

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 12, 2008

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GROUND LEASE AGREEMENT

GROUND LEASE AGREEMENT (this "Lease"), dated as of September 12, 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 (30th) 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 letting 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 as 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 (30th) 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: 
Name: Laura L. Blyden
Title: Chairperson

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.**

A handwritten signature in black ink, appearing to read "Pat Kehoe", written over a horizontal line.

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

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: 
Name: Laura L. Anglin
Title: Chairperson

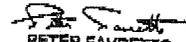
Approved as to form by:

**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

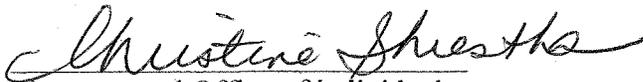

PETER FAVRETTO
ASSOCIATE ATTORNEY

Belmont

State of New York)

County of NY) ss.:

On the 12th day of Sept. in the year 2008 before me, the undersigned, personally appeared Laura L. Arglin, 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

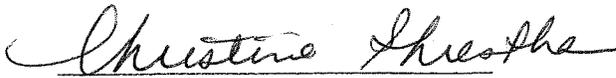
CHRISTINE SHRESTHA
NOTARY PUBLIC, State of New York
No. 01SH50566934
Qualified in New York County
Commission Expires March 11, 20 10

Belmont

State of New York)

County of NY) ss.:

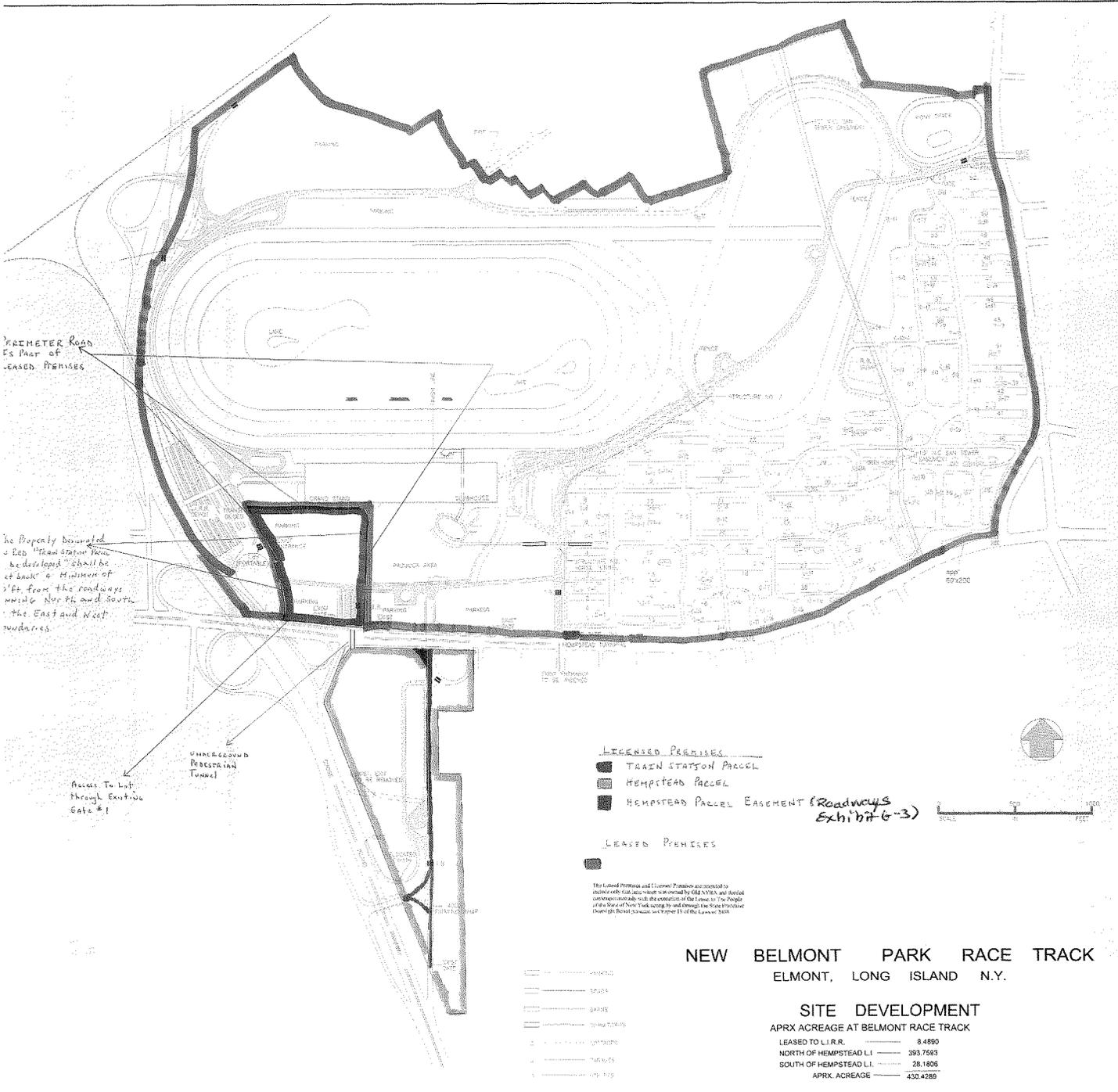
On the 12th day of Sept. in the year 2008 before me, the undersigned, personally appeared Patrick L. Kehoe, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they 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

CHRISTINE SHRESTHA
NOTARY PUBLIC, State of New York
No. 01SH50566934
Qualified in New York County
Commission Expires March 11, 20 10

Exhibit A, Exhibit B, Exhibit G-1, Exhibit G-2, and Exhibit G-3



PERIMETER ROOMS
Part of
LEASED PREMISES

The Property designated
as "Train Station" when
developed shall be
set back 4' minimum of
10ft from the roadways
on the North and South
the East and West
boundaries.

Access To Lot
Through Existing
Gate #1

UNDERGROUND
Pedestrian
Tunnel

LICENSED PREMISES
 TRAIN STATION PARCEL
 HEMPSTEAD PARCEL
 HEMPSTEAD PARCEL EASEMENT (Roadways
Exhibit G-3)

LEASED PREMISES

The Licensed Premises and Licensed Premises are intended to include only that area owned or controlled by the L.I.R.R. and do not include any other area owned or controlled by the L.I.R.R. or any other entity.

NEW BELMONT PARK RACE TRACK ELMONT, LONG ISLAND N.Y.

SITE DEVELOPMENT
 APRX ACREAGE AT BELMONT RACE TRACK

| | |
|-------------------------|-----------------|
| LEASED TO L.I.R.R. | 8.4800 |
| NORTH OF HEMPSTEAD L.I. | 393.7593 |
| SOUTH OF HEMPSTEAD L.I. | 28.1806 |
| APRX. ACREAGE | 430.4289 |

- 1. CONCRETE
- 2. ASPHALT
- 3. GRAVEL
- 4. SAND
- 5. GRAVEL
- 6. SAND
- 7. GRAVEL
- 8. SAND
- 9. GRAVEL
- 10. SAND

EXHIBIT C
FRANCHISE AGREEMENT

[SEE TAB 18]

EXHIBIT D
LIST OF ART WORK

WORKS OF ART

| | | | |
|----|-------------|--|---|
| 1. | HENRY STULL | THE START | signed <i>Henry Stull</i> , inscribed <i>copyright</i> , and dated 1902 (lower left) oil on canvas 28 by 44 in 71 1 by 111 7 cm |
| 2. | HENRY STULL | THE 1902 SUBURBAN HANDICAP | signed <i>Henry Stull</i> , inscribed <i>copyright</i> , and dated 1902 (lower right) oil on canvas 24 by 36 in 60 9 by 91 4 cm |
| 3. | HENRY STULL | THE 1902 BELMONT STAKES | signed <i>Henry Stull</i> , inscribed <i>copyright</i> , and dated 1903 (lower right) oil on canvas 24 x 36 in 60 9 by 91 4 cm |
| 4. | HENRY STULL | POTOMAC AND MASHER OWNED BY THE HON AUGUST BELMONT | signed <i>Henry Stull</i> and dated 1890 (lower right) oil on canvas 36¼ by 48¼ in 92 1 by 122 5 cm |
| 5. | HENRY STULL | THE START | signed <i>Henry Stull</i> , inscribed <i>copyright</i> , and dated 1898 (lower left) oil on canvas 22¼ by 44¼ in 56 5 by 112 4 cm |
| 6. | HENRY STULL | NEARING THE FINISH | signed <i>Henry Stull</i> , inscribed <i>copyright</i> , and dated 1909 (lower right) oil on canvas 24 by 44 in 60 9 by 111 7 cm |
| 7. | HENRY STULL | CANTERING TO THE STARTING POST | signed <i>Henry Stull</i> , inscribed <i>copyright</i> , and dated 1904 (lower left) oil on canvas 22 by 36 in 55 9 by 91 44 cm |

| | | | |
|-----|---------------------------------|---|---|
| 8. | HENRY STULL | LADY AMELIA AT THE FINISH LINE | signed <i>Henry Stull</i> and dated 1906 (lower right) oil on canvas 24 by 29¼ in 60.9 by 74.3 cm |
| 9. | HENRY STULL | CHESTNUT HORSE WITH JOCKEY UP | signed <i>Henry Stull</i> and dated 1889 (lower left) oil on canvas 30¼ by 40 in 76.8 by 101.6 cm |
| 10. | JOHN FREDERICK HERRING, SNR | THE FLYING DUTCHMAN | signed <i>JF. Herring Senior</i> and inscribed <i>The Flying Dutchman at 3 yrs old won 1849 the Derby & Doncaster Leger ridden by Chas Marlow</i> (lower center) oil on canvas 42¼ by 72½ in 107.3 by 184.1 cm |
| 11. | JOHN HOLLAND JNR | NOTTINGHAM RACECOURSE - THE QUEEN S PLATE | signed with initials <i>J.H.</i> and dated 1885 (lower left) and signed <i>J Holland</i> (center left) oil on canvas 17 x 27½ in 43.2 by 69.8 cm |
| 12. | JOHN FREDERICK HERRING SNR | BLUE BONNET IN A STALL | signed <i>J.F. Herring Senr.</i> (center right) titled <i>Blue Bonnet</i> and dated 1842 (upper left) oil on canvas 15 by 20 in 38.1 by 50.8 cm |
| 13. | ATTRIBUTED TO JOHN FERNELEY SNR | A BAY HUNTER IN A LANDSCAPE | oil on canvas 25 by 30 in 63.5 by 76.2 cm |
| 14. | JAMES LYNWOOD PALMER | THE INSPECTION | signed <i>Lynwood Palmer NY</i> (lower left) oil on canvas 30½ by 40 in 77.5 by 101.6 cm |
| 15. | HARRY HALL | THE RACEHORSE SHANNON WITH F. WEBB UP | signed <i>Harry Hall</i> and dated 1878 (lower right) oil on canvas 28 by 36 in 71.1 by 91.4 cm |

| | | | |
|-----|------------------------|---|--|
| 16. | KAREL-FREDERIK BOMBLED | THE RACETRACK AT CHANTILLY | signed <i>Ch Bombled</i> and dated 1866 (lower left) oil on canvas 36¼ by 72 in 92.1 by 182.9 cm |
| 17. | HARRY HALL | BLAIR ATHOL. WINNER OF THE DERBY AND ST LEGER, 1864. WITH J. SNOWDEN UP | signed <i>H. Hall</i> and dated 1865 (lower right) oil on canvas 28 by 36 in 71.1 by 91.4 cm |
| 18. | EMILIO GRAU SALA | COURSE À CLAIREFONTAINE | signed <i>Grau Sala</i> (lower right); signed <i>Grau Sala</i> dated 1960 and titled <i>Courses à Clairefontaine</i> (on reverse) oil on canvas 21¼ by 25½ in 54 by 64.7 cm |
| 19. | EMILIO GRAU SALA | COURSE À DEAUVILLE | signed <i>Grau Sala</i> (lower left); signed <i>Grau Sala</i> dated 1959, and titled <i>Course à Deauville</i> (on reverse) oil on canvas 25¾ by 32 in 65.4 by 81.3 cm |

EXHIBIT E
INSURANCE

Lease Insurance Requirements

Prior to the date on which possession of the Premises is delivered to the Lessee, the Lessee shall file with The People of the State of New York, Office of General Services (together with Lessor collectively referred to hereinafter as "OGS"), Certificates of Insurance executed by a duly authorized representative of each insurer evidencing compliance with all requirements contained in this Lease. Such Certificates shall be of form and substance acceptable to OGS.

Acceptance and/or approval by the OGS does not and shall not be construed to relieve Lessee of any obligations, responsibilities or liabilities under the Lease or represent adequacy of the insurance or limits.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Lessee, shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to OGS; shall be primary and non-contributing to any insurance or self insurance maintained by OGS; shall be endorsed to provide written notice be given to OGS, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice Lessee shall request of the insurance company, be sent by return receipt of United States Certified Mail, shall be sent to Lessor. All such insurance shall name The People of the State of New York, NY State Urban Development Corp. dba Empire State Development Corp., The Franchise Oversight Board and their respective officers, agents, trustees, directors and employees as additional insureds thereunder. (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 26 11 85**). The additional insured requirement does not apply to Workers Compensation or Disability coverage.

Lessee shall require any subcontractors hired, to carry insurance with the same provisions provided herein . Contractors involved in the construction, maintenance, renovation or repair of the Premises will maintain Commercial General Liability limits of not less than \$5,000,000 each occurrence or in the case of major construction, additions or renovations limits agreed to by OGS and General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number **CG 20 10 11 85**. Notwithstanding the foregoing, all contractors shall have such insurance coverage (i) as is commercially reasonable with respect to the form and amounts of coverage, taking into account the size and cost of any construction, maintenance, renovation or repair of the Premises, or (ii) as otherwise required by the OGS, using the same standard.

Lessee shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self insured retentions must be approved by OGS. Such approval shall not be unreasonably withheld.

Each insurance carrier must be rated at least "A-" Class "VIII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal

date of the policy with an insurer acceptable to the OGS and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

Lessee shall cause all insurance to be in full force and effect as of the commencement date of this Lease and to remain in full force and effect throughout the term of this Lease and as further required by this Lease. Lessee shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, Lessee shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.

Lessee, throughout the term of this Lease, or as otherwise required by this Lease, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Lease, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- (a) Commercial General Liability Insurance with a limit of not less than \$50,000,000 each occurrence. Such liability shall be written on the Insurance Service Office's (ISO) occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage including completed operations, personal & advertising injury, cross liability coverage, liability assumed in a contract including the tort liability of another and explosion, collapse and underground. The limit for Fire Damage Legal shall not be less than \$100,000.
- (b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included.
- (c) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$10,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.
- (d) Commercial Property Insurance on the Premises covering at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, including debris removal, demolition and increased cost of construction that are caused by legal requirements regulating the construction or repair of damaged facilities, including an ordinance and law endorsement, in an amount of

not less than the Full Insurable Value of the Premises including completed additions. Full Insurable Value shall mean actual replacement cost (exclusive of the cost of non insurable portions thereof, such as excavation, foundations and footings). OGS is to be named as an insured.

- (e) Commercial Property Insurance covering at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, for loss or damage to any owned, borrowed, leased or rented personal property, equipment, tools, including tools of their agents and employees, and property of OGS held in their care, custody and/or control.
- (f) Rental Value Insurance providing coverage for fair rental value of any portion of the Premises occupied by Lessee.
- (g) Equipment Breakdown Insurance covering all of the boilers, fired or unfired pressure vessels, heating, ventilating and air-conditioning units or any other mechanical equipment which services the premises exclusively and which may malfunction or cause damage to property or injury to persons for the Full Insurable Value of the Premises. Lessee shall be responsible for the regular inspection of the Boiler. A joint loss agreement endorsement should be attached to the Equipment Breakdown and Commercial Property Insurance policies if with different insurance carriers. OGS is to be named as an insured.
- (h) Bailees insurance with limits of not less than \$10,000,000 covering liability arising from loss or damage to the property of others while being transported, in storage or otherwise in the care, custody or control of Lessee.
- (i) Garage Keepers Legal Liability Coverage with a limit of not less than \$1,000,000 at each location for Comprehensive and Collision Coverage for damage to a customer's automobile or automobile equipment in Lessee's care, custody or control.
- (j) If Lessee uses, stores, handles, processes or disposes of Hazardous Materials, then Lessee shall maintain in full force and effect through the term, Environmental Impairment Liability insurance with limits of not less than \$5,000,000, providing coverage for bodily injury, property damage or loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against The People of the State of New York,

arising from Lessee's use, storage, handling, processing or disposal of Hazardous Materials

- (k) If Lessee sells, distributes, serves or furnishes alcoholic beverages, then tenant shall maintain in full force and effect through the term, Liquor Liability Insurance with limits of not less than \$5,000,000.
- (l) During the performance of any Construction Work, Restoration or Alteration, Lessee will maintain or require the contractors to maintain Builder's risk coverage on a completed value form covering the perils insured under the ISO special causes of loss form, including collapse, water damage, and transit and theft of building materials, with deductible reasonably approved by the OGS, in non reporting form, covering the total value of work performed and equipment, supplies and materials at the location of the job as well as at any off-site storage location used with respect to such work. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation. Such policy shall name as insureds, The People of the State of New York, Lessee, Contractor and Subcontractors. Consent of the carrier must be included to allow for the occupancy or use of the Premises by Lessee and OGS.
- (m) If any Construction Work, Restoration or Alteration involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, petroleum or petroleum product, Lessee will require the Contractor to maintain in full force and effect throughout the term hereof, Pollution Legal Liability insurance with limits of not less than \$10,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against OGS arising from Contractor's work.
 - 1. Coverage should be written on an occurrence basis. If not available and subject to the approval of OGS, coverage is written on a claims-made policy, Lessee shall require the Contractor to warrant that any applicable retroactive date precedes the effective date of the Contractor's contract (the "Contract"); and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than 2 years from the time work under the Contract is completed.

2. If the Contract includes disposal of materials from the job site, the Contractor must furnish to OGS, evidence of pollution legal liability insurance with a limit of not less than \$5,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste under the Contract.
3. If autos are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

Waiver of Subrogation. Lessee shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Lessee waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS.

EXHIBIT F
PERMITTED SUBLEASES

Permitted Subleases

1. Lease Agreement dated December 31, 2007 between The New York Racing Association, Inc., as landlord, and Automated Bookkeeping Services, Inc., as tenant.

EXHIBIT H

NEW YORK STATE APPENDIX A

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

TABLE OF CONTENTS

1. Executory Clause
2. Non-Assignment Clause
3. Comptroller's Approval
4. Workers' Compensation Benefits
5. Non-Discrimination Requirements
6. Wage and Hours Provisions
7. Non-Collusive Bidding Certification
8. International Boycott Prohibition
9. Set-Off Rights
10. Records
11. Identifying Information and Privacy Notification
12. Equal Employment Opportunities For Minorities and Women
13. Conflicting Terms
14. Governing Law
15. Late Payment
16. No Arbitration
17. Service of Process
18. Prohibition on Purchase of Tropical Hardwoods
19. MacBride Fair Employment Principles
20. Omnibus Procurement Act of 1992
21. Reciprocity and Sanctions Provisions
22. Purchases of Apparel

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. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (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 -- 7th 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.

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