lease by reference in the form mutually agreed upon by Lessor and Lessee ("Memorandum of Lease"). Lessor and Lessee agree that at Lessee's option, and at Lessee's cost, Lessee may record such Memorandum of Lease, in the office of the county clerk in which the Leased Premises is located.

14.14 No Waiver. No waiver of any of the provisions of this Lease shall be deemed, or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, nor shall a waiver in any instance constitute a continuing waiver, nor shall a waiver in any instance constitute a waiver in any subsequent instance.

14.15 Consents.

(a) Wherever in this Lease Lessor's consent or approval is required and Lessor agrees that such consent or approval shall not be unreasonably withheld, conditioned or delayed, if Lessor shall refuse such consent or approval, Lessee in no event shall be entitled to and shall not make any claim, and Lessee hereby waives any claim, for money damages (nor shall Lessee claim any money damages by way of set-off, counterclaim or defense) based upon any assertion by Lessee that Lessor unreasonably withheld or unreasonably delayed its consent or approval. Lessee's sole

remedy in such circumstance shall be an action or proceeding to enforce any such provision by way of specific performance, injunction or declaratory judgment.

(b) If Lessor fails to approve or disapprove a request for consent within thirty (30) days (provided, that if Lessee requires a response from Lessor prior to such thirtieth (30<sup>th</sup>) day in order to ensure the orderly operation of the Franchise and the Leased Premises, Lessee may, in its initial submission to Lessor, request that Lessor respond with a shorter period of time, but in no event less than fifteen (15) Business Days), Lessee shall have the right to provide Lessor with a second written request for consent (a "Second Consent Request"), which shall set forth in bold capital letters the following statement: "IF LESSOR FAILS TO RESPOND WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN LESSEE SHALL BE ENTITLED TO TAKE THE ACTION LESSEE HAS REQUESTED LESSOR'S CONSENT TO PREVIOUSLY AND TO WHICH LESSOR HAS FAILED TO TIMELY RESPOND." In the event that Lessor fails to respond to a Second Consent Request within ten (10) Business Days after receipt by Lessor, the action for which the Second Consent Request is submitted shall be deemed to be approved by Lessor. Notwithstanding the foregoing, in no event shall this Section 14.15 (b) apply to a request by Lessee to assign the Lease or sublet the Leased Premises pursuant to Section 7.1 hereof or to mortgage or encumber its leasehold interest in the Leased Premises pursuant to Section 8.1 hereof.

14.16 Non-Interference. Lessor will use reasonable efforts to ensure that neither Lessor nor any tenants, licensees or occupants of the Premises or any adjacent property owned by Lessor, interferes in a material adverse manner with Lessee's use and occupancy of and the conduct of its operations at the Leased Premises.

14.17 Primacy of Documents. In the event of a conflict between the provisions of the Legislation and the provisions of this Lease or the Franchise Agreement, the provisions of the Legislation shall prevail. In the event of a conflict between the provisions of this Lease and the Franchise Agreement, the provisions of the Franchise Agreement shall prevail. Notwithstanding the foregoing, the description of the Leased Premises set forth in this Lease shall prevail over any contrary provision in the Franchise Agreement.

14.18 Counterparts. This Lease may be executed in two or more fully or partially executed counterparts, each of which shall be deemed an original, binding the signer thereof against the other signing Party, but all counterparts together will constitute one and the same instrument.

14.19 State Appendix. New York State Appendix A, attached hereto as Exhibit F, is incorporated herein and made a part of this Lease.

14.20 Regulatory Space. Lessee acknowledges that certain agencies of the State of New York relating to racing and wagering (the "Agencies") occupy space on the Leased Premises, and Lessee agrees that the Agencies may continue to occupy such

space, free of charge, for the Term hereof. In the event that Lessee desires to relocate the Agencies within the Leased Premises, Lessee shall provide facilities of comparable size, character, quality and utility and reasonably convenient location to the Agencies, and shall pay all reasonable costs of relocating the Agencies to such replacement space.

14.21 Condition Precedent to Future Development of Real Estate Development Parcels. Notwithstanding anything to the contrary contained herein, in no event shall Lessor permit the Phase II Developer to undertake any Phase II Development prior to the Sublease Agreement and the Omnibus Agreement being in full force and effect.

14.22 Lessor Mortgage of Leased Premises. Lessor represents and warrants that as of the date hereof it has not mortgaged or encumbered its fee interest in the Leased Premises. Lessor may not mortgage or encumber its fee interest in the Leased Premises without obtaining a non-disturbance agreement in favor of Lessee which must be in form and content reasonably satisfactory to Lessee.

14.23 Facilities Ground Lease/Sublease. It is hereby mutually acknowledged and agreed that this Lease is intended to be effective in conjunction only with the Facilities Ground Lease or the Sublease, as applicable. Notwithstanding the foregoing, in the event that the Facilities Ground Lease or the Sublease (pursuant to Section 4.2(b) thereof), as applicable, is terminated pursuant to an amendment to the Franchise Agreement and the Legislation, where Lessee is permitted to continue to use the Leased Premises as a training facility or otherwise, then this Lease shall continue in full force and effect in accordance with the terms hereof to permit such use as a training facility or otherwise, except that the Permitted Uses and other Lease provisions shall be amended to reflect the revised use, and to incorporate such other provisions as may be required by the amended Franchise Agreement and Legislation.

14.24 Non-Competition Pari-Mutuel Wagering. Lessor acknowledges and agrees that there shall be no pari-mutuel or simulcast wagering or horse racing conducted at the Aqueduct Racetrack by any party other than Lessee.

14.25 Successors and Assigns. The provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**SIGNATURE PAGES TO FOLLOW**

Lessor and Lessee have executed this Lease as of the day and year first above written.

**LESSOR:**

**THE PEOPLE OF THE STATE OF  
NEW YORK ACTING BY AND  
THROUGH THE STATE FRANCHISE  
OVERSIGHT BOARD PURSUANT TO  
CHAPTER 18 OF THE LAWS OF 2008**

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**Approved as to form by:**

**THE OFFICE OF THE ATTORNEY  
GENERAL OF THE STATE OF  
NEW YORK**

**By:** \_\_\_\_\_

**Name:**  
**Title:**

**LESSEE:**

**THE NEW YORK RACING  
ASSOCIATION, INC.**

---

**By: Patrick L. Kehoe  
Title: General Counsel**

State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Signature and Office of individual  
taking acknowledgment

State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Signature and Office of individual  
taking acknowledgment

**EXHIBIT D**  
**AQUEDUCT SUBLEASE**

## SUBLEASE AGREEMENT

SUBLEASE AGREEMENT (this "Sublease"), dated as of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ having an address at \_\_\_\_\_ (the "Sublessor"), and THE NEW YORK RACING ASSOCIATION, INC, a not-for-profit racing corporation incorporated pursuant to Section 402 of the Not-For-Profit Corporation Law of the State of New York, as authorized by Chapter 18 of the Laws of 2008, with a place of business at 110-00 Rockaway Boulevard, South Ozone Park, New York 11417 (the "Sublessee"), sometimes collectively referred to herein as the "Parties" or singularly as a "Party."

### RECITALS

On September 12, 2008, and pursuant to (i) the authority granted by Chapter 18 of the Laws of 2008 passed February 13, 2008, by the New York State Senate and the New York State Assembly, and signed into law by the Governor of the State on February 19, 2008, as amended (the "Legislation") (ii) the Chapter 11 plan filed by The New York Racing Association Inc. ("Old NYRA") pursuant to section 1121(a) of the Bankruptcy Code (the "Plan"), as confirmed by an order, dated April 28, 2008, of the United States Bankruptcy Court for the Southern District of New York and (iii) the State Settlement Agreement made by and among Old NYRA, Sublessee and the State of New York, the New York State Racing and Wagering Board, The New York State Non-Profit Racing Association Oversight Board and The New York State Division of the Lottery (the "Settlement Agreement"), Old NYRA conveyed all right, title and interest in and to the entire Aqueduct Racetrack (which term is defined below) to The People of the State of New York Acting by and through The State Franchise Oversight Board Pursuant to Chapter 18 of the Laws of 2008 (the "State"). The State Franchise Oversight Board (the "FOB") and Sublessee subsequently entered into that certain Franchise Agreement dated September 12, 2008 (the "Franchise Agreement"), pursuant to which Sublessee was granted the Franchise (as hereinafter defined) to conduct thoroughbred racing and pari-mutuel wagering with respect to thoroughbred racing at the "Aqueduct Racetrack" (which term is intended to include all of the real property and improvements associated with the racetrack and other facilities at Aqueduct Racetrack, including but not limited to parcels of land to be leased, subleased or licensed now or in the future, and sometimes referred to herein as the "Property"), and as more particularly described and depicted on Exhibit A-1 attached hereto.

In order for Sublessee to operate the Franchise, the State was authorized pursuant to the Legislation to ground lease to Sublessee a portion of the Property. Pursuant to that certain "Facilities Ground Lease", dated September 12, 2008, between the State and Sublessee, the State, acting through the FOB, did ground lease to Sublessee a portion of the Property, as more particularly described and depicted in Exhibit A-2 annexed hereto (the "Facilities Ground Leased Premises"), all for such rentals, and upon such terms and conditions, contained in the Facilities Ground Lease.

The State, acting through the FOB, and Sublessee also entered into that certain "Racetrack Ground Lease" dated September 12, 2008, pursuant to which the State ground leased to Sublessee the remaining portions of the Aqueduct Racetrack not subject to the Facilities Ground Lease (the "Racetrack Ground Leased Premises"), all for such rentals, and upon such terms and conditions, contained in the Racetrack Ground Lease.

The Parties intend that: (i) Sublessee will assign its interest as lessee in the Facilities Ground Lease to the VLT Operator (hereinafter defined), pursuant to the terms and conditions contained in that certain "Assignment and Assumption of Facilities Ground Lease" between Sublessee, as assignor, and Sublessor, as assignee; (ii) VLT Operator, as lessee, and the FOB, on behalf of and for the benefit of the State ("Landlord"), as lessor, will amend and restate the Facilities Ground Lease; (iii) VLT Operator, as sublessor, and Sublessee will enter into this Sublease Agreement for a portion of the Facilities Ground Leased Premises, more particularly set forth herein; and (iv) the State, as landlord under the Facilities Ground Lease, will enter into a Non-disturbance and Attornment Agreement and an Omnibus Agreement (hereinafter defined) with Sublessee, as sublessee under this Sublease Agreement. The Parties agree that none of the actions listed in the preceding sentence shall be effective unless they all occur and occur one immediately after the other in the order in which they are listed in the preceding sentence.

Sublessor hereby subleases to Sublessee, and Sublessee hereby takes from Sublessor, the interior of a portion of the Facilities Ground Leased Premises, as more particularly described in the attached Exhibit B (the "Subleased Premises") (subject to Sublessee's expansion rights contained in Section 4.6(c) and the provisions of Section 7.15 herein), for such rental, and upon such terms and conditions, as contained in this Sublease.

## ARTICLE I EXHIBITS TO SUBLEASE AND DEFINITIONS

### 1.1 EXHIBITS:

Attached to this Sublease and hereby made a part hereof are the following:

EXHIBIT A-1, being a description of the "Property", which shall comprise the entire Aqueduct Racetrack, including the Facilities Ground Leased Premises and the Racetrack Ground Leased Premises.

EXHIBIT A-2, being a description of the "Facilities Ground Leased Premises", which shall consist of all portions of the Aqueduct Racetrack not subject to the Racetrack Ground Lease.

EXHIBIT B - being a description of the Subleased Premises.

EXHIBIT C, being a description of the VLT Premises (hereinafter defined).

EXHIBIT D, being a description of the Future Development Area (hereinafter defined).

EXHIBIT E, being a description of the Clubhouse (hereinafter defined).

EXHIBIT F, being a description of the Grandstand (hereinafter defined).

EXHIBIT G, being a description of the Parking Areas (hereinafter defined).

EXHIBIT H, being a description of the Real Estate Development Parcels (hereinafter defined)

EXHIBIT I, being a copy of the Capital Plan.

EXHIBIT J, being a list of Permitted Subleases.

EXHIBIT K, being a Memorandum of Sublease

EXHIBIT L, being Sublessee's Insurance Requirements

## 1.2 DEFINITIONS:

Capitalized terms not otherwise defined herein shall have the respective meanings given them in the Facilities Ground Lease and/or Franchise Agreement. The following terms for purposes of this Sublease shall have the meanings hereinafter specified:

"Additional Charges" shall mean all other taxes, levies, impositions, assessments or whatever type or nature levied or assessed against the Facilities Ground Leased Premises, Improvements, and/or Sublessee, other than Taxes.

"Building" shall mean the building within which the Clubhouse and Grandstand are located as depicted on the attached Exhibits. Exhibit B depicts those portions of the Building that comprise the Subleased Premises. Exhibit C depicts those portions of the Building that comprise the VLT Premises. Exhibit D depicts those portions of the Building that comprise the Future Development Area.

"Building Area" shall mean all of the Facilities Ground Leased Premises excluding the Parking Areas.

"Building Standard" shall mean a standard of operation, maintenance, security, repair, restoration, improvement and alteration with respect to the Subleased Premises which shall mean that the Subleased Premises shall be maintained in good, safe and clean condition and repair, in a manner not to detract from the commercial appeal of the VLT Operations.

“Clubhouse” shall mean the three-story enclosed structure located on the Facilities Ground Leased Premises, which constitutes a portion of the Building. Exhibit E depicts those portions of the Building that comprise the Clubhouse.

“Commencement Date” shall mean the date first above written, on which date this Sublease has been fully executed by Sublessor and Sublessee.

“Common Facilities” shall mean the parking areas, parking structures, streets, driveways, fences, tunnels, hallways, service roads, sidewalks, entrances, exits, means of ingress and egress, landscaping, common utilities and sewer lines, alleyways, loading docks and lanes, truck and delivery passages, exterior ramps, outdoor lighting facilities, pylon and other in common signs and sign structures and other common and service areas within the Facilities Ground Leased Premises or located at the Facilities Ground Leased Premises or servicing the Facilities Ground Leased Premises and utilized in common by Sublessor, Sublessee and any Occupants. Certain of the Common Facilities are depicted on the attached Exhibits to this Lease.

“Contaminants” shall mean any material, substance or waste classified, characterized or regulated as toxic, hazardous or a pollutant or contaminant under any Requirements, including asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or the equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million.

“Contractor” shall mean any construction manager, contractor, subcontractor, laborer or materialman who shall supply goods, services, labor or materials in connection with the development, construction, management, maintenance or operation of any part of the Facilities Ground Leased Premises.

“Default Rate” The rate of interest per annum applicable to judgment claims in the State of New York.

“Facilities Ground Leased Premises” shall mean all portions of the Aqueduct Racetrack not subject to the Racetrack Ground Lease.

“Franchise” shall mean the authority granted to Sublessee to conduct racing and pari-mutuel wagering with respect to thoroughbred racing at the Property, as provided for in the Legislation and the Franchise Agreement.

“Franchise Agreement” shall have the meaning set forth in the Recitals.

“Future Development Area” shall mean that portion of the Building which excludes the Subleased Premises, the VLT Premises and the Common Facilities located within the Building. Exhibit D depicts those portions of the Building that comprise the Future Development Area.

“Grandstand” shall mean the structure, which constitutes a portion of the Building. Exhibit F depicts those portions of the Building that comprise the Grandstand.

“Improvements” shall mean all buildings, structures, improvements and other real and personal property associated therewith from time to time on the Facilities Ground Leased Premises.

“Land” shall mean those certain tracts of land underlying the Facilities Ground Leased Premises.

“Non-Disturbance Agreement” shall mean that certain Non-Disturbance Agreement dated as of the date hereof by and between Sublessee and the State.

“Occupants” shall mean any and all lessees, sublessees and licensees occupying at any time any or all of the VLT Premises, the Future Development Area and the Real Estate Development Parcels (prior to the release to the State) other than Sublessee.

“Omnibus Agreement” shall mean that certain Omnibus Agreement dated as of the date hereof by and between Sublessee and the State.

“Parking Areas” shall mean the parking areas and roads within the exterior Common Facilities. Exhibit G depicts those portions of the exterior Common Facilities that comprise the Parking Areas.

“Parking Area Adjustments” means seventy-five (75%) percent (since Sublessee’s operations are seasonal in nature).

“Person” shall mean a corporation, an association, a partnership (general or limited), a limited liability company, a joint venture, a limited liability partnership, a private company, a public company, a limited life public company, a trust or fund (including but not limited to a business trust), an organization or any other legal entity, an individual or a government or any agency or political subdivision thereof.

“Real Estate Development Parcels” shall mean certain parcels located on the Parking Areas as depicted on Exhibit H.

“Requirements” shall mean all applicable laws, rules, regulations or other legal requirements enacted by a Governmental Authority having jurisdiction over the Subleased Premises or the operations or the activity at the Subleased Premises, including but not limited to the protection of the environment.

“State” shall mean the People of the State of New York.

“State Comptroller” shall mean the Office of the Comptroller of the State of New York.

“Sublease Year” Each calendar year during the Term of this Sublease, with the first Sublease Year being the partial year beginning on the Commencement Date and ending

on December 31 of the date in which the Commencement Date occurs, and the final Sublease Year expiring on the Expiration Date.

“Sublessee’s Building Area Proportionate Share” shall mean a fraction having as its numerator the number of gross square feet located within the Building that comprises the Subleased Premises (which the parties agree is currently \_\_\_\_\_), and as its denominator the sum of (i) the number of gross square feet located within the Subleased Premises, the Future Development Area (to the extent it is leased and occupied by the VLT Operator or leased, licensed or otherwise occupied by any Occupant) and the VLT Premises combined (which the parties agree is currently \_\_\_\_\_). The Parties also agree that Sublessee’s Building Area Proportionate Share will be adjusted in the following manner: (i) by increasing the denominator if and at such time Sublessor increases the size of the VLT Premises into or any Occupant occupies all or a portion of the Future Development Area or otherwise, and (ii) by increasing the numerator if and at such time Sublessee increases the size of the Subleased Premises into all or a portion of the Future Development Area.

“Sublessee’s Parking Proportionate Share” shall mean (i) prior to the Phase II Development, the same as the Sublessee’s Building Area Proportionate Share, and (ii) subsequent to the Phase II Development, a fraction having as its numerator the number of gross square feet located within the Building that comprises the Subleased Premises (which the parties agree is currently \_\_\_\_\_), and as its denominator the sum of the number of gross square feet located within the Subleased Premises, the VLT Premises, the Future Development Area, to the extent the Future Development Area is leased and occupied by the VLT Operator or leased, licensed or otherwise occupied by anyone else, and any buildings constructed on the Real Estate Development Parcels provided, however, Sublessee’s Parking Proportionate Share shall never exceed on a per square foot basis the Parking Areas Operating Expense that is being paid by Sublessor, as further appropriately adjusted by the Operating Expense Exclusions and the Parking Area Adjustments (without any double counting).

“Sublessee’s Parking Contribution” means Sublessee’s Parking Proportionate Share multiplied by the Operating Expense attributable to the Parking Areas and as further adjusted by the Parking Area Adjustments.

“Sublessee’s Building Area Contribution” means Sublessee’s Building Area Proportionate Share multiplied by the Operating Expenses attributable to the Building Area.

“VLT Operator” and “VLT Operations” shall have the meanings specified in Section 5.1.

“VLT Premises” shall mean the interior portion of the Building which excludes the Subleased Premises, the Future Development Area (except to the extent the VLT Premises has been expanded into the Future Development Area) and the Common Facilities. Exhibit C depicts those portions of the Building that comprise the VLT Premises.

ARTICLE II  
SUBLEASING CLAUSE

2.1 SUBLEASING CLAUSE

(a) Upon and subject to the terms, provisions and conditions hereinafter set forth, Sublessor does hereby SUBLEASE, DEMISE and LET unto Sublessee, and Sublessee does hereby take and sublease from Sublessor, (i) the Subleased Premises, and (ii) a non-exclusive right to use and occupy the Common Facilities, on an undivided basis together with Sublessor and the other Occupants and the Sublessor's, Sublessee's and other Occupants' agents, contractors, employees and invitees, TO HAVE AND TO HOLD together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to the Subleased Premises, for the term hereinafter provided, upon and subject to the terms, conditions and agreements contained herein.

(b) The term of this Sublease (the "Term") shall be for a period commencing on the Commencement Date and terminating on the date on which the Franchise Agreement expires or is revoked pursuant to the terms thereof (the "Expiration Date"). The Expiration Date shall be coterminous with the expiration date under the Racetrack Ground Lease.

2.2 DELIVERY OF SUBLEASED PREMISES

Physical possession of the Subleased Premises shall be delivered to Sublessee by Sublessor in "As Is" condition on the Commencement Date and Sublessee hereby agrees to accept the Subleased Premises on the Commencement Date in its "As-Is" and "Where Is" condition acknowledging that it has been in possession of the Subleased Premises prior to the date hereof.

2.3 APPROVAL BY SUBLESSOR

Any approval or consent granted by Sublessor under this Sublease shall be solely for the purposes of granting approval pursuant to the terms of this Sublease and shall not be deemed or construed to have any other meaning, including but not limited to, compliance with any applicable Requirements, the Franchise Agreement or the Legislation.

ARTICLE III  
RENT

3.1 FIXED RENT.

Sublessee shall pay to Sublessor rent ("Fixed Rent") in the amount of One Dollar (\$1.00) annually throughout the entire term of this Sublease. All of such annual Rent due from the date hereof until the expiration of the term of this Sublease has been paid in full, in advance, on the date hereof.

### 3.2 ADDITIONAL RENT AND OPERATING EXPENSE EXCLUSIONS.

(a) In addition to the payment of Fixed Rent, Sublessee shall pay, as additional rent, Sublessee's Parking Contribution and Sublessee's Building Area Contribution (which together, shall include the applicable share of all Operating Expenses) and all other amounts due and payable by Sublessee under this Sublease ("Additional Rent", and together with Fixed Rent, "Rent").

(b) "Operating Expenses" shall include all reasonable and competitive costs and expenses paid or incurred by or on behalf of Sublessor with respect to the Common Facilities and the Sublessor Repair Obligations (hereinafter defined), including, without limitation: (i) costs and expenses in connection with operating, maintaining, restoring, replacing and repairing in accordance with Sections 4.6(b) and (c) herein, (ii) wages and salaries of employees of Sublessor engaged in such operation, maintenance, restoration and repair but excluding security and any property manager and those employees of Sublessor's above the grade of building manager; (iii) payroll taxes, worker's compensation, medical insurance, union and general benefits for such employees, (iv) the cost of electricity, heat, ventilation, air-conditioning, water, sewer and other utilities, as further provided in Section 3.3 herein (v) the cost of casualty, liability, property and other insurance in accordance with Sublessor's insurance requirements set forth in Section 4.9(a) herein, (vi) the cost of landscaping, cleaning and janitorial services, including, without limitation, glass cleaning and garbage and waste collection and disposal and (vii) Additional Charges. All Building Area Operating Expenses and Parking Areas Operating Expenses shall consist of Sublessor's actual out-of-pocket costs incurred by Sublessor and shall not include any profit.

(c) Operating Expenses shall exclude the following expenses (collectively, the "Operating Expense Exclusions"): (i) depreciation and amortization, (ii) ground rent and principal and interest payments and other costs incurred in connection with any financing or refinancing of the Facilities Ground Leased Premises or any portion thereof, (iii) management fees, brokerage commissions, leasing commissions, consultant fees, and marketing, promotion and advertising expenses and the cost of rental insurance; (iv) all costs in connection with the operation, maintenance, restoration, repair, security, improving and alteration of the VLT Premises, the Future Development Area (provided, however, for a period of five (5) Sublease Years commencing on the date hereof, the cost of maintaining and insuring those portions of the Future Development Area that are not occupied by Sublessor and/or any Occupant shall be included as an Operating Expense and the maintenance obligations with respect to the Future Development Area shall be at all times in accordance with Article V of this Sublease ), and the Real Estate Development Parcels (from and after any date that the Real Estate Development Parcels are leased, transferred or improved other than for parking), or any part thereof, (v) Taxes (hereinafter defined), (vi) legal fees, including but not limited to those pertaining to any litigation or arbitration, (vii) any cost to the extent Sublessor is reimbursed therefore out of insurance proceeds, parking charges or reimbursements received by Sublessor, (viii) costs incurred as a result of the negligence of Sublessor or its agents or employees, (ix) franchise, estate, gift, mortgage recording, transfer gains, transfer, unincorporated

business, commercial rent or income taxes imposed on Sublessor; (x) all costs incurred in connection with the transfer of the Future Development Area and the Real Estate Development Parcels, (xi) the cost of capital improvements and any other capital costs, except to the extent same is in the nature of a repair and the cost is amortized over the useful life of the capital improvement (capital improvements with respect to the facade shall be excluded from Operating Expenses, provided, however, that with respect to the lobby, Sublessee will pay Sublessee's Building Area Proportionate Share for costs incurred in connection with maintaining the improved lobby), (xii) any costs associated with the sale, transfer, or restructuring of the ownership of the Sublessor or the Facilities Ground Leased Premises, (xiii) the cost of constructing, improving, altering or developing any on grade, above-ground or below-ground parking structures, (xiv) the cost of improving the lighting in the Parking Areas and (xv) the costs for providing security.

(d) Sublessor may furnish to Sublessee, prior to the commencement of each Sublease Year, a statement setting forth Sublessor's reasonable estimate of Sublessee's Additional Rent for such Sublease Year. Sublessee shall pay to Sublessor on the first day of each quarter during such Sublease Year, an amount equal to 1/4th of Sublessor's estimate of Additional Rent for such Sublease Year. If Sublessor shall not furnish any such estimate of the Additional Rent for such Sublease Year or if Sublessor shall furnish any such estimate for a Sublease Year subsequent to the commencement thereof, then (i) until the first day of the quarter following the quarter in which such estimate is furnished to Sublessee, Sublessee shall pay to Sublessor on the first day of each quarter an amount equal to the quarterly sum payable by Sublessee to Sublessor under this Section 3.2 in respect of the last quarter of the preceding Sublease Year; (ii) after such estimate is furnished to Sublessee, Sublessor shall notify Sublessee whether the installments of Additional Rent previously made for such Sublease Year were greater or less than the installments of Additional Rent to be made in accordance with such estimate, and (x) if there is a deficiency, Sublessee shall pay the amount thereof within thirty (30) days after such notification by Sublessor, or (y) if there is an overpayment, Sublessor shall, within thirty (30) days after notification by Sublessor, refund to Sublessee the amount thereof; and (iii) on the first day of the quarter following the quarter in which such estimate is furnished to Sublessee and quarterly thereafter throughout such Sublease Year, Sublessee shall pay to Sublessor an amount equal to 1/4th of the Additional Rent shown on such estimate. Sublessor may, during each Sublease Year, furnish to Sublessee a revised statement of Sublessor's estimate of the Additional Rent for such Sublease Year, and in such case, the Additional Rent for such Sublease Year shall be adjusted and paid or refunded as the case may be, substantially in the same manner as provided in the preceding sentence. Sublessor shall furnish to Sublessee a statement ("Sublessor's Statement") for each Sublease Year (and shall endeavor to do so within one hundred twenty (120) days after the end of each Sublease Year) setting forth in reasonable detail the calculation of the Operating Expenses and the Additional Rent payable by Sublessee for the previous year. If Sublessor's Statement shows that the sums paid by Sublessee for the applicable Sublease Year exceeded the Additional Rent to be paid by Sublessee for the applicable Sublease Year, Sublessor shall refund to Sublessee the amount of such

excess within thirty (30) days of the furnishing of such Sublessor's Statement; provided, if such excess is not paid within thirty (30) days after the furnishing of such Sublessor's Statement, Sublessor shall pay to Sublessee such excess together with interest thereon at the Default Rate from the date which is thirty (30) days after the furnishing of such Sublessor's Statement through the date the refund is paid by Sublessor; and if the Sublessor's Statement shall show that the sums so paid by Sublessee were less than the Additional Rent to be paid by Sublessee for such Sublease Year, Sublessee shall pay the amount of such deficiency within thirty (30) days after the furnishing of such Sublessor's Statement; provided, if such deficiency is not paid within thirty (30) days after the furnishing of such Sublessor's Statement, Sublessee shall pay to Sublessor such deficiency together with interest thereon at the Default Rate from the date that is thirty (30) days after the furnishing of such Sublessor's Statement through the date the deficiency is paid by Sublessee. Sublessee, upon notice given with one hundred eighty (180) days after Sublessee's receipt of Sublessor's Statement, may elect to have Sublessee's designated agent examine such of Sublessor's books and records (collectively, "Records") as are directly relevant to such Sublessor's Statement and Sublessee shall be entitled, at its expense, to make copies of such Records to the extent relevant to Sublessee's review. Sublessee shall and shall cause its agent to treat all Records as confidential and only for the purposes herein intended. Sublessee, within one hundred twenty (120) days after the date on which the Records are made available to Sublessee, may send a notice ("Sublessee's Notice") to Sublessor that Sublessee disagrees with the applicable Sublessor's Statement, specifying in reasonable detail the basis for Sublessee's disagreement and the amount of the Additional Rent Sublessee claims is due (to the extent known to Sublessee). If Sublessee fails to timely deliver Sublessee's Notice to Sublessor, then Sublessor's Statement shall be conclusive and binding on Sublessee. Sublessor and Sublessee shall attempt to adjust such disagreement. If they are unable to do so, Sublessee shall notify Sublessor, within one hundred fifty (150) days after the date on which the Records are made available to Sublessee in connection with the disagreement in question, that Sublessee desires to have such disagreement determined by an Arbiter, and promptly thereafter Sublessor and Sublessee shall designate a certified public accountant (the "Arbiter") and whose determination made in accordance with this Section 3.2 shall be binding upon the Parties. If Sublessee timely delivers a Sublessee's Notice, the disagreement referenced therein is not resolved by the Parties and Sublessee fails to notify Sublessor of Sublessee's desire to have such disagreement determined by an Arbiter within the one hundred fifty (150) day period set forth in the preceding sentence, then the Sublessor's Statement to which such disagreement relates shall be conclusive and binding on Sublessee. If the determination of the Arbiter shall substantially confirm the determination of Sublessee, then Sublessor shall pay the cost of the Arbiter. In all other events, the cost of the Arbiter shall be borne equally by Sublessor and Sublessee. The Arbiter shall be a member of an independent certified public accounting firm having at least three (3) accounting professionals, who are certified public accountants. If Sublessor and Sublessee shall be unable to agree on the designation of the Arbiter within fifteen (15) days after receipt of notice from the other Party requesting agreement as to the designation of the Arbiter, then either Party shall have the right to request the American Arbitration Association to designate as the

Arbiter a certified public accountant whose determination made in accordance with this provision shall be conclusive and binding on both parties. If Sublessee shall prevail in such contest, Sublessor shall refund the appropriate amount to Sublessee. The term "substantial" shall mean a variance of 5% or more of the Additional Rent in question. If Sublessee shall prevail in such contest and the Arbiter shall confirm that the Additional Rent was overstated by 10% or more of the Operating Expenses on which the Additional Rent was paid, then Sublessor shall pay to Sublessee within thirty (30) days of the date of such determination, the reasonable cost of the agent of Sublessee which examined the Records in connection with such Additional Rent payment.

### 3.3 UTILITIES.

(a) Sublessee shall have exclusive use of (i) the lines, pipes and other mechanical equipment, and systems that currently exist on the Facilities Ground Leased Premises and provide utilities to the Building and the Common Facilities, including but not limited to, electricity, water, sewer, gas, sprinkler and natural gas, and (ii) the back-up electrical generator adjacent to the Clubhouse and oil tanks that are located on the Facilities Ground Leased Premises (collectively, the "Existing Utility Systems"). Sublessee shall pay for the cost of the utilities used by the Existing Utility Systems directly to the utility providers. In the event that Sublessee can not make payments directly to the utility providers, then Sublessee shall arrange through Sublessor to have submeters installed in the Subleased Premises at Sublessee's cost and expense, and Sublessee shall pay to Sublessor the actual out of pocket costs incurred by Sublessor for such utility services. Sublessee shall also be responsible for maintaining and repairing the Existing Utility Systems located within the Subleased Premises and any costs incurred in connection therewith. Any portion of the Existing Utility Systems located within the Common Facilities, VLT Premises and/or the Future Development Area, shall be maintained and repaired by Sublessor, at Sublessee's sole cost and expense. If Sublessor fails to promptly repair the Existing Utility Systems that are located within the Common Facilities, VLT Premises and/or the Future Development Area after notice by Sublessee, Sublessee shall be allowed access within such premises for the purpose for maintaining and repairing the Existing Utility Systems. Sublessor, at Sublessor's sole cost and expense, and with Sublessee's prior consent, which shall not be unreasonably withheld or delayed, shall have the right to relocate the Existing Utility Systems in the Common Facilities, the VLT Premises, and the Future Development Areas upon thirty (30) days notice to Sublessee, provided Sublessor perform such relocation work at such times that Sublessee is not operating its business in the Subleased Premises.

(b) Sublessee's Parking Contribution and Sublessee's Building Area Contribution for utilities within the Common Facilities shall be determined by separate meters placed within the Common Facilities and Sublessee shall pay to Sublessor Sublessee's Parking Proportionate Share and Sublessee's Building Area Proportionate Share, as applicable, for Sublessee's demand for said utilities. If Sublessee's demand for utilities within the Common Facilities cannot be determined by separate meters for the Common Facilities, then the Parties shall agree to adjust the cost of the utilities in an

equitable and proportionate manner, taking into account Sublessee's seasonal and limited use of the Subleased Premises.

(c) Sublessor shall be required to install new lines and other systems to provide utilities to the VLT Premises, the Common Facilities and the Future Development Area, at such time as Sublessor or any other Occupant commences any Future Development, at no cost to Sublessee. Sublessor shall not be entitled to the use of the Existing Utility Systems while it is constructing the VLT Premises; however, in and to the extent Sublessor cannot obtain adequate temporary utilities for use during such construction or for operation of temporary VLT Operations, Sublessee, upon request by Sublessor, shall provide to Sublessor the use of such utilities as are currently existing on the Facilities Ground Leased Premises provided Sublessor's use thereof does not adversely affect or interfere with Sublessee's supply of, distribution or use of the Existing Utility Systems other than to a de minimus extent, and Sublessor shall be responsible for the cost of its demand for and consumption of such utilities in an equitable and proportionate manner.

(d) Sublessor agrees that if the water pipe currently existing within the Facilities Ground Leased Premises has sufficient capacity to accommodate water consumption by both Sublessor and Sublessee and thus will not adversely affect Sublessee's use or delivery of its water supply, it shall allow both Sublessor and Sublessee the use of the water pipe. Sublessor and Sublessee shall have separate water meters installed at the cost of Sublessor so that each party may be assessed water consumption separately. However, in the event separate water meters cannot be installed, Sublessor and Sublessee agree to adjust the cost of water consumption in an equitable and proportionate manner, taking into account Sublessee's seasonal and limited use of the Subleased Premises.

(e) If any meters or submeters are shared, and Sublessee disagrees in good faith with any determination or adjustment of the amount charged to Sublessee (the "Actual Charge") Sublessee shall notify Sublessor thereof within one (1) year after Sublessor gives Sublessee notice of such determination or adjustment or if Sublessee believes (i) there is a change in the rate by which Sublessor is charging Sublessee ("Sublessor's Rate") or (ii) Sublessee is paying in excess of the entire cost of Sublessee's demand for and/or consumption of, electricity, including, without limitation, by reason that electrical equipment is removed or altered within the Subleased Premises, or if Sublessee decreases its hours of operation, Sublessee shall notify Sublessor thereof. If the parties cannot reach agreement with respect to any of the contested items listed above, then in each case, Sublessor shall retain, at Sublessee's expense, or at Sublessor's expense if the consultant substantially agrees with Sublessee, an independent electrical consultant reasonably satisfactory to Sublessee who shall survey the demand for, and consumption of, electricity by Sublessee and, if applicable, each other Occupant who shares such submeter, and the determination made by the electrical consultant shall be binding on Sublessor and Sublessee. If Sublessee fails to so disagree with any determination or adjustment made by Sublessor, or to request that Sublessor obtain an independent electrical consultant, within such ninety (90) day period, such determination

or adjustment shall be conclusive and binding on Sublessee. Pending the determination of such consultant, Sublessee shall pay the Actual Charge determined by Sublessor and upon such determination by the consultant, an appropriate adjustment shall be made retroactive to the date of the relevant change. Sublessor shall refund to Sublessee any overpayment as hereinabove provided within fifteen days after Sublessor is notified of such consultant's determination. Surveys of Sublessee's electrical consumption shall take into account that the Sublessor's Rate or the electric consumption of Sublessee during the period that the survey is conducted may be different than the Sublessor's Rate or electric consumption of Sublessee during the period covered by the Actual Charge that Sublessee is contesting.

(f) Sublessor shall cooperate, at the sole cost and expense of Sublessee, in Sublessee's efforts to obtain electrical utility incentives for which Sublessee may be qualified, provided, that such efforts shall not in any way adversely impact Sublessor, any Occupants in the Building or the operation of the Building.

(g) As of the date hereof, the providers of Sublessee's Existing Utility Systems are as follows:

- (i) Electrical Supplier: Juice
- (ii) Electrical Delivery: Consolidated Edison
- (iii) Gas Supplier: NATGASCO
- (iv) Gas Delivery: National Grid
- (v) Water Supplier: The New York City Water Board

(h) Sublessor and Sublessee agree that to the extent feasible, any of the Building systems serving the Subleased Premises shall be kept separate and distinct from those Building systems serving the remaining portions of the Building and the Common Facilities.

### 3.4 PAYMENT OF TAXES.

Sublessee shall have no obligation to pay any property taxes, special assessments and special ad valorem levies (as defined in NY Real Property Tax Law, Section 102, subdivisions 14, 15, 20) levied or assessed against the Facilities Ground Leased Premises and Improvements (together, "Taxes"), during the Term, which are payable by the State pursuant to the Legislation. Sublessee shall pay its proportionate share of Additional Charges pursuant to Section 3.2(b) herein.

### 3.5 SECURITY DEPOSIT.

Sublessee shall not be obligated to pay a security deposit to Sublessor at any time during the Term of this Sublease.

ARTICLE IV  
CONDITION AND USE OF THE SUBLEASED PREMISES

4.1 COVENANT OF TITLE, AUTHORITY AND QUIET POSSESSION.

(a) Sublessor's Representations, Warranties and Special Covenants.  
Sublessor hereby represents, warrants and covenants as follows:

(i) Binding Obligation. This Sublease will be a valid obligation of Sublessor and is binding upon Sublessor in accordance with its terms once approved by the applicable state authorities, including, but not limited to the State Comptroller.

(ii) Authority. Sublessor is a duly authorized corporation, validly existing and in good standing under the laws of the State of \_\_\_\_\_ and has been duly authorized by all requisite corporate action to enter into, deliver and perform under this Sublease. Neither the execution and delivery of this Sublease by Sublessor, nor the performance of its obligations hereunder, will result in violation of any law applicable to Sublessor or provision of the organizational documents of Sublessor.

(iii) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for Sublessor to enter into this Sublease or make the agreements herein contained, other than those which have been obtained.

(iv) Quiet Enjoyment. So long as the Franchise Agreement is in full force and effect and there has been no revocation of the Franchise, Sublessee shall have the quiet enjoyment and peaceable possession of the Subleased Premises and the Common Facilities, in common with Sublessor and any Occupants during the Term of this Sublease in accordance with the terms of this Sublease, against hindrance or disturbance of any person or persons whatsoever claiming by, through or under Sublessor.

(v) Proceedings. To the knowledge of Sublessor, there are no actions, suits or proceedings pending or threatened or asserted against Sublessor which would, if successful, prevent Sublessor from entering into this Sublease or performing its obligations hereunder.

(vi) Limitations. Except as otherwise expressly provided herein, this Sublease is made by Sublessor without representation or warranty of any kind, either express or implied, as to the condition of the Subleased Premises, title to the Facilities Ground Leased Premises (except pursuant to the Facilities Ground Lease, Sublessor hereby represents that it is the lessee under a valid ground lease), the Facility's merchantability, its condition or its fitness for Sublessee's intended use or for any particular purpose and all of the Subleased Premises is leased or licensed on an "as is" basis with all faults, provided, however, Sublessor covenants and warrants that it has not taken any action or done anything that has or would adversely affect the Sublessee's

ability to (i) conduct its racing operations on the Racetrack Ground Leased Premises, (ii) conduct its Permitted Uses, (as such terms are hereinafter defined) within the Subleased Premises, or (iii) abrogate any rights of Sublessee under the terms and conditions of this Sublease.

(vii) Subordination. Sublessor covenants and warrants that as of the date of this Sublease it has not in any manner encumbered its leasehold interest as lessee under the Facilities Ground Lease and Sublessor agrees that it will not in any manner encumber its leasehold interest as lessee under the Facilities Ground Lease during the Term of this Sublease. Notwithstanding the foregoing, Sublessor shall have the right to encumber its leasehold interest under the Facilities Ground Lease provided Sublessor procures from the lender and delivers to Sublessee a Subordination and Non-Disturbance Agreement ("SNDA") in favor of the Sublessee, which SNDA shall be acceptable to Sublessee.

(b) Sublessee's Representations, Warranties and Special Covenants.  
Sublessee hereby represents, warrants and covenants as follows:

(i) Existence. Sublessee is a not-for-profit racing corporation duly incorporated pursuant to Section 402 of the Not-for-Profit Corporation Law of the State of New York, as authorized by Chapter 18 of the Laws of 2008, validly existing and in good standing under the laws of the State of New York and its adopted and currently effective articles of incorporation.

(ii) Authority. Sublessee has all requisite power and authority to operate its business, own its property, enter into this Sublease and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Sublease and the consummation of the transactions herein contemplated.

(iii) Binding Obligations. This Sublease constitutes a valid and legally binding obligation of Sublessee and is enforceable against Sublessee in accordance with its terms.

(iv) No Default. The execution by Sublessee of this Sublease and the consummation by Sublessee of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or a condition which upon notice or lapse of time or both would ripen into a default under the Legislation, the articles of organization of Sublessee, or under any resolution, indenture, agreement, instrument or obligation to which Sublessee is a party or by which the Subleased Premises or any portion thereof is bound; and does not to the knowledge of Sublessee, constitute a violation of any order, rule or regulation applicable to Sublessee or any portion of the Subleased Premises of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Sublessee or any portion of the Subleased Premises.

(v) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for Sublessee to enter into this Sublease or make the agreements herein contained, other than those which have been obtained.

(vi) Proceedings. To the knowledge of Sublessee, there are no actions, suits or proceedings pending or threatened or asserted against Sublessee which would, if successful, prevent Sublessee from entering into this Sublease or performing its obligations hereunder.

#### 4.2 USE OF SUBLEASED PREMISES.

(a) Sublessee's use of the Subleased Premises shall be primarily for the management and operations of all functions as may be necessary or appropriate to conduct racing, racing operations, pari-mutuel and simulcast wagering (collectively, the "Uses"), together with various activities related thereto, including, without limitation, live wagering and retail, food, beverage, trade expositions and entertainment facilities, racing equestrian, social and community activities, and other uses and activities historically conducted on the Facilities Ground Leased Premises (collectively, the "Ancillary Uses," and, together with the Uses being the "Permitted Uses") at or with respect to the Subleased Premises and the Common Facilities, subject to and in compliance with the provisions of the Franchise Agreement, applicable Requirements, including, without limitation, the Legislation. Sublessee shall not conduct, manage or otherwise operate VLT Operations at the Subleased Premises or any other area of the Facilities Ground Leased Premises.

(b) In the event that this Sublease is terminated pursuant to an amendment to the Franchise Agreement and the Legislation whereby Sublessee is permitted to discontinue operating its business within its Subleased Premises, this Sublease shall terminate and Sublessee shall have no further obligations to Sublessor with respect to this Sublease. If Sublessee discontinues its operations in the Subleased Premises pursuant to this section, Sublessee shall deliver the Subleased Premises back to Sublessor vacant, clean and in safe condition, whereby the physical condition of the Subleased Premises would not detract from the commercial appeal of the VLT Operations.

#### 4.3 SUBLETTING AND ASSIGNING.

(a) Assignment. Sublessee may, subject to requirements of Section 138 of the State Finance Law and the receipt of all required governmental approvals in connection with any permitted assignment (if any) of Sublessee's rights and obligations under the Franchise Agreement, assign, sublease, license or otherwise transfer Sublessee's leasehold interest granted to Sublessee under this Sublease, in whole only (and not in part). It is understood and agreed that Sublessee's interest in this Sublease may only be assigned or transferred to a party in which the Franchise is being assigned and which party shall hold the Franchise at the time of assignment, or any successor thereto. Upon any such assignment, the assignee shall execute and deliver to Sublessor a

written assumption of all of the obligations of Sublessee under this Sublease. Sublessee shall be released from any obligations arising under this Sublease which accrue from and after such an assignment, but not those accruing before such assignment.

(b) **Concessions, Sub-subletting and Licensing.** Sublessee shall have the right from time to time, without the prior written consent of Sublessor but with the consent of the State to the extent required by the Legislation (including without limitation Section 206 thereof), to grant concessions at the Subleased Premises as Sublessee may deem proper for the conduct at the Subleased Premises of Ancillary Uses as permitted in Section 4.2 hereof (“Concessions”). All Concessions shall be entered into in compliance with the Legislation (including without limitation Section 208-6 thereof), and other Requirements. Agreements for the operation of Concessions may, at the election of Sublessee, be in the form of sub-subleases, licenses or concession agreements; provided, that no sub-subletting or licensing shall relieve Sublessee of any of its obligations under the Sublease, and all Concessions, whether in the form of sub-subleases, licenses or concession agreements, shall be strictly subject and subordinate to the terms and provisions of this Sublease.

(c) Other than with respect to the grant of Concessions, Sublessee may not sublet all or any portion of the Subleased Premises without the prior written consent of the State, as required by Section 138 of the State Finance Law, but without the consent of Sublessor, upon the receipt of all required governmental approvals in connection with any sub-sublease or transfer. Notwithstanding anything to the contrary contained herein, (x) the stabling of horses belonging to third parties shall not constitute a sublease under the terms of this Sublease and (y) those subleases set forth on Exhibit J hereto (the “Permitted Subleases”) shall not be subject to the general subleasing prohibition set forth in this Section 4.3(a) and Sublessor hereby consents to the Permitted Subleases. In addition to the foregoing, Sublessee shall also have the right to enter into any sublease or occupancy agreement with The New York Thoroughbred Breeders Inc., The New York Thoroughbred Horsemen’s Association (or such other entity as is certified and approved pursuant to Section 228 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law, as amended), The New York State Racing and Wagering Board, The New York State Department of Taxation and Finance, and with any governmental authorities, agencies, boards or regulators of the State, without the consent of Sublessor or the State.

(d) **General Provisions.** Sublessee shall, in connection with any assignment, license or sub-sublease, provide notice to Sublessor, as provided below in Section 7.2, of the name, legal composition and address of any Concessionaire, together with a complete copy of the agreement under which such Concession is granted. In addition, Sublessee shall provide Sublessor with a description of the nature of the Concessionaire’s business to be carried on in the Subleased Premises.

#### 4.4 LEASEHOLD MORTGAGE.

Sublessee shall have the right, subject to any requirements of the Legislation and the Franchise Agreement and the State’s reasonable approval of the form

and content of the loan documentation evidencing such mortgage or encumbrance, to mortgage or encumber this Sublease and/or in any improvements made and owned by Sublessee and/or in Sublessee's personal property, furniture, fixtures and equipment (collectively, "Sublessee's Property"). No mortgagee shall foreclose upon Sublessee's leasehold interest hereunder, unless such mortgagee or a purchaser at the foreclosure sale is a holder of the Franchise at the time of such foreclosure.

**4.5 COMPLIANCE WITH LAWS/MAINTENANCE OF SUBLEASED PREMISES.**

(a) Sublessee shall use, operate and maintain the Subleased Premises and the improvements situated thereon in compliance with all Requirements and the Building Standard.

(b) Sublessee shall have the right to contest the validity, enforceability or applicability of any Requirements applicable to the Land, Building and Improvements constituting the Subleased Premises, provided that there is no danger of an imminent threat of Sublessor losing title to the Subleased Premises and provided that Sublessee's failure to comply with any Requirements would not subject Sublessor or the State to criminal liability and/or create interference in any material respect with the VLT Operations. During such contest, compliance with any such contested Requirements may be deferred by Sublessee; provided, however, that Sublessee shall promptly comply with the final determination of any such contest. If non-compliance shall result in a lien being filed against the Subleased Premises, Sublessor may require Sublessee to deposit with Sublessor a surety bond issued by a surety company of recognized responsibility guaranteeing and securing the payment in full of such lien. Prior to instituting such proceeding, if required by law, Sublessee shall provide notice to the Attorney General of the State of New York, which may choose to be a party in such contest. Any such proceeding instituted by Sublessee shall be commenced as soon as is reasonably possible after the issuance of any such contested matters, or after actual notice to Sublessee of the applicability of such matters to the Subleased Premises, and shall be prosecuted with reasonable dispatch. In the event that Sublessee shall institute any such proceeding, Sublessor shall cooperate with Sublessee in connection therewith, and Sublessee shall be responsible for the reasonable and actual out-of-pocket costs and expenses incurred by Sublessor in connection with such cooperation.

(c) Sublessor shall comply with all Requirements affecting the Facilities Ground Leased Premises, other than that portion of the Subleased Premises Sublessee is obligated to maintain pursuant to Section 4.7. Sublessor shall have the right to contest the validity, enforceability or applicability of any Requirements provided that Sublessor's failure to comply with any Requirements would not subject Sublessee or the State to criminal liability and/or create interference in any material respect with Sublessee's operations within the Subleased Premises. Any such proceeding instituted by Sublessor shall be commenced as soon as is reasonably possible after the issuance of any such contested matters, or after actual notice to Sublessor of the applicability of such matters to the Facilities Ground Leased Premises, and shall be prosecuted with reasonable

dispatch. During such contest, compliance with any such contested Requirements may be deferred by Sublessor; provided, however, that Sublessor shall promptly comply with the final determination of any such contest.

#### 4.6 SUBLESSOR COVENANTS.

(a) **Sublessor Services.** From and after the date hereof, provided that Sublessee is not in default in the payment of Rent after the expiration of any applicable notice and cure period, Sublessor shall furnish Sublessee through existing facilities at the Facilities Ground Lease Premises, with the following services in connection with the Subleased Premises:

(i) hot and cold water in sufficient quantities to meet the needs of Sublessee, its employees, customers and invitees for use in the restrooms and, (ii) elevator service, (iii) electricity in accordance with the terms and conditions contained in Section 3.3, (iv) access to the Subleased Premises for Sublessee and its employees 24 hours per day/ 7 days per week, (v) the right to connect to the Building's standard telecommunication system and service at the point of connection on each floor of the Subleased Premises and (vi) such other services as Sublessee shall reasonably require.

(ii) heat, ventilation and air-conditioning ("hvac") to the Subleased Premises as required by Sublessee. Notwithstanding the foregoing, Sublessor shall not be held liable to Sublessee for failure to provide any such services which failure is caused by any utility provider.

Notwithstanding the foregoing, Sublessor shall not be obligated to provide any utility services to Sublessee in the Subleased Premises to the extent that Sublessee is obtaining its own utility services from Sublessee's Existing Utility Systems or from replacements thereof, or from any other systems that exclusively serve the Subleased Premises, and making payment for such utility services directly to the utility providers. In all other cases, Sublessor is obligated to comply with this Section 4.6(a).

(b) **Other Building Services.** Except and to the extent the following shall be Sublessee's obligation pursuant to this Sublease, Sublessor shall, at Sublessor's cost and expense (subject to reimbursement by Sublessee as Operating Expenses to the extent provided for in Section 3.2 hereof) operate, maintain, repair and replace (but only if reasonably necessary instead of repairing) (collectively, the "Sublessor Repair Obligations") (i) all exterior portions of the Facilities Ground Leased Premises (including the exterior portions of the Subleased Premises) and all appurtenances thereto including paving and landscaping of the Facilities Ground Leased Premises (excluding the Future Development Area and all improvements thereon,) including the Common Facilities, (ii) all structural parts of the Building (including the Subleased Premises), both exterior and interior, including, but not limited to, floor slabs, walls, windows and window sills, foundations, facades and roofs, and all repairs thereto necessary to make same sound and watertight, (iii) all exterior doors and plate glass, (iv) all Building systems serving the Common Facilities including concealed water, sewer, gas, electric

and other utility lines and all sprinkler systems, (v) all mechanical equipment, including but not limited to, the hvac system and any elevators and escalators, (vi) all fences located within or located at the Facilities Ground Leased Premises, including but not limited to providing crowd control, and (vii) all other portions of the Common Facilities.

(c) **Future Development Area.** Sublessor and Sublessee acknowledge and agree that it is anticipated that the Future Development Area will not be occupied or utilized for some time. During such time and to the extent that all or any portion of the Future Development Area is not utilized, Sublessor's maintenance and repair obligations with respect to such Future Development Area shall be minimal, and Sublessor shall only be obligated to ensure that the Future Development Area is safe, insured and does not deteriorate. Sublessor shall have the right to expand its VLT Premises into all or a portion of the Future Development Area which is not utilized by Sublessee or any Occupant, to be exercised upon thirty (30) days prior written notice to Sublessee, and, in such event, Sublessee's Building Area Proportionate Share shall be adjusted as provided herein and Sublessor shall be obligated to operate, maintain, restore, replace, repair, secure, improve and alter such expanded space consistent with its obligations with respect to the VLT Premises. Sublessor, in its reasonable discretion, shall make Alterations and shall construct at the perimeter of the Future Development Area such demising walls as are necessary to separate the Subleased Premises located within the Building from the Future Development Areas being subleased by Sublessor if such Future Development Area impinges on the non-public areas of the Subleased Premises, using materials customarily used for this type of space, the location and design of such demising walls to be reasonably acceptable to Sublessee. Sublessee shall have the right to expand its Subleased Premises into all or a portion of the Future Development Area that is not utilized by Sublessor or any Occupant, to be exercised upon thirty (30) days prior written notice to Sublessor provided Sublessee has obtained the State's consent to such expansion, and in such event, Sublessee's Building Area Proportionate Shares shall be adjusted as provided herein. Sublessee shall not make any Alterations in any portion of the Future Development Area until such portion of the Future Development Area becomes a part of the Subleased Premises other than Alterations with respect to Building systems or mechanical systems that service the Subleased Premises that are located in or run through the Future Development Area. Sublessee shall provide Sublessor with ten (10) days notice prior to commencing any Alterations in any portion of the Future Development Area, except in the case of an emergency, whereby Sublessee may make Alterations as necessary without prior notice to Sublessor. Further, Sublessee shall operate, maintain, restore, replace, repair, secure, improve and alter such expanded space consistent with its obligations with respect to the Subleased Premises, including Section 4.11 hereof.

(d) **Parking.** Sublessor acknowledges that the number of parking spaces provided at the Facilities Ground Leased Premises must, at all times during the Term of the Sublease, take into account Sublessee's parking requirements. Sublessor also acknowledges that on approximately three (3) days each year, which at this time is expected to be when the Wood Memorial (1 day) and the Breeders Cup (2 days)

traditionally take place ("Peak Parking Days"), Sublessee requires parking well in excess of its usual requirements. Sublessee's parking requirements on Peak Parking Days for any calendar year shall be based upon the number of parking spaces for Peak Parking Days used in the prior calendar year. Sublessee shall provide Sublessor with at least thirty (30) days prior notice to each such event advising as to the date or dates of such event. If, at any time during the Term of this Sublease, due to the use by Sublessor, Phase II Developer (hereinafter defined) and/or any Occupants, or their respective customers or invitees, of any parking spaces within the Parking Areas, or as a result of any Facilities Ground Leased Premises Development (hereinafter defined), Sublessee is unable to use any of the parking spaces on the Facilities Ground Leased Premises that are currently utilized by Sublessee, Sublessor shall provide to Sublessee and its customers and invitees alternate parking sufficient in number and convenient to the Clubhouse in order to satisfy Sublessee's and its customers' and invitees' parking requirements. For purposes of determining what parking spaces are currently utilized, such determination shall be based on the number of parking spaces utilized in the prior calendar year. Sublessor may reserve a reasonable number of parking spaces in a section to be specified by the VLT Operator, of the Parking Areas for VIP parking and the VLT Operator's exclusive use, provided same are not located directly in front of Sublessee's entrance to the Clubhouse.

(e) **Sublessor Repair Obligations.** Sublessor shall be obligated to make all repairs which are expressly made Sublessor's responsibility under any other article of this Sublease, unless such repairs are not covered by the insurance required to be maintained by the Sublessor hereunder and are necessitated by the negligence or misconduct of Sublessee or such repairs as are necessary to remedy any defect, structural or otherwise, in any portion of the Facilities Ground Leased Premises (including but not limited to the Subleased Premises and the Common Facilities) existing by reason of Sublessor's failure to perform properly its obligations under this Sublease.

(f) **Sublessor's Warranties.** It is agreed and understood that Sublessee shall have the benefit of all warranties which Sublessor may have with respect to all mechanical equipment, including but not limited to, the hvac system, for as long as all such warranties continue in force and effect.

(g) **Construction Costs, Interference and Obligations.** Sublessor covenants and agrees that (i) Sublessee shall have no responsibility or obligation to incur any costs in connection with the construction, maintenance or repair in connection with the VLT Operations, the Future Development Area (except as specifically set forth in this Sublease) or the Phase II Development, (ii) at Sublessee's reasonable discretion and subject to Section 4.6(j) Sublessor shall construct at the perimeter of the VLT Premises and/or Future Development Area such demising walls as are necessary to separate the Subleased Premises and/or the Common Facilities located within the Building from the VLT Premises and Future Development Area using materials customarily used for this type of space, the location and design of such demising walls to be reasonably acceptable to Sublessee, (iii) the VLT Premises shall be maintained in a manner comparable to other first class VLT Premises facilities operating similar operations under similar conditions

in the United States, and (iv) Sublessor shall, and shall cause any Occupant to, not interfere in any material respect with Sublessee and with Sublessee's Permitted Uses, which obligation shall survive the termination of this Sublease, for the benefit of Sublessee as lessee under the Racetrack Ground Lease.

(h) **Trade Union Workers.** Sublessee currently employs union workers on the Subleased Premises and in other areas of the Facilities Ground Leased Premises pursuant to the Racetrack Ground Lease, including but not limited to plumbers, laborers, carpenters, heavy equipment workers and window washers. Since the union workers will continue to work at the Subleased Premises and the Parking Areas and during and after the Facilities Ground Leased Premises Development (hereinafter defined), Sublessor and Sublessee agree that, in order to prevent strife between and among competing union workforces, Sublessor and its employees and Contractors shall work harmoniously with such union workforces and Sublessee and its employees and Contractors shall work harmoniously with Sublessor's union workforces. Any issues arising in connection with competing jurisdictions within the Subleased Premises and Common Facilities between Sublessee's union workforces and Sublessor's union workforces shall be resolved pursuant to union grievance procedures, insofar as that is permissible under state law.

(i) **Security.** Sublessee shall be permitted to retain and provide its own security forces ("Sublessee's Security Forces") in order to provide security to the Subleased Premises and Common Facilities, including the Parking Areas located on the Facilities Ground Leased Premises. If Sublessor desires Sublessee's Security Forces to provide security on and within the Common Facilities, Sublessee shall provide such Security Forces to the extent available and the parties agree that such costs shall be allocated equitably and proportionately between Sublessor, Sublessee, the Phase II Developer and other Occupants. Notwithstanding that the State, Sublessor or the Phase II Developer may be providing security for the Parking Areas at the Property, the Sublessee's Security Forces shall not be restricted from acting in accordance with their legal authority with respect to illegal, disruptive, dangerous or inappropriate actions occurring outside of the Subleased Premises.

(j) **Coordination of VLT Premises and Subleased Premises.** It is the intent of the Sublessor and the Sublessee that there may be demising walls separating the VLT Premises and the Subleased Premises in those areas of the Subleased Premises and the VLT Premises which are generally open to the public for purposes of the business being conducted at the Subleased Premises and the VLT Premises, with such demising walls to contain doors that connect the public areas of the Building with the Subleased Premises and the VLT Premises. At such time as Sublessee's business operations are closed, the connecting doors for said demising walls shall be locked and no access to the Subleased Premises will be allowed. The VLT Operator shall erect demising walls for all non-public areas within the VLT Premises as are necessary to separate the VLT Premises from such public areas using materials customarily used for this type of space, the location and design of such demising walls to be reasonably acceptable to the Sublessee.

(k) **Sublessor Improvement Rights to Subleased Premises.** Sublessor shall have the right, subject to Sublessee's consent, which consent shall not be unreasonably withheld, to make improvements to the Subleased Premises, which improvements shall be solely for the purpose of changing or modifying finishes within the Subleased Premises to be consistent or complementary to the finishes contained within the VLT Premises. In Sublessor's performance of such improvement work, Sublessor shall not interfere with Sublessee's business operations other than to a de minimus extent or in any manner reconfigure the Subleased Premises.

#### 4.7 SUBLESSEE COVENANTS.

(a) **Sublessee Repairs.** Sublessee shall be responsible for keeping the Subleased Premises in accordance with the Building Standard. Sublessee shall be solely responsible for maintenance and repair within the Subleased Premises and may undertake the performance of any maintenance and repair within the Subleased Premises without the consent of Sublessor. Sublessee's maintenance, repair and replacement obligations shall include, without limitation, repairs to and replacements of: (i) floor covering; (ii) interior partitions, including interior windows and glass; (iii) interior doors; (iv) the interior side of demising walls; (v) electronic, fiber, phone and data cabling and related equipment that is installed by or for the exclusive benefit of Sublessee and located within the Subleased Premises; and (vi) air conditioning units, kitchens, personal restrooms or showers, hot water heaters, plumbing and similar facilities exclusively serving Sublessee and located within the Subleased Premises. Notwithstanding the foregoing, at such time as the VLT Operator has occupied the VLT Premises, Sublessee shall have a reasonable period of time to perform such improvement work that may be required to bring the Subleased Premises to Building Standard. Upon the Expiration Date, the Subleased Premises will be surrendered to Sublessor in accordance with the Building Standard, subject to damages caused by ordinary wear and tear or damage or destruction by acts of God, causes beyond Sublessee's control, or conditions which, under the provisions of this Sublease, it is the obligation of Sublessor to remedy.

(b) **Interference and Obligations.** Sublessee shall not interfere in any material respect with Sublessor or any Occupant or their respective uses of the VLT Premises and Future Development Area. This provision shall survive the termination of this Sublease.

#### 4.8 DAMAGE CLAUSE.

(a) **Notice of Damage.** If the Building or the Subleased Premises shall be totally or partially damaged or destroyed by fire or other casualty (each, a "Casualty"), Sublessee shall, upon actual knowledge of the occurrence of such Casualty, give to Sublessor prompt notice thereof.

(b) **Obligation to Restore.** (i) If all or any portion of the Subleased Premises becomes untenable due to a Casualty, this Sublease shall not terminate except as expressly set forth herein. Sublessor, with reasonable promptness, shall cause a general

contractor selected by Sublessor to provide Sublessor and Sublessee with a written estimate (the "Completion Estimate") of the amount of time required, using standard working methods, to substantially complete the repair and restoration of the Subleased Premises and the Common Facilities necessary to provide access to the Subleased Premises and sufficient parking to meet the needs of Sublessee and its employees, customers and invitees. Sublessor shall promptly and diligently restore the Subleased Premises (including Sublessee's improvements but excluding Sublessee's Property). Such restoration shall be to substantially the same condition that existed prior to the date of the Casualty.

(c) **Substantial Damage.** If the structural portions of the Subleased Premises and/or the remainder of the Building suffers such severe damage or are destroyed to such an extent that, in Sublessor's and Sublessee's reasonable opinion exercising sound business judgment, it is in the best interests of the Parties to rebuild the Subleased Premises and/or Building in a manner different from that which existed prior to the date of the Casualty, Sublessor shall not unreasonably withhold its consent to such alternate rebuilding and shall rebuild the Subleased Premises and/or the remainder of the Building in such alternate manner, provided that the same does not materially adversely affect Sublessor and any excess costs resulting from such alternate rebuilding (in excess of insurance proceeds) shall be paid by Sublessee.

#### 4.9 INSURANCE.

(a) Sublessor shall obtain and maintain in full force and effect all such insurance as required by the State under the Facilities Ground Lease, as amended between the Sublessor and the State, provided, however, Sublessor shall be required, at a minimum, to carry all such insurance in coverages and amounts as was required by the Sublessee, as lessee, under the Facilities Ground Lease.

(b) Sublessee shall be required to maintain the insurance, coverages and amounts as shown in the attachment attached hereto as Exhibit L.

#### 4.10 UNPERFORMED COVENANTS OF SUBLESSOR OR SUBLESSEE.

(d) **Failure of Sublessor to Perform.** If Sublessor shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by Sublessor pursuant to this Sublease, or if Sublessor should fail to make any payment which Sublessor agrees to make, and any such failure shall, if it relates to a matter which is not of an emergency nature, remain uncured for a period of thirty (30) days after Sublessee shall have served upon Sublessor notice of such failure, or for a period of 48 hours after service of such notice if in Sublessee's judgment reasonably exercised such failure relates to a matter which is of an emergency nature, then Sublessee may, at Sublessee's option, perform any such term, provision, covenant or condition or make any such payment, as Sublessor's agent, and in Sublessee's sole discretion as to the necessity therefor, and the full amount of the cost and expense entailed, or the payment so made, shall immediately be owing by Sublessor to Sublessee, and Sublessee may, at its option,

deduct the amount thereof, together with interest at the Default Rate thereon from the date of payment, without liability of forfeiture, from Rents then due or thereafter coming due hereunder (the "Offset"), and irrespective of who may own or have an interest in the Subleased Premises at the time Offsets are made. Any such Offset shall not constitute a default in the payment of Rent unless Sublessee shall fail to pay the amount of the Offset to Sublessor within 30 days after final adjudication that such amount is owing to Sublessor. The option given in this article is for the sole protection of Sublessee, and its existence shall not release Sublessor from the obligation to perform the terms, provisions, covenants and conditions herein provided to be performed by Sublessor or deprive Sublessee of any legal rights which it may have by reason of any such default by Sublessor. Sublessor and Sublessee acknowledge and agree that the remedies of Rent abatement or lease termination provided for throughout this Sublease may be insufficient as Sublessee's remedy for Sublessor breaches or other events that may give rise to such remedies hereunder. In addition to the rights of Sublessee described herein, and any and all rights hereunder, at law or at equity, Sublessor and Sublessee agree that Sublessee shall have the right to seek specific performance and/or injunctive relief from a court of competent jurisdiction or in any other appropriate legal or administrative proceeding. Notwithstanding the foregoing, if Sublessor disputes Sublessee's right to take one or more Offsets or any amount constituting a portion of any such Offset, Sublessor may require that such dispute be settled by arbitration, as provided in Section 7.14 herein.

(e) **Failure of Sublessee to Perform.** If Sublessee shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by Sublessee pursuant to this Sublease, or if Sublessee should fail to make any payment which Sublessee agrees to make, and any such failure shall, if it relates to a matter which is not of an emergency nature, remain uncured for a period of thirty (30) days after Sublessor shall have served upon Sublessee notice of such failure, or for a period of 48 hours after service of such notice if in Sublessor's judgment, reasonably exercised, such failure relates to a matter which is of an emergency nature, then Sublessor may, at Sublessor's option, perform any such term, provision, covenant or condition or make any such payment, as Sublessee's agent, and in Sublessor's sole discretion as to the necessity therefore, and the actual out of pocket cost and expense incurred by Sublessor, shall immediately be owing by Sublessee to Sublessor, and Sublessor may, at its option, add the amount thereof, together with interest at the Default Rate thereon from the date of payment, without liability of forfeiture, to amounts then due or thereafter coming due hereunder. In addition to the rights contained herein, Sublessor shall have any legal rights or other rights they have under this Sublease which they may have by reason of any such default by Sublessee.

#### 4.11 ALTERATIONS.

(f) Sublessee shall have the right, subject to the restrictions imposed by Legislation, the Franchise Agreement, the Omnibus Agreement and the Applicable Requirements, to develop, redevelop, refurbish, renovate or make such other improvements, capital expenditures or otherwise ("Alterations"), to the Subleased Premises and the fixtures and improvements thereon, as shall be necessary or desirable

for the operation of the Subleased Premises for the uses permitted under this Sublease and the Franchise Agreement.

(g) Sublessee has heretofore delivered to Sublessor a five-year capital expenditure plan (such capital plan as amended and extended from time to time, as approved by the State, the "Capital Plan") setting forth in reasonable detail the capital expenditures and the budgeted costs therefore which Sublessee proposes to make with respect to the Subleased Premises for the Sublease Years 2008-2013, and which has been approved by the State. A copy of the approved Capital Plan 2008-2013 is annexed hereto as Exhibit I. Sublessee shall submit to Sublessor all amendments and extensions of the Capital Plan approved by the State, promptly upon such approval, which shall be similar to the detail contained in the then-existing approved Capital Plan.

(h) Sublessee shall be entitled to perform all Alterations which are set forth in the approved Capital Plan. If Sublessee desires to perform any Alterations which are not set forth in the approved Capital Plan, Sublessee shall obtain the prior written consent of the State, in accordance with the Omnibus Agreement, to such Alterations, unless such Alterations (i) do not affect any structural elements or Building systems or the improvements and (ii) in the good faith estimation of Sublessee's architect or engineer, cost more than \$100,000 to complete, which, in the case of (i) and (ii) above, the State's prior written consent shall not be required.

(i) Prior to performing any proposed Alterations, Sublessee shall, at Sublessee's expense, procure and maintain in its possession and provide to Sublessor: (i) detailed plans and specifications for such Alterations, to the extent same is required by any governmental authorities having jurisdiction over the Subleased Premises, (ii), insurance certificates from all Contractors evidencing the insurance coverages required under this Sublease, and (iii) all permits, approvals, and certifications required by any governmental authorities having jurisdiction over the Subleased Premises. Upon completion of any Alterations, Sublessee shall obtain any certificates of final approval of such Alterations required by any governmental authority, together with the "as-built" plans and specifications for such Alterations (together, the "Completion Documents"). Upon Sublessor's request, Sublessee shall promptly provide to Sublessor, in hard copy or electronic form (as Sublessor may request), any or all of the documents required to be obtained under this Section 4.11(d) including the Completion Documents, upon the completion of the Alteration.

(j) All Alterations shall be made and performed, in all material respects, in accordance with the plans and specifications therefore, as same may be modified from time to time. All Alterations shall be made and performed in a good and workmanlike manner, using materials substantially similar in quality to the existing materials at the Subleased Premises, and in good compliance with all applicable Requirements, as well as requirements of insurance bodies having jurisdiction over the Subleased Premises. No Alterations shall impair the structural integrity of soundness of any improvements and cause damage to any of Sublessor's property.

(k) All Contractors that Sublessee proposes to employ in connection with the performance of Alterations in the Subleased Premises, must be properly bonded and licensed. Notwithstanding the foregoing, all Contractors shall have such insurance coverage and bonding (i) as is commercially reasonable with respect to the form and amounts of coverage, taking into account the size and cost of the Alterations, or (ii) as otherwise required by the State, using the same standard.

(l) All Alterations made by Sublessee shall become the property of Sublessor or the State, as the case may be, upon the expiration of the Sublease. Throughout the Term of this Sublease, to the extent permitted under the applicable tax laws, rules and regulations, Sublessee shall have the sole and exclusive right to take depreciation of all Alterations made by Sublessee.

(m) Any Alterations made to the Facilities Ground Leased Premises, whether performed by Sublessor or any Occupant, when performed or completed, will not impair the structural integrity or soundness of the Building, impede the operation of any of Sublessee's Building systems within the Subleased Premises or cause damage to Sublessee's Property. In no event shall any structure or obstruction of any kind be erected at the Facilities Ground Leased Premises which would in any manner block access to the entrance to the Aqueduct Racetrack, the Building, or the Parking Areas, unless specifically set forth herein.

(i) Indemnification for Mechanics Liens.

(A) Sublessee will pay or cause to be paid all costs and charges for work performed by Sublessee or caused to be performed by Sublessee in or to the Subleased Premises. Sublessee will indemnify Sublessor against, and hold Sublessor and the Facilities Ground Leased Premises free, clear and harmless of and from, all mechanics' liens and claims of liens, and all other liabilities, liens, claims and demands on account of such work by or on behalf of Sublessee. If any such lien, at any time, is filed against the Facilities Ground Leased Premises or any part thereof, on account of work performed or caused to be performed by Sublessee in or to the Subleased Premises, Sublessee will cause such lien to be discharged of record within forty-five (45) days after the filing of such lien. If Sublessee fails to pay any charge for which a mechanics' lien has been filed, and has not discharged same of record as described above, Sublessor may, at its option, in addition to exercising any other remedies Sublessor has under this Sublease on account of a default by Sublessee, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with the removal of such lien, will be immediately due from Sublessee to Sublessor.

(B) Sublessor will pay or cause to be paid all costs and charges for work performed by Sublessor or caused to be performed by Sublessor in or to the Facilities Ground Leased Premises. Sublessor will indemnify Sublessee against, and hold Sublessee and the Subleased Premises free, clear and harmless of and from, all mechanics' liens and claims of liens, and all other liabilities, liens, claims and demands

on account of such work by or on behalf of Sublessor. If any such lien, at any time, is filed against the Facilities Ground Leased Premises or any part thereof, on account of work performed or caused to be performed by Sublessor in or to the Facilities Ground Leased Premises, Sublessor will cause such lien to be discharged of record within forty-five (45) days after the filing of such lien. If Sublessor fails to pay any charge for which a mechanics' lien has been filed, and has not discharged same of record as described above, Sublessee may, at its option, in addition to exercising any other remedies Sublessee has under this Sublease on account of a default by Sublessor, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with the removal of such lien, will be immediately due from Sublessor to Sublessee.

#### 4.12 SIGNAGE.

(n) Sublessor hereby consents to any and all of Sublessee's signage and sponsorship signage that is currently installed on the Facilities Ground Leased Premises ("Sublessee's Existing Signage") and to any upgrade of Sublessee's Existing Signage, provided such signage does not detract from the commercial appeal of the VLT Operations. Sublessee may sell, lease or otherwise permit any signage or sponsorship signage that is related to Sublessee's business operations to be erected within the Subleased Premises, without the consent of Sublessor. Subject to Sublessor's reasonable approval thereof, Sublessee shall have the right to install and maintain any other of its signs or its sponsor's signs on any part of the Facilities Ground Leased Premises, including the exterior of the Facilities Ground Leased Premises, the Building and the Common Facilities. All such signs shall be furnished, installed and maintained by Sublessee at its sole cost and expense but Sublessor shall, at Sublessee's sole reasonable cost and expense, provide the electrical connections and wiring for all such signs as required by Sublessee. Sublessor agrees that if a pylon sign is erected at or near the Facilities Ground Leased Premises or Building and the Occupants of the Facilities Ground Leased Premises are permitted to place their logo signs on said pylon sign, then Sublessee shall, at its sole cost and expense, be permitted to place its logo on the pylon sign. In the event such a sign is erected, such sign shall be kept in good order and repair by Sublessor and lighted during the evening hours, as determined by Sublessor, and Sublessee shall pay Sublessee's Building Area Proportionate Share of the costs thereof. In no event shall Sublessee erect any signage in any area of the Facilities Ground Leased Premises to competitors of Sublessor and Sublessee shall, upon written notice from Sublessor, not renew or extend any current lease or license for any signage that is leased or licensed to competitors of Sublessor.

(o) Sublessor may sell, lease or otherwise permit signage or sponsorship signage (other than sponsorship signage for racing) to be erected on or about the Facilities Ground Leased Premises other than the Subleased Premises, including but not limited to the exterior of the Building and the Common Facilities, without the consent of Sublessee provided such signage does not block any of the windows of the Subleased Premises or is not placed on the exterior portions of the Subleased Premises or the Clubhouse. Notwithstanding the foregoing, if Sublessor commences VLT Operations

within the VLT Premises, Sublessor shall be permitted to install and maintain signs or sponsorship signage on or about the VLT Premises, provided same do not impede or interfere with Sublessee's signs. In no event shall Sublessor or any other Occupant sell or lease signage or advertising space on or about the VLT Premises or the Facilities Ground Leased Premises, including but not limited to the exterior of the Building and the Common Facilities, to competitors of Sublessee and in no event shall Sublessor erect sponsorship signage which relates to racing operations in or on any area of the Property. This provision shall survive the termination of the Sublease, for the benefit of Sublessee as lessee under the Racetrack Ground Lease.

#### 4.13 SUBLESSOR MORTGAGE

Sublessor represents and warrants that, as of the date hereof, except for a mortgage disclosed to Sublessee which is subject to a non-disturbance agreement executed by Sublessee and such mortgagee, it has not mortgaged or encumbered its leasehold interest in the Facilities Ground Leased Premises. Sublessor may not mortgage or encumber all or any part of the Facilities Ground Leased Premises that includes all or any portion of the Subleased Premises without obtaining a non-disturbance agreement in favor of Sublessee, which may be on such mortgagee's customary form, in form and content reasonably satisfactory to Sublessee, modified as necessary to preserve Sublessee's rights under this Sublease, including that under no circumstances may this Sublease be terminated except as set forth herein.

#### 4.14 NAME OF RACETRACK.

The name of the racetrack shall be Aqueduct Racetrack, and such name shall not be changed during the term of this Sublease without the written consent of both Sublessor and Sublessee having been first obtained. Sublessor may not use the name of the racetrack for any purpose or in any manner that would benefit any competitor of Sublessee.

#### 4.15 INDEMNIFICATION, WAIVER AND RELEASE.

(p) Sublessee Indemnification. Sublessee shall indemnify, defend and hold harmless Sublessor, Empire State Development Corporation, the FOB and their respective officers, directors, trustees, employees, members, managers, and agents (collectively, the "Indemnitees"), from and against any and all claims, actions, damages, liability and expense which (i) arise from or in connection with the possession, use or occupancy of the Subleased Premises, (ii) result from or are in connection with any act or omission by Sublessee or its agents, Contractors or employees, (iii) result from any default or breach of this Sublease or any provision herein by Sublessee, or (iii) result in injury to person or property or loss of life sustained within the Subleased Premises, except if caused by the negligence, acts or omissions of Sublessor, or its agents, Contractors or employees. In case any Indemnitee shall be made a party to any litigation covered by this indemnity, whether or not also commenced by or against Sublessee, then Sublessee shall protect and hold the Indemnitees harmless and shall pay all costs,

expenses and reasonable attorneys' fees incurred or paid by such parties in connection with such litigation.

(q) **Sublessor's Indemnification.** Sublessor shall indemnify, defend and hold harmless Sublessee from and against any and all claims, actions, damages, liability and expense which (i) arise from or in connection with the possession, use or occupancy of the Common Facilities, (ii) result from or are in connection with any act or omission by Sublessor, its agents, Contractors or employees, (iii) result from any default or breach of this Sublease or any provision herein by Sublessor, or (iii) result in injury to person or property or loss of life sustained within the Common Facilities, except if caused by the negligence, acts or omissions of Sublessee or its agents, Contractors or employees. In case Sublessee shall be made a party to any litigation covered by this indemnity, whether or not also commenced by or against Sublessor, then Sublessor shall protect and hold Sublessee harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by such parties in connection with such litigation.

## ARTICLE V DEVELOPMENT CLAUSE

### 5.1 DEVELOPMENT OF THE FACILITIES GROUND LEASED PREMISES.

(a) The parties acknowledge that from time to time during the Term of this Sublease, (i) Sublessor shall develop and construct all or a portion of the VLT Premises for the operation of video lottery gaming terminals and activities and uses associated with such operation (the "VLT Operations") and in such capacity, Sublessor may from time to time be referred to herein as the "VLT Operator", (ii) Sublessor may expand its VLT Operations into all or a portion of the Future Development Area and/or may sublease or license, for the direct benefit of the State, all or any portion of the Future Development Area to any Occupant, subject to applicable Requirements, provided Sublessor shall not sublet or license any Future Development Area to any competitor of Sublessee other than for executive offices for New York City OTB (the "Future Development"), and (iii) Sublessor may release one or more of those portions of the Facilities Ground Leased Premises identified as the "Real Estate Development Parcels" (each, a "Real Estate Development Parcel"), to the State to lease or license to a third party entity or entities selected in accordance with the terms of the Franchise Agreement (collectively, the "Phase II Developer") for the development of retail, hotel and entertainment facilities or such other uses and facilities as are approved by the FOB (the "Phase II Development"), provided there shall be no pari-mutuel or simulcast wagering or horse racing conducted at the Aqueduct Racetrack by any party other than Sublessee, and from and after such release, the provisions of this Sublease shall not apply to the portions so released. The construction and development of the VLT Premises, the Future Development and the Phase II Development, to the extent undertaken on the premises subject to the Facilities Ground Lease, may herein be collectively referred to as the "Facilities Ground Leased Premises Development" and shall at all times be conducted in a manner which satisfies the conditions set forth in the Franchise Agreement and Article 5 of this Sublease. The

provisions of this paragraph prohibiting Sublessor from subletting or licensing any Future Development Area to any competitor of Sublessee other than New York City OTB shall survive the termination of this Sublease, for the benefit of Sublessee as lessee under the Racetrack Ground Lease.

(b) Pursuant to the Omnibus Agreement, and in connection with the Phase II Development, Sublessee shall be entitled to receive from the State such information, including, but not limited to, site development and construction plans, specifications, schedules, reports, contracts, agreements, budgets, surveys and such other documentation (the "Development Documentation"), as shall be in the possession of the State in order to allow Sublessee to determine the nature, scope, design and conformity of such Phase II Development to the Development Requirements (defined below). Sublessor shall also provide to Sublessee such Development Documentation as it has in its possession. At such times as Sublessor expands its VLT Operations or commences Future Development, Sublessor shall also provide Sublessee with all available Development Documentation for its review. Sublessor covenants that the Facilities Ground Leased Premises Development shall not interfere with Sublessee's Permitted Uses and Ancillary Uses of the Subleased Premises in any material respect.

## 5.2 DEVELOPMENT REQUIREMENTS.

Supplementing Section 5.1 of this Sublease, in connection with any or all of the Facilities Ground Leased Premises Development undertaken on premises then subject to the Facilities Ground Lease, Sublessor agrees that Sublessor shall comply with the following requirements, which are collectively defined as the "Development Requirements":

(a) **Compliance with Franchise Agreement.** Sublessor shall have complied, and continue to comply, with the requirements contained in Section 2.13(a) of the Franchise Agreement applicable to Sublessor.

(b) **Development Costs.** Sublessee shall not be required to incur any costs in connection with the development and construction of the Facilities Ground Leased Premises Development.

(c) **Timing, Noise and Interference During Initial Construction.** Sublessor acknowledges that, due to the presence of horses on the Property, the Property should not be subjected to excessive noise to the extent commercially practicable. Sublessee acknowledges that the construction of the Facilities Ground Leased Premises Development will inherently create noise and disruption. Sublessor therefore agrees that it will take appropriate measures to minimize the likelihood and extent of interference with horse racing, training and stabling of horses. In particular, the initial construction of the Facilities Ground Leased Premises Development or any part thereof (the "Initial Phase II Construction") which could reasonably be expected to interfere with racing, training and stabling of horses shall, to the extent commercially practicable, be conducted at such times and in such manner so as to minimize the likelihood of any such

interference, but Sublessor or any Occupants shall not be obligated to incur any additional overtime costs in order to minimize noise and disruption on the Property. In order to cooperate and to assist with the compliance of this provision, at such time as there is any construction work or any other activity scheduled that is reasonably likely to interfere with racing, training and stabling of horses, the Parties shall establish a procedure of coordination with each other in order to make each other aware of such potential disruption so that the Parties can take appropriate action. Sublessor agrees that it will take appropriate measures to minimize the likelihood and extent of interference with Sublessee's and its employees', customers' and invitees' use and occupancy of the Facilities Ground Leased Premises and the Ground Leased Premises, including parking, as a result of the development and construction of the Facilities Ground Leased Premises Development, including, without limitation, the staging of all construction related vehicles and equipment and the storing of construction materials and supplies. This provision shall survive the termination of this Sublease, for the benefit of Sublessee as lessee under the Racetrack Ground Lease.

(d) **Timing, Noise and Interference Other Than During Initial Construction.** Other than during Initial Phase II Construction, which is covered by subparagraph 5.2(c) above, Sublessee and Sublessor each agree and Sublessor shall require any Occupants to agree that each party shall conduct or permit the conduct of its respective permitted uses in a manner that does not interfere in any material respect with the other party's operations within the Facilities Ground Leased Premises or the Ground Leased Premises. Other than during the Initial Phase II Construction, to the extent that either Sublessee, Sublessor or Occupant engages in an activity that is reasonably likely to cause interference in any material respect with another party's operations (an "Impact Activity"), each party engaging in the activity shall provide, or Sublessor shall require Occupant to provide, to the other party or parties, as applicable, with five (5) business days notice of its intention to engage in such Impact Activity (the "Impact Notice"). In the event that a party (the "Objecting Party") objects to another party's (the "Non-Objecting Party") Impact Activity, the Objecting Party shall have two (2) business days from the date of receipt of the Impact Notice in question to object thereto, provided that, if the Objecting Party shall not object within such two (2) business days, the Objecting Party shall be deemed to have no objection thereto. In the event that the Objecting Party does object to a particular Impact Activity, the Objecting Party and the Non-Objecting Party shall cooperate in good faith to determine a date and time during which the Non-Objecting Party may engage in the applicable Impact Activity (such date not to be more than ten (10) days subsequent to Objecting Party's receipt of the Impact Notice). Notwithstanding the foregoing, nothing contained in this Section 5.2(d) shall be construed to require any party to incur overtime costs or incur other extra expense. This provision shall survive the termination of the Sublease, for the benefit of Sublessee as lessee under the Racetrack Ground Lease.

ARTICLE VI  
DEFAULT CLAUSE

6.1 EVENTS OF DEFAULT NOT RESULTING IN FRANCHISE REVOCATION

The following events shall each constitute a "Non-Revocation Event of Default" under this Sublease:

(a) **Monetary Defaults.** Failure on the part of Sublessee to pay Rent or any other sums and charges when due to Sublessor hereunder and the continuation of such failure for ten (10) days after written notice to Sublessee.

(b) **Nonmonetary Defaults.** Failure on the part of Sublessee to perform any of the terms or provisions of this Sublease other than the provisions (x) requiring the payment of Rent, and (y) breach of which would give rise to the revocation of the Franchise Agreement pursuant to the terms thereof, and the continuation of such failure for thirty (30) days after written notice to Sublessee, provided that if the default is of such character as to require more than thirty (30) days to cure, if Sublessee shall fail to commence curing such default within thirty (30) days following notice and thereafter to use reasonable diligence in curing such default.

6.2 REMEDIES FOR NON-REVOCATION EVENT OF DEFAULT NOT RESULTING IN FRANCHISE REVOCATION

If a Non-Revocation Event of Default shall occur, Sublessor shall be entitled, at Sublessor's election, to exercise any remedies available at law or in equity on account of such Non-Revocation Event of Default, including without limitation, to bring one or more successive suits for monetary damages and/or specific performance, but Sublessor shall not be entitled to terminate this Sublease and remove Sublessee from possession of the Subleased Premises. In addition to the foregoing, Sublessor may undertake to cure such Non-Revocation Event of Default for the account of Sublessee, and Sublessee shall be responsible for the reasonable and actual out of pocket cost and expenses incurred by Sublessor in performing such cure (with interest accruing at the Default Rate) which shall immediately be owing by Sublessee to Sublessor.

6.3 REVOCATION OF FRANCHISE AGREEMENT

Notwithstanding anything in this Sublease to the contrary, if Sublessee's Franchise shall be duly revoked pursuant to Racing Law §§244 and 245, then this Sublease shall be deemed automatically, without further notice or legal action, terminated as of the date of such Franchise revocation, and Sublessor shall have the right, at Sublessor's election, to exercise any of the remedies set forth in Section 6.4 of this Sublease which are applicable following termination of the Sublease. Sublessee shall have the right to remain in possession of the Subleased Premises for a period of not more than thirty (30) days following termination of the Sublease, solely for the purposes of

orderly vacating the Subleased Premises in the condition required by this Sublease, TIME BEING OF THE ESSENCE to the obligation of Sublessee to vacate the Subleased Premises as provided in this Sublease no later than the thirtieth (30th) day following the termination of this Sublease. Sublessor has no other rights to terminate this Lease other than those stated in this Section 6.3.

**6.4 LEASE TERMINATION FOLLOWING REVOCATION OF FRANCHISE AGREEMENT**

(a) If this Sublease shall be terminated as provided in Section 6.3, Sublessor, without notice, may re-enter and repossess the Subleased Premises using such force for that purpose as may be necessary and permissible pursuant to applicable laws, without being liable to indictment, prosecution or damages therefore and may dispossess Sublessee by summary proceedings or otherwise.

(b) No termination of this Sublease pursuant to Section 6.3, or taking possession of or reletting the Subleased Premises or any part thereof, shall relieve Sublessee of its liabilities and obligations under this Sublease which shall survive such expiration, termination, repossession or reletting.

**6.5 NO WAIVER**

No failure by Sublessor to insist upon the strict performance of any covenant, agreement, term or condition of this Sublease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Sublease to be performed or complied with by Sublessee, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Sublessor. No waiver of any breach shall affect or alter this Sublease, but each and every covenant, agreement, term and condition of this Sublease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

**6.6 REMEDIES CUMULATIVE**

All amounts expended by either party to cure any default by the other party or to pursue remedies hereunder shall be paid by the defaulting party to such other party upon demand. Each right and remedy of Sublessor and Sublessee provided for in this Sublease shall be cumulative and shall be in addition to every other right or remedy provided for in this Sublease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by either party to this Sublease of any one or more of the rights or remedies provided for in this Sublease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Sublease or now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE VII  
MISCELLANEOUS

7.1 ESTOPPEL CERTIFICATES

Either party shall, at any time and from time to time upon not less than ten (10) days' prior request by the other Party, execute, acknowledge and deliver to such other Party, a statement in writing certifying (i) its ownership of its interest hereunder, (ii) that this Sublease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (iii) the dates to which the rent and any other charges have been paid, and (iv) that, to the best of its knowledge, no default hereunder on the part of the other Party exists (except that if any such default does exist, such Party shall specify such default).

7.2 NOTICES

All notices hereunder to the respective Parties will be in writing and will be served by personal delivery or by prepaid, express mail (next day) via a reputable courier service, or by prepaid, registered or certified mail, return receipt requested, addressed to the respective parties at their addresses set forth below. Any such notice to Sublessor or Sublessee will be deemed to be given and effective: (i) if personally delivered, then on the date of such delivery, (ii) if sent via express mail (next day), then one (1) business day after the date such notice is sent, or (iii) if sent by registered or certified mail, then three (3) business days following the date on which such notice is deposited in the United States mail addressed as aforesaid. For purposes of this Sublease, a business day shall be deemed to mean a day of the week other than a Saturday or Sunday or other holiday recognized by banking institutions of the State of New York. Copies of all notices will be sent to the following:

If to Sublessee:

The New York Racing Association, Inc.  
Aqueduct Racetrack  
110-00 Rockaway Boulevard  
South Ozone Park, New York 11417  
Attn: General Counsel

With a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attn: Brian S. Rosen, Esq.

If to Sublessor:

[VLT Operator]

With a copy to:

The New York State Franchise Oversight Board  
Franchise Oversight Board  
c/o Executive Chamber  
The Capitol  
Albany, NY 12224  
Attention: Chairman  
Telecopy: \_\_\_\_\_

With a copy to:

The State of New York  
Office of the Attorney General  
of the State of New York  
The Capitol  
Albany, New York 12224-0341  
Attention: Nancy Hershey Lord, Esq.  
Fax: (508) 408-2057

With a copy to:

Charities Bureau  
Department of Law  
120 Broadway - 3rd Floor  
New York, New York 10271

With a copy to:

The Racing and Wagering Board  
Chairman  
N.Y.S. Racing and Wagering Board  
1 Broadway Center, Suite 600  
Schenectady, New York 12305  
Telecopy: (518) 347-1250

With a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Attn: Alan S. Kornberg, Esq.

### 7.3 ACCESS TO SUBLEASED PREMISES

Sublessee shall permit Sublessor and the authorized representatives of Sublessor to enter the Subleased Premises at reasonable times upon prior reasonable notice to Sublessee (i) for the purpose of serving or posting or keeping posted thereon notices required by law; (ii) for the purpose of conducting periodic inspections of the same and (iii) for the purpose of performing any work thereon required to be performed by Sublessor pursuant to this Sublease or that Sublessor, in the reasonable exercise of Sublessor's judgment, is required to perform to prevent waste, loss, damage or deterioration to or in connection with the Subleased Premises.

### 7.4 WAIVER OF PERFORMANCE BY EITHER PARTY

No waiver of any of the provisions of this Sublease shall be deemed, or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, nor shall a waiver in any instance constitute a continuing waiver, nor shall a waiver in any instance constitute a waiver in any subsequent instance.

### 7.5 CAPTIONS

Captions throughout this instrument are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Sublease.

### 7.6 SUBLEASE BINDING ON SUCCESSORS/MODIFICATION

All covenants, agreements, provisions and conditions of this Sublease shall be binding upon and inure to the benefit of the parties hereto and their heirs, devisees, executors, administrators, successors in interest and assigns and grantees, and shall be deemed to run with the land. No modification of this Sublease shall be binding unless evidenced by an agreement in writing signed by Sublessor and Sublessee.

### 7.7 BROKERAGE COMMISSION

Sublessor and Sublessee represent and warrant one to the other that no broker commission, finder's fees or similar compensation is due to any party claiming through Sublessor or Sublessee, as applicable, and Sublessor and Sublessee agree to hold the other Party harmless from any liability to pay any such brokerage commission, finder's fees or similar compensation to any parties claiming same through the indemnifying Party.

### 7.8 ATTORNEYS' FEES

Either Party shall be entitled to recover its reasonable attorneys' fees and similar costs incurred in connection with the enforcement of its rights and remedies under this Sublease.

7.9 MEMORANDUM OF LEASE

Sublessor and Sublessee agree to execute and deliver to each other a short form of this Sublease in recordable form which incorporates all of the terms and conditions of this Sublease by reference in the form mutually agreed upon by Sublessor and Sublessee and attached hereto as Exhibit K ("Memorandum of Lease"). Sublessor and Sublessee agree that at such recording party's cost, either party may record such Memorandum of Lease, in the office of the county clerk in which the Facilities Ground Leased Premises is located.

7.10 PARTIAL INVALIDITY

If any term, provision, condition or covenant of this Sublease or the application thereof to any Party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Sublease, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

7.11 APPLICABLE LAW AND VENUE

This Sublease shall be governed by and construed in accordance with the laws of the State of New York.

7.12 PRIMACY OF DOCUMENTS

In the event of a conflict between the provisions of the Legislation and the provisions of this Sublease or the Franchise Agreement, the provisions of the Legislation shall prevail. In the event of a conflict between this Sublease and the Franchise Agreement, the provisions of the Franchise Agreement shall prevail.

7.13 COUNTERPARTS

This Sublease may be executed in two or more fully or partially executed counterparts, each of which shall be deemed an original, binding the signer thereof against the other signing Party, but all counterparts together will constitute one and the same instrument.

7.14 ARBITRATION. (a) If this Sublease shall require any dispute between Sublessor and Sublessee to be settled by arbitration, then each Party shall have the right to submit such dispute to arbitration, which shall be conducted in Manhattan in accordance with the Commercial Arbitration Rules (Expedited Procedures) of the AAA. The Party requesting arbitration shall do so by giving notice to that effect to the other Party, specifying in said notice the nature of the dispute, and that said dispute shall be determined in the City of New York, by a panel of three (3) arbitrators in accordance

with this Section 7.14. Sublessor and Sublessee shall each appoint their arbitrator within five (5) days after such Party's notice. The arbitrators so appointed shall meet and shall, if possible, determine such matter within ten (10) days after the second arbitrator is appointed and their determination shall be binding on the parties. If for any reason such two arbitrators fail to agree on such matter within such period of ten (10) days, then either Sublessor or Sublessee may request ENDISPUTE/JAMS (or any organization which is the successor thereto or any other arbitration or mediation entity that is an active or retired state or federal judge) to appoint an arbitrator who shall be impartial within seven (7) days of such request and both parties shall be bound by any appointments so made within such 7-day period. The third arbitrator (and the second arbitrator if selected by the other arbitrator as provided above) only shall subscribe and swear or affirm to an oath fairly and impartially to determine such dispute. Within seven (7) days after the third arbitrator has been appointed, each of the first two arbitrators shall submit their respective determinations to the third arbitrator who must select one or the other of such determinations (whichever the third arbitrator believes to be correct or closest to a correct determination) within seven (7) days after the first two arbitrators shall have submitted their respective determinations to the third arbitrator, and the selection so made shall in all cases be binding upon the parties, and judgment upon such decision may be entered into any court having jurisdiction. In the event of the failure, refusal or inability of an arbitrator to act, a successor shall be appointed within ten (10) days as hereinbefore provided. In the case of all disputes to be determined by arbitration in accordance with this Section 7.14, the arbitrator shall be engaged in such field for a period of at least ten (10) years before the date of his appointment. The third arbitrator shall be an active or retired New York State or federal judge experienced with the subject matter with which the arbitration is concerned and shall schedule a hearing where the parties and their advocates shall have the right to present evidence, call witnesses and experts and cross-examine the other Party's witnesses and experts. Either Party shall have the right, at any time, to make a motion to the third arbitrator to grant summary judgment as to any question of law.

(b) Sublessor and Sublessee agree to sign all documents and to do all other things necessary to submit any such matter to arbitration and further agree to, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. For such period, if any, as this agreement to arbitrate is not legally binding or the arbitrator's awards is not legally enforceable, the provision requiring arbitration shall be deemed deleted and matters to be determined by arbitration shall be subject to litigation.

(c) Except as otherwise specifically provided herein, the losing Party shall pay the fees and expenses for all arbitrators.

#### 7.15 CLUBHOUSE PREMISES.

The parties agree and acknowledge that notwithstanding the exhibits attached hereto, in connection with the initial occupancy of the VLT Premises by the

VLT Operator, if any portion of the Clubhouse included in the exhibits as the VLT Premises is not actually demised under this Sublease to the VLT Operator for the VLT Premises, such portion of the Clubhouse shall become part of the Subleased Premises. If any part of the Clubhouse that is not included in the exhibits as VLT Premises is required by the VLT Operator for VLT gaming, the parties shall negotiate in good faith to allocate a reasonable amount of alternate or additional space within the Clubhouse to reasonably accommodate the requirements of both parties, provided that the Sublessee shall be under no obligation to agree to any allocation of alternate or additional space to the VLT Operator within the Clubhouse if such allocation would result in an adverse impact upon Sublessee's operations or customer experience within the Subleased Premises to more than a de minimus extent. If the Parties' good faith negotiations result in a reasonable accommodation that is mutually satisfactory to each, in such case the Subleased Premises and the VLT Premises shall be appropriately adjusted. Moreover, if the VLT Operator proposes to use or operate any additional or alternate space within the Clubhouse for non-gaming activities, such as dining, Sublessee shall participate in good faith discussions with the VLT Operator regarding such activities, however, Sublessee shall be under no obligation to agree to any such activities within the Clubhouse if such activities or allocation of spaces attendant thereto would result in an adverse impact upon Sublessee's operations or customer experience within the Subleased Premises to more than a de minimus extent.

**7.16 RESTRICTIONS ON PARI-MUTUEL WAGERING.**

The Parties hereby acknowledge and agree that there shall be no pari-mutuel or simulcast wagering or horse racing conducted at the Aqueduct Racetrack by any party other than Sublessee.

**7.17 TIME PERIOD FOR PAYMENT OBLIGATIONS.**

All payments to be made by Sublessor and Sublessee pursuant to this Sublease shall be made within ten (10) business days after demand therefor, unless a time period for such payment is otherwise specifically set forth herein. If either Party fails to make any payment due within the time period required under this Sublease, then such Party shall pay to the other Party the amount so due together with interest thereon at the Default Rate, which interest shall accrue from the date such payment is due through the date such payment is made.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2008 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Signature and Office of individual  
taking acknowledgment

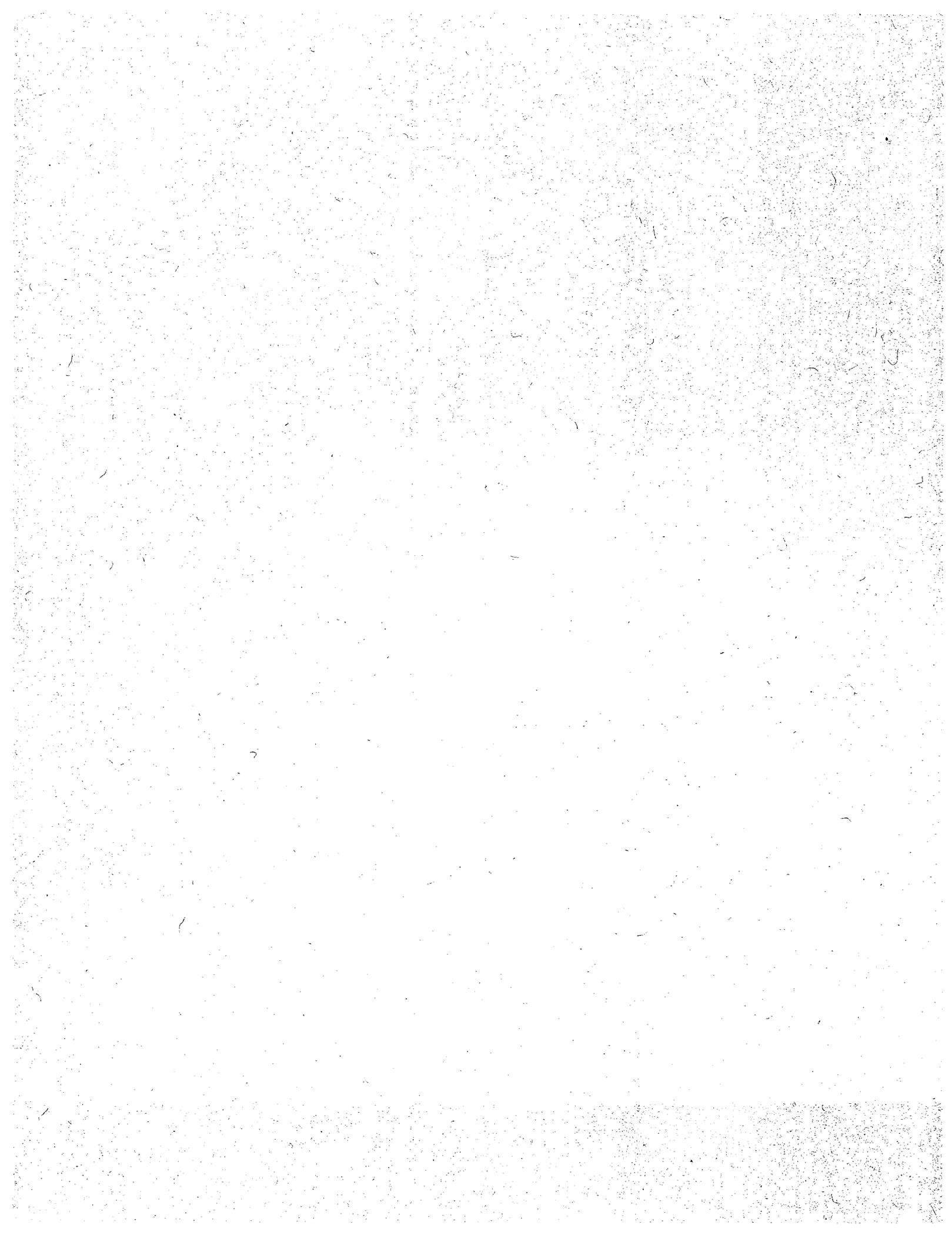
State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Signature and Office of individual  
taking acknowledgment



**EXHIBIT E**  
**BELMONT GROUND LEASE**

**BELMONT PARK**

**GROUND LEASE AGREEMENT**

**between**

**THE PEOPLE OF THE STATE OF NEW YORK ACTING BY AND  
THROUGH THE STATE FRANCHISE OVERSIGHT BOARD  
PURSUANT TO CHAPTER 18 OF THE LAWS OF 2008  
as Lessor,**

**and**

**THE NEW YORK RACING ASSOCIATION, INC.**

**as Lessee**

**September \_\_, 2008**

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## GROUND LEASE AGREEMENT

GROUND LEASE AGREEMENT (this "Lease"), dated as of September \_\_, 2008, by and between THE PEOPLE OF THE STATE OF NEW YORK ACTING BY AND THROUGH THE STATE FRANCHISE OVERSIGHT BOARD PURSUANT TO CHAPTER 18 OF THE LAWS OF 2008, having an address at c/o Executive Chamber, The Capitol, Albany, New York 12224, Attn: Chairman (the "Lessor"), and THE NEW YORK RACING ASSOCIATION, INC., a not-for-profit racing corporation incorporated pursuant to Section 402 of the Not-For-Profit Corporation Law of the State of New York, as authorized by Chapter 18 of the Laws of 2008, with a place of business at 110-00 Rockaway Boulevard, South Ozone Park, New York 11417 (the "Lessee"), sometimes collectively referred to herein as the "Parties" or singularly as a "Party."

### RECITALS

Contemporaneously with the execution of this Lease, and pursuant to (i) the authority granted by Chapter 18 of the Laws of 2008 passed February 13, 2008, by the New York State Senate and the New York State Assembly, and signed into law by the Governor of the State on February 19, 2008 (as the same may hereafter be amended, the "Legislation"), (ii) the Chapter 11 plan filed by the New York Racing Association Inc. ("Old NYRA") pursuant to section 1121(a) of the Bankruptcy Code (the "Plan"), as confirmed by an order, dated April 28, 2008, of the United States Bankruptcy Court for the Southern District of New York and (iii) the State Settlement Agreement made by and among Lessee, Old NYRA and the State of New York, the New York State Racing and Wagering Board, the New York State Non-Profit Racing Association Oversight Board and the New York State Division of the Lottery (the "Settlement Agreement"), Old NYRA is conveying all right, title and interest in and to the Leased Premises (as hereinafter defined) and licensing the Licensed Premises (as hereinafter defined) to Lessor. Lessor and Lessee are concurrently herewith entering into that certain Franchise Agreement (as hereinafter defined) pursuant to which Lessee is granted the Franchise (as hereinafter defined) to conduct thoroughbred racing and pari-mutuel wagering with respect to thoroughbred racing at the Leased Premises.

In order for Lessee to operate the Franchise granted pursuant to the Franchise Agreement, Lessor is authorized pursuant to the Legislation to lease (and license) to Lessee the Belmont Racetrack Real Property (as defined in the Franchise Agreement). Lessor desires to lease a portion of the Belmont Racetrack Real Property, constituting the Leased Premises, and license a portion of the Belmont Racetrack Real Property, constituting the Licensed Premises, to Lessee, for such rentals, and upon such terms and conditions, contained in this Lease.

## ARTICLE I

### Grant, Term of Lease and License and Certain Definitions

1.1 Leasing Clause. Upon and subject to the terms, provisions and conditions hereinafter set forth, Lessor does hereby LEASE, DEMISE and LET unto Lessee, and Lessee does hereby take and lease from Lessor, the Leased Premises, TO HAVE AND TO HOLD, together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to the Leased Premises (including the Art Work (hereinafter defined)), for the term hereinafter provided, upon and subject to the terms, conditions and agreements contained herein.

1.2 Licensing Clause. Upon and subject to the terms, provisions and conditions hereinafter set forth, Lessor does hereby LICENSE to Lessee, and Lessee hereby licenses from Lessor, the use and occupancy of the Licensed Premises (the "License"); to use and occupy the Licensed Premises for the term hereinafter provided, upon and subject to the terms, conditions and agreements contained herein. The term of this License shall be for a period commencing on the Commencement Date (as hereinafter defined), and terminating, as to any specified portion of the Licensed Premises, on the effective date on which the License as to such portion of the Licensed Premises is revoked pursuant to the provisions of this Lease (the "Parcel Termination Date"). In all events, Lessee's License with respect to any remaining Licensed Premises will terminate upon the Expiration Date.

1.3 Term. The term of this Lease (the "Term") shall be for a period commencing on the Commencement Date (hereinafter defined), and terminating on the date on which the Franchise Agreement terminates pursuant to the terms thereof, or upon the sooner termination of this Lease as set forth herein (the "Expiration Date").

1.4 Certain Definitions. Capitalized terms not otherwise defined herein shall have the respective meanings given them in the Franchise Agreement. The following terms shall have the respective meanings set forth below in this Section 1.3 for purposes of this Lease:

(a) Additional Charges. All other taxes, levies impositions, assessments of whatever type or nature levied or assessed against the Leased Premises, Improvements, and /or Lessee, other than Impositions.

(b) Art Work. All art work transferred from Old NYRA to Lessor, including, but not limited to, the items listed on Exhibit D hereto.

(c) Base Rental. The base rental for the Premises as defined in Section 2.1 of this Lease.

(d) Childcare Sublease. That certain sublease, dated December 12, 2001, by and between Lessee, as sublessor, and Belmont Child Care Association, Inc., as sublessee.

(e) Commencement Date. The date first above written, on which date this Lease has been fully executed by Lessor and Lessee and approved and filed in the Office of the State Comptroller pursuant to Section 112 of the State Finance Law.

(f) Contaminants. Any material, substance or waste classified, characterized or regulated as toxic, hazardous or a pollutant or contaminant under any Requirements, including asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or the equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million.

(g) Contractor. Any construction manager, contractor, subcontractor, laborer or materialman who shall supply goods, services, labor or materials in connection with the development, construction, management, maintenance or operation of any part of the Premises.

(h) Default Rate. The rate of interest per annum applicable to judgment claims in the State of New York.

(i) Franchise. The authority granted to Lessee to conduct racing and pari-mutuel wagering with respect to thoroughbred racing, as provided for in the Legislation and the Franchise Agreement.

(j) Franchise Agreement. That certain Franchise Agreement between Lessor and Lessee of even date herewith which is annexed hereto as Exhibit C.

(k) Impositions. All taxes set forth in Paragraph 8.a. of the Legislation, as the same is amended by Subdivision 3 of Section 530 of the Real Property Tax Law and constructed through Sections 102, 530 and 532 of the Real Property Tax Law, levied or assessed against the Premises and Improvements and coming due during the Term, now or hereafter located thereon associated with the ownership, which are required, pursuant to the above referenced sections, to be paid by Lessor. In no event shall Impositions include any personal or corporate income or franchise taxes imposed upon Lessee, or other taxes imposed on the income or revenues from the operation of the Premises or other activities of Lessee.

(l) Improvements. All buildings, structures, improvements and other real and personal property associated therewith from time to time situated on the Premises.

(m) Insurance Trustee. An institutional lender with offices located in the State of New York, proposed by Lessee and reasonably satisfactory to

Lessor, which agrees to serve as the Insurance Trustee for purposes of this Lease on terms reasonably satisfactory to Lessor and Lessee.

(n) Land. Those certain tracts of land underlying the Premises.

(o) Lease. This Lease Agreement by and between Lessor, as lessor and licensor, and Lessee, as lessee and licensee, covering the Leased Premises and Licensed Premises.

(p) Lease Year. Each calendar year during the Term of this Lease, with the first Lease Year being the partial year beginning on the Commencement Date and ending on December 31 of the year in which the Commencement Date occurs, and the final Lease Year expiring on the Expiration Date.

(q) Leased Premises. The Land, together with all present and future improvements on the Land, including, without limitation, rights, privileges, easements and appurtenances benefiting, belonging to or in any way appertaining thereto, including, but not limited to, (i) any and all rights, privileges, easements and appurtenances of Lessor as the owner of fee simple title to the Land now or hereafter existing in, to, over or under adjacent streets, parking lots, sidewalks, alleys and property contiguous to the Land, and (ii) any and all strips and gores relating to the Land, commonly referred to as the Belmont Park, New York, all as more particularly described on Exhibit A attached hereto, less and except the Licensed Premises.

(r) Legislation. As defined in the Recitals.

(s) Lessee. As defined in the Recitals.

(t) Lessor. As defined in the Recitals.

(u) Licensed Premises. The property more particularly described on Exhibit B hereto, as amended from time to time pursuant to the terms of Article X of this Lease.

(v) Person. A corporation, an association, a partnership (general or limited), a limited liability company, a joint venture, a limited liability partnership, a private company, a public company, a limited life public company, a trust or fund (including but not limited to a business trust), an organization or any other legal entity, an individual or a government or any agency or political subdivision thereof.

(w) Premises. The Leased Premises and the Licensed Premises (subject to amendment pursuant to the terms of this Lease) taken together. For avoidance of doubt, at any given time, the Premises shall include the Leased Premises and only such portion of the Licensed Premises as shall, at the time in question, be subject to the License (i.e., as to which the Parcel Termination Date has not occurred).

(x) Rental. The rent payable during the Term.

(y) Requirements. All applicable laws, rules, regulations or other legal requirements enacted by a governmental authority having jurisdiction over the Premises or the operations or the activity at the Premises, including, but not limited to, the protection of the environment.

(z) State. The People of the State of New York.

(aa) Sublessee. Any permitted sublessee or user under Section 7.2 of this Lease.

(bb) Term. The term of this Lease as provided in Section 1.3 of this Lease.

## ARTICLE II

### Rental

2.1 Base Rental. Lessee shall pay to Lessor the Base Rental for the Premises in an amount equal to One Dollar (\$1.00) per annum, which Base Rental has been paid in full for the entire Term, in advance, on the date hereof (the "Base Rental"). Notwithstanding the foregoing, Lessee shall pay other charges and costs due under this Lease as additional rent throughout the term of this Lease.

## ARTICLE III

### Impositions and Utilities

3.1 Payment of Impositions. Lessor shall be solely responsible for the payment of all Impositions before the same become delinquent. Lessee agrees to cooperate with Lessor in seeking the delivery of all notices of Impositions to Lessor directly from the applicable taxing authorities. Lessor shall be entitled to contest the amount or validity of any Impositions, at Lessor's expense; provided that such contest does not materially adversely affect Lessee's use of and operations upon the Premises.

3.2 Additional Charges and Utilities. Lessee shall be solely responsible to pay all charges when due for (i) Additional Charges and (ii) utilities furnished to the Premises, including, but not limited to, electricity, gas, heat, light and power, telephone and any and all other services and utilities furnished to the Premises (the "Utilities"), including, without limitation, charges for Additional Charges and Utilities incurred prior to the Commencement Date. Lessee may, at Lessee's sole cost and expense, dispute and contest any and all charges for Additional Charges and Utilities for which Lessee is responsible for payment, provided there is no danger of an imminent threat of Lessor losing title to the Premises. If there is the threat of the Premises becoming subject to any lien, encumbrance or charge, Lessor may require Lessee to deposit with Lessor a surety bond issued by a surety company of recognized

responsibility, guaranteeing and securing payment in full of such charges for Additional Charges or Utilities.

3.3 Operating Expenses. Lessee shall be solely responsible for the payment of all operating expenses for the Premises, including without limitation repair and maintenance charges, insurance charges, and all other charges incurred in connection with the operation of the Premises pursuant to this Lease (the "Operating Expenses").

#### ARTICLE IV

##### Improvements and Alterations

##### 4.1 Improvement Rights and Alterations; Capital Plan.

(a) Subject to Lessor's right to terminate the License and recapture the Licensed Premises pursuant to Article 10 hereof, Lessee shall have the right, subject to the restrictions imposed by the Legislation, the Franchise Agreement and the applicable Requirements, to develop, redevelop, refurbish, renovate or make such other improvements, capital expenditures or otherwise ("Alterations"), to the Premises and the fixtures and improvements thereon, as shall be necessary or desirable for the operation of the Premises for the uses permitted under this Lease and the Franchise Agreement.

(b) Intentionally Omitted.

(c) Lessee has heretofore delivered to Lessor, and Lessor, concurrently with the execution of this Lease, hereby approves, a five-year capital expenditure plan (the "Capital Plan") setting forth in reasonable detail the capital expenditures and the budgeted costs therefor which Lessee proposes to make with respect to the Leased Premises for the Lease Years 2008-2013. Lessee shall be entitled to perform all Alterations which are set forth in an approved Capital Plan, without further approval from Lessor. If Lessee desires to perform any Alterations which are not set forth in an approved Capital Plan, Lessee shall obtain the prior written consent of Lessor, not to be unreasonably withheld or delayed, to such Alterations, unless such Alterations (y) will not, in the good faith estimation of Lessee's architect or engineer, cost more than \$100,000 to complete and (z) do not affect any structural elements or building systems of the Improvements which, in the case of (y) and (z) above, Lessor's prior written consent shall not be required.

(d) Prior to performing any proposed Alterations to which Lessor's consent has been obtained, including those set forth in an approved Capital Plan, Lessee shall, at Lessee's expense, procure and maintain in its possession: (w) detailed plans and specifications for such Alterations, (x) a construction budget setting forth the cost to perform and complete such Alterations, (y) insurance certificates from all Contractors evidencing the insurance coverages required under this Lease and (z) all permits, approvals and certifications required by any governmental authorities having

jurisdiction over the Premises. Upon completion of any Alterations, Lessee shall obtain any certificates of final approval of such Alterations required by any governmental authority, together with the "as-built" plans and specifications for such Alterations (together, the "Completion Documents"). Upon Lessor's request, Lessee shall promptly provide to Lessor, in hard copy or electronic form (as Lessor may request), any or all of the documents required to be obtained under this Section 4.1(d), including the Completion Documents upon completion of the Alteration.

(e) All Alterations shall be made and performed, in all material respects, in accordance with the plans and specifications therefor submitted to Lessor, as same may be modified from time to time. All Alterations shall be made and performed in a good and workmanlike manner, using materials substantially similar in quality to the existing materials at the Premises, and in compliance with all applicable Requirements, as well as requirements of insurance bodies having jurisdiction over the Premises. No Alterations shall impair the structural integrity or soundness of any Improvements.

(f) All Alterations made by Lessee shall become the property of Lessor upon the expiration of the Lease. Throughout the Term of this Lease, to the extent permitted under the applicable tax laws, rules and regulations, Lessee shall have the sole and exclusive right to take depreciation of all Alterations made by Lessee to the Premises.

4.2 Easements and Dedications. In order to maintain and/or improve the Premises, it may be necessary or desirable that street, water, sewer, drainage, gas, power lines, set back lines, and other easements, and dedications and similar rights be granted or dedicated over or within portions of the Premises by plat, replat, grant, deed or other appropriate instrument. Lessor shall, within thirty (30) days following written request by Lessee to Lessor, and to the extent reasonably necessary as fee owner of the Premises, join with Lessee in executing and delivering such documents, as may be appropriate or reasonably required for the future improvement of the Premises.

4.3 Zoning. In the event that Lessee deems it necessary or appropriate to obtain use, zoning, site plan approval or any permit from the appropriate governmental entity having jurisdiction over the Premises, or any part thereof, Lessor shall, within thirty (30) days following written request by Lessee to Lessor, and to the extent reasonably necessary as fee owner of the Premises, execute such document, or join in such petitions, applications and authorizations as may be appropriate or reasonably required by Lessee, and cooperate in good faith with Lessee in any such reasonable efforts.

4.4 Indemnification for Mechanics' Liens. Lessee will pay or cause to be paid all costs and charges for work performed by Lessee or caused to be performed by Lessee in or to the Premises. Lessee will indemnify Lessor against, and hold Lessor and the Premises free, clear and harmless of and from, any and all vendors', mechanics', laborers', or materialmans' liens and claims of liens, and all other liabilities, liens, claims

and demands on account of such work by or on behalf of Lessee. If any such lien, at any time, is filed against the Premises, or any part thereof, on account of work performed or caused to be performed by Lessee in or to the Premises, Lessee will cause such lien to be discharged of record within forty-five (45) days after Lessee has received actual notice of the filing of such lien. If Lessee fails to pay any charge for which a mechanic's lien has been filed, and has not discharged same of record as described above, Lessor may, at its option, upon ten (10) days' prior written notice to Lessee and in addition to exercising any other remedies Lessor has under this Lease on account of a default by Lessee, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with the removal of such lien, will be immediately due from Lessee to Lessor.

## ARTICLE V

### Use of the Premises

5.1 Permitted Uses. Lessee's use of the Premises shall be primarily for the management and operations of all functions as may be necessary or appropriate to conduct racing, racing operations, pari-mutuel and simulcast wagering (collectively, "Uses"), together with various activities related thereto, including without limitation, live wagering and retail, food, beverage, trade expositions and entertainment facilities, racing, equestrian, social and community activities, and other uses and activities historically conducted on the Premises (collectively, "Ancillary Uses" and, taken together with the Uses, the "Permitted Uses") at or with respect to the Premises, subject to and in compliance with the provisions of the Franchise Agreement, applicable Requirements including without limitation the Legislation, and any Certificates of Occupancy for the Premises. Lessee shall not conduct, manage or otherwise operate VLT Operations at the Premises.

### 5.2 Compliance with Laws.

(a) Lessee shall use, operate and maintain the Premises and the Improvements situated thereon in compliance with all applicable laws, regulations or ordinances of the United States, the State of New York, the City of New York or other lawful authority having jurisdiction over the Premises, as applicable (collectively, "Requirements").

(b) Lessee shall have the right to contest the validity, enforceability or applicability of any Requirements applicable to the Land, Building and Improvements constituting the Premises and Improvements, provided that there is no danger of an imminent threat of Lessor losing title to the Premises or criminal liability to Lessor. During such contest, compliance with any such contested Requirements may be deferred by Lessee; provided, however, that Lessee shall promptly comply with the final determination of any such contest. If non-compliance (x) shall result in a lien being filed against the Premises or (y) may reasonably be expected (in Lessor's reasonable

judgment) to result in civil liability to Lessor, Lessor may require Lessee to deposit with Lessor a surety bond issued by a surety company of recognized responsibility guaranteeing and securing the payment in full of such lien. Prior to instituting such proceeding, Lessee shall provide notice to the Attorney General of the State of New York, which may choose to be a party in such contest. Any such proceeding instituted by Lessee shall be commenced as soon as is reasonably possible after the issuance of any such contested matters, or after actual notice to Lessee of the applicability of such matters to the Premises, and shall be prosecuted with reasonable dispatch. In the event that Lessee shall institute any such proceeding, Lessor shall cooperate with Lessee in connection therewith, and Lessee shall be responsible for the reasonable and actual out-of-pocket costs and expenses incurred by Lessor in connection with such cooperation.

5.3 Maintenance and Repairs. Lessee shall perform all maintenance, repair and upkeep of the Premises, including the Improvements thereon, so as to keep the same in good order and repair in compliance with all Requirements (subject to Lessee's right to contest pursuant to Section 5.2(b)). The costs of such maintenance shall be borne solely by Lessee.

5.4 Disposition of Personal Property. Lessee shall have the right to dispose of any personal property or Alterations during the term of this Lease in the ordinary course of business, but Lessee agrees that it will not purposefully remove any such personal property or Alterations to circumvent the intent that the same shall become the property of Lessor at the end of the Term and Lessee further agrees that it shall replace any such personal property or Alterations to the extent they are required to conduct racing operations. Notwithstanding the foregoing, the Art Work may not be disposed of by Lessee without the prior written consent of Lessor, which consent Lessor may withhold in its sole discretion.

## ARTICLE VI

### Insurance

#### 6.1 Insurance.

(a) Lessee, throughout the Term, or as otherwise required by this Lease, shall obtain and maintain Insurance, in full force and effect, from an insurance company licensed or authorized to do business in the State of New York, in accordance with the terms, coverages and requirements set forth in Exhibit E attached hereto.

## ARTICLE VII

### Assignment and Subletting

7.1 Assignment. Lessee may, subject to the prior written approval of Lessor as required by Section 138 of the State Finance Law and the receipt of all required governmental approvals in connection with any assignment of Lessee's rights and

obligations under the Franchise Agreement, assign (or sublease, license or otherwise transfer) to any party to which the Franchise is assigned, Lessee's leasehold interest granted to Lessee under this Lease, in whole only. It is understood and agreed that Lessee's interest in the Lease may only be assigned or transferred to a party in which the Franchise is being assigned and which party shall hold the Franchise at the time of assignment, or any successor thereto. Upon any such assignment, the assignee shall execute and deliver to Lessor a written assumption, in form and substance satisfactory to the Lessor in its reasonable judgment, of all of the obligations of Lessee under this Lease. Lessee shall be released from any obligations arising under this Lease which accrue from and after such an assignment, but not those accruing prior to the date of such assignment. For purposes of this Section 7.1, approval of the Franchise Oversight Board of an assignment of the Franchise Agreement shall be deemed to constitute approval by the Lessor of Lessee's assignment of this Lease.

7.2 Concessions, Subletting and Licensing. (a) Lessee shall have the right from time to time, with the prior written consent of Lessor to the extent required by the Legislation (including without limitation Section 206 thereof), to grant concessions at the Leased Premises as Lessee may deem proper for the conduct at the Premises of Ancillary Uses as permitted in Section 5.1 hereof ("Concessions"). All Concessions shall be entered into in compliance with the Legislation (including, without limitation, Section 208-6 thereof), and other Requirements. Agreements for the operation of Concessions may, at the election of Lessee, be in the form of subleases, licenses or concession agreements; provided, that no subletting or licensing shall relieve Lessee of any of its obligations under the Lease, and all Concessions, whether in the form of subleases, licenses or concession agreements, shall be strictly subject and subordinate to the terms and provisions of this Lease.

(b) Other than with respect to the grant of Concessions, Lessee may not sublet all or any portion of the Premises without the prior written consent of Lessor, in Lessor's sole discretion, as required by Section 138 of the State Finance Law and the receipt of all required governmental approvals in connection with any sublease or transfer. Notwithstanding anything to the contrary contained herein, (x) the stabling of horses belonging to third parties shall not constitute a sublease under the terms of this Lease, (y) the Childcare Sublease shall not be subject to the general subleasing prohibition set forth in this Section 7.2 and Lessor hereby consents to such Childcare Sublease and (z) those subleases set forth on Exhibit F hereto (the "Permitted Subleases") shall not be subject to the general subleasing prohibition set forth in this Section 7.2 and Lessor hereby consents to the Permitted Subleases. In addition to the foregoing, Lessee shall also have the right to enter into any sublease or occupancy agreement with The New York Thoroughbred Breeders Inc., The New York Thoroughbred Horsemen's Association (or such other entity as is certified and approved pursuant to Section 228 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law, as amended), The New York State Racing and Wagering Board, The New York State Department of Taxation and Finance, and with any governmental authorities, agencies, boards or

regulators of the State, with the prior written consent of Lessor, such consent not to be unreasonably withheld, conditioned or delayed.

7.3 General Provisions. Lessee shall, in connection with any Concession, whether or not Lessor's consent is required thereto, provide written notice to Lessor of the name, legal composition and address of any Concessionaire, together with a complete copy of the agreement under which such Concession is granted, and a description of the nature of the Concessionaire's business to be carried on in the Premises.

7.4 Transfer by Lessor of the Premises. Lessor and Lessee acknowledge and agree that certain benefits accrue to Lessor and Lessee by virtue of Lessor's ownership of fee title to the Premises and that such benefits are material inducements to Lessor and Lessee to enter into this Lease. Accordingly, Lessor covenants and agrees that, during the Term of this Lease and any renewals or extensions thereof, and prior to the termination of this Lease, whether through expiration of the Term or the earlier termination thereof pursuant to a right to so terminate this Lease, it will at all times own and hold title to the Premises, as encumbered by this Lease, for the benefit of and on behalf of the State in accordance with the Legislation, and further covenants and agrees that it will not, if and to the extent prohibited by the Legislation, sell, transfer or otherwise convey all or any portion of the Premises to any Person or entity, other than an agency, division, subdivision or department of the State of New York, or a public benefit corporation, local development corporation, municipal corporation or public authority constituting a political subdivision of the State of New York.

## ARTICLE VIII

### Leasehold Mortgages/Subordination

8.1 Lessor's Consent to Leasehold Mortgage. Lessee shall have the right, subject to the prior written consent of Lessor as provided in the Legislation, to mortgage or encumber this Lease and Lessee's interest in the Premises and/or any improvements made and owned by Lessee and/or in Lessee's personal property, furniture, fixtures and equipment. In no event shall Lessee's mortgage encumber or affect Lessor's fee title to the Land or Improvements. Each mortgage of Lessee's interest shall provide that the terms and conditions of this Lease, and Lessor's title to the Improvements at the expiration of this Lease, remains superior, and any mortgage of Lessee's interest is subordinate to the rights of Lessor hereunder.

## ARTICLE IX

### Default of Lessee

9.1 Non-Revocation Events of Default. The following events shall each constitute a "Non-Revocation Event of Default" under this Lease:

(a) Monetary Defaults. Failure on the part of Lessee to pay Rental or any other sums and charges when due to Lessor hereunder and the continuation of such failure for thirty (30) days after written notice to Lessee.

(b) Nonmonetary Defaults. Failure on the part of Lessee to perform any of the terms or provisions of this Lease other than the provisions (x) requiring the payment of Rental and (y) breach of which would give rise to the revocation of the Franchise Agreement pursuant to the terms thereof, and the continuation of such failure for thirty (30) days after written notice to Lessee, provided that if the default is of such character as to require more than thirty (30) days to cure, if Lessee shall fail to commence curing such default within thirty (30) days following Lessor's notice and thereafter fail to use reasonable diligence in curing such default.

9.2 Remedies for Non-Revocation Event of Default. If a Non-Revocation Event of Default shall occur, Lessor shall be entitled, at Lessor's election, to exercise any remedies available at law or in equity on account of such Non-Revocation Event of Default, including without limitation to bring one or more successive suits for monetary damages and/or specific performance, but Lessor shall not be entitled to terminate this Lease and remove Lessee from possession of the Premises. In addition to the foregoing, Lessor may undertake to cure such Non-Revocation Event of Default for the account of and at the cost and expense of Lessee, and the full amount so expended by Lessor (with interest accruing at the Default Rate) shall immediately be owing by Lessee to Lessor.

9.3 Revocation of Franchise Agreement. Notwithstanding anything in this Lease to the contrary, if Lessee's Franchise shall be duly revoked pursuant to Racing Law §§ 244 and 245, then this Lease shall be deemed automatically, without further notice or legal action, terminated as of the date of such Franchise revocation, and Lessor shall have the right, at Lessor's election, to exercise any of the remedies set forth in Section 9.4 of this Lease which are applicable following termination of the Lease. Lessee shall have the right to remain in possession of the Premises for a period of not more than thirty (30) days following the termination of the Lease, solely for the purposes of orderly vacating the Premises in the condition required by this Lease, TIME BEING OF THE ESSENCE to the obligation of Lessee to vacate the Premises as provided in this Lease no later than the thirtieth (30<sup>th</sup>) day following Lease termination.

9.4 Lease Termination Following Revocation of Franchise Agreement.

(a) If this Lease shall be terminated as provided in Section 9.3, Lessor, without notice, may re-enter and repossess the Premises using such force for that purpose as may be necessary and permissible pursuant to applicable laws, without being liable for indictment, prosecution or damages therefor and may dispossess Lessee by summary proceedings or otherwise.

(b) No termination of this Lease pursuant to Section 9.3, or taking possession of or reletting the Premises or any part thereof, shall relieve Lessee of its liabilities and obligations under this Lease arising prior to the date of termination.

9.5 No Waiver. No failure by Lessor to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition, unless Lessor agrees in writing to waive such breach at the time of its occurrence or anytime thereafter. No covenant, agreement, term or condition of this Lease to be performed or complied with by Lessee, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease still continue in full force and effect with respect to any other then existing or subsequent breach thereof.

9.6 Remedies Cumulative. All amounts expended by Lessor to cure any default or to pursue remedies hereunder shall be paid by Lessee to Lessor upon demand and shall be in addition to the Rentals otherwise payable hereunder. Each right and remedy of Lessor provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE X

Recapture of Real Estate Development Parcels

10.1 Conditions of Recapture.

(a) From time to time during the term of this Lease, Lessor shall have the right to terminate Lessee's License as to, and to recapture for lease, license and/or sale (together, a ("Transfer")), in accordance with the provisions set forth below, to a third party entity or entities selected in accordance with Section 2.13(b) of the

Franchise Agreement (collectively, the "Phase II Developer") for development, one or more of those portions of the Licensed Premises (such recaptured portion, the "Real Estate Development Parcels", and each, individually, a "Real Estate Development Parcel"), for development as set forth below (the "Phase II Development") in a manner which satisfies the conditions set forth in Section 2.13(b) of the Franchise Agreement and Article 10 of this Lease, provided, that a precondition to any sale shall be that the Real Estate Development Parcel being sold shall be subdivided from the Premises for purposes of real estate taxes and legal ownership at no cost to Lessee. In furtherance of the foregoing, (i) the parking lot included as a Real Estate Development Parcel to the south of Hempstead Turnpike (set forth in Exhibit G-1) (the "Hempstead Parcel") may be so recaptured by Lessor and Transferred to any Phase II Developer as part of the Phase II Development for retail, hotel, entertainment or any other uses or facilities and (ii) the parking lot included as a Real Estate Development Parcel adjacent to the Long Island Railroad train station (set forth in Exhibit G-2) (the "Train Station Parcel") may only be recaptured by the State for the express purpose of being leased or licensed to a Phase II Developer as part of a Phase II Development for the operation by an operator (the "VLT Operator") of video lottery gaming terminals (the "VLT Operations"), and/or hotel, resort and spa facilities or, for any other use that is complementary to horse racing and pari-mutuel wagering. Lessor shall notify Lessee, in writing, at least thirty (30) days prior to the date of its intended recapture (the "Preview Period") and, at such time, deliver to Lessee such information, including, but not limited to, site development and construction plans, specifications, schedules, reports, contracts, agreements, surveys and such other documentation (the "Phase II Development Documentation"), as shall be in the possession of Lessor in order to allow Lessee to determine the nature, scope, design and conformity of such Phase II Development to the Phase II Development Requirements (defined below). Lessor agrees that the Phase II Development shall not interfere in any material respect with Lessee's Permitted Uses of the Leased Premises, except in accordance with Sections 10.2 (c) and (d) of the Phase II Development Requirements. Upon recapture of an applicable Real Estate Development Parcel, the Leased Premises shall no longer include such applicable Real Estate Development Parcel and Lessee shall have no further rights of use or occupancy therein, or further payment, maintenance or other obligations in connection therewith, except as expressly provided herein.

(b) As an express condition to a Phase II Development, Lessor agrees that (i) if any Real Estate Development Parcel is Transferred to a Phase II Developer, Lessor shall enter into an agreement with the Phase II Developer that is recorded, in order to bind all future owners to the Real Estate Development Parcel, in the appropriate land records that provides (w) no Real Estate Development Parcel may be used for pari-mutuel or simulcast wagering or horse racing, (x) Phase II Developer shall not and shall not allow any tenant or licensee to sell or lease signage or advertising space on or about the Real Estate Development Parcel to competitors of Lessee or erect sponsorship signage which relates to racing operations in or on any area of the Real Estate Development Parcel, (y) Phase II Developer shall not and shall not allow any tenant or licensee to interfere in any material way with Lessee's Permitted Uses of the Leased Premises, except in accordance with the Phase II Development Requirements; and

(z) Phase II Developer shall keep the roadways depicted on Exhibit G-3 attached hereto within the Hempstead Parcel property insured, maintained and open (except in the case of an emergency) for the use of Lessee, in conjunction with Phase II Developer, and their respective tenants, licensees and invitees, and (ii) if the Hempstead Parcel is sold to a Phase II Developer, the deed conveying title to the Hempstead Parcel shall contain all of the provisions set forth in (w), (x),(y) and (z) above which shall run with the land.

10.2 Phase II Development. In the event Lessor shall elect to develop, or permit a Phase II Developer to develop, the Phase II Development on one or more Real Estate Development Parcels, Lessor shall, and shall require Phase II Developer to, comply with the following requirements, which shall be collectively defined as the "Phase II Development Requirements":

(a) Compliance with Franchise Agreement. Lessor shall have complied, and continue to comply, with the requirements contained in Section 2.13(b) of the Franchise Agreement applicable to Lessor.

(b) Development Costs. Lessee shall not be required to incur any costs in connection with the development and construction of the Real Estate Development Parcels.

(c) Timing, Noise and Interference During Initial Construction. Lessor acknowledges that, due to the presence of horses on the Premises, the Premises should not be subjected to excessive noise to the extent commercially practicable. Lessee acknowledges that the construction of the Phase II Development will inherently create noise and disruption. Lessor therefore agrees that it will take appropriate measures to minimize the likelihood and extent of interference with horse racing, training and stabling of horses. In particular, the initial construction of the Phase II Development or any part thereof (the "Initial Phase II Construction") which could reasonably be expected to interfere with racing, training and stabling of horses shall, to the extent commercially practicable, be conducted at such times and in such manner so as to minimize the likelihood of any such interference, but neither Lessor or the Phase II Developer shall be obligated to incur any additional overtime costs in order to minimize noise and disruption on the Property. In order to cooperate and to assist with the compliance of this provision, at such time as there is any construction work or any other activity scheduled that is reasonably likely to interfere with racing, training and stabling of horses, the Parties shall establish a procedure of coordination with each other in order to make each other aware of such potential disruption so that the Parties can take appropriate action. Lessor agrees that it will take appropriate measures to minimize the likelihood and extent of interference with Lessee's and its employees', customers' and invitees' use and occupancy of the Premises, including parking, as a result of the development and construction of the Phase II Development, including, without limitation, the staging of all construction related vehicles and equipment and the storing of construction materials and supplies.

(d) Timing, Noise and Interference Other Than During Initial Construction. Other than during Initial Phase II Construction, which is covered by subparagraph 10.2(c) above, Lessee and Lessor each agree and Lessor shall require any Phase II Developer to agree that each party shall conduct or permit the conduct of its respective permitted uses in a manner that does not interfere in any material respect with the other party's operations within the Premises or the Real Estate Development Parcels. Other than during the Initial Phase II Construction, to the extent that either Lessee, Lessor or Phase II Developer engages in an activity that is reasonably likely to cause interference in any material respect with another party's operations (an "Impact Activity"), each party engaging in the activity shall provide, or Lessor shall require Phase II Developer to provide, to the other party or parties, as applicable, with five (5) business days notice of its intention to engage in such Impact Activity (the "Impact Notice"). In the event that a party (the "Objecting Party") objects to another party's (the "Non-Objecting Party") Impact Activity, the Objecting Party shall have two (2) business days from the date of receipt of the Impact Notice in question to object thereto, provided that, if the Objecting Party shall not object within such two (2) business days, the Objecting Party shall be deemed to have no objection thereto. In the event that the Objecting Party does object to a particular Impact Activity, the Objecting Party and the Non-Objecting Party shall cooperate in good faith to determine a date and time during which the Non-Objecting Party may engage in the applicable Impact Activity (such date not to be more than ten (10) days subsequent to Objecting Party's receipt of the Impact Notice). Notwithstanding the foregoing, nothing contained in this Paragraph 10.2(d) shall be construed to require any party to incur overtime costs or incur other extra expense.

(e) Parking. Lessor acknowledges that adequate parking is essential to the success of Lessee's operations and that the number of parking spaces provided for Lessee's use, after the Phase II Development, must take into account all of the uses at the Belmont Racetrack Premises. Lessor also acknowledges that, on the days of the running of the Belmont Stakes and the Breeder's Cup (collectively, "Peak Days"), Lessee requires all of the parking available at the Belmont Racetrack Premises (the "Peak Parking Days"). Upon the recapture of a Real Estate Development Parcel, Lessee agrees that it shall not utilize any parking located on the Real Estate Development Parcels (the "Phase II Development Parking") other than on Peak Parking Days. On Peak Parking Days, Lessee shall be entitled to utilize the Phase II Development Parking in common with the Phase II Developer and its customers and invitees, at no greater charge to Lessee and its employees, customers and invitees than is charged to the customers and invitees of the Phase II Developer.

(f) Trade and Union Workers. Lessee currently employs union workers on the Premises, including but not limited to plumbers, laborers, carpenters, heavy equipment workers and window washers. Since the union workers will continue to work at the Premises and during and after the Phase II Development (hereinafter defined), Lessor and Lessee agree that, in order to prevent strife between and among competing union workforces, Lessor shall require Phase II Developer and its employees and Contractors to work harmoniously with such union workforces and Lessee and its

employees and Contractors shall work harmoniously with Phase II Developer union workforces. Any issues arising in connection with competing jurisdictions within the Premises and Real Estate Development Parcels between Lessee's union workforces and Phase II Developer's union workforces shall be resolved pursuant to union grievance procedures, insofar as the same are permissible under State law.

(g) Standards. Lessor shall use reasonable efforts to ensure that the Phase II Developer keeps the Phase II Development Parking in good order and repair, properly drained, and properly striped to designate parking spaces. Lessor shall require the Phase II Developer to be keep the Phase II Development Parking open and reasonably illuminated from sunset until at least 10:00 p.m. on Peak Days.

## ARTICLE XI Casualty Restoration

11.1 Notice of Damage. If all or any part of any of the Premises shall be destroyed or damaged in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen (a "Casualty"), Lessee, upon actual knowledge of the occurrence of such Casualty, shall give to Lessor prompt notice thereof.

### 11.2 Obligation to Restore.

(a) Lessee Obligation to Restore. In the event of a Casualty, Lessee shall be obligated to repair, alter, restore, replace and rebuild (collectively, "Restore" and the act of Restoring, a "Restoration") the Premises, as nearly as possible equal to the condition, quality, character and class of the Premises existing immediately prior to such occurrence. Notwithstanding the foregoing, Lessee, with the consent of Lessor, not to be unreasonably withheld, conditioned or delayed, may Restore the Premises with such changes and modifications that Lessee may deem desirable in the exercise of its sound business judgment, for use for racing operations and to accommodate the Permitted Uses; it being agreed that Lessee shall not be required to rebuild such facilities that Lessee deems are no longer useful or necessary for the continued operation of racing at the Premises (the "Unnecessary Facilities") and accordingly that withholding, conditioning or delaying consent for failure to rebuild the Unnecessary Facilities will be deemed unreasonable. Provided that Lessee's Property Insurance at the time of a Casualty is in full force and effect and is in compliance with the requirements of this Lease, including policy limits equal to the full replacement cost of the Improvements, Lessee shall not be obligated or required to expend any funds in connection with a restoration (x) in excess of the Insurance Proceeds, plus (y) the deductible amount under Lessee's Property Insurance.

(b) No Obligation of Lessor to Restore. Lessor shall have no obligation to Restore the Leased Premises.

### 11.3 Restoration Funds.

(a) In the event of a Restoration which is subject to Section 11.2(a) and which cost thereof is to exceed \$1,000,000, Lessee shall cause to be deposited with the Insurance Trustee all proceeds of Lessee's Property Insurance, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (hereinafter referred to as the "Insurance Proceeds"). Prior to commencing any Restoration, Lessee shall furnish Lessor with an estimate of the cost of such Restoration, prepared by an independent licensed professional engineer or registered architect selected by Lessee and reasonably approved by Lessor (the "Approved Engineer"). The Insurance Proceeds shall be applied by the Insurance Trustee to the payment of the cost of the Restoration, and shall be paid to, or for the account of, Lessee from time to time, as the Restoration progresses, but not more frequently than once in any calendar month. Said Insurance Trustee shall make such payments upon written request of Lessee accompanied by the following:

(i) a certificate, dated not more than fifteen (15) days prior to such request, signed by Lessee and by an architect in charge of the Restoration who shall be selected by Lessee and reasonably satisfactory to Lessor setting forth that:

(A) the sum then requested either has been paid by Lessee or is justly due to contractors, subcontractors, materialmen, architects or other persons who have rendered services or furnished materials in connection with the Restoration, giving a brief description of the services and materials and the several amounts so paid or due and stating that no part of such sum has been made the basis for a withdrawal of Insurance Proceeds in any previous or then pending request or has been paid out of any Insurance Proceeds received by Lessee, and that the sum requested does not exceed the value of the services and materials described in the certificate.

(B) the cost, as estimated by the persons signing such certificate, of the Restoration remaining to be done subsequent to the date of such certificate, does not exceed the amount of Insurance Proceeds remaining deposited with the Insurance Trustee after the payment of the sum so requested; and

(ii) a certificate dated not more than fifteen (15) days prior to such request of a reputable national title company then doing business in the State of New York, covering the period from the date of this Lease to the date of such certificate, setting forth that there are no liens or encumbrances of record of any kind on the Premises or Lessee's interest therein other than those that Lessee is contesting in good faith, those permitted by the terms of this Lease, and except such as will be discharged by payment of the amount then requested.

(b) Upon compliance with the foregoing provisions of this Section 11.3, the Insurance Trustee shall, out of such Insurance Proceeds, pay or cause to be paid to Lessee or to the Persons named in the certificate, the respective amounts stated therein to have been paid by Lessee or to be due to said Persons, as the case may be. All sums so paid to Lessee and any other Insurance Proceeds received or collected by or for the account of Lessee, and the right to receive the same, shall be held by Lessee in trust for the purpose of paying the cost of the Restoration.

(c) When the Insurance Trustee shall receive evidence satisfactory to it of the character required by subparagraph (a) of this Section 11.3 and that the Restoration has been completed and paid for in full and that there are no liens of the character referred to herein, the Insurance Trustee shall pay any remaining balance of the Insurance Proceeds to Lessee, unless Lessor has notified the Insurance Trustee that there has been a Non-Revocation Event of Default by Lessee under this Lease, in which case the Insurance Trustee shall refrain from paying to Lessee any remaining balance of the Insurance Proceeds until the Insurance Trustee shall have received (i) notice from Lessor that the Non-Revocation Event of Default has been cured (which Lessor shall give to Insurance Trustee within fifteen (15) Business Days from the date of determination), or (ii) notice from Lessee or Lessor of an official determination by a court of competent jurisdiction that there was no such Non-Revocation Event of Default by Lessee under this Lease as claimed by Lessor. Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, Lessor hereby agrees to indemnify Lessee for any claims against Lessee and for any loss, cost or expense incurred by Lessee by reason of Lessor claiming a Non-Revocation Event of Default causing the Insurance Trustee to withhold the Insurance Proceeds and preventing Lessee from making payments when due, where a court of competent jurisdiction makes an official determination that there was no such Non-Revocation Event of Default by Lessee under this Lease.

(d) It is expressly understood that the requirements under this Article XI are for the benefit only of Lessor, and no contractor or other person shall have or acquire any claim against Lessee as a result of any failure of Lessee actually to undertake or complete any Restoration or to obtain the evidence, certifications and other documentation provided for herein.

11.4 No Termination or Abatement. This Lease shall not terminate or be forfeited or be affected in any manner by reason of damage to or total, substantial or partial destruction of any of the Building or any part thereof or by reason of the untenability of the same or any part thereof, for or due to any reason or cause whatsoever, and Lessee, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender any part of the Premises. It is the intention of Lessor and Lessee that the foregoing is an “express agreement to the contrary” as provided in Section 227 of the Real Property Law of the State of New York.

## ARTICLE XII

### Representations, Warranties and Special Covenants

#### 12.1 Lessor's Representations, Warranties and Special Covenants.

Lessor hereby represents, warrants and covenants as follows:

(a) Existence. Lessor has been established and exists pursuant to the Legislation.

(b) Authority. Pursuant to the Legislation, Lessor has all requisite power and authority to own its property and the Premises, effectuate its mandate, enter into this Lease and consummate the transactions herein contemplated, and by proper action in accordance with all applicable law has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Lease will be a valid obligation of Lessor and is binding upon Lessor in accordance with its terms once approved by the applicable state authorities.

(d) No Defaults. The execution by Lessor of this Lease and the consummation by Lessor of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or a condition which upon notice or lapse of time or both would ripen into a default under the Legislation, which constitutes the articles of organization of Lessor, or under any resolution, indenture, agreement, instrument or obligation to which Lessor is a party or by which the Premises or any portion thereof is bound; and does not to the knowledge of Lessor, constitute a violation of any order, rule or regulation applicable to Lessor or any portion of the Premises of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessor or any portion of the Premises.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities, other than those that have already been obtained, is required in order for Lessor to enter into this Lease, make the agreements herein contained, other than those which have been obtained.

(f) Quiet Enjoyment. So long as the Franchise Agreement is in full force and effect, Lessee shall have the quiet enjoyment and peaceable possession of the Premises during the Term of this Lease, against hindrance or disturbance of any person or persons whatsoever claiming by, through or under Lessor.

(g) Proceedings. To the knowledge of Lessor, there are no actions, suits or proceedings pending or threatened in writing against Lessor which would, if successful, prevent Lessor from entering into this Lease or performing its obligations hereunder.

(h) Limitations. Except as otherwise expressly provided herein, this Lease is made by Lessor without representation or warranty of any kind, either express or implied, as to the condition of the Premises, title to the Premises, its merchantability, its condition or its fitness for Lessee's intended use or for any particular purpose and all of the Premises is leased on an "as is" basis with all faults.

12.2 Lessee's Representations, Warranties and Special Covenants.  
Lessee hereby represents, warrants and covenants as follows:

(a) Existence. Lessee is a not-for-profit racing corporation incorporated pursuant to Section 402 of the Not-for-Profit Corporation Law of the State of New York, as authorized by Chapter 18 of the Laws of 2008, validly existing and in good standing under the laws of the State of New York and its adopted and currently effective articles of incorporation.

(b) Authority. Lessee has all requisite power and authority to own its property, operate its business, enter into this Lease and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligations. This Lease constitutes a valid and legally binding obligation of Lessee and is enforceable against Lessee in accordance with its terms.

(d) No Defaults. The execution by Lessee of this Lease and the consummation by Lessee of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or a condition which upon notice or lapse of time or both would ripen into a default under the Legislation, the articles of organization of Lessee, or under any resolution, indenture, agreement, instrument or obligation to which Lessee is a party or by which the Premises or any portion thereof is bound; and does not to the knowledge of Lessee, constitute a violation of any order, rule or regulation applicable to Lessee or any portion of the Premises of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessee or any portion of the Premises.

(e) Consents. No other permission, approval or consent by third parties or any other governmental authorities is required in order for Lessee to enter into this Lease or consummate the transactions herein contemplated, other than those which have been obtained.

(f) Proceedings. To the knowledge of Lessee, there are no actions, suits or proceedings pending or threatened in writing against Lessee which would, if successful, prevent Lessee from entering into this Lease or performing its obligations hereunder.

## ARTICLE XIII

### Indemnification, Waiver and Release

13.1 Lessee Indemnification. Lessee shall indemnify, defend and hold harmless the Lessor, Empire State Development Corporation, the Franchise Oversight Board, the Racing and Wagering Board, and their respective officers, directors, trustees, employees, members, managers, and agents (the "Lessor Indemnitees"), from and against any and all claims, actions, damages, liability and expense, arising from or out of (i) the negligence or intentional acts or omissions of Lessee, its officers, directors, agents or employees at the Premises ("Lessee Parties") in connection with the occupancy or use by Lessee of the Premises or any part thereof, and (ii) any occurrence at the Premises not arising out of the negligence or intentional acts or omissions of a Lessee Party, but which is covered by the insurance which Lessee is required to maintain pursuant to the terms of this Lease (or any additional insurance which Lessee actually carries). Lessee's liability arising out of (ii) above shall be limited to the actual amount of proceeds available under such insurance. In case any Lessor Indemnitee shall be made a party to any litigation covered by this indemnity, whether or not also commenced by or against Lessee, then Lessee shall indemnify, defend and hold the Lessor Indemnitees harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by the Lessor Indemnitees in connection with such litigation.

13.2 Lessor's Indemnification. Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, Lessor shall hold Lessee and its officers, directors, trustees, employees, members, managers, and agents (the "Lessee Indemnitees"), harmless from any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Lessor and its officers or employees when acting within the course and scope of their employment.

13.3 Survival. The provisions of this Article XIII shall survive the expiration or termination of this Lease with respect to matters that accrued prior to the Expiration Date, whether or not claims in respect of such matters are brought prior to or following the Expiration Date.

## ARTICLE XIV

### Miscellaneous

14.1 Inspection. Lessee shall permit Lessor and its agents, upon no less than twenty-four (24) hours' prior notice, to enter into and upon the Premises during normal business hours for the purpose of inspecting the same on the condition that Lessor and its agents shall use reasonable efforts to ensure that Lessee's and Lessee's invitees' use and quiet enjoyment of the Premises is not interfered with.

14.2 Estoppel Certificates. Either Party shall, at any time and from time to time upon not less than ten (10) days' prior request by the other Party, execute, acknowledge and deliver to such requesting party, a statement in writing certifying (i) its ownership of its interest hereunder, (ii) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (iii) the dates to which the Rental and any other charges have been paid, and (iv) that, to the best of their knowledge, no default hereunder on the part of the other Party exists (except that if any such default does exist, then such default shall be specified).

14.3 Lease Termination Agreement. If requested by Lessor or Lessee, Lessor and Lessee shall, upon termination of this Lease, execute and deliver to one another an appropriate release, cancellation and termination of the Lease, in form proper for recording, of all Lessee's interest in the Premises and all of Lessee's obligations under the Lease, other than such obligations as survive the termination hereof.

14.4 Notices. All notices hereunder to the respective Parties will be in writing and will be served by personal delivery or by prepaid, express mail (next day) via a reputable courier service, or by prepaid, registered or certified mail, return receipt requested, addressed to the respective parties at their addresses set forth below. Any such notice to Lessor or Lessee will be deemed to be given and effective: (i) if personally delivered, then on the date of such delivery, (ii) if sent via express mail (next day), then one (1) business day after the date such notice is sent, or (iii) if sent by registered or certified mail, then three (3) business days following the date on which such notice is deposited in the United States mail addressed as aforesaid. For purposes of this Lease, a business day shall be deemed to mean a day of the week other than a Saturday or Sunday or other holiday recognized by banking institutions of the State of New York. Copies of all notices will be sent to the following:

If to Lessee:

The New York Racing Association, Inc.  
Aqueduct Racetrack  
110-00 Rockaway Boulevard  
South Ozone Park, New York 11417  
Attn: General Counsel

With a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attn: Brian S. Rosen, Esq.

If to Lessor:

The New York State Franchise Oversight Board  
Franchise Oversight Board  
c/o Executive Chamber  
The Capitol  
Albany, NY 12224  
Attention: Chairman  
Telecopy: (518) 486-9652

With a copy to:

The New York State Office of General Services  
State of New York State Office of General Services  
Legal Services Bureau  
41st Floor, Corning Tower  
The Governor Nelson A. Rockefeller Empire State Plaza  
Albany, New York 12242

With a copy to:

Charities Bureau  
Department of Law  
120 Broadway - 3rd Floor  
New York, New York 10271

With a copy to:

The Racing and Wagering Board  
Chairman  
N.Y.S. Racing and Wagering Board  
1 Broadway Center, Suite 600  
Schenectady, New York 12305  
Telecopy: (518) 347-1250

With a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Attn: Alan S. Kornberg, Esq.

14.5 Modifications. This Lease may be modified only by written agreement signed by Lessor and Lessee and approval of the State Comptroller.

14.6 Descriptive Headings. The descriptive headings of this Lease are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Lease.

14.7 Force Majeure. The time within which either Party hereto shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the party seeking the delay.

14.8 Partial Invalidity. If any term, provision, condition or covenant of this Lease or the application thereof to any Party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

14.9 Applicable Law and Venue. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

14.10 Attorneys' Fees. If any Party to this Lease brings an action against the other party based on an alleged breach by the other party of its obligations under this Lease, the prevailing party may seek to recover all reasonable expenses incurred, including reasonable attorneys' fees and expenses. In the event that Lessee fails to quit and surrender to Lessor the Premises upon the termination of this Lease as provided herein, Lessee shall be responsible for all costs and expenses, including reasonable attorneys' fees and expenses, incurred by Lessor in regaining possession of the Premises following the Expiration Date.

14.11 Net Rental. It is the intention of Lessor and Lessee that the Rental payable under this Lease after the Commencement Date and other costs related to Lessee's use or operation of the Premises, other than Impositions, shall be absolutely net to Lessor, and that Lessee shall pay during the Term, without any offset or deduction whatsoever, all such costs.

14.12 No Broker. Lessor and Lessee represent and warrant one to the other that no broker commission, finder's fees or similar compensation is due to any party claiming through Lessor or Lessee, as applicable, and Lessor and Lessee agree to hold the other Party harmless from any liability to pay any such brokerage commission,

finder's fees or similar compensation to any parties claiming same through the indemnifying Party.

14.13 Memorandum of Lease. Lessor and Lessee agree to execute and deliver to each other a short form of this Lease in recordable form which incorporates all of the terms and conditions of this Lease by reference in the form mutually agreed upon by Lessor and Lessee ("Memorandum of Lease"). Lessor and Lessee agree that at Lessee's option, and at Lessee's cost, Lessee may record such Memorandum of Lease, in the offices of the county clerks in which the Premises is located.

14.14 No Waiver. No waiver of any of the provisions of this Lease shall be deemed, or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, nor shall a waiver in any instance constitute a continuing waiver, nor shall a waiver in any instance constitute a waiver in any subsequent instance.

14.15 Consents.

(a) Wherever in this Lease Lessor's consent or approval is required and Lessor agrees that such consent or approval shall not be unreasonably withheld, conditioned or delayed, if Lessor shall refuse such consent or approval, Lessee in no event shall be entitled to and shall not make any claim, and Lessee hereby waives any claim, for money damages (nor shall Lessee claim any money damages by way of set-off, counterclaim or defense) based upon any assertion by Lessee that Lessor unreasonably withheld or unreasonably delayed its consent or approval. Lessee's sole remedy in such circumstance shall be an action or proceeding to enforce any such provision by way of specific performance, injunction or declaratory judgment.

(b) If Lessor fails to approve or disapprove a request for consent within thirty (30) days (provided, that if Lessee requires a response from Lessor prior to such thirtieth (30<sup>th</sup>) day in order to ensure the orderly operation of the Franchise and the Premises, Lessee may, in its initial submission to Lessor, request that Lessor respond with a shorter period of time, but in no event less than fifteen (15) Business Days), Lessee shall have the right to provide Lessor with a second written request for consent (a "Second Consent Request"), which shall set forth in bold capital letters the following statement: "IF LESSOR FAILS TO RESPOND WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN LESSEE SHALL BE ENTITLED TO TAKE THE ACTION LESSEE HAS REQUESTED LESSOR'S CONSENT TO PREVIOUSLY AND TO WHICH LESSOR HAS FAILED TO TIMELY RESPOND." In the event that Lessor fails to respond to a Second Consent Request within ten (10) Business Days after receipt by Lessor, the action for which the Second Consent Request is submitted shall be deemed to be approved by Lessor. Notwithstanding the foregoing, in no event shall this Section 14.15 (b) apply to a request by Lessee to assign the Lease or sublet the Leased Premises pursuant to Section 7.1 hereof or to mortgage or encumber its leasehold interest in the Leased Premises pursuant to Section 8.1 hereof.

14.16 Non-Interference. Subject to provisions of Article X, Lessor will use reasonable efforts to ensure that neither Lessor nor any tenants, licensees or occupants of the Premises or any adjacent property owned by Lessor, interferes in a material adverse manner with Lessee's use and occupancy of and the conduct of its operations at the Premises.

14.17 Primacy of Documents. In the event of a conflict between the provisions of the Legislation and the provisions of this Lease or the Franchise Agreement, the provisions of the Legislation shall prevail. In the event of a conflict between the provisions of this Lease and the Franchise Agreement, the provisions of the Franchise Agreement shall prevail. Notwithstanding the foregoing, the description of the Leased Premises, the Licensed Premises and the Premises set forth in this Lease shall prevail over any contrary provision in the Franchise Agreement.

14.18 Counterparts. This Lease may be executed in two or more fully or partially executed counterparts, each of which shall be deemed an original, binding the signer thereof against the other signing Party, but all counterparts together will constitute one and the same instrument.

14.19 State Appendix. New York State Appendix A, attached hereto as Exhibit H, is incorporated herein and made a part of this Lease.

14.20 Regulatory Space. Lessee acknowledges that certain agencies of the State of New York relating to racing and wagering (the "Agencies") occupy space on the Premises, and Lessee agrees that the Agencies may continue to occupy such space, free of charge, for the Term hereof. In the event that Lessee desires to relocate the Agencies within the Leased Premises, Lessee shall provide facilities of comparable size, character, quality and utility and reasonably convenient location, to the Agencies, and shall pay all reasonable costs of relocating the Agencies to such replacement space in the Premises.

14.21 Restrictions on Pari-Mutuel Wagering. The parties hereby agree and acknowledge that there shall be no pari-mutuel wagering conducted on the Premises by any party other than Lessee.

14.22 Lessor Mortgage of Leased Premises. Lessor represents and warrants that as of the date hereof it has not mortgaged or encumbered its fee interest in the Leased Premises. Lessor may not mortgage or encumber its fee interest in the Leased Premises without obtaining a non-disturbance agreement in favor of Lessee, which must be in form and content reasonably satisfactory to Lessee.

14.23 Successors and Assigns. The provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**SIGNATURE PAGES TO FOLLOW**

Lessor and Lessee have executed this Lease as of the day and year first above written.

**LESSOR:**

**THE PEOPLE OF THE STATE OF  
NEW YORK ACTING BY AND  
THROUGH THE STATE FRANCHISE  
OVERSIGHT BOARD PURSUANT TO  
CHAPTER 18 OF THE LAWS OF 2008**

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**Approved as to form by:**

**THE OFFICE OF THE ATTORNEY  
GENERAL OF THE STATE OF NEW  
YORK**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

**LESSEE:**

**THE NEW YORK RACING  
ASSOCIATION, INC.**

---

**By: Patrick L. Kehoe  
Title: General Counsel**

State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

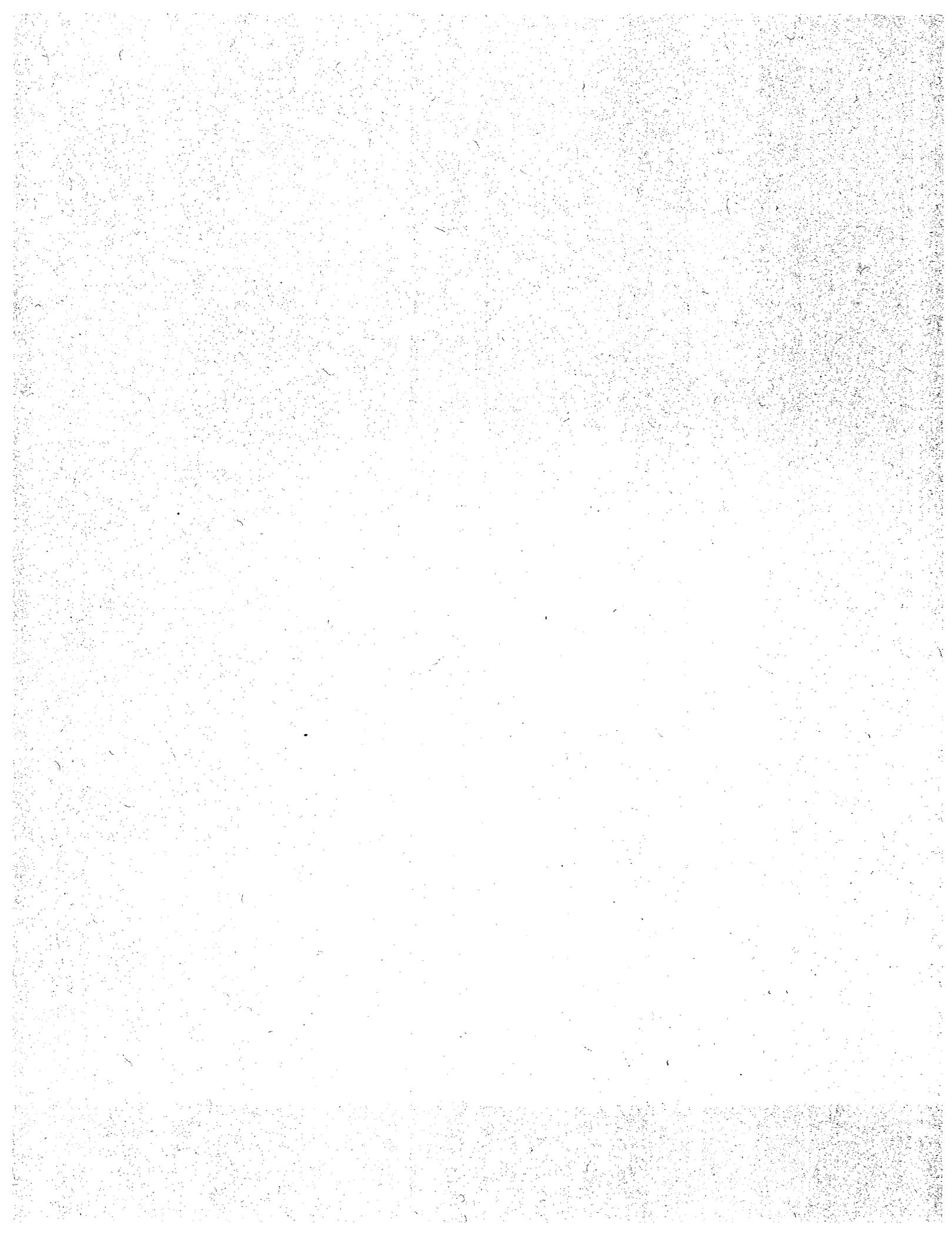
\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment



**EXHIBIT F**  
**SARATOGA GROUND LEASE**

**SARATOGA RACE COURSE**

**GROUND LEASE AGREEMENT**

**between**

**THE PEOPLE OF THE STATE OF NEW YORK ACTING BY AND  
THROUGH THE STATE FRANCHISE OVERSIGHT BOARD  
PURSUANT TO CHAPTER 18 OF THE LAWS OF 2008  
as Lessor,**

**and**

**THE NEW YORK RACING ASSOCIATION, INC.**

**as Lessee**

**September \_\_, 2008**

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## GROUND LEASE AGREEMENT

GROUND LEASE AGREEMENT (this "Lease"), dated as of September \_\_, 2008, by and between THE PEOPLE OF THE STATE OF NEW YORK ACTING BY AND THROUGH THE STATE FRANCHISE OVERSIGHT BOARD PURSUANT TO CHAPTER 18 OF THE LAWS OF 2008, having an address at c/o Executive Chamber, The Capitol, Albany, New York 12224, Attn: Chairman (the "Lessor"), and THE NEW YORK RACING ASSOCIATION, INC., a not-for profit racing corporation incorporated pursuant to Section 402 of the Not-For-Profit Corporation Law of the State of New York, as authorized by Chapter 18 of the Laws of 2008, with a place of business at 110-00 Rockaway Boulevard, South Ozone Park, New York 11417 (the "Lessee"), sometimes collectively referred to herein as the "Parties" or singularly as a "Party."

### RECITALS

Contemporaneously with the execution of this Lease, and pursuant to (i) the authority granted by Chapter 18 of the Laws of 2008 passed February 13, 2008, by the New York State Senate and the New York State Assembly, and signed into law by the Governor of the State on February 19, 2008 (as the same may hereafter be amended, the "Legislation"), (ii) the Chapter 11 plan filed by the New York Racing Association Inc. ("Old NYRA") pursuant to section 1121(a) of the Bankruptcy Code (the "Plan"), as confirmed by an order, dated April 28, 2008, of the United States Bankruptcy Court for the Southern District of New York and (iii) the State Settlement Agreement made by and among Lessee, Old NYRA and the State of New York, the New York State Racing and Wagering Board, the New York State Non-Profit Racing Association Oversight Board and the New York State Division of the Lottery (the "Settlement Agreement"), Old NYRA is conveying all right, title and interest in and to the Leased Premises (as hereinafter defined) to Lessor. Lessor and Lessee are concurrently herewith entering into that certain Franchise Agreement (as hereinafter defined) pursuant to which Lessee is granted the Franchise (as hereinafter defined) to conduct thoroughbred racing and pari-mutuel wagering with respect to thoroughbred racing at the Leased Premises.

In order for Lessee to operate the Franchise granted pursuant to the Franchise Agreement, Lessor is authorized pursuant to the Legislation to lease to Lessee the Saratoga Racing Premises (as defined in the Franchise Agreement). Lessor desires to lease the Saratoga Racing Premises to Lessee, for such rentals, and upon such terms and conditions, contained in this Lease.

### ARTICLE I

#### Grant, Term of Lease and Certain Definitions

1.1 Leasing Clause. Upon and subject to the terms, provisions and conditions hereinafter set forth, Lessor does hereby LEASE, DEMISE and LET unto

Lessee, and Lessee does hereby take and lease from Lessor, the Leased Premises, TO HAVE AND TO HOLD, together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to the Leased Premises (including the Art Work (hereinafter defined)), for the term hereinafter provided, upon and subject to the terms, conditions and agreements contained herein.

1.2 Term. The term of this Lease (the "Term") shall be for a period commencing on the Commencement Date (hereinafter defined), and terminating on the date on which the Franchise Agreement terminates pursuant to the terms thereof, or upon the sooner termination of this Lease as set forth herein (the "Expiration Date").

1.3 Certain Definitions. Capitalized terms not otherwise defined herein shall have the respective meanings given them in the Franchise Agreement. The following terms shall have the respective meanings set forth below in this Section 1.3 for purposes of this Lease:

(a) Additional Charges. All other taxes, levies impositions, assessments of whatever type or nature levied or assessed against the Leased Premises, Improvements, and /or Lessee, other than Impositions.

(b) Art Work. All art work transferred from Old NYRA to Lessor, including, but not limited to, the items listed on Exhibit C hereto.

(c) Base Rental. The base rental for the Leased Premises as defined in Section 2.1 of this Lease.

(d) Commencement Date. The date first above written, on which date this Lease has been fully executed by Lessor and Lessee and approved and filed in the Office of the State Comptroller pursuant to Section 112 of the State Finance Law.

(e) Contaminants. Any material, substance or waste classified, characterized or regulated as toxic, hazardous or a pollutant or contaminant under any Requirements, including asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or the equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million.

(f) Contractor. Any construction manager, contractor, subcontractor, laborer or materialman who shall supply goods, services, labor or materials in connection with the development, construction, management, maintenance or operation of any part of the Leased Premises.

(g) Default Rate. The rate of interest per annum applicable to judgment claims in the State of New York.

(h) Franchise. The authority granted to Lessee to conduct racing and pari-mutuel wagering with respect to thoroughbred racing, as provided for in the Legislation and the Franchise Agreement.

(i) Franchise Agreement. That certain Franchise Agreement between Lessor and Lessee of even date herewith which is annexed hereto as Exhibit B.

(j) Impositions. All taxes set forth in Paragraph 8.a. of the Legislation, as the same is amended by Subdivision 3 of Section 530 of the Real Property Tax Law and constructed through Sections 102, 530 and 532 of the Real Property Tax Law, levied or assessed against the Leased Premises and Improvements and coming due during the Term, now or hereafter located thereon associated with the ownership, which are required, pursuant to the above referenced sections, to be paid by Lessor. In no event shall Impositions include any personal or corporate income or franchise taxes imposed upon Lessee, or other taxes imposed on the income or revenues from the operation of the Leased Premises or other activities of Lessee.

(k) Improvements. All buildings, structures, improvements and other real and personal property associated therewith from time to time situated on the Leased Premises.

(l) Insurance Trustee. An institutional lender with offices located in the State of New York, proposed by Lessee and reasonably satisfactory to Lessor, which agrees to serve as the Insurance Trustee for purposes of this Lease on terms reasonably satisfactory to Lessor and Lessee.

(m) Land. Those certain tracts of land underlying the Leased Premises.

(n) Lease. This Lease Agreement by and between Lessor, as lessor, and Lessee, as lessee.

(o) Lease Year. Each calendar year during the Term of this Lease, with the first Lease Year being the partial year beginning on the Commencement Date and ending on December 31 of the year in which the Commencement Date occurs, and the final Lease Year expiring on the Expiration Date.

(p) Leased Premises. The Land, together with all present and future improvements on the Land, including, without limitation, rights, privileges, easements and appurtenances benefiting, belonging to or in any way appertaining thereto, including, but not limited to, (i) any and all rights, privileges, easements and appurtenances of Lessor as the owner of fee simple title to the Land now or hereafter existing in, to, over or under adjacent streets, parking lots, sidewalks, alleys and property contiguous to the Land, and (ii) any and all strips and gores relating to the Land, commonly referred to as the Saratoga Race Course, New York, all as more particularly described in Exhibit A annexed hereto.

- (q) Legislation. As defined in the Recitals.
- (r) Lessee. As defined in the Recitals.
- (s) Lessor. As defined in the Recitals.
- (t) Person. A corporation, an association, a partnership (general or limited), a limited liability company, a joint venture, a limited liability partnership, a private company, a public company, a limited life public company, a trust or fund (including but not limited to a business trust), an organization or any other legal entity, an individual or a government or any agency or political subdivision thereof.
- (u) Rental. The rent payable during the Term.
- (v) Requirements. All applicable laws, rules, regulations or other legal requirements enacted by a governmental authority having jurisdiction over the Leased Premises or the operations or the activity at the Leased Premises, including, but not limited to, the protection of the environment.
- (w) State. The People of the State of New York.
- (x) Sublessee. Any permitted sublessee or user under Section 7.2 of this Lease.
- (y) Term. The term of this Lease as provided in Section 1.2 of this Lease.

## ARTICLE II

### Rental

2.1 Base Rental. Lessee shall pay to Lessor the Base Rental for the Leased Premises in an amount equal to One Dollar (\$1.00) per annum, which Base Rental has been paid in full for the entire Term, in advance, on the date hereof (the "Base Rental"). Notwithstanding the foregoing, Lessee shall pay other charges and costs due under this Lease as additional rent throughout the term of this Lease.

## ARTICLE III

### Impositions and Utilities

3.1 Payment of Impositions. Lessor shall be solely responsible for the payment of all Impositions before the same become delinquent. Lessee agrees to cooperate with Lessor in seeking the delivery of all notices of Impositions to Lessor directly from the applicable taxing authorities. Lessor shall be entitled to contest the amount or validity of any Impositions, at Lessor's expense; provided that such contest

does not materially adversely affect Lessee's use of and operations upon the Leased Premises.

3.2 Additional Charges and Utilities. Lessee shall be solely responsible to pay all charges when due for (i) Additional Charges and (ii) utilities furnished to the Leased Premises, including, but not limited to, electricity, gas, heat, light and power, telephone and any and all other services and utilities furnished to the Leased Premises (the "Utilities"), including, without limitation, charges for Additional Charges and Utilities incurred prior to the Commencement Date. Lessee may, at Lessee's sole cost and expense, dispute and contest any and all charges for Additional Charges and Utilities for which Lessee is responsible for payment, provided there is no danger of an imminent threat of Lessor losing title to the Leased Premises. If there is the threat of the Leased Premises becoming subject to any lien, encumbrance or charge, Lessor may require Lessee to deposit with Lessor a surety bond issued by a surety company of recognized responsibility, guaranteeing and securing payment in full of such charges for Additional Charges or Utilities.

3.3 Operating Expenses. Lessee shall be solely responsible for the payment of all operating expenses for the Leased Premises, including without limitation repair and maintenance charges, insurance charges, and all other charges incurred in connection with the operation of the Leased Premises pursuant to this Lease (the "Operating Expenses").

## ARTICLE IV

### Improvements and Alterations

4.1 Improvement Rights and Alterations; Capital Plan.

(a) Lessee shall have the right, subject to the restrictions imposed by the Legislation, the Franchise Agreement and the applicable Requirements, to develop, redevelop, refurbish, renovate or make such other improvements, capital expenditures or otherwise ("Alterations"), to the Leased Premises and the fixtures and improvements thereon, as shall be necessary or desirable for the operation of the Leased Premises for the uses permitted under this Lease and the Franchise Agreement.

(b) Intentionally Omitted.

(c) Lessee has heretofore delivered to Lessor, and Lessor, concurrently with the execution of this Lease, hereby approves, a five-year capital expenditure plan (the "Capital Plan") setting forth in reasonable detail the capital expenditures and the budgeted costs therefor which Lessee proposes to make with respect to the Leased Premises for the Lease Years 2008-2013. Lessee shall be entitled to perform all Alterations which are set forth in an approved Capital Plan, without further approval from Lessor. If Lessee desires to perform any Alterations which are not set forth in an approved Capital Plan, Lessee shall obtain the prior written consent of Lessor, not

to be unreasonably withheld or delayed, to such Alterations, unless such Alterations (y) will not, in the good faith estimation of Lessee's architect or engineer, cost more than \$100,000 to complete and (z) do not affect any structural elements or building systems of the Improvements which, in the case of (y) and (z) above, Lessor's prior written consent shall not be required.

(d) Prior to performing any proposed Alterations to which Lessor's consent has been obtained, including those set forth in an approved Capital Plan, Lessee shall, at Lessee's expense, procure and maintain in its possession: (w) detailed plans and specifications for such Alterations, (x) a construction budget setting forth the cost to perform and complete such Alterations, (y) insurance certificates from all Contractors evidencing the insurance coverages required under this Lease and (z) all permits, approvals and certifications required by any governmental authorities having jurisdiction over the Leased Premises. Upon completion of any Alterations, Lessee shall obtain any certificates of final approval of such Alterations required by any governmental authority, together with the "as-built" plans and specifications for such Alterations (together, the "Completion Documents"). Upon Lessor's request, Lessee shall promptly provide to Lessor, in hard copy or electronic form (as Lessor may request), any or all of the documents required to be obtained under this Section 4.1(d), including the Completion Documents upon completion of the Alteration.

(e) All Alterations shall be made and performed, in all material respects, in accordance with the plans and specifications therefor (as submitted to Lessor, if applicable), as same may be modified from time to time. All Alterations shall be made and performed in a good and workmanlike manner, using materials substantially similar in quality to the existing materials at the Leased Premises, and in compliance with all applicable Requirements, as well as requirements of insurance bodies having jurisdiction over the Leased Premises. No Alterations shall impair the structural integrity or soundness of any Improvements.

(f) All Alterations made by Lessee shall become the property of Lessor upon the expiration of the Lease. Throughout the Term of this Lease, to the extent permitted under the applicable tax laws, rules and regulations, Lessee shall have the sole and exclusive right to take depreciation of all Alterations made by Lessee to the Leased Premises.

4.2 Easements and Dedications. In order to maintain and/or improve the Leased Premises, it may be necessary or desirable that street, water, sewer, drainage, gas, power lines, set back lines, and other easements, and dedications and similar rights be granted or dedicated over or within portions of the Leased Premises by plat, replat, grant, deed or other appropriate instrument. Lessor shall, within thirty (30) days following written request by Lessee to Lessor, and to the extent reasonably necessary as fee owner of the Leased Premises, join with Lessee in executing and delivering such documents, as may be appropriate or reasonably required for the future improvement of the Leased Premises.

4.3 Zoning. In the event that Lessee deems it necessary or appropriate to obtain use, zoning, site plan approval or any permit from the appropriate governmental entity having jurisdiction over the Leased Premises, or any part thereof, Lessor shall, within thirty (30) days following written request by Lessee to Lessor, and to the extent reasonably necessary as fee owner of the Leased Premises, execute such document, or join in such petitions, applications and authorizations as may be appropriate or reasonably required by Lessee, and cooperate in good faith with Lessee in any such reasonable efforts.

4.4 Indemnification for Mechanics' Liens. Lessee will pay or cause to be paid all costs and charges for work performed by Lessee or caused to be performed by Lessee in or to the Leased Premises. Lessee will indemnify Lessor against, and hold Lessor and the Leased Premises free, clear and harmless of and from, any and all vendors', mechanics', laborers', or materialmans' liens and claims of liens, and all other liabilities, liens, claims and demands on account of such work by or on behalf of Lessee. If any such lien, at any time, is filed against the Leased Premises, or any part thereof, on account of work performed or caused to be performed by Lessee in or to the Leased Premises, Lessee will cause such lien to be discharged of record within forty-five (45) days after Lessee has received actual notice of the filing of such lien. If Lessee fails to pay any charge for which a mechanic's lien has been filed, and has not discharged same of record as described above, Lessor may, at its option, upon ten (10) days' prior written notice to Lessee and in addition to exercising any other remedies Lessor has under this Lease on account of a default by Lessee, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with the removal of such lien, will be immediately due from Lessee to Lessor.

## ARTICLE V

### Use of Leased Premises

5.1 Permitted Uses. Lessee's use of the Leased Premises shall be primarily for the management and operations of all functions as may be necessary or appropriate to conduct racing, racing operations, pari-mutuel and simulcast wagering (collectively, "Uses"), together with various activities related thereto, including without limitation, live wagering and retail, food, beverage, trade expositions and entertainment facilities, racing, equestrian, social and community activities, and other uses and activities historically conducted on the Leased Premises (collectively, "Ancillary Uses" and, taken together with the Uses, the "Permitted Uses") at or with respect to the Leased Premises, subject to and in compliance with the provisions of the Franchise Agreement, applicable Requirements including without limitation the Legislation, and the Certificate of Occupancy for the Leased Premises. Lessee shall not conduct, manage or otherwise operate VLT Operations at the Leased Premises.

5.2 Compliance with Laws.

(a) Lessee shall use, operate and maintain the Leased Premises and the Improvements situated thereon in compliance with all applicable laws, regulations or ordinances of the United States, the State of New York, the City of Saratoga Springs or other lawful authority having jurisdiction over the Leased Premises, as applicable (collectively, "Requirements").

(b) Lessee shall have the right to contest the validity, enforceability or applicability of any Requirements applicable to the Land, Building and Improvements constituting the Leased Premises and Improvements, provided that there is no danger of an imminent threat of Lessor losing title to the Leased Premises or criminal liability to Lessor. During such contest, compliance with any such contested Requirements may be deferred by Lessee; provided, however, that Lessee shall promptly comply with the final determination of any such contest. If non-compliance (x) shall result in a lien being filed against the Leased Premises or (y) may reasonably be expected (in Lessor's reasonable judgment) to result in civil liability to Lessor, Lessor may require Lessee to deposit with Lessor a surety bond issued by a surety company of recognized responsibility guaranteeing and securing the payment in full of such lien. Prior to instituting such proceeding, Lessee shall provide notice to the Attorney General of the State of New York, which may choose to be a party in such contest. Any such proceeding instituted by Lessee shall be commenced as soon as is reasonably possible after the issuance of any such contested matters, or after actual notice to Lessee of the applicability of such matters to the Leased Premises, and shall be prosecuted with reasonable dispatch. In the event that Lessee shall institute any such proceeding, Lessor shall cooperate with Lessee in connection therewith, and Lessee shall be responsible for the reasonable and actual out-of-pocket costs and expenses incurred by Lessor in connection with such cooperation.

5.3 Maintenance and Repairs. Lessee shall perform all maintenance, repair and upkeep of the Leased Premises, including the Improvements thereon, so as to keep the same in good order and repair in compliance with all Requirements (subject to Lessee's right to contest pursuant to Section 5.2(b)). The costs of such maintenance shall be borne solely by Lessee.

5.4 Disposition of Personal Property. Lessee shall have the right to dispose of any personal property or Alterations during the term of this Lease in the ordinary course of business, but Lessee agrees that it will not purposefully remove any such personal property or Alterations to circumvent the intent that the same shall become the property of Lessor at the end of the Term and Lessee further agrees that it shall replace any such personal property or Alterations to the extent they are required to conduct racing operations. Notwithstanding the foregoing, the Art Work may not be disposed of by Lessee without the prior written consent of Lessor, which consent Lessor may withhold in its sole discretion.

## ARTICLE VI

### Insurance

#### 6.1 Required Coverages of Lessee.

(a) Lessee, throughout the Term, or as otherwise required by this Lease, shall obtain and maintain Insurance, in full force and effect, from an insurance company licensed or authorized to do business in the State of New York, in accordance with the terms, coverages and requirements set forth in Exhibit D attached hereto.

## ARTICLE VII

### Assignment and Subletting

7.1 Assignment. Lessee may, subject to the prior written approval of Lessor as required by Section 138 of the State Finance Law and the receipt of all required governmental approvals in connection with any assignment of Lessee's rights and obligations under the Franchise Agreement, assign (or sublease, license or otherwise transfer) to any party to which the Franchise is assigned, Lessee's leasehold interest granted to Lessee under this Lease, in whole only. It is understood and agreed that Lessee's interest in the Lease may only be assigned or transferred to a party in which the Franchise is being assigned and which party shall hold the Franchise at the time of assignment, or any successor thereto. Upon any such assignment, the assignee shall execute and deliver to Lessor a written assumption, in form and substance satisfactory to the Lessor in its reasonable judgment, of all of the obligations of Lessee under this Lease. Lessee shall be released from any obligations arising under this Lease which accrue from and after such an assignment, but not those accruing prior to the date of such assignment. For purposes of this Section 7.1, approval of the Franchise Oversight Board of an assignment of the Franchise Agreement shall be deemed to constitute approval by the Lessor of Lessee's assignment of this Lease.

7.2 Concessions, Subletting and Licensing. (a) Lessee shall have the right from time to time, with the prior written consent of Lessor to the extent required by the Legislation (including without limitation Section 206 thereof), to grant concessions at the Leased Premises as Lessee may deem proper for the conduct at the Leased Premises of Ancillary Uses as permitted in Section 5.1 hereof ("Concessions"). All Concessions shall be entered into in compliance with the Legislation (including, without limitation, Section 208-6 thereof), and other Requirements. Agreements for the operation of Concessions may, at the election of Lessee, be in the form of subleases, licenses or concession agreements; provided, that no subletting or licensing shall relieve Lessee of any of its obligations under the Lease, and all Concessions, whether in the form of subleases, licenses or concession agreements, shall be strictly subject and subordinate to the terms and provisions of this Lease.

(b) Other than with respect to the grant of Concessions, Lessee may not sublet all or any portion of the Leased Premises without the prior written consent of Lessor, in Lessor's sole discretion, as required by Section 138 of the State Finance Law and the receipt of all required governmental approvals in connection with any sublease or transfer. Notwithstanding anything to the contrary contained herein, (x) the stabling of horses belonging to third parties shall not constitute a sublease under the terms of this Lease and (y) those subleases set forth on Exhibit E hereto (the "Permitted Subleases") shall not be subject to the general subleasing prohibition set forth in this Section 7.1 and Lessor hereby consents to the Permitted Subleases. In addition to the foregoing, Lessee shall also have the right to enter into any sublease or occupancy agreement with The New York Thoroughbred Breeders Inc., The New York Thoroughbred Horsemen's Association (or such other entity as is certified and approved pursuant to Section 228 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law, as amended), The New York State Racing and Wagering Board, The New York State Department of Taxation and Finance, and with any governmental authorities, agencies, boards or regulators of the State, with the prior written consent of Lessor, such consent not to be unreasonably withheld, conditioned or delayed.

7.3 General Provisions. Lessee shall, in connection with any Concession, whether or not Lessor's consent is required thereto, provide written notice to Lessor of the name, legal composition and address of any Concessionaire, together with a complete copy of the agreement under which such Concession is granted, and a description of the nature of the Concessionaire's business to be carried on in the Leased Premises.

7.4 Transfer by Lessor of the Leased Premises. Lessor and Lessee acknowledge and agree that certain benefits accrue to Lessor and Lessee by virtue of Lessor's ownership of fee title to the Leased Premises and that such benefits are material inducements to Lessor and Lessee to enter into this Lease. Accordingly, Lessor covenants and agrees that, during the Term of this Lease and any renewals or extensions thereof, and prior to the termination of this Lease, whether through expiration of the Term or the earlier termination thereof pursuant to a right to so terminate this Lease, it will at all times own and hold title to the Leased Premises, as encumbered by this Lease, for the benefit of and on behalf of the State in accordance with the Legislation, and further covenants and agrees that it will not, if and to the extent prohibited by the Legislation, sell, transfer or otherwise convey all or any portion of the Leased Premises to any Person or entity, other than an agency, division, subdivision or department of the State of New York, or a public benefit corporation, local development corporation, municipal corporation or public authority constituting a political subdivision of the State of New York.

## ARTICLE VIII

### Leasehold Mortgages/Subordination

8.1 Lessor's Consent to Leasehold Mortgage. Lessee shall have the right, subject to the prior written consent of Lessor as provided in the Legislation, to mortgage or encumber this Lease and Lessee's interest in the Leased Premises and/or in any improvements made and owned by Lessee and/or in Lessee's personal property, furniture, fixtures and equipment. In no event shall Lessee's mortgage encumber or affect Lessor's fee title to the Land or Improvements. Each mortgage of Lessee's interest shall provide that the terms and conditions of this Lease, and Lessor's title to the Improvements at the expiration of this Lease, remains superior, and any mortgage of Lessee's interest is subordinate to the rights of Lessor hereunder.

## ARTICLE IX

### Default of Lessee

9.1 Non-Revocation Events of Default. The following events shall each constitute a "Non-Revocation Event of Default" under this Lease:

(a) Monetary Defaults. Failure on the part of Lessee to pay Rental or any other sums and charges when due to Lessor hereunder and the continuation of such failure for thirty (30) days after written notice to Lessee.

(b) Nonmonetary Defaults. Failure on the part of Lessee to perform any of the terms or provisions of this Lease other than the provisions (x) requiring the payment of Rental and (y) breach of which would give rise to the revocation of the Franchise Agreement pursuant to the terms thereof, and the continuation of such failure for thirty (30) days after written notice to Lessee, provided that if the default is of such character as to require more than thirty (30) days to cure, if Lessee shall fail to commence curing such default within thirty (30) days following Lessor's notice and thereafter fail to use reasonable diligence in curing such default.

9.2 Remedies for Non-Revocation Event of Default. If a Non-Revocation Event of Default shall occur, Lessor shall be entitled, at Lessor's election, to exercise any remedies available at law or in equity on account of such Non-Revocation Event of Default, including without limitation to bring one or more successive suits for monetary damages and/or specific performance, but Lessor shall not be entitled to terminate this Lease and remove Lessee from possession of the Leased Premises. In addition to the foregoing, Lessor may undertake to cure such Non-Revocation Event of Default for the account of and at the cost and expense of Lessee, and the full amount so expended by Lessor (with interest accruing at the Default Rate) shall immediately be owing by Lessee to Lessor.

9.3 Revocation of Franchise Agreement. Notwithstanding anything in this Lease to the contrary, if Lessee's Franchise shall be duly revoked pursuant to Racing Law §§ 244 and 245, then this Lease shall be deemed automatically, without further notice or legal action, terminated as of the date of such Franchise revocation, and Lessor shall have the right, at Lessor's election, to exercise any of the remedies set forth in Section 9.4 of this Lease which are applicable following termination of the Lease. Lessee shall have the right to remain in possession of the Leased Premises for a period of not more than thirty (30) days following the termination of the Lease, solely for the purposes of orderly vacating the Leased Premises in the condition required by this Lease, TIME BEING OF THE ESSENCE to the obligation of Lessee to vacate the Leased Premises as provided in this Lease no later than the thirtieth (30<sup>th</sup>) day following Lease termination.

9.4 Lease Termination Following Revocation of Franchise Agreement.

(a) If this Lease shall be terminated as provided in Section 9.3, Lessor, without notice, may re-enter and repossess the Leased Premises using such force for that purpose as may be necessary and permissible pursuant to applicable laws, without being liable for indictment, prosecution or damages therefor and may dispossess Lessee by summary proceedings or otherwise.

(b) No termination of this Lease pursuant to Section 9.3, or taking possession of or reletting the Leased Premises or any part thereof, shall relieve Lessee of its liabilities and obligations under this Lease arising prior to the date of termination.

9.5 No Waiver. No failure by Lessor to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition, unless Lessor agrees in writing to waive such breach at the time of its occurrence or anytime thereafter. No covenant, agreement, term or condition of this Lease to be performed or complied with by Lessee, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease still continue in full force and effect with respect to any other then existing or subsequent breach thereof.

9.6 Remedies Cumulative. All amounts expended by Lessor to cure any default or to pursue remedies hereunder shall be paid by Lessee to Lessor upon demand and shall be in addition to the Rentals otherwise payable hereunder. Each right and remedy of Lessor provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not

preclude the simultaneous or later exercise by Lessor of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

**ARTICLE X**  
**Intentionally Omitted**

**ARTICLE XI**  
**Casualty Restoration**

11.1 Notice of Damage. If all or any part of any of the Leased Premises shall be destroyed or damaged in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen (a "Casualty"), Lessee, upon actual knowledge of the occurrence of such Casualty, shall give to Lessor prompt notice thereof.

11.2 Obligation to Restore.

(a) Lessee Obligation to Restore. In the event of a Casualty, Lessee shall be obligated to repair, alter, restore, replace and rebuild (collectively, "Restore" and the act of Restoring, a "Restoration") the Leased Premises, as nearly as possible equal to the condition, quality, character and class of the Leased Premises existing immediately prior to such occurrence. Notwithstanding the foregoing, Lessee, with the consent of Lessor, not to be unreasonably withheld, conditioned or delayed, may Restore the Leased Premises with such changes and modifications that Lessee may deem desirable in the exercise of its sound business judgment, for use for racing operations and to accommodate the Permitted Uses; it being agreed that Lessee shall not be required to rebuild such facilities that Lessee deems are no longer useful or necessary for the continued operation of racing at the Leased Premises (the "Unnecessary Facilities") and accordingly that withholding, conditioning or delaying consent for failure to rebuild the Unnecessary Facilities will be deemed unreasonable. Provided that Lessee's Property Insurance at the time of a Casualty is in full force and effect and is in compliance with the requirements of this Lease, including policy limits equal to the full replacement cost of the Improvements, Lessee shall not be obligated or required to expend any funds in connection with a restoration (x) in excess of the Insurance Proceeds, plus (y) the deductible amount under Lessee's Property Insurance.

(b) No Obligation of Lessor to Restore. Lessor shall have no obligation to Restore the Leased Premises.

11.3 Restoration Funds.

(a) In the event of a Restoration which is subject to Section 11.2(a) and which cost thereof is to exceed \$1,000,000, Lessee shall cause to be deposited with the Insurance Trustee all proceeds of Lessee's Property Insurance, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (hereinafter referred to as the "Insurance Proceeds"). Prior to commencing any Restoration, Lessee shall furnish Lessor with an estimate of the cost of such Restoration, prepared by an independent licensed professional engineer or registered architect selected by Lessee and reasonably approved by Lessor (the "Approved Engineer"). The Insurance Proceeds shall be applied by the Insurance Trustee to the payment of the cost of the Restoration, and shall be paid to, or for the account of, Lessee from time to time, as the Restoration progresses, but not more frequently than once in any calendar month. Said Insurance Trustee shall make such payments upon written request of Lessee accompanied by the following:

(i) a certificate, dated not more than fifteen (15) days prior to such request, signed by Lessee and by an architect in charge of the Restoration who shall be selected by Lessee and reasonably satisfactory to Lessor setting forth that:

(A) the sum then requested either has been paid by Lessee or is justly due to contractors, subcontractors, materialmen, architects or other persons who have rendered services or furnished materials in connection with the Restoration, giving a brief description of the services and materials and the several amounts so paid or due and stating that no part of such sum has been made the basis for a withdrawal of Insurance Proceeds in any previous or then pending request or has been paid out of any Insurance Proceeds received by Lessee, and that the sum requested does not exceed the value of the services and materials described in the certificate.

(B) the cost, as estimated by the persons signing such certificate, of the Restoration remaining to be done subsequent to the date of such certificate, does not exceed the amount of Insurance Proceeds remaining deposited with the Insurance Trustee after the payment of the sum so requested; and

(ii) a certificate dated not more than fifteen (15) days prior to such request of a reputable national title company then doing business in the State of New York, covering the period from the date of this Lease to the date of such certificate, setting forth that there are no liens or encumbrances of record of any kind on the Leased Premises or Lessee's interest therein other than those that Lessee is contesting in good faith, those permitted by the terms of this Lease, and except such as will be discharged by payment of the amount then requested.

(b) Upon compliance with the foregoing provisions of this Section 11.3, the Insurance Trustee shall, out of such Insurance Proceeds, pay or cause to be paid to Lessee or to the Persons named in the certificate, the respective amounts stated

therein to have been paid by Lessee or to be due to said Persons, as the case may be. All sums so paid to Lessee and any other Insurance Proceeds received or collected by or for the account of Lessee, and the right to receive the same, shall be held by Lessee in trust for the purpose of paying the cost of the Restoration.

(c) When the Insurance Trustee shall receive evidence satisfactory to it of the character required by subparagraph (a) of this Section 11.3 and that the Restoration has been completed and paid for in full and that there are no liens of the character referred to herein, the Insurance Trustee shall pay any remaining balance of the Insurance Proceeds to Lessee, unless Lessor has notified the Insurance Trustee that there has been a Non-Revocation Event of Default by Lessee under this Lease, in which case the Insurance Trustee shall refrain from paying to Lessee any remaining balance of the Insurance Proceeds until the Insurance Trustee shall have received (i) notice from Lessor that the Non-Revocation Event of Default has been cured (which Lessor shall give to Insurance Trustee within fifteen (15) Business Days from the date of determination), or (ii) notice from Lessee or Lessor of an official determination by a court of competent jurisdiction that there was no such Non-Revocation Event of Default by Lessee under this Lease as claimed by Lessor. Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, Lessor hereby agrees to indemnify Lessee for any claims against Lessee and for any loss, cost or expense incurred by Lessee by reason of Lessor claiming a Non-Revocation Event of Default causing the Insurance Trustee to withhold the Insurance Proceeds and preventing Lessee from making payments when due, where a court of competent jurisdiction makes an official determination that there was no such Non-Revocation Event of Default by Lessee under this Lease.

(d) It is expressly understood that the requirements under this Article XI are for the benefit only of Lessor, and no contractor or other person shall have or acquire any claim against Lessee as a result of any failure of Lessee actually to undertake or complete any Restoration or to obtain the evidence, certifications and other documentation provided for herein.

11.4 No Termination or Abatement. This Lease shall not terminate or be forfeited or be affected in any manner by reason of damage to or total, substantial or partial destruction of any of the Building or any part thereof or by reason of the untenability of the same or any part thereof, for or due to any reason or cause whatsoever, and Lessee, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender any part of the Leased Premises thereof. It is the intention of Lessor and Lessee that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

## ARTICLE XII

### Representations, Warranties and Special Covenants

#### 12.1 Lessor's Representations, Warranties and Special Covenants.

Lessor hereby represents, warrants and covenants as follows:

(a) Existence. Lessor has been established and exists pursuant to the Legislation.

(b) Authority. Pursuant to the Legislation, Lessor has all requisite power and authority to own its property and the Leased Premises, effectuate its mandate, enter into this Lease and consummate the transactions herein contemplated, and by proper action in accordance with all applicable law has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Lease will be a valid obligation of Lessor and is binding upon Lessor in accordance with its terms once approved by the applicable state authorities.

(d) No Defaults. The execution by Lessor of this Lease and the consummation by Lessor of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or a condition which upon notice or lapse of time or both would ripen into a default under the Legislation, which constitutes the articles of organization of Lessor, or under any resolution, indenture, agreement, instrument or obligation to which Lessor is a party or by which the Leased Premises or any portion thereof is bound; and does not to the knowledge of Lessor, constitute a violation of any order, rule or regulation applicable to Lessor or any portion of the Leased Premises of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessor or any portion of the Leased Premises.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities, other than those that have already been obtained, is required in order for Lessor to enter into this Lease, make the agreements herein contained, other than those which have been obtained.

(f) Quiet Enjoyment. So long as the Franchise Agreement is in full force and effect, Lessee shall have the quiet enjoyment and peaceable possession of the Leased Premises during the Term of this Lease, against hindrance or disturbance of any person or persons whatsoever claiming by, through or under Lessor.

(g) Proceedings. To the knowledge of Lessor, there are no actions, suits or proceedings pending or threatened in writing against Lessor which would, if successful, prevent Lessor from entering into this Lease or performing its obligations hereunder.

(h) Limitations. Except as otherwise expressly provided herein, this Lease is made by Lessor without representation or warranty of any kind, either express or implied, as to the condition of the Leased Premises, title to the Leased Premises, its merchantability, its condition or its fitness for Lessee's intended use or for any particular purpose and all of the Leased Premises is leased on an "as is" basis with all faults.

12.2 Lessee's Representations, Warranties and Special Covenants.  
Lessee hereby represents, warrants and covenants as follows:

(a) Existence. Lessee is a not-for-profit racing corporation incorporated pursuant to Section 402 of the Not-for-Profit Corporation Law of the State of New York, as authorized by Chapter 18 of the Laws of 2008, validly existing and in good standing under the laws of the State of New York and its adopted and currently effective articles of incorporation.

(b) Authority. Lessee has all requisite power and authority to own its property, operate its business, enter into this Lease and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligations. This Lease constitutes a valid and legally binding obligation of Lessee and is enforceable against Lessee in accordance with its terms.

(d) No Defaults. The execution by Lessee of this Lease and the consummation by Lessee of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or a condition which upon notice or lapse of time or both would ripen into a default under the Legislation, the articles of organization of Lessee, or under any resolution, indenture, agreement, instrument or obligation to which Lessee is a party or by which the Leased Premises or any portion thereof is bound; and does not to the knowledge of Lessee, constitute a violation of any order, rule or regulation applicable to Lessee or any portion of the Leased Premises of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessee or any portion of the Leased Premises.

(e) Consents. No other permission, approval or consent by third parties or any other governmental authorities is required in order for Lessee to enter into this Lease or consummate the transactions herein contemplated, other than those which have been obtained.

(f) Proceedings. To the knowledge of Lessee, there are no actions, suits or proceedings pending or threatened in writing against Lessee which would, if successful, prevent Lessee from entering into this Lease or performing its obligations hereunder.

## ARTICLE XIII

### Indemnification, Waiver and Release

13.1 Lessee Indemnification. Lessee shall indemnify, defend and hold harmless the Lessor, Empire State Development Corporation, the Franchise Oversight Board, the Racing and Wagering Board, and their respective officers, directors, trustees, employees, members, managers, and agents (the "Lessor Indemnitees"), from and against any and all claims, actions, damages, liability and expense, arising from or out of (i) the negligence or intentional acts or omissions of Lessee, its officers, directors, agents or employees at the Leased Premises ("Lessee Parties") in connection with the occupancy or use by Lessee of the Leased Premises or any part thereof, and (ii) any occurrence at the Leased Premises not arising out of the negligence or intentional acts or omissions of a Lessee Party, but which is covered by the insurance which Lessee is required to maintain pursuant to the terms of this Lease (or any additional insurance which Lessee actually carries). Lessee's liability arising out of (ii) above shall be limited to the actual amount of proceeds available under such insurance. In case any Lessor Indemnitee shall be made a party to any litigation covered by this indemnity, whether or not also commenced by or against Lessee, then Lessee shall indemnify, defend and hold the Lessor Indemnitees harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by the Lessor Indemnitees in connection with such litigation.

13.2 Lessor's Indemnification. Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, Lessor shall hold Lessee and its officers, directors, trustees, employees, members, managers, and agents (the "Lessee Indemnitees"), harmless from any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Lessor and its officers or employees when acting within the course and scope of their employment.

13.3 Survival. The provisions of this Article XIII shall survive the expiration or termination of this Lease with respect to matters that accrued prior to the Expiration Date, whether or not claims in respect of such matters are brought prior to or following the Expiration Date.

## ARTICLE XIV

### Miscellaneous

14.1 Inspection. Lessee shall permit Lessor and its agents, upon no less than twenty-four (24) hours' prior notice, to enter into and upon the Leased Premises during normal business hours for the purpose of inspecting the same on the condition that Lessor and its agents shall use reasonable efforts to ensure that Lessee's and Lessee's invitees' use and quiet enjoyment of the Leased Premises is not interfered with.

14.2 Estoppel Certificates. Either Party shall, at any time and from time to time upon not less than ten (10) days' prior request by the other Party, execute, acknowledge and deliver to such requesting party, a statement in writing certifying (i) its ownership of its interest hereunder, (ii) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (iii) the dates to which the Rental and any other charges have been paid, and (iv) that, to the best of their knowledge, no default hereunder on the part of the other Party exists (except that if any such default does exist, then such default shall be specified).

14.3 Lease Termination Agreement. If requested by Lessor or Lessee, Lessor and Lessee shall, upon termination of this Lease, execute and deliver to one another an appropriate release, cancellation and termination of the Lease, in form proper for recording, of all Lessee's interest in the Leased Premises and all of Lessee's obligations under the Lease, other than such obligations as survive the termination hereof.

14.4 Notices. All notices hereunder to the respective Parties will be in writing and will be served by personal delivery or by prepaid, express mail (next day) via a reputable courier service, or by prepaid, registered or certified mail, return receipt requested, addressed to the respective parties at their addresses set forth below. Any such notice to Lessor or Lessee will be deemed to be given and effective: (i) if personally delivered, then on the date of such delivery, (ii) if sent via express mail (next day), then one (1) business day after the date such notice is sent, or (iii) if sent by registered or certified mail, then three (3) business days following the date on which such notice is deposited in the United States mail addressed as aforesaid. For purposes of this Lease, a business day shall be deemed to mean a day of the week other than a Saturday or Sunday or other holiday recognized by banking institutions of the State of New York. Copies of all notices will be sent to the following:

If to Lessee:

The New York Racing Association, Inc.  
Aqueduct Racetrack  
110-00 Rockaway Boulevard  
South Ozone Park, New York 11417  
Attn: General Counsel

With a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attn: Brian S. Rosen, Esq.

If to Lessor:

The New York State Franchise Oversight Board Franchise  
Oversight Board c/o Executive Chamber The Capitol  
Albany, NY 12224  
Attention: Chairman  
Telecopy: (518) 486-9652

With a copy to:

The New York State Office of General Services  
State of New York State Office of General Services  
Legal Services Bureau  
41st Floor, Corning Tower  
The Governor Nelson A. Rockefeller Empire State Plaza  
Albany, New York 12242

With a copy to:

Charities Bureau  
Department of Law  
120 Broadway - 3rd Floor  
New York, New York 10271

With a copy to:

The Racing and Wagering Board  
Chairman  
N.Y.S. Racing and Wagering Board  
1 Broadway Center, Suite 600  
Schenectady, New York 12305  
Telecopy: (518) 347-1250

With a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Attn: Alan S. Kornberg, Esq.

14.5 Modifications. This Lease may be modified only by written agreement signed by Lessor and Lessee and approval of the State Comptroller.

14.6 Descriptive Headings. The descriptive headings of this Lease are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Lease.

14.7 Force Majeure. The time within which either Party hereto shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the party seeking the delay.

14.8 Partial Invalidity. If any term, provision, condition or covenant of this Lease or the application thereof to any Party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

14.9 Applicable Law and Venue. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

14.10 Attorneys' Fees. If any Party to this Lease brings an action against the other party based on an alleged breach by the other party of its obligations under this Lease, the prevailing party may seek to recover all reasonable expenses incurred, including reasonable attorneys' fees and expenses. In the event that Lessee fails to quit and surrender to Lessor the Premises upon the termination of this Lease as provided herein, Lessee shall be responsible for all costs and expenses, including reasonable attorneys' fees and expenses, incurred by Lessor in regaining possession of the Leased Premises following the Expiration Date.

14.11 Net Rental. It is the intention of Lessor and Lessee that the Rental payable under this Lease after the Commencement Date and other costs related to Lessee's use or operation of the Leased Premises, other than Impositions, shall be absolutely net to Lessor, and that Lessee shall pay during the Term, without any offset or deduction whatsoever, all such costs.

14.12 No Broker. Lessor and Lessee represent and warrant one to the other that no broker commission, finder's fees or similar compensation is due to any party claiming through Lessor or Lessee, as applicable, and Lessor and Lessee agree to hold the other Party harmless from any liability to pay any such brokerage commission, finder's fees or similar compensation to any parties claiming same through the indemnifying Party.

14.13 Memorandum of Lease. Lessor and Lessee agree to execute and deliver to each other a short form of this Lease in recordable form which incorporates all of the terms and conditions of this Lease by reference in the form mutually agreed upon by Lessor and Lessee ("Memorandum of Lease"). Lessor and Lessee agree that at Lessee's option, and at Lessee's cost, Lessee may record such Memorandum of Lease, in the office of the county clerk in which the Leased Premises is located.

14.14 No Waiver. No waiver of any of the provisions of this Lease shall be deemed, or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, nor shall a waiver in any instance constitute a continuing waiver, nor shall a waiver in any instance constitute a waiver in any subsequent instance.

14.15 Consents.

(a) Wherever in this Lease Lessor's consent or approval is required and Lessor agrees that such consent or approval shall not be unreasonably withheld, conditioned or delayed, if Lessor shall refuse such consent or approval, Lessee in no event shall be entitled to and shall not make any claim, and Lessee hereby waives any claim, for money damages (nor shall Lessee claim any money damages by way of set-off, counterclaim or defense) based upon any assertion by Lessee that Lessor unreasonably withheld or unreasonably delayed its consent or approval. Lessee's sole remedy in such circumstance shall be an action or proceeding to enforce any such provision by way of specific performance, injunction or declaratory judgment.

(b) If Lessor fails to approve or disapprove a request for consent within thirty (30) days (provided, that if Lessee requires a response from Lessor prior to such thirtieth (30<sup>th</sup>) day in order to ensure the orderly operation of the Franchise and the Leased Premises, Lessee may, in its initial submission to Lessor, request that Lessor respond with a shorter period of time, but in no event less than fifteen (15) Business Days), Lessee shall have the right to provide Lessor with a second written request for consent (a "Second Consent Request"), which shall set forth in bold capital letters the following statement: "IF LESSOR FAILS TO RESPOND WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN LESSEE SHALL BE ENTITLED TO TAKE THE ACTION LESSEE HAS REQUESTED LESSOR'S CONSENT TO PREVIOUSLY AND TO WHICH LESSOR HAS FAILED TO TIMELY RESPOND." In the event that Lessor fails to respond to a Second Consent Request within ten (10) Business Days after receipt by Lessor, the action for which the Second Consent Request is submitted shall be deemed to be approved by Lessor. Notwithstanding the foregoing, in no event shall this Section 14.15 (b) apply to a request by Lessee to assign the Lease or sublet the Leased Premises pursuant to Section 7.1 hereof or to mortgage or encumber its leasehold interest in the Leased Premises pursuant to Section 8.1 hereof.

14.16 Non-Interference. Lessor will use reasonable efforts to ensure that neither Lessor nor any tenants, licensees or occupants of the Premises or any adjacent

property owned by Lessor, interferes in a material adverse manner with Lessee's use and occupancy of and the conduct of its operations at the Leased Premises.

14.17 Primacy of Documents. In the event of a conflict between the provisions of the Legislation and the provisions of this Lease or the Franchise Agreement, the provisions of the Legislation shall prevail. In the event of a conflict between the provisions of this Lease and the Franchise Agreement, the provisions of the Franchise Agreement shall prevail. Notwithstanding the foregoing, the description of the Leased Premises set forth in this Lease shall prevail over any contrary provision in the Franchise Agreement.

14.18 Counterparts. This Lease may be executed in two or more fully or partially executed counterparts, each of which shall be deemed an original, binding the signer thereof against the other signing Party, but all counterparts together will constitute one and the same instrument.

14.19 State Appendix. New York State Appendix A, attached hereto as Exhibit F, is incorporated herein and made a part of this Lease.

14.20 Regulatory Space. Lessee acknowledges that certain agencies of the State of New York relating to racing and wagering (the "Agencies") occupy space on the Leased Premises, and Lessee agrees that the Agencies may continue to occupy such space, free of charge, for the Term hereof. In the event that Lessee desires to relocate the Agencies within the Leased Premises, Lessee shall provide facilities of comparable size, character, quality and utility and reasonably convenient location to the Agencies, and shall pay all reasonable costs of relocating the Agencies to such replacement space.

14.21 Lessor Mortgage of Leased Premises. Lessor represents and warrants that as of the date hereof it has not mortgaged or encumbered its fee interest in the Leased Premises. Lessor may not mortgage or encumber its fee interest in the Leased Premises without obtaining a non-disturbance agreement in favor of Lessee, which must be in form and content reasonably satisfactory to Lessee.

14.22 Successors and Assigns. The provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**SIGNATURE PAGES TO FOLLOW**

Lessor and Lessee have executed this Lease as of the day and year first above written.

**LESSOR:**

**THE PEOPLE OF THE STATE OF  
NEW YORK ACTING BY AND  
THROUGH THE STATE FRANCHISE  
OVERSIGHT BOARD PURSUANT TO  
CHAPTER 18 OF THE LAWS OF 2008**

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**Approved as to form by:**

**THE OFFICE OF THE ATTORNEY  
GENERAL OF THE STATE OF NEW  
YORK**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

**LESSEE:**

**THE NEW YORK RACING  
ASSOCIATION, INC.**

---

**By: Patrick L. Kehoe  
Title: General Counsel**

State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

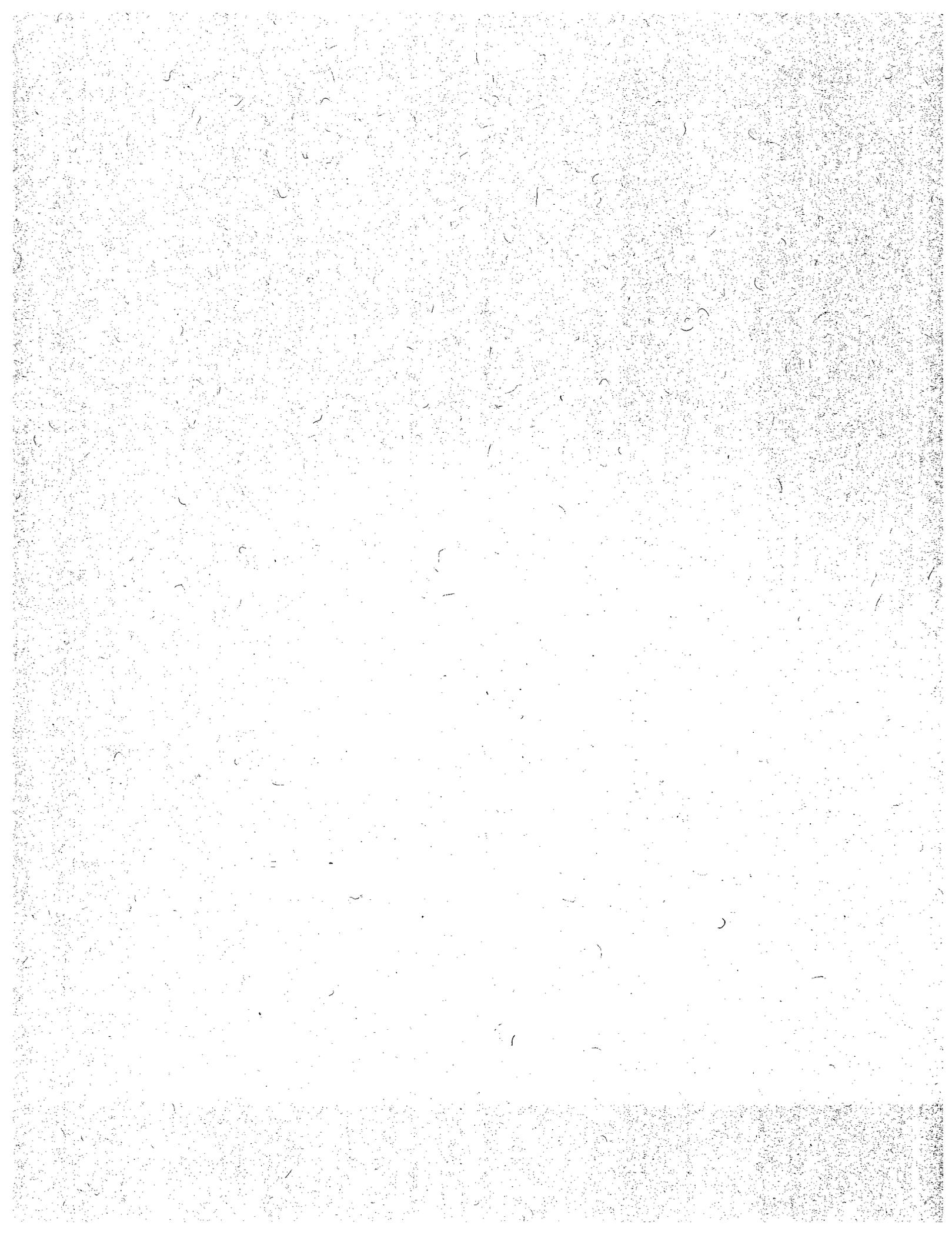
\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

State of New York )

County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment



**EXHIBIT G**

**NEW NYRA ARTICLES OF INCORPORATION**

**CERTIFICATE OF INCORPORATION  
OF  
THE NEW YORK RACING ASSOCIATION, INC.**

Under Section 402 of the Not-For-Profit Corporation Law and Section 201 of the Racing,  
Pari-Mutuel Wagering and Breeding Law

THE UNDERSIGNED, being a natural person at least 18 years of age and acting as the incorporator of the corporation hereby being formed under Section 402 of the Not-For-Profit Corporation Law of the State of New York (the "Not-For-Profit Corporation Law"), hereby certifies that:

**FIRST:** The name of the corporation (hereinafter called the "Corporation") is "THE NEW YORK RACING ASSOCIATION, INC."

**SECOND:** In accordance with Section 206.1 of the New York Racing, Pari-Mutuel Wagering and Breeding Law (L.1982, c. 865, §1, as amended, Consolidated Laws Chapter 47-A and Chapter 18 of the Laws of 2008), as amended from time to time (the "Racing Law"), the Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-For-Profit Corporation Law and shall be a Type C membership corporation under Section 201 of the Not-For-Profit Corporation Law.

**THIRD:** The Corporation is formed for the purpose and objective of conducting race meetings at one or more thoroughbred racetracks, conducting pari-mutuel wagering and furthering the raising and breeding and improving the breed of horses, including exercising the particular powers conferred by Section 203 of the Racing Law with all the general powers of corporations created under the laws of the State of New York. The Corporation intends to conduct running or steeplechase race meetings in the following counties: Queens, Nassau and Saratoga.

**FOURTH:** In furtherance of the foregoing purposes, the Corporation shall have all of the powers enumerated in Section 202 of the Not-For-Profit Corporation Law and such other powers as are now or hereafter permitted by law for a corporation organized for such purposes including, without limitation, all the powers and rights conferred by the Racing Law.

**FIFTH:** The Corporation shall have twenty-five (25) individual members (each, a "Member," and collectively, the "Membership"), divided into two membership classes. One membership class, to be known as Class A, initially shall be the persons listed in this Section Fifth of the Certificate of Incorporation of the Corporation (the "Certificate of Incorporation"). Subsequent Class A member(s) shall, following vacancy, be elected by majority vote of, or by the unanimous written consent of, the Class A Members, voting as a separate class, in accordance with Not-For-Profit Corporation Law. The second membership class, to be known as Class B, shall be the persons appointed as directors of the Corporation pursuant to Section 207.1 of the Racing Law.

The names of the initial Class A Members shall be the following persons:

C. Steve Duncker  
Charles E. Hayward  
James P. Heffernan  
Dennis D. Dammerman  
Stuart S. Janney III  
Barry R. Ostrager  
Odgen M. Phipps  
Michael L. Rankowitz  
Lucy Young Hamilton  
John W. Meriwether  
Richard T. Santulli  
Stuart Subotnick  
Robert S. Evans  
Peter G. Schiff

**SIXTH:** Subject to the provisions of this Section Sixth, the Corporation shall have twenty-five (25) individual directors to be elected or appointed as follows:

(a) fourteen (14) directors, known as Class A Directors, to be elected by majority vote of, or by the unanimous written consent of, the Class A Members of the Corporation, voting as a separate class, in accordance with Not-For-Profit Corporation Law;

(b) seven (7) directors, known as Class B Directors, to be appointed in writing by the Governor of the State of New York (the "Governor") in accordance with Section 207(1)(a) of the Racing Law;

(c) two (2) directors, known as Class B Directors, to be appointed in writing by the Speaker of the Assembly of the State of New York (the "Speaker") in accordance with Section 207(1)(a) of the Racing Law; and

(d) two (2) directors, known as Class B Directors, to be appointed in writing by the Temporary President of the Senate of the State of New York (the "Temporary President") in accordance with Section 207(1)(a) of the Racing Law.

The failure to elect or appoint one or more directors pursuant to this Section Sixth shall not impair the ability of the Corporation to take any action which the

Corporation has the power or authority to take under applicable law, this Certificate of Incorporation or the Corporation's Bylaws.

With respect to any director elected or appointed pursuant to this Section Sixth, only the person(s) entitled to elect or appoint such director, as applicable, may remove such director at any time. To the extent that any vacancy arises on the Board of Directors from time to time as a result of the resignation, removal or death of a director, only the person(s) entitled to elect or appoint such director in accordance with this Section Sixth shall be entitled to elect or appoint, as applicable, a replacement director to fill any such vacancy.

**SEVENTH:** The names and post-office addresses of the initial directors of the Corporation, to serve for the first year, as supplemented by the directors to be appointed in accordance with the provisions of this Certificate of Incorporation, shall be as follows:

<u>Name</u>	<u>Post-Office Address</u>
C. Steve Duncker	c/o The New York Racing Association, Inc. 110-00 Rockaway Blvd. Jamaica, New York 11417
Charles E. Hayward	c/o The New York Racing Association, Inc. 110-00 Rockaway Blvd. Jamaica, New York 11417
James P. Heffernan	c/o The New York Racing Association, Inc. 110-00 Rockaway Blvd. Jamaica, New York 11417
Dennis D. Dammerman	c/o The New York Racing Association, Inc. 110-00 Rockaway Blvd. Jamaica, New York 11417
Stuart S. Janney III	c/o The New York Racing Association, Inc. 110-00 Rockaway Blvd. Jamaica, New York 11417
Barry R. Ostrager	c/o The New York Racing Association, Inc. 110-00 Rockaway Blvd. Jamaica, New York 11417
Odgen M. Phipps	c/o The New York Racing Association, Inc. 110-00 Rockaway Blvd. Jamaica, New York 11417
Michael L. Rankowitz	c/o The New York Racing Association, Inc. 110-00 Rockaway Blvd. Jamaica, New York 11417
Lucy Young Hamilton	c/o The New York Racing Association, Inc.

110-00 Rockaway Blvd.  
Jamaica, New York 11417

John W. Meriwether c/o The New York Racing Association, Inc.  
110-00 Rockaway Blvd.  
Jamaica, New York 11417

Richard T. Santulli c/o The New York Racing Association, Inc.  
110-00 Rockaway Blvd.  
Jamaica, New York 11417

Stuart Subotnick c/o The New York Racing Association, Inc.  
110-00 Rockaway Blvd.  
Jamaica, New York 11417

Robert S. Evans c/o The New York Racing Association, Inc.  
110-00 Rockaway Blvd.  
Jamaica, New York 11417

Peter G. Schiff c/o The New York Racing Association, Inc.  
110-00 Rockaway Blvd.  
Jamaica, New York 11417

**EIGHTH:** The office of the Corporation shall be located in the County of Queens in the State of New York and shall be the principal business office of the Corporation.

**NINTH:** The Secretary of State is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon it is:

The New York Racing Association, Inc.  
110-00 Rockaway Blvd.  
Jamaica, New York 11417

**TENTH:** The Corporation shall indemnify each of its current and former directors and officers from time to time (and their heirs, executors and administrators) to the fullest extent permitted by law. The directors of the Corporation, and any person or persons acting on their behalf, while acting within the scope of their authority, shall be exempt from any personal liability resulting from carrying out any of the powers expressly given in Chapter 18 of the Laws of 2008, except for acts of malfeasance or gross negligence.

**ELEVENTH:** Subject to the Racing Law, if the Corporation voluntarily relinquishes the State racing franchise held by the Corporation prior to the expiration of

such franchise, or voluntarily declines to continue conducting race meetings and pari-mutuel betting on the races run at such race meetings as required by its franchises unless such declination is the result of strikes, acts of God, or other unavoidable causes not under the control of the Corporation, or voluntarily affects corporate dissolution in the manner provided for by article ten or eleven of the Not-For-Profit Corporation Law and other applicable provisions of law, or if such franchise is revoked by the New York State Racing and Wagering Board, then, notwithstanding any other provision of law to the contrary, the Corporation shall transfer to the New York State Franchise Oversight Board at the time of such relinquishment, declination, revocation or dissolution all right, title and interest held by the Corporation in all such facilities and associated assets, and all capital improvements made to the real property and such facilities.

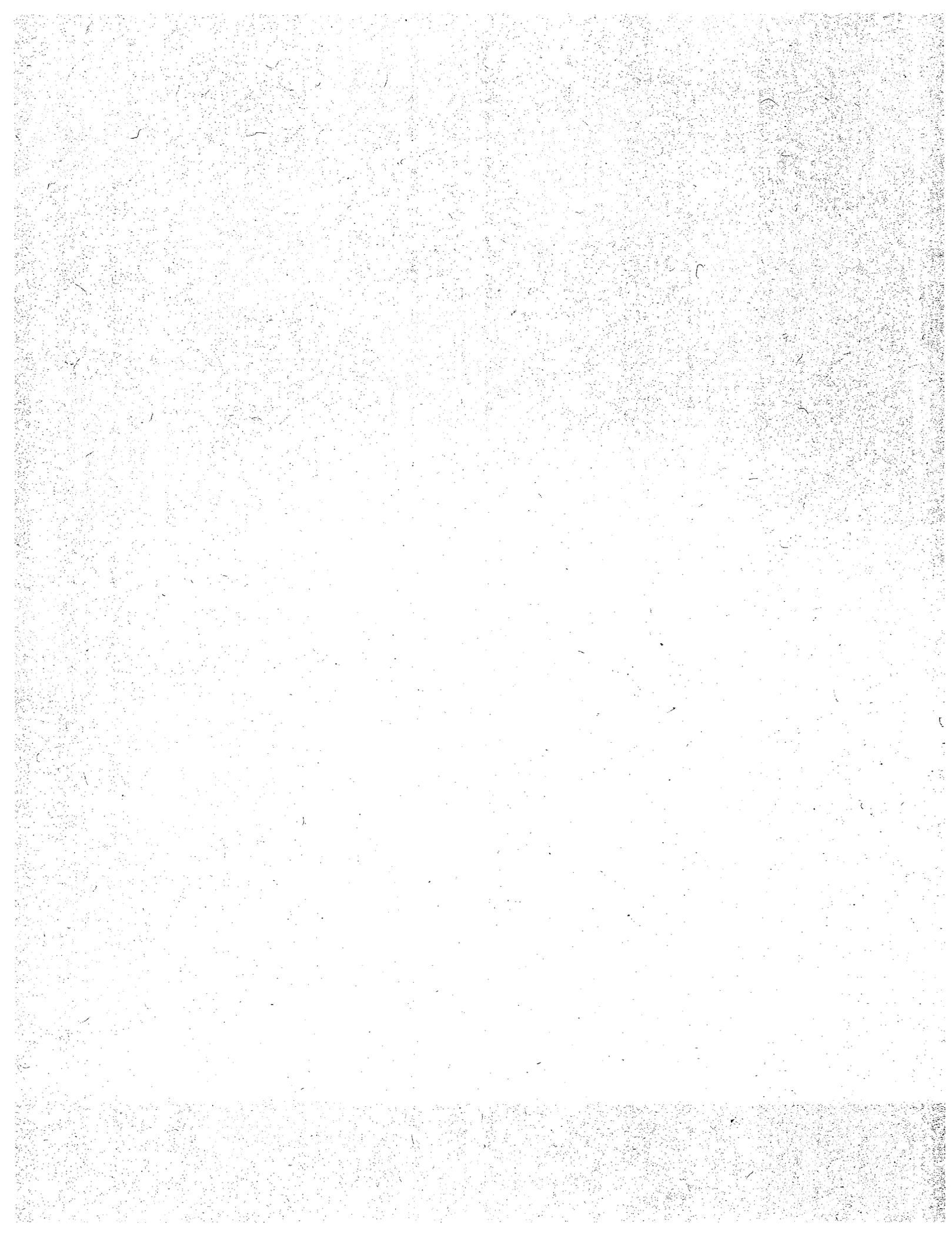
**TWELFTH:** Subject to the Racing Law, the duration of the Corporation shall be coterminous with the expiration, revocation or relinquishment of the Corporation's racing franchise, as provided under the Racing Law, but shall not exceed September 12, 2033. Notwithstanding the foregoing, to the extent the Corporation's racing franchise is extended at any time, the Corporation's duration shall automatically be extended so that the Corporation's duration shall at all times be coterminous with the duration of its racing franchise.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Incorporation and affirmed as true the statements made herein under the penalties of perjury this 12<sup>th</sup> day of September, 2008.

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Name: Patrick Kehoe  
Title: Sole Incorporator



**EXHIBIT H**  
**NEW NYRA BY LAWS**

BYLAWS OF  
THE NEW YORK RACING ASSOCIATION, INC.

**BYLAWS**  
**of**  
**THE NEW YORK RACING ASSOCIATION, INC.**

**ARTICLE I**  
**NAME, PURPOSES, OFFICE**

Section 1.01 Name. The name of the Corporation is "The New York Racing Association, Inc." (the "Corporation").

Section 1.02 Purposes. The Corporation is formed for the purpose and objective of conducting race meetings at one or more thoroughbred racetracks, conducting pari-mutuel wagering and furthering the raising and breeding and improving the breed of horses, with all the general powers of corporations created under the laws of the State of New York.

Section 1.03 Office. The principal office of the Corporation shall be located at 110-00 Rockaway Blvd., Jamaica, New York, in the county of Queens, in the State of New York. The Corporation may change the location of the principal office to any other location at which the Corporation operates a racetrack in the State of New York and maintain additional offices at such other places within the State as the Board of Directors of the Corporation (the "Board") may from time to time determine or the business of the Corporation may require.

**ARTICLE II**  
**MEMBERS**

Section 2.01 General. The Corporation is a membership organization.

Section 2.02 Membership. The Corporation shall have twenty-five (25) individual members (each, a "Member," and collectively, the "Membership"), divided into two membership classes. One membership class, to be known as Class A, initially shall be the persons listed in Section Fifth of the Certificate of Incorporation of the Corporation (as the same may be amended from time to time in accordance with law, the "Certificate of Incorporation") and who shall be initial directors of the Corporation as provided in Section Seventh of the Certificate of Incorporation. Subsequent Class A Members shall, following vacancy, be elected by majority vote of, or by the unanimous written consent of, the Class A Members, voting as a separate class, in accordance with Not-For-Profit Corporation Law. The second membership class, to be known as Class B, shall be the persons from time to time appointed as directors of the Corporation pursuant to Section 207.1 of the Racing Law (as defined below) and who shall also be directors of the Corporation. Subsequent Class B Members shall be the persons appointed as directors pursuant to Section 207.1 of the New York Racing, Pari-Mutuel Wagering and Breeding Law (L.1982, c. 865, § 1, as amended, Consolidated Laws Chapter 47-A and

Chapter 18 of the Laws of 2008), as amended from time to time (the "Racing Law"). A Member shall not be entitled to transfer his or her membership interests to any person.

Section 2.03 Term of membership service.

(a) Class A Membership. Each Class A Member shall be a Class A Director of the Corporation elected pursuant to subsection (a) of Section Sixth of the Certificate of Incorporation and shall continue to serve as a Class A Director for so long as such person serves as a Class A Member. If at any time a Class A Member ceases to be a Class A Member for any reason, such person shall automatically cease to serve as a Class A Director at such time. If at any time a Class A Member ceases to be a Class A Director for any reason (including, without limitation, such Class A Director's resignation or removal as a Class A Director), such person shall automatically cease to be a Class A Member. In the event of any vacancy in the Class A Membership, the remaining Class A Members shall fill such vacancy by electing another individual to serve as a replacement Class A Member and any such replacement Class A Member so elected by the Class A Membership shall also be elected by the Class A Membership to serve as a Class A Director of the Corporation pursuant to subsection (a) of Section Sixth of the Certificate of Incorporation.

(b) Class B Membership. Each Class B Director of the Corporation appointed pursuant to Section 207.1 of the Racing Law shall, concurrently with his or her appointment as a director of the Corporation and without further action, become a Class B Member and shall continue to serve as a Class B Member for so long as such person serves as a Class B Director. A Class B Member shall not be entitled to resign from the Class B Membership so long as such person serves as a Class B Director. If at any time a Class B Member ceases to be a Class B Director appointed pursuant to Section 207.1 of the Racing Law for any reason (including, without limitation, such Class B Director's resignation or removal as a Class B Director), such person shall automatically cease to be a Class B Member and the vacancy in the Class B Membership shall be filled by appointment of another individual to serve as a Class B Director of the Corporation pursuant to Section 207.1 of the Racing Law and such individual shall also become a Class B Member in accordance with this Section 2.03(b).

Section 2.04 Electing Class A Members and Class A Directors. The Class A Members are entitled to (i) fill any vacancy in their membership class in accordance with Section 2.03(a) of these Bylaws and (ii) elect fourteen (14) Class A Directors to the Board in accordance with subsection (a) of Section Sixth of the Certificate of Incorporation and these Bylaws (as the same may be amended from time to time in accordance with law, the "Bylaws").

**ARTICLE III**  
**MEETINGS OF THE MEMBERSHIP**

Section 3.01 Annual and Special Meetings.

(a) Annual Meeting. There shall be an annual meeting of the Members (the "Annual Membership Meeting") at such time and place as shall be determined by the Chairperson or by resolution of the Board and in accordance with the Not-For-Profit Corporation Law of the State of New York, as amended from time to time (the "Not-For-Profit Corporation Law"). All business which properly comes before the Annual Membership Meeting shall be transacted, including, without limitation, the following:

(i) in the case of the Class A Members, the election of fourteen Class A Directors to the Board by majority vote of the Class A Members, voting as a separate class, in accordance with subsection (a) of Section Sixth of the Certificate of Incorporation (it being understood, however, that in no event shall the Class B Members participate in the election of any Class A Directors);

(ii) consideration of reports for the closing year; and

(iii) any special business on which the Members may act in accordance with applicable law and as shall be set forth on the agenda for the Annual Membership Meeting, of which due notice has been given in accordance with Section 3.03 of the Bylaws.

(b) Special Meetings. A special meeting of the Members (a "Special Membership Meeting") may be called at any time (i) by the Chairperson, (ii) by resolution of the Board or (iii) upon the written request of such number of Members constituting not less than one-third (1/3) of the then present Membership delivered to the Secretary of the Corporation. If a Special Membership Meeting is called by written request of the Members, upon receiving the written request, the Secretary shall cause prompt notice of the meeting to be given to the Members in accordance with the Bylaws or, if the Secretary fails to do so within five (5) business days, any Member signing the demand may give such notice. Notice of any Special Membership Meeting shall also specify the persons who are calling such meeting and shall contain a specific statement of the purpose or purposes for which such meeting is to be held. Special meetings shall deal only with matters of business which either have been stated in the notice of the meeting or as to which notice of such matter has been waived by all the Members in accordance with Section 606 of the Not-For Profit Corporation Law.

Section 3.02 Voting.

(a) Number of Votes. Each Member shall have one (1) vote at all meetings of the Membership and, in the case of meetings of any Membership class, each Member of such class shall have one (1) vote at all meetings of such Membership class.

(b) Quorum and Action. A quorum at all meetings of the Membership shall consist of a majority of the total number of persons then serving as Members. A quorum at all meetings of any Membership class shall consist of a majority of the total number of persons then serving as Members in such class. A Member shall be considered present in person or by proxy. All actions of the Membership or any Membership class shall become effective upon a majority of the votes cast by the persons present in person or by proxy and entitled to vote thereon.

Section 3.03 Timing of Notice of Membership Meetings. Notice of the date, time and place of any Membership meeting shall be given, in person or by mail, by the Secretary of the Corporation, if given in person or via first-class mail, not less than ten (10) days nor more than fifty (50) days in advance of such meeting to each Member; provided, however, if such notice is mailed by any other class of mail, such notice shall be given not less than thirty (30) days nor more than sixty (60) days before such date. There shall be included with notice of any Membership meeting a suitable form of proxy for use by the Members. Nothing in this Section 3.03 shall prohibit the Membership from holding any Special Membership Meeting on shorter notice, or without any notice at all, in accordance with Section 606 of the Not-For-Profit Corporation Law.

Section 3.04 Action Without a Meeting. Any action required or permitted under these Bylaws to be taken by a vote of the Members at any meeting of the Membership or at any meeting of any Membership class, as applicable, may be taken without a meeting by written consent, setting forth the action to be so taken, signed by all the then Members.

## **ARTICLE IV BOARD OF DIRECTORS**

Section 4.01 Powers and Number. The Board shall have general power to control and manage the affairs and property of the Corporation subject to applicable law and in accordance with the purposes and limitations set forth in the Certificate of Incorporation and in these Bylaws. The Board shall consist of twenty-five (25) directors (the "Directors") as set forth in Section 207.1 of the Racing Law and Section Sixth of the Certificate of Incorporation. The failure to elect or appoint one or more Directors pursuant to Section Sixth of the Certificate of Incorporation shall not impair the ability of the Corporation to take any action which the Corporation has the power or authority to take under applicable law, the Certificate of Incorporation or the Bylaws. The term "Entire Board" shall mean at any time the total number of Directors entitled to vote which the Corporation would have if there were no vacancies.

Section 4.02 Eligibility. No Class A Director elected in accordance with subsection (a) of Section Sixth of the Certificate of Incorporation shall be over the age of seventy-five (75) at the time of his or her election to the Board.

Section 4.03 Term of Service. The initial Directors shall be the persons named in the Certificate of Incorporation. Any Class A Director elected by the Class A

Members in accordance with subsection (a) of Section Sixth of the Certificate of Incorporation shall serve until the next meeting of the Class A Membership at which his or her successor is elected by the Class A Members or until the resignation, removal or death of such Director. Any Class B Director appointed in accordance with subsections (b), (c) or (d) of Section Sixth of the Certificate of Incorporation shall commence service upon written notification from the appointing authority to the Secretary of the Corporation that such appointment has become effective and shall serve until the resignation, removal or death of such Class B Director.

Section 4.04 Chairperson and Vice-Chairperson of the Board. The Board, by resolution adopted by a majority of the Entire Board, shall designate from among the Directors a Chairperson who shall preside at all meetings of the Board. The Chairperson shall be designated annually by the Board. The initial Chairperson shall serve for no more than four years. In addition, the Board, by resolution adopted by a majority of the Entire Board, shall annually designate from among its members a Vice-Chairperson, who, if present, shall preside at all meetings of the Board when the Chairperson is absent from such meetings. In the absence of both the Chairperson and the Vice-Chairperson from a Board meeting, such member of the Board as the Board members present may designate shall preside at the meeting.

Section 4.05 Resignation. Any Director may resign at any time by delivering a resignation in writing to the Chairperson, the President or the Secretary and, in the case of an appointed Director, to their appointing authority. The resignation shall take effect at the time specified therein, and acceptance of the resignation, unless required by its terms, shall not be necessary to make the resignation effective.

Section 4.06 Vacancies.

(a) Vacancies Among Elected Class A Directors. If any vacancy arises on the Board from time to time as a result of the resignation, removal or death of any elected Class A Director of the Corporation, the Class A Members shall fill such vacancy in accordance with this Section 4.06. Upon the occurrence of any such vacancy on the Board, the Secretary of the Corporation shall promptly give the Class A Membership and the Nominating Committee of the Board notice in writing of such vacancy. The Nominating Committee shall convene as promptly as practicable thereafter to conduct searches, consider potential candidates and make a recommendation to the Class A Membership on a potential candidate to fill such vacancy. As promptly as practicable following the receipt of the Nominating Committee's recommendation of a person to fill such vacancy, the Secretary shall call a meeting of the Class A Membership to fill such vacancy on the Board or, at the discretion of the Chairperson, in lieu of calling a meeting of the Class A Membership, the Secretary shall prepare a form of unanimous written consent for circulation to the Class A Members to fill such vacancy without a meeting of the Class A Membership. Notwithstanding any recommendation of the Nominating Committee, the Class A Membership shall have complete discretion as to whether or not to elect any director candidate recommended by the Nominating

Committee, and the Class A Membership in its discretion may elect any individual not recommended by the Nominating Committee to fill such vacancy.

(b) Vacancies Among Appointed Class B Directors. If any vacancy arises on the Board from time to time as a result of the resignation, removal or death of any appointed Class B Director of the Corporation, the Secretary of the Corporation shall promptly give notice in writing to the appointing authority that appointed such Class B Director in accordance with subsections (b), (c) or (d) of Section Sixth of the Certificate of Incorporation (i) of such vacancy and (ii) requesting such person to promptly provide the Secretary with the name and address of the individual appointed by such person to fill such vacancy in accordance with subsections (b), (c) or (d) of Section Sixth of the Certificate of Incorporation.

#### Section 4.07 Removal.

(a) The Class A Members may vote to remove, with or without cause, any Class A Director elected in accordance with subsection (a) of Section Sixth of the Certificate of Incorporation. The Class B Members shall not be entitled to vote with respect to the removal of any Class A Directors.

(b) Any Class B Directors appointed in accordance with subsections (b), (c) or (d) of Section Sixth of the Certificate of Incorporation may be removed, with or without cause, only by the appointing authority that appointed such Class B Director.

Section 4.08 Compensation. No compensation of any kind shall be paid to any Director for the performance of his or her duties as a Director; provided, however, that Directors shall be reimbursed by the Corporation for their actual and necessary out-of-pocket expenses incurred in the performance of their duties to the Corporation, to the extent such expenses are reasonable. Subject to Article XII below (Conflicts of Interest, Contracts and Services of Directors and Officers), provided that there is full disclosure to the Board of the terms of such compensation and, to the extent required by the Bylaws, the arrangement has been approved in accordance with the Bylaws, this Section 4.08 shall not in any way limit reimbursement of or payment for services provided to the Corporation by the Director in any capacity separate from his or her responsibilities as a Director, including, without limitation, in his or her capacity as an officer or employee of the Corporation (in the case of an officer or employee of the Corporation who is also a Director).

### ARTICLE V MEETINGS OF DIRECTORS

Section 5.01 Meetings. Meetings of the Board (annual or regular) may be held on any day, and at such time and place, as shall be determined by the Board. Unless the Board by resolution determines otherwise, meetings of the Board shall be held at least four (4) times a year within the State of New York.

Section 5.02 Special Meetings. Special meetings of the Board shall be called at any time by the Secretary, acting upon the request of the Board, the Chairperson, the President or the written request of Directors constituting a majority of the Entire Board. Each special meeting of the Board shall be held on such date and time and at such place as shall be specified in the notice of such meeting.

Section 5.03 Notice or Actual or Constructive Waiver. No notice shall be required for annual or regular meetings for which the date, time and place have been fixed by the Board. Written notice (including by email) of the date, time and place shall be given for special meetings of the Board at least forty-eight (48) hours in advance of such special meeting. The notice of a special meeting of the Board shall contain the specific purpose of the meeting. Business transacted at such a special meeting of the Board shall be limited to such specific purpose. Any requirements of furnishing a notice shall be waived by any Director who signs a waiver of notice before, at its commencement or after the meeting, or who attends the meeting without protesting (either prior to or at its commencement) the lack of notice to such Director. Any annual, regular or special meeting of the Board may be adjourned for any reason; provided, however, that the recommencement of any such adjourned meeting shall occur no later than ten (10) days from the original date of such meeting.

Section 5.04 Quorum and Action. Except as required by law or as hereinafter provided, a majority of the Entire Board shall constitute a quorum at any meeting of the Board. A majority of the Directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as otherwise provided by the Not-For-Profit Corporation Law, and except as otherwise provided in the Bylaws, the action of the Board shall be the action taken, at a meeting duly assembled, by vote of a majority of the Directors present at the time of the vote, a quorum being present at such time. Each Director present at a meeting of the Board shall have one (1) vote with respect to each resolution or action voted on by the Board. With the consent of the Chairperson, which consent, if given, shall apply to all Directors, any one or more members of the Board may participate in a meeting of the Board by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

Section 5.05 Actions Without a Meeting. Any action required or permitted under these Bylaws to be taken by the Board may be taken without a meeting if all members of the Board consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the Directors shall be filed with the minutes of the proceedings of the Board referenced in Section 8.01 of these Bylaws. Any such written consent may be in electronic form and may be transmitted through mail, e-mail or other electronic means, telegraph or facsimile transmission (but, if in electronic form, a paper copy thereof shall be filed with the minutes of the proceedings of the Board).

Section 5.06 Delegation of Authority. Except as otherwise imposed under applicable law or provided in these Bylaws, the Board may delegate to one or more of the Corporation's officers, agents or employees, such powers and duties as the Board may deem appropriate. However, delegation of authority to any person shall not relieve any Director of his or her duty to the Corporation under Section 717 of the Not-For-Profit Corporation Law. In no event shall the Board delegate to any person authority with respect to the following matters:

- (a) The submission to Members of any action requiring the Members' approval under the Not-For-Profit Corporation Law;
- (b) The filling of any vacancies in the Board or in any committee of the Board;
- (c) The amendment or repeal of these Bylaws or the adoption of amended and restated Bylaws of the Corporation; and
- (d) The amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.

## **ARTICLE VI COMMITTEES**

Section 6.01 Committees. The Board, by resolution adopted by a majority of the Entire Board, may from time to time designate from their number one or more committees consisting of three (3) or more Directors to serve at the pleasure of the Board, each of which, to the extent provided in the resolution designating it, shall have the authority of the Board with the exception of any authority the delegation of which is prohibited by Section 712 of the Not-For-Profit Corporation Law. Additionally, the Board may provide for special committees of the Board, which shall have such powers as the Board may lawfully delegate. Special committees shall have the power to recommend action to the Board but shall not have the power to take any official action. The Chairperson shall serve ex officio as a member of all committees of the Board. The Chairperson may propose a committee member to serve as chairperson of such committee of the Board, subject to the approval of the Board. Each committee of the Board shall report to the full Board its activities and actions undertaken at the next regular Board meeting.

Section 6.02 Mandatory Committees. The Board shall constitute an executive committee (the "Executive Committee") which shall consist of not less than (3) Directors (in addition to the Chairperson of the Board, who shall serve as a member ex officio), all of whom shall be selected and appointed by the Board; provided that (i) at least one (1) such Director shall be a Class B Director appointed to the Board in accordance with subsection (b) of Section Sixth of the Certificate of Incorporation (to the extent any such Director is serving on the Board) and the Governor shall be entitled to designate such Class B Director to serve on the Executive Committee, (ii) at least one (1) such Director

shall be a Class B Director appointed to the Board in accordance with subsection (c) of Section Sixth of the Certificate of Incorporation (to the extent any such Director is serving on the Board) and (iii) at least one (1) such Director shall be a Class B Director appointed to the Board in accordance with subsection (d) of Section Sixth of the Certificate of Incorporation (to the extent any such Director is serving on the Board). In the event that the Governor fails to designate the Class B Director referred to in clause (i) of the immediately preceding sentence to serve on the Executive Committee, such failure shall result in a vacancy on such committee until such time as the Governor designates, and the Board appoints, such Class B Director to serve on such committee, and such vacancy shall not impair or hinder the ability of such committee to take any action. The Executive Committee may exercise, when the Board is not in session, all the powers of the Board that may be lawfully delegated to a committee by the Board. In addition, the Board shall constitute each of the committees listed in subsections (a) through (c) below and each such committee shall consist of not less than three (3) Directors (in addition to the Chairperson of the Board, who shall serve as a member ex officio), at least one (1) of which shall be a Class B Director appointed to the Board in accordance with subsection (b) of Section Sixth of the Certificate of Incorporation (to the extent any such Director is serving on the Board). The Governor shall be entitled to designate the Class B Director to serve on any such committee of the Board. In the event that the Governor fails to designate the Class B Director to serve on any such committee, such failure shall result in a vacancy on such committee until such time as the Governor designates, and the Board appoints, the Class B Director to serve on such committee, and such vacancy shall not impair or hinder the ability of such committee to take any action.

- (a) Compensation Committee. The Compensation Committee shall assist the Board in setting executive compensation guidelines and to review and make recommendations regarding compensation plans, policies and programs of the Corporation, such guidelines and recommendations to be consistent with the operation of other first class thoroughbred racing operations in the United States.
- (b) Finance Committee. The Finance Committee shall review annual operating and capital budgets for the Corporation for each of the racetracks operated by the Corporation and assist the Board with respect to its oversight responsibilities relating to fiscal management of the Corporation's financial assets.
- (c) Nominating Committee. The Nominating Committee shall present to the Membership its recommendations for nominating director candidates for election from time to time in accordance with subsection (a) of Section Sixth of the Certificate of Incorporation.

Section 6.03 Term. With the exception of the Chairperson who serves ex officio as a member of all committees of the Board and subject to Section 6.02 hereof, each member of any committee of the Board shall serve on such committee at the pleasure of the Board.

Section 6.04 Vacancies. Subject to Section 6.02 hereof, if any vacancy shall occur in any committee of the Board for any reason, including an increase in the number of Directors thereon, the vacancy shall be filled by resolution adopted by the Entire Board in a manner consistent with the Bylaws.

Section 6.05 Meetings and Notice. Each committee of the Board may hold meetings at such time or times and at such place or places as it shall determine from time to time. No notice shall be required for meetings of any committee of the Board for which the date, time and place have been fixed by such committee. Written notice (including by email) of the date, time and place shall be given for meetings of each committee of the Board in sufficient time for the convenient assembly of the committee members unless the lapse of such time has been waived. The notice of any meeting of any committee of the Board shall specify the specific purpose of the meeting. Business transacted at such a meeting shall be limited to such specific purpose. Any requirements of furnishing a notice shall be waived by any committee member who signs a waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such committee member. With the consent of the chairperson of any committee, which consent, if given, shall apply to all Directors serving on such committee, any one or more Directors serving on any committee of the Board may participate in a meeting of a committee of the Board by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time and participation by such means shall constitute presence in person at a meeting. Each committee of the Board shall keep a record of its proceedings.

Section 6.06 Quorum and Vote. Except as required by law or as hereinafter provided, at all meetings of any committee of the Board, the presence in person, or by telephone or similar communications equipment, when permitted by the chairperson of the meeting, of committee members constituting a majority of the entire committee, shall be necessary and sufficient to constitute a quorum, and the act of a majority of the committee members present, a quorum being present, shall be the act of such committee.

Section 6.07 Actions Without a Meeting. Any action required or permitted under these Bylaws to be taken by any committee of the Board may be taken without a meeting if all members of the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the committee shall be filed with the minutes of the proceedings of the committee referenced in Section 8.01 of these Bylaws. Any such written consent may be in electronic form and may be transmitted through mail, e-mail or other electronic means, telegraph or facsimile transmission (but, if in electronic form, a paper copy thereof shall be filed with the minutes of the proceedings of the committee).

## **ARTICLE VII OFFICERS**

Section 7.01 Election and Term of Office. The officers of the Corporation shall include a President, a Secretary, and any other officers (including one or more Vice-Presidents) as the Board may deem necessary or appropriate, each of whom shall be elected by the Board from time to time. Any two or more offices may be held by the same person except the offices of the President and Secretary. Each officer shall hold office until the next annual meeting of the Board and the election of his or her successor, or until his or her earlier death, resignation or removal. The officers of the Corporation shall each have such powers and duties as are set forth herein and as generally pertain to their respective offices and such powers and duties as from time to time may be conferred upon them by the Board.

Section 7.02 Removal and Vacancies. Any officer may be removed with or without cause by the Board. A vacancy in any office may be filled by the Board for the unexpired term of the vacant office.

Section 7.03 Other Agents and Advisors. The Board may from time to time appoint such agents and advisors as it shall deem necessary, each of whom shall hold its position at the pleasure of the Board, and shall have such authority, perform such duties and receive such reasonable compensation, if any, as the Board may from time to time determine.

Section 7.04 President. The President shall have general supervision and authority over the affairs of the Corporation including such duties and powers as customarily pertain to such office, subject, however, to the control and oversight of the Board and the Executive Committee. The President shall keep the Board and the Executive Committee fully informed about the affairs of the Corporation.

Section 7.05 Vice-President. The most senior Vice-President, if any, shall, in the absence or disability of the President, act in the place of the President, or, if there shall be no Vice-President, the President's duties shall be performed by a Director designated by the Board. Each Vice-President, if any, shall also perform such other duties as from time to time may be assigned to him or her by the Board, the President or the Executive Committee, which duties may include powers elsewhere assigned or delegated to other officers.

Section 7.06 Secretary. The Secretary shall keep the minute books and, if there be one, the seal of the Corporation, serve or cause to be served all notices on behalf of the Corporation including notices of meetings of the Membership, the Board and committees of the Board (provided that, if notice is otherwise properly given, the absence or failure of the Secretary to give notice shall not affect the validity of the notice or meeting). Furthermore, the Secretary shall maintain the minutes of the meetings of the Membership, the Board, the committees of the Board and actions by written consent in lieu of a meeting, and in general perform all duties incident to the office of Secretary

under the Bylaws and have such duties and powers as customarily pertain to such office, and such other duties as from time to time may be assigned to him or her by the Board, the President or the Executive Committee, which duties may include powers elsewhere assigned or delegated to other officers.

Section 7.07 Compensation. Any officer of the Corporation is authorized to receive a reasonable salary and other reasonable compensation (including, without limitation, benefits, incentives and retirement programs) for services rendered to the Corporation. The compensation of the President, the Chief Financial Officer, the General Counsel, and each Executive Vice-President of the Corporation shall be determined by the Board following the receipt by the Board of the recommendation of the Compensation Committee. The compensation of the other officers of the Corporation shall be determined by the Chairperson or, with the written consent of the Chairperson, by the President of the Corporation.

## **ARTICLE VIII BOOKS, RECORDS AND FINANCIAL AUTHORITY**

Section 8.01 Books and Records. There shall be kept at the principal office of the Corporation accurate books of account of the activities and transactions of the Corporation, including a minute book, which shall contain a copy of the Certificate of Incorporation, a copy of the Bylaws, the Corporate Governance Code of Conduct and the Competitive Purchasing Bidding Policy, and all minutes of meetings and actions by written consent without a meeting of the Members, the Board and each committee of the Board.

Section 8.02 Execution of Instruments. The Board or, if delegated to the Executive Committee, the Executive Committee is authorized to select the banks or depositories it deems proper for the funds of the Corporation. The Board or, if delegated to the Executive Committee, the Executive Committee, shall determine who shall be authorized from time to time and in what manner on the Corporation's behalf to sign checks, drafts or other orders for the payment of money, acceptance, notes or other evidences or indebtedness, to enter into contracts or to execute and deliver other documents and instruments.

Section 8.03 Loans to Directors and Officers. No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to its Directors or officers, or to any other corporation, firm, association or other entity in which one or more Directors or officers are directors or officers or hold a substantial financial interest. A loan made in violation of this Section 8.03 shall be a violation of the duty to the Corporation of the Directors or officers authorizing it or participating in it; provided, however, that the obligation of the borrower with respect to any such loan shall not be affected thereby.

Section 8.04 Exemption from Personal Liability. The directors of the Corporation, and any person or persons acting on their behalf, while acting within the scope of their authority, shall be exempt from any personal liability resulting from carrying out any of the powers expressly given in Chapter 18 of the Laws of 2008, except for acts of malfeasance or gross negligence.

## **ARTICLE IX INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Section 9.01 Indemnification. The Corporation shall indemnify each of its current and former Directors and officers from time to time (and their heirs, executors and administrators) to the fullest extent permitted by law who is made, or threatened to be made, a party to an action or proceeding (a "Proceeding") by reason of the fact that such person (or his or her testator or intestate) was a Director or officer of the Corporation or served in any capacity another corporation or a partnership, joint venture, trust, employee benefit plan or other enterprise at the Corporation's request. With respect to each person who serves as a Director or officer at any time while the foregoing provisions of this Article IX are in effect, such provisions are intended to and shall constitute a contract between the Corporation and, severally, each such person in consideration of such person's services as a Director or officer and no repeal or modification of any of such provisions shall adversely affect any rights of such person or obligations of the Corporation to such person under such provisions with respect to any action or omission of such person occurring, or any state of facts existing, before such repeal or modification, regardless of whether a claim arising out of such action, omission or state of facts is asserted before or after such repeal or modification. To the fullest extent permitted by law, expenses incurred by a current or former Director or officer (or an heir, executor or administrator thereof) in defending a Proceeding may be paid by the Corporation in advance of the final disposition of such Proceeding upon receipt of an undertaking by or on behalf of such person to repay the amount so advanced in case, and to the extent, it shall ultimately be found in the manner provided by law that such person is not entitled to be indemnified by the Corporation against such expenses as authorized by this Section 9.01. The Corporation may indemnify and advance expenses to employees and agents of the Corporation to the same extent that it may do so in the case of a Director or officer of the Corporation.

Section 9.02 Insurance. The Corporation shall have the power to purchase and maintain such insurance as is permitted by law and as the Board may from time to time determine is prudent to protect the Corporation against losses caused by the acts of any Director, officer, or employee, to reimburse the Corporation for any obligation to indemnify a Director, officer, employee or agent incurred by the Corporation and to indemnify Directors, officers, employees and agents under circumstances where indemnity by the Corporation is not permitted but insurance coverage is permitted by applicable law.

**ARTICLE X  
CORPORATE SEAL**

The Corporation need not have a corporate seal. If the Corporation determines to have a corporate seal, such seal shall be in such form as the Board shall prescribe.

**ARTICLE XI  
FISCAL YEAR**

The fiscal year of the Corporation shall be determined by the Board.

**ARTICLE XII  
CONFLICTS OF INTEREST, CONTRACTS AND SERVICES OF  
DIRECTORS AND OFFICERS**

Section 12.01 Disclosure.

(a) Prior to election to the Board or appointment to an office, as applicable, and thereafter on an annual basis, each Director and officer shall disclose in writing, to the Board, in the case of a Director, or the Chairperson, in the case of an officer, to the best of his or her knowledge, any Interest (as defined below) such Director or officer may have in any corporation, organization, partnership or other entity which provides professional or other goods or services to the Corporation for a fee or other compensation, and any position or other material relationship such Director or officer may have with any person or entity with which the Corporation has any business relationship (collectively, a "Conflict of Interest"). A copy of each disclosure statement shall be made available to any Director, to any officer of the Corporation upon request, and to the Corporation's independent business integrity counsel.

(b) If at any time during his or her term of service, a Director or officer acquires any Interest or otherwise a circumstance arises which may pose a Conflict of Interest, that Interest and/or Conflict of Interest shall be promptly disclosed in writing to the Board, in the case of a Director, or the Chairperson, in the case of an officer.

(c) When any matter for decision or approval comes before the Board or any committee of the Board in which a Director or officer has an Interest or Conflict of Interest, that Interest or Conflict of Interest shall be immediately disclosed to the Board or relevant committee of the Board by that Director or officer.

Section 12.02 Definition of "Interest". Whether a Director or officer has an Interest in an entity shall be determined by whether such Director or officer would derive an individual economic benefit, either directly or indirectly, from any transaction or relationship involving such entity or any decision on a matter involving such entity by the

Board or a committee of the Board, other than from being an owner or a breeder of a horse that runs at the racetracks operated by the Corporation.

Section 12.03 Voting. No Director shall vote on any matter in which he or she has a Conflict of Interest.

Section 12.04 Non-Participation. Any Director or officer who has a Conflict of Interest in a matter shall leave the room in which any discussions regarding such matter are carried on, if so requested by the Board or the relevant committee of the Board; provided, however, that such Director or officer may participate in any discussions regarding his or her Conflict of Interest.

Section 12.05 Attempts to Influence. Directors and officers shall not attempt to influence other Directors and officers regarding matters in which they have a Conflict of Interest, without first disclosing any such Conflict of Interest.

Section 12.06 Other Activities. Directors, except as otherwise provided by law, may engage in private employment, or in a profession or business; provided, however, no Director shall have any direct or indirect economic interests in any video lottery gaming facility, excluding incidental benefits based on purses or awards won in the ordinary conduct of racing operations, or any direct or indirect interest in any development undertaken at the racetracks of the New York State racing franchise.

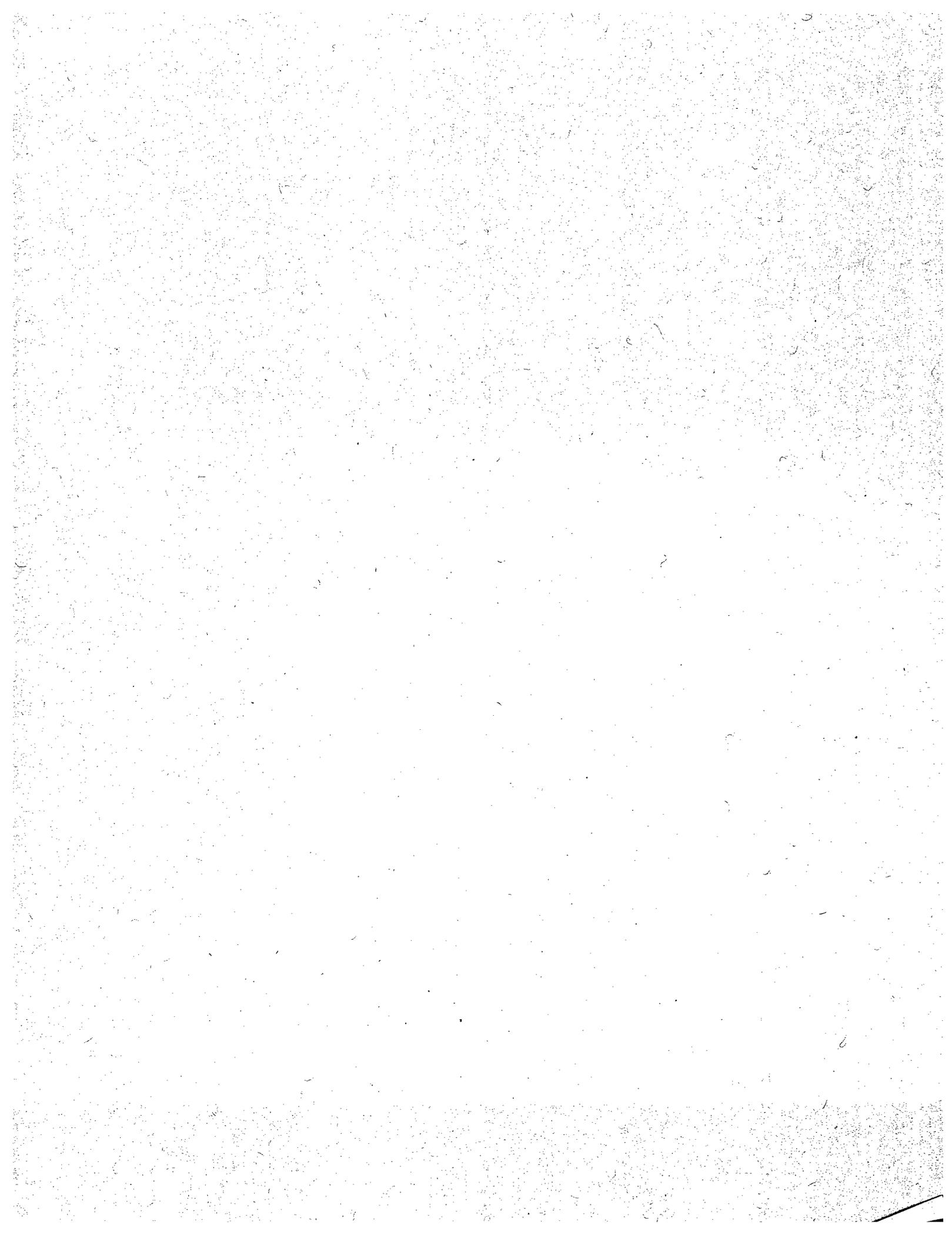
### **ARTICLE XIII AMENDMENTS TO BYLAWS**

Section 13.01 Amendments at Meetings of the Board. The Bylaws may be amended at any duly convened meeting of the Board by resolution adopted by a majority of the Entire Board and provided that notice of the proposed resolution and amendment, including a copy of the proposed amendment, has been given to all Directors in the manner provided by the Bylaws for the giving of notice of a special meeting of the Board or the giving of such notice has been waived in the manner provided by the Bylaws; provided, however, that any amendment of Sections 2.03(b), 4.06(b), 4.07(b) or 6.02 of the Bylaws (in each case, to the extent such amendment adversely affects the rights of the Class B Directors or any appointing authority of Class B Directors) shall, in addition to the approvals described above, also require the approval of a majority of the Class B Directors, voting separately on such matter at any meeting of Directors.

Section 13.02 Amendments by Written Consent. The Bylaws may also be amended by unanimous written consent of all the Directors without a meeting of the Board given in the manner provided by the Bylaws, provided that such amendment shall be included in the consent or notice of the proposed amendment and such notice shall have been given to each Director or waived in accordance with Section 13.01 hereof.

**ARTICLE XIV**  
**AMENDMENT OF CERTIFICATE OF INCORPORATION**

Amendments of the Certificate of Incorporation shall be approved by the Members at any duly convened meeting of the Membership by resolution adopted by a majority of the entire Membership (assuming no vacancies) provided that notice of the proposed resolution and amendment, including a copy of the proposed amendment, has been given to all Members in the manner provided by the Bylaws for the giving of notice of any meeting of the Membership or the giving of such notice has been waived in the manner provided by the Bylaws. Alternatively, amendments of the Certificate of Incorporation may be approved by unanimous written consent of all the Members without a meeting of the Membership given in the manner provided by the Bylaws, provided that such amendment shall be included in the consent or notice of the proposed amendment and such notice shall have been given in the manner provided in the Bylaws for the giving of notice of any meeting of the Membership or the giving of such notice has been waived in the manner provided by the Bylaws. Upon approval of any such amendment by the Membership, the Secretary shall submit the amendment to the Certificate of Incorporation to the New York State Racing and Wagering Board (the "Racing Board") for its review, consideration and approval in accordance Racing Law §201.b. Any such approval shall (i) be indorsed or annexed to any such amendment to the Certificate of Incorporation and (ii) state that, in the Racing Board's opinion, the purposes of Article II of the Racing Law and the public interest will be promoted by such amendment, and that such amendment will be conducive to the interests of legitimate racing. References in these Bylaws to the Certificate of Incorporation shall include all amendments thereto or changes thereof, as approved and indorsed or annexed by the Racing Board, unless specifically excepted by law. In the event of a conflict between the Certificate of Incorporation and these Bylaws, the Certificate of Incorporation shall govern.



**EXHIBIT I**  
**NEW NYRA CODE OF CONDUCT**

**Code of Ethics**  
**The New York Racing Association, Inc.**  
**September 2008**

**CODE OF ETHICS**  
**The New York Racing Association, Inc.**

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## **Mission Statement**

The goal of The New York Racing Association, Inc. (“New NYRA”) is to continue the long-standing tradition of excellence in horse racing that NYRA Inc., f/k/a The New York Racing Association Inc. (“Old NYRA”), has provided since 1955. We set the highest standard for thoroughbred racing in the United States by demanding integrity, credibility and continuously working to improve the sport of horse racing and pari-mutuel betting. New NYRA strives to attract the highest quality horses and owners through a strong purse structure and integrity on the track that is transparent and second to none. This quality-racing product is supported by pari-mutuel pools that are beyond reproach and which ensure each customer a fair and equal opportunity with their wagering dollar.

New NYRA also recognizes that there is a strong interdependence among those members who contribute to the racing experience. New NYRA’s success is inextricably bound with the success of owners, breeders, trainers, jockeys and the racing fans. It is important to promote collaboration among these groups in order to maintain a strong positive thoroughbred racing experience in New York and to serve the best interests of the state agricultural industries, owners, breeders, patrons, and all other stakeholders, including the State of New York.

It is essential to develop the highest level of customer satisfaction during New NYRA’s live racing events. A high level of customer satisfaction will keep current customers returning to enjoy the New NYRA experience and will help attract new fans and owners to the sport that will guarantee future growth for thoroughbred racing in New York.

## Preamble to Code of Ethics

Old NYRA conducted, and New NYRA continues to conduct, thoroughbred racing operations and pari-mutuel wagering on horse races consistent with Article I, Section 9 of the New York State Constitution.

Old NYRA is a private, non-profit racing association that, from 1955 to 2008, owned and operated thoroughbred horse racing and pari-mutuel wagering at four racetracks located in New York State: Jamaica Racetrack in Jamaica (through 1959), Belmont Park Racetrack in Elmont, Aqueduct Racetrack in Ozone Park, and Saratoga Race Course in Saratoga Springs. Old NYRA operated racing and pari-mutuel wagering under a franchise, which was granted by the New York State Legislature in 1955, extended from time to time, and expired on December 31, 2007. Old NYRA continued to retain the rights to conduct racing and pari-mutuel wagering into 2008 pursuant to stipulations with, among others, the State of New York. New NYRA is a New York State not-for-profit corporation incorporated in 2008, following consummation of a chapter 11 plan of reorganization of Old NYRA. New NYRA is governed by a Board of Directors, whose members receive no compensation or dividends. In February 2008, New NYRA was awarded a new twenty-five year franchise to continue racing and racing operations at Belmont Park Racetrack, Aqueduct Racetrack, and Saratoga Race Course.

Certain provisions of sections 73 and 74 of the New York State Public Officers Law, which are applicable to officers and employees of state agencies, were used as a guideline for this Code of Ethics and its application at New NYRA. While the Public Officers Law is not binding on New NYRA, as it is not a State Agency, the Public Officers Law is a standard that we are choosing as a guideline, in light of our ongoing obligation to operate in a sound economical and efficient manner. Additionally, The New York State Ethics Commission rulings and opinions will be used for guidance in deciding conflicts and ethics issues at New NYRA. All employees will be required to read, acknowledge and abide by this Code of Ethics. We want all of our business practices to be ethical and transparent at every level.

The purpose of the Code of Ethics is to outline what is expected in order to maintain a professional and ethical workplace and a high standard of business values that will lead to a successful future for all of us and for New NYRA. If you have any questions or feel uncertain about anything stated in this Code of Ethics, please contact the Ethics Compliance Officer who has been appointed to address ethical issues that may arise at New NYRA. As employees of New NYRA, we are not only obligated to perform our jobs to the best of our capabilities, but we also have the ongoing obligations to properly serve the betting public, and to represent New NYRA in a professional capacity. Looking forward, New NYRA has the potential for great accomplishments in both the horse racing and gaming industries. This Code of Ethics should serve as a reminder that, "*good conduct results in good business.*"

## **New NYRA's Unique Atmosphere**

Unlike most workplaces, New NYRA is not just comprised of a building where people work. New NYRA consists of offices, restaurants, betting windows, picnic areas and playgrounds, three racetracks that host the very best in thoroughbred racing, stable areas with veterinary services and other professional care for world-class equine athletes, backstretch areas, a health care clinic, living quarters, large parking lots, greenhouses and much more. We employ people to staff all of these locations. Employees are expected and required to interact with each other and the public in a professional and courteous manner. Management understands that situations and problems arise that are unique to each location where people work at New NYRA. We want everyone to enjoy a comfortable and professional work environment. If you experience any situation that is troublesome, questionable or offensive, there are mechanisms in place at New NYRA to help you resolve these issues.

Management realizes that employees who work on the backstretch and those who reside on New NYRA facilities are exposed to situations that are unique to their working and living environments. If you live and/or work on the backstretch you may also interact with non-employees on a regular basis. The way we treat each other and non-employees alike affects the way we do our jobs. Every employee is expected to contribute to a respectful work environment by treating each other professionally and with respect. Issues or concerns such as safety, health, living quarters, cleanliness, harassment, disorderly conduct, and/or disparate or unfair treatment of an employee should be brought to the attention of a supervisor, Human Resources and/or the Ethics Compliance Officer depending on the nature of the issue. For guidance on who to report issues to refer to this Code of Ethics and/or your Employee Handbook. While non-employees are not limited by this Code of Ethics, it is important to realize that as employees of New NYRA our interaction with non-employees is governed by this Code of Ethics.

If you are not certain whether to report an incident, the better practice is to report it to the Ethics Compliance Officer.

## **CODE OF ETHICS**

Unless stated otherwise, all of the provisions of this Code of Ethics apply to all directors, officers and employees of New NYRA.

### **Compliance with Code of Ethics**

While this Code of Ethics provides a guideline for a variety of business situations, it does not anticipate all possible ethical questions that may arise. First and foremost, you are responsible for your own behavior and your own business decisions. If you have any questions regarding: compliance with any law, rule or regulation, participating in employment and activities outside your employment with New NYRA, a possible conflicting financial interest, the acceptance or the giving of gifts and business courtesies, travel and entertainment, record keeping or confidential information, bribery, patron wagering, “ten-percenting” or money laundering, competitive bidding, harassment, workplace safety, interaction with government employees or political contributions or any conflict of interest, you should refer to this Code of Ethics for guidance on how to address the issue. If an issue presents itself that may involve an ethical dilemma or an appearance of impropriety it is your responsibility to speak to the Ethics Compliance Officer. For instance, if a vendor offers you a gift and you are not certain whether or not to accept it, you should seek the guidance of the Ethics Compliance Officer. Additionally, if you have knowledge or a suspicion of any non-compliance with any section of this Code of Ethics on the part of others you should report the situation by using any of the following methods:

- you may contact the Ethics Compliance Officer in person, by phone at (718) 641-4700, (ask for the Ethics Compliance Officer) or by email at [ethicsofficer@nyrainc.com](mailto:ethicsofficer@nyrainc.com) or you may contact New NYRA’s confidential employee hotline by using the Hotline number, 1-800-605-1340;
- you may report the situation to your immediate supervisor if applicable (there may be circumstances where this will not be appropriate, for example if you believe that the supervisor has any involvement in the alleged conduct). Your supervisor, in turn, must report the incident to the Ethics Compliance Officer; or
- you may report anonymously by completing the attached “Investigatory Report Form” without providing your personal information. The form can be submitted by sending it by inter-office mail to the Ethics Compliance Officer. All reports will be given the same consideration.

New NYRA will not permit retaliation against anyone who acts in good faith in reporting any violation or suspected violation of the Code of Ethics. Because even the appearance of impropriety can be damaging to you and to New NYRA, any situation that may appear to be a violation of this Code of Ethics must be reported to the Ethics Compliance Officer. If you’re ever in doubt, disclose.

When reporting an incident be assured:

- you will be treated with dignity and respect;
- your communication will be protected to the greatest extent possible or as otherwise provided by law;
- if your issue cannot be resolved at the time you report it, the matter will be further investigated and you will be informed of the outcome, if appropriate; and
- you need not identify yourself.

New NYRA will take all reports seriously. However, please be advised that any person who knowingly makes a false report will be subject to discipline up to and including termination.

- The Ethics Compliance Officer will handle routine matters. In certain matters, however, the Ethics Compliance Officer may choose to submit an ethics issue for further review simultaneously to the Ethics Committee, which is comprised of the President/Chief Executive Officer, the Senior Vice President/General Counsel, the Senior Vice President/Chief Financial Officer and the Senior Vice President of Human Resources and Labor Relations. Additionally, the Director of the Internal Audit Department will be present at all Ethics Committee meetings. Although, the Director of the Internal Audit Department will be at the Ethics Committee meetings, the Director of the Internal Audit Department will not participate in the decision-making or review processes of the Ethics Committee. The Ethics Committee may choose to accept the decision of the Ethics Compliance Officer, reject it or refer it to the Audit Committee of the Board of Directors. If the Ethics Committee rejects the decision of the Ethics Compliance Officer, the Ethics Compliance Officer may appeal to the Audit Committee of the Board of Directors for further review. The decisions of the Audit Committee of the Board of Directors will be final and binding. The Ethics Compliance Officer will issue a report to the Board of Directors Audit Committee regarding the ethics issues handled by the Ethics Compliance Officer covering the time period prior to each meeting of the Audit Committee of the Board of Directors.

### **Compliance with Laws, Rules, and Regulations**

Directors, officers and employees of New NYRA must respect and follow all relevant laws rules and regulations including but not limited to the laws of the Federal Government, the laws of the State of New York, all relevant rules and regulations of State Regulators including but not limited to the New York State Racing and Wagering Board, and New NYRA's internal policies. It is your responsibility to be aware of the laws and regulations affecting your job. If a law conflicts with a policy in this Code of Ethics, New NYRA's directors, officers and employees must comply with the law.

New NYRA provides periodic training on our internal policies. If you have any question about compliance with a law, rule, policy or regulation, please contact the Law Department.

## **Conflicts of Interest**

We should not have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of our duties on behalf of New NYRA. A conflict of interest can arise when a trustee, officer or employee, or a member of his or her family receives an improper personal benefit as a result of his or her position with New NYRA and the possibility of personal gain influences or appears to influence any business decision or judgment. All business decisions and actions must be made with the best interests of New NYRA in mind; they cannot be motivated by personal gain.

We have an obligation to promote the best interests of New NYRA at all times. It is important to avoid any action that may involve a conflict with the interests of New NYRA. It is not permissible to have any financial or other business relationship(s), or engage in any business or transaction or professional activity or incur any obligation(s) of any nature that are in substantial conflict with the proper discharge of our duties in the best interest of New NYRA.

It is important to avoid even the appearance of impropriety, which may occur when a reasonable observer might assume there is a conflict of interest and, therefore, a loss of objectivity while acting on behalf of New NYRA. Our conduct should not give a reasonable basis for the impression that any person can improperly influence us or can unduly enjoy our favor in the performance of our duties and/or job. Our conduct should also not give a reasonable basis for the impression that we can be affected by the kinship, rank, position or influence of any party or person. Likewise, we should all endeavor to pursue a course of conduct that will not raise suspicion among the public that we are likely to be engaged in acts that are in violation of any trust.

The following are examples of how to avoid conflicts of interest and the appearance of impropriety and how to abide by New NYRA's Code of Ethics.

### **I. Outside Employment and Activities**

Conflicts of interest can arise if you accept any other employment that would impair your independence of judgment in the exercise of your duties or job(s) in the interest of New NYRA. Engaging in activities that involve services performed in direct competition with New NYRA or engaging in activities that affect your independence of judgment is not permitted. We should not use our affiliation and connection with New NYRA for our own personal benefit. Performing activities or services related to your professional or corporate specialty for any outside individual or company that does or wishes to do business with New NYRA must be approved pursuant to the procedures set forth in this Code of Ethics. Specifically, prior to accepting or engaging in any outside employment or activities, you should notify your immediate supervisor or the Ethics Compliance Officer for approval using the reporting procedures as set forth in the section hereof entitled *Compliance with Code of Ethics*.

## **II. Conflicting Financial Interest**

Acting in your official capacity in any manner where you have a direct or indirect personal financial interest that might reasonably be expected to impair your objectivity or independence of judgment should be avoided. Additionally, you should abstain from making personal investments in enterprises or organizations that you have reason to believe may be directly involved in decisions that you may have to make on behalf of New NYRA or which will otherwise create a substantial conflict between your duty or job(s) in the interest of New NYRA and/or your private interest. New NYRA respects your right to manage your investments and does not wish to interfere with your personal life. However, it is important to avoid situations that create or that may create an apparent or actual of a conflict between your personal interests and the interests of New NYRA.

In order to avoid any potential conflict of interest, directors, officers, vice presidents, the Anti-Money Laundering Compliance Officer and the Ethics Compliance Officer must complete the Disclosure of Business Interests form attached hereto.

Completed forms should be submitted to the Ethics Compliance Officer annually; the Ethics Compliance Officer must submit the Ethics Compliance Officer's Disclosure of Business Interests form to NYRA's General Counsel.

Furthermore, all employees not identified above have certain disclosure obligations to avoid actual and potential conflicts of interest. If you and/or your spouse or family member have any interest financial or otherwise in an entity, or are employed by an entity that does or is seeking to do business with New NYRA, or has substantial business contacts with New NYRA, you have the obligation to disclose that relationship to the Ethics Compliance Officer.

## **III. Gifts and Business Courtesies**

A gift is something that is given or made without charge or consideration that is "freely bestowed" with no obligations attached. No one is permitted to accept any gift in connection with New NYRA business that has a value of more than seventy-five dollars (\$75.00).

A business courtesy may be a tangible or intangible benefit such as meals, drinks, entertainment, discounts, promotional items, materials, use of facilities or equipment, for which fair market value is not paid by the recipient. New NYRA business should always be free from even the perception that favorable treatment was sought, received, or given in exchange for the furnishing or receipt of gifts or business courtesies. This includes gifts or business courtesies consisting of payments, consulting fees, loans, or other benefits of value received directly or indirectly from any existing or potential customer, supplier, bidder or competitor. Soliciting gifts or business courtesies is strictly prohibited. The giving or receiving of any gift or business courtesy that could create or appear to create an obligation to the donor or the receiver, or influence the business relationship with the donor or the receiver may not be given or accepted, even a gift or business courtesy having a value less than seventy-five dollars (\$75.00). Furthermore, we cannot give or accept any gift, business courtesy or obligation of any nature that

is in substantial conflict with the proper discharge of our duties at New NYRA. You may give or accept an occasional meal or outing with suppliers, customers or vendors if there is a valid business purpose involved and you follow this Code of Ethics and New NYRA's Travel and Entertainment Expense Policy.

We must act in a fair and impartial manner in all business dealings, and must not create a perception that we are subject to undue influence. No one should give or accept gifts or business courtesies that constitute, or could be reasonably perceived as constituting, unfair business inducements or that would violate any Federal or State law, rule or regulation, or policy of New NYRA, or that could cause embarrassment to, or reflect negatively on, New NYRA's reputation.

Acceptance and giving of gifts or business courtesies must be free of obligation on the part of the individual or New NYRA and must not influence, or appear to influence, any subsequent business decisions. For instance, if you are invited to attend and take part in a golf outing (business courtesy) hosted by a company that does business with New NYRA, this could be acceptable business networking. On the other hand, if an employee of the company gives you two (2) tickets to a ball game for your personal use, that would be considered an unacceptable gift. If you deal with vendors, sales personnel or the public, or hold a decision-making position, you should not give preferential treatment based on gifts, business courtesies or favors. For example, a foreman or manager who orders merchandise or materials should not base his or her business decision on the promise or offer of a gift, service or business courtesy from a vendor or sales person. This is a violation of the Code of Ethics and should be reported following the procedures outlined in the section hereof entitled *Compliance with the Code of Ethics*.

Anyone that has business dealings with government employees or officials must remember that the standards of conduct may be different from those we normally use in commercial business. We all must comply with the rules set forth in the section hereof entitled *Government Employees*.

In deciding whether to give or accept a gift or business courtesy, you are expected to use good business judgment and consider the perception created by giving or accepting a gift or business courtesy. We want to promote professional relationships and ethical business practices. We must never offer or accept gifts or business courtesies that might compromise our ethical and/or legal obligations. If you would like to give a gift or business courtesy or accept a gift or business courtesy and there is any question as to whether or not it is permissible, contact the Ethics Compliance Officer.

#### **IV. Travel and Entertainment**

Employees must keep the costs of business travel and expenses at a reasonable level by using the most cost-effective means of travel and/or entertainment. If you are offered a meal or invitation, acceptance of such offer(s) must be free of obligation on the part of the individual or New NYRA and must not influence, or appear to influence, any subsequent business decisions. Care must be taken to avoid the appearance of impropriety or the appearance of influencing any act or decision of any person doing business with or wanting to do business with New NYRA. You may accept or pay for occasional lunches, dinners and accept other invitations from

business associates but be sure to comply with both the policies on *Gifts and Business Courtesies* set forth above and New NYRA's Travel and Entertainment Expense Policy.

Anyone that has business dealings with government employees or officials must remember that the standards of conduct may be different from those we normally use in commercial business. We all must comply with the rules set forth in the section hereof entitled *Government Employees*.

#### **V. Directors as Horsemen**

While it is not a conflict of interest for a director to participate in racing or the ownership of thoroughbred race horses at New NYRA, directors should not expect to be given any special consideration based on this status. Directors should take special care to avoid even the appearance of impropriety when participating in racing activities. For more information please see the section hereof entitled *Directors*.

#### **Accuracy of Books and Records**

Everyone is expected to keep and maintain accurate business records in accordance with all relevant laws, rules, and regulations including but not limited to the laws of the Federal Government, the laws of the State of New York, all relevant rules and regulations of State Regulators including but not limited to the New York State Racing and Wagering Board, and New NYRA's internal policies. If you come across any business records that you believe are not accurate, contain errors, or are not up to date, you should follow the reporting procedures set forth in the section hereof entitled *Compliance with Code of Ethics*. Our business records must reflect the actual transactions or events that take place. We must ensure that all New NYRA business records, whether electronic or on paper, are reliable, accurate and complete. Furthermore, when appropriate, New NYRA records shall be prepared in accordance with GAAP ("Generally Accepted Accounting Principles"). Accuracy and reliability in the preparation of all business records is of critical importance to New NYRA's decision-making processes and the proper discharge of our financial, legal and reporting obligations. It is also important to be aware that some of our business records are disclosed to, and/or reviewed by, the public and or the government; accordingly, attention to detail is very important. Business records include but are not limited to: paper documents, notes, books, accounts (paper and computerized), audio or videotapes, email and voice mail, computer files and disks, and any other medium that contains information about New NYRA or New NYRA's business activities.

Keep in mind that certain financial and business records must be retained for minimum time periods by law. Additionally, all New NYRA business records must be retained pursuant to New NYRA's Record Retention Policy. If you have any question about the retention of any New NYRA business records, please contact the Law Department.

We must never misrepresent facts, falsify or suppress records. Tampering with business records is illegal and will not be tolerated.

## **Confidential Information**

We must act with professionalism and discretion when handling New NYRA information and discussing New NYRA business. Some information that comes into our possession as New NYRA employees is confidential information. Examples of confidential information are: personnel files, information concerning future business transactions, compensation information, and trade secrets. A trade secret is any valuable business information that is not generally known and that gives one an advantage over competitors. Examples of trade secrets include: plans, engineering and technical designs and drawings, product specifications, customer lists, business strategies, computer programs, and sales and marketing information. Confidential information, including trade secrets, should not be disclosed or used for any reason other than New NYRA business.

If you possess or have access to confidential information you:

- are not permitted to use the information for your own benefit or for the benefit of anyone or any organization other than New NYRA;
- should not discuss the information with anyone outside of New NYRA, including family members;
- must make sure that confidential information remains secure and/or under your direct supervision when in use; and
- must only use the information to carry out New NYRA business.

New NYRA's general business affairs should not be discussed with anyone outside New NYRA except as required in the normal course of business or if disclosure is required by law. If you are not certain whether information you possess or have been asked to disclose is confidential information, please consult the Law Department.

## **Theft/Misuse of Company Assets**

New NYRA's assets may only be used for purposes as are approved by New NYRA. We may not take, make use of, or knowingly misappropriate the assets of New NYRA, for personal use, for use by another, or for an improper or illegal purpose. We are not permitted to remove, dispose of, or destroy anything of value belonging to New NYRA without New NYRA's consent, including physical items and electronic information.

## **Use of Computer Systems**

NYRA's computer systems (including Internet access) and its e-mail systems (collectively, "computer systems") are the property of New NYRA and are intended to be used for New NYRA business. Although employees may periodically use the computer systems for incidental personal use, they should not expect that their communications, records and other uses of New NYRA's computer systems are private or confidential. New NYRA reserves all rights, to the fullest extent permitted by law, to access information on its computer systems as it deems appropriate. For example, New NYRA accesses such information in the course of routine systems maintenance and also periodically monitors the use of its computer systems to ensure against improper use.

Employees may not use New NYRA's computer systems to conduct any unlawful activity. Employees also may not use New NYRA's computer systems for any communication of a discriminatory or harassing nature or to create, transmit or receive (including by downloading from the Internet) material that could reasonably be construed by an intended or unintended recipient as harassing or disparaging of another individual or group or as otherwise offensive.

New NYRA's computer systems may not be used to solicit for commercial ventures, charitable contributions other than for New NYRA causes, for religious or political causes, or for chain letters.

## **Bribery**

Bribery occurs when something of value is given or promised in order to influence the judgment or conduct of a person. Bribery is often used to obtain an illicit or illegal advantage. Bribery can occur when money is offered as an incentive to choose a vendor or bidder, when something of value is offered to get information that would provide a competitive advantage, or when an offer is made in order to change the results of an event, test or document. Bribery is a form of corruption, it is illegal, and will not be tolerated at New NYRA.

## **Patron Wagering and Anti-Money Laundering Compliance**

Wagering at New NYRA racetracks is governed by the New York State Racing, Pari-Mutuel Wagering and Breeding Law and the New York Codes, Rules and Regulations. "Ten-percenting" or any other form of evasion of tax reporting requirements is strictly prohibited. A "ten-percenter" is any person who offers to cash tickets that are subject to IRS withholding regulations in exchange for a percentage of money or something of value.

Pari-mutuel tellers and those employees who work in Customer Relations have direct interaction with the public. Any situation that occurs between an employee and a customer that is out of the ordinary should be reported to a supervisor. Examples of unusual situations are: an argument with a customer, a dispute over a wager, or a customer or fellow employee making an inappropriate request of an employee.

Additionally, pari-mutuel tellers handle money and additional responsibilities come with handling money. Pari-mutuel tellers are trained regarding what is expected of them when handling money and they are trusted with the responsibility of following those rules. Mistakes happen, but it is extremely important that anyone who knows of or observes a possible violation of New NYRA's rules and regulations reports it following the applicable New NYRA policies.<sup>1</sup>

"Money laundering can be generally defined as the movement of cash or other financial assets attributable to illicit activities through one or more legitimate accounts, businesses or other conduits for the purpose of making such cash or assets appear to be attributable to legitimate activities or otherwise more difficult to trace back to their illicit source."<sup>2</sup> Often money laundering occurs when criminals try to "clean" the proceeds of a crime by hiding the proceeds and making them appear legal or legitimate. If you encounter someone who is reluctant to give you information that is essential or required by law, or you have suspicions about a financial transaction, you must contact the Anti-Money Laundering Compliance Officer (see Addendum B) immediately. For further information regarding New NYRA's policies pertaining to combating money laundering, please refer to New NYRA's Policies and Procedures to Combat Money Laundering and Terrorist Activity.

### **Employee Wagering**

It is unlawful in New York State for a pari-mutuel employee to place a wager on a horse race while the teller is working at a racetrack.<sup>3</sup> All pari-mutuel tellers receive the Mutuel Department Rules and Regulations and are expected to know the rules and abide by them. If you have any question about the rule against pari-mutuel tellers wagering, please contact the Law Department.

Employees in all other departments are expected to consult with a supervisor about any restrictions or prohibitions that exist regarding wagering for a particular job category.

### **Tips and Gratuities**

Tips are gratuities voluntarily offered by a customer or patron at the conclusion of an employee's normal service or duties. In no event shall any payment from a customer or patron be demanded or accepted by any employee to induce the employee to perform any service or duty.

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<sup>1</sup> Applicable New NYRA policies may include but are not limited to this Code of Ethics, NYRA's Policies and Procedures to Combat Money Laundering and Terrorist Activity, the NYRA Employee Handbook, and the Mutuel Department Rules and Regulations.

<sup>2</sup> The New York Racing Association Inc., Policies and Procedures to Combat Money Laundering and Terrorist Activities, March 24, 2006, page 1.

<sup>3</sup> 9 NYRCC § 4005.4.

Additionally, when accepting a tip or gratuity it is important to keep in mind the rules set forth in the section hereof entitled *Gifts and Business Courtesies*.

### **Competitive Bidding**

Pursuant to the New York State Racing, Pari-Mutuel Wagering and Breeding Law, “[a]ll contracts entered into by the franchised corporation for the procurement of goods and services shall be pursuant to a competitive bidding purchasing policy approved by the franchise oversight board.”<sup>4</sup> Anyone involved in the bidding process is expected to know and follow New NYRA’s Purchasing Policies and Procedures. If you are involved in proposals, bid preparations or contract negotiations it is very important that you are accurate and truthful in the process. Furthermore, once a contract is awarded the terms of the contract must be complied with in all regards.

For further information regarding New NYRA’s policy on Competitive Bidding, please refer to the New York State Racing, Pari-Mutuel Wagering and Breeding Law §208(6), New NYRA’s Purchasing Policies and Procedures Manual, and/or contact New NYRA’s Purchasing Department or Law Department.

### **Unlawful Discrimination and Harassment**

All employees of New NYRA are entitled to work in an environment free of any form of harassment and other forms of unlawful discrimination. In order to safeguard the professionalism and dignity of the workplace, every supervisor and employee must ensure that harassment of any kind does not occur under any circumstances. Harassment based on age, race, creed, color, national origin, sexual orientation, military status, sex, disability, genetic predisposition or carrier status, or marital status, or on any other basis protected by state or federal law, will not be tolerated.

All employees should protect the professionalism and dignity of our workplace and should not tolerate harassment of or by any employee or non-employee. This applies equally to the backstretch as it does to all other aspects of New NYRA’s business.

If you feel that you have been harassed in any manner you should refer to New NYRA’s policies and procedures on harassment which are contained in your Employee Handbook.

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<sup>4</sup> New York State Racing, Pari-Mutuel Wagering and Breeding Law § 208(6)(a).

## **Workplace Safety and Health**

Safety and health are primary concerns of New NYRA management. All employees are entitled to a safe and healthy workplace environment. If you become aware of any hazard or safety concern you should report it immediately. You can contribute to the safety of our work environment by complying with all New NYRA and government safety regulations and by reporting any hazardous condition(s) or safety concern(s) to a supervisor, the Facilities Managers or the Management Safety Committee. If you operate vehicles or any type of equipment you are required do so in a safe and lawful manner. Safety and/or protective equipment must be worn where it is required. All injuries that occur in or on New NYRA facilities or premises must be reported immediately to a supervisor and/or First Aid or New NYRA security, as applicable. New NYRA takes these issues very seriously and asks the same of its employees.

In addition to your own safety, it is important to remember that we must endeavor to create a safe environment for the horses that are stabled and/or race at our three racetracks. Only licensed and authorized personnel are permitted in the barn areas. Everyone should take care to follow all directives of authorized personnel when in the presence of horses as these animals can be dangerous and unpredictable. The health and safety of the horses is paramount to our continued operations and should be taken seriously.

For more information on how to report Health and Safety violations please refer to the Employee Handbook.

## **Government Employees**

In pursuing business with governmental entities and agencies, the standard of conduct and prohibited practices may be different from those adhered to in commercial business. Any business interactions with governmental entities and agencies must be free of obligation on the part of the individual and/or New NYRA and must not influence, nor appear to influence, any subsequent business decisions. Care must be taken to avoid the appearance of impropriety, or the appearance of influencing any act or decision of a governmental official or government employee in his or her official capacity.

If you are acting on New NYRA's behalf you must not offer or make directly or indirectly, any payment of anything of value (in the form of compensation, gift, contribution or otherwise) to:

- Any governmental employee or entity, for the purpose of inducing or rewarding action (or withholding of action) by a governmental entity in any governmental matter; or
- Influence the award of a contract by governmental authority, or which may be reasonably construed by the public as having the effect or intent to influence the award of a contract.

### **Political Contributions**

New NYRA shall not make any monetary corporate political contribution to any elected official or candidate for political office. If you choose to participate in lawful political activities, your participation must be on an individual basis, on your own time, and at your own expense.

### **Directors**

At New NYRA, directors are permitted and encouraged to participate in all levels of horse racing including ownership of race horses. Directors can be both horsemen and directors but they shall not receive any preferential treatment by New NYRA based on their position as a director. Directors have a fiduciary responsibility to New NYRA and must make certain that all of New NYRA's assets are used in the best interests of New NYRA.

As set forth above in the section entitled *Conflicting Financial Interest*, directors must complete the Disclosure of Business Interests Form attached hereto and submit it to the Ethics Compliance Officer annually. Furthermore, a director with any other possible conflict must disclose the relevant information and seek a determination pursuant to the rules governing Compliance with the Code of Ethics stated in the section hereof entitled *Compliance with the Code of Ethics*. If it is determined that a conflict exists, that trustee must not participate or vote in any matter relating to the conflict and should recuse him/her self from any deliberations, votes, or actions on the matter deemed to be a conflict.

**Accountability for Adherence to the Code of Ethics**

Compliance with this Code of Ethics is a condition of employment at New NYRA for all officers and employees. However, nothing contained in this Code of Ethics is to be construed as a contract of employment.

All directors, officers, and employees are required to comply with this Code of Ethics and will be asked to acknowledge acceptance of the Code of Ethics on an annual basis. Failing to exercise proper supervision and/or failing to report a violation may be considered a violation of this Code of Ethics. Discipline may, when appropriate, include dismissal. In addition to any penalty contained in any other provision of law, any director, officer, or employee who shall knowingly and intentionally violate any of the provisions of this Code of Ethics may be fined, suspended or removed from office or employment in the manner provided by law or any applicable collective bargaining agreement.

I \_\_\_\_\_, have received a copy of the New NYRA Code of Ethics.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

INVESTIGATORY REPORT FORM

To: The New York Racing Association, Inc.  
Ethics Compliance Officer

Date: \_\_\_\_\_

Individual(s) Allegedly Involved

Name(s): \_\_\_\_\_

Department(s): \_\_\_\_\_

Allegation(s)

*Please specify the alleged violation of the Code of Ethics and/or describe the incident involving the alleged violation of the Code of Ethics. Include (1) the names of any witnesses, (2) the date if possible, and (3) the place of occurrence if applicable. Attach additional sheets if necessary.*

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*If you choose to remain anonymous you may leave the following section blank.*

Your Name: (sign) \_\_\_\_\_ (print) \_\_\_\_\_

Your Department: \_\_\_\_\_

Your Extension: \_\_\_\_\_

**The New York Racing Association, Inc.**  
**P.O. Box 90, Jamaica, New York 11417**  
**Disclosure of Business Interests: For calendar year 200**

1. \_\_\_\_\_  
 NAME (LAST) (FIRST) (M.I.)
2. \_\_\_\_\_  
 (a) TITLE OF POSITION (b) DEPARTMENT
- \_\_\_\_\_
- (c) ADDRESS OF PRESENT OFFICE (d) OFFICE PHONE NUMBER
3. \_\_\_\_\_  
 (a) MARITAL STATUS - IF MARRIED, PLEASE GIVE SPOUSE'S FULL NAME (INCLUDING MAIDEN NAME WHERE APPLICABLE)
- \_\_\_\_\_
- (b) LIST THE NAMES OF ALL UNEMANCIPATED CHILDREN

4. *Business Interests.* List any ownership interest, office, trusteeship, directorship, partnership, or position of any nature, whether compensated or not, held by the reporting individual with any firm, corporation, association, partnership, or other organization which has dealings with The New York Racing Association, Inc. ("NYRA") in any manner, list the name of any such entity and the nature of its relationship with NYRA. Include compensated honorary positions; do NOT list membership or uncompensated honorary positions.

NONE

<u>POSITION</u>	<u>NAME AND ADDRESS OF ENTITY</u>	<u>DEALINGS/RELATIONSHIP WITH NYRA</u>

5. If the spouse or unemancipated child of the reporting individual is engaged in any occupation, employment, trade, business or profession which has dealings with NYRA in any manner list the name of any such entity and the nature of its relationship with NYRA.

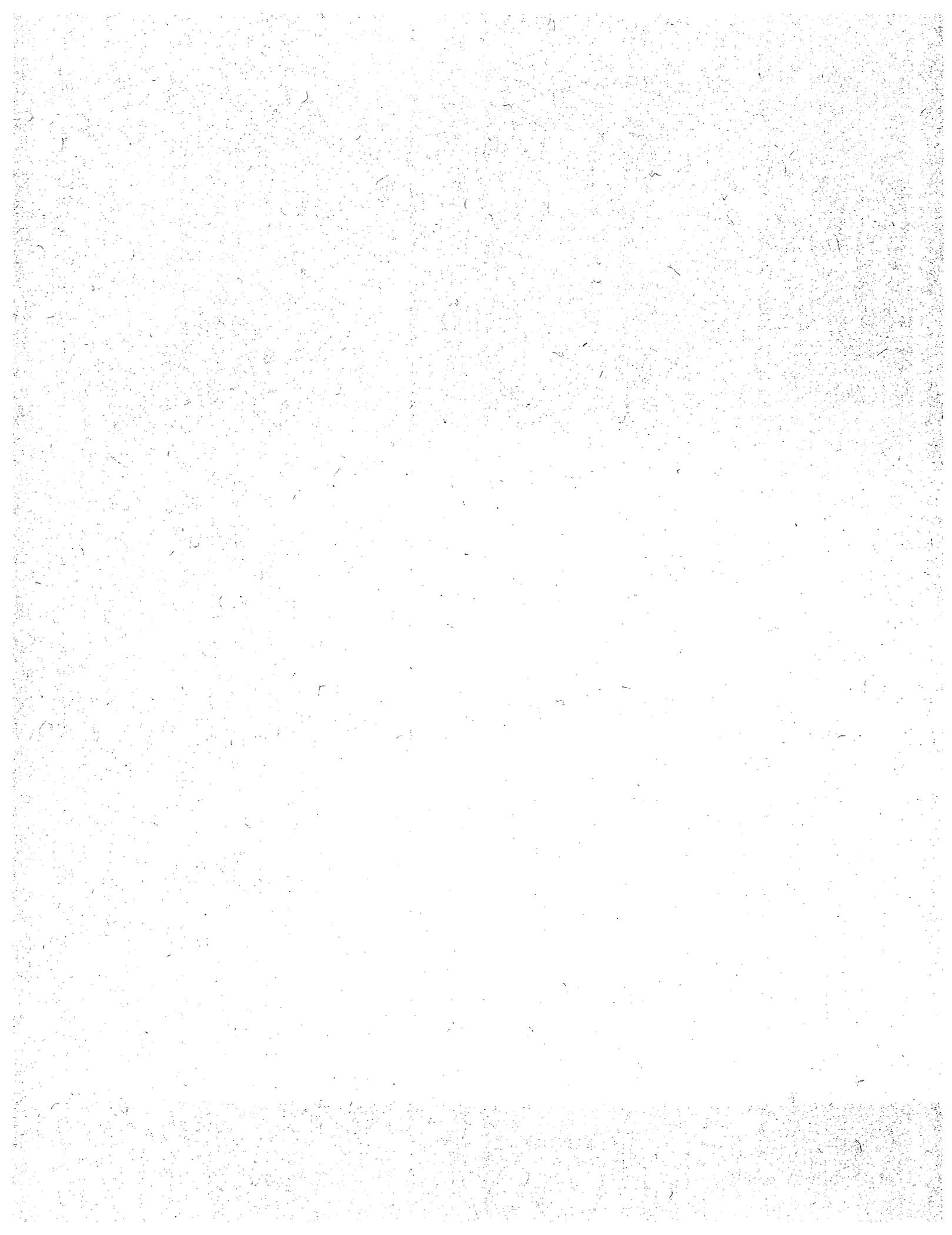
NONE

<u>POSITION</u>	<u>NAME AND ADDRESS OF ENTITY</u>	<u>DEALINGS/RELATIONSHIP WITH NYRA</u>

X  
 (Signature of Reporting Individual)

\_\_\_\_\_  
 Date (month/day/year)

- ✓ Please remember to sign and date the Statement
- ✓ Please keep a copy of the completed Statement for your records.



**EXHIBIT J**

**NEW YORK STATE APPENDIX A**

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the

performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor

within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin; sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.