

EXHIBIT B
AQUEDUCT FACILITIES GROUND LEASE

AQUEDUCT RACETRACK

FACILITIES GROUND LEASE AGREEMENT

between

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

and

THE NEW YORK RACING ASSOCIATION, INC.

as Lessee

September__, 2008

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FACILITIES GROUND LEASE AGREEMENT

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

RECITALS

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

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

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

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

ARTICLE I

Grant, Term of Lease and Certain Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(q) Legislation. As defined in the Recitals.

(r) Lessee. As defined in the Recitals.

(s) Lessor. As defined in the Recitals.

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

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

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

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

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

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

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

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

ARTICLE II

Rental

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

ARTICLE III

Impositions and Utilities

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

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

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

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

ARTICLE IV

Improvements and Alterations

4.1 Improvement Rights and Alterations; Capital Plan.

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

(b) Intentionally Omitted.

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

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

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

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

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

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

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

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

ARTICLE V

Use of Leased Premises

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

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

5.2 Compliance with Laws.

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

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

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

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

ARTICLE VI

Insurance

6.1 Required Coverages of Lessee.

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

ARTICLE VII

Assignment and Subletting

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

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

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

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

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

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

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

ARTICLE VIII

Leasehold Mortgages/Subordination

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

ARTICLE IX

Default of Lessee

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

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

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

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

9.3 Revocation of Franchise Agreement. Notwithstanding anything in this Lease to the contrary, if Lessee's Franchise shall be duly revoked pursuant to Racing Law §§ 244 and 245, then this Lease shall be deemed automatically, without further notice or legal action, terminated as of the date of such Franchise revocation, and Lessor shall have the right, at Lessor's election, to exercise any of the remedies set forth in Section 9.4 of this Lease which are applicable following termination of the Lease. Lessee shall have the right to remain in possession of the Leased Premises for a period of not more than thirty (30) days following the termination of the Lease, solely for the purposes of orderly vacating the Leased Premises in the condition required by this Lease, TIME BEING OF THE ESSENCE to the obligation of Lessee to vacate the Leased Premises as provided in this Lease no later than the thirtieth (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 Leased Premises using such force for that purpose as may be necessary and permissible pursuant to applicable laws, without being liable for indictment, prosecution or damages therefor and may dispossess Lessee by summary proceedings or otherwise.

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

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

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

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

ARTICLE X
Intentionally Omitted

ARTICLE XI
Casualty Restoration

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

11.2 Obligation to Restore.

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

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

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

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

11.3 Restoration Funds.

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

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

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

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

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

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

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

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

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

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

ARTICLE XII

Representations, Warranties and Special Covenants

12.1 Lessor’s Representations, Warranties and Special Covenants.

Lessor hereby represents, warrants and covenants as follows:

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

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

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

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

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

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

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

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

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

12.2 Lessee's Representations, Warranties and Special Covenants.
Lessee hereby represents, warrants and covenants as follows:

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

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

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

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

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

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

ARTICLE XIII

Indemnification, Waiver and Release

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

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

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

ARTICLE XIV

Miscellaneous

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

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

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

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

If to Lessee:

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

With a copy to:

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

If to Lessor:

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

With a copy to:

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

With a copy to:

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

With a copy to:

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

With a copy to:

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

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

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

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

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

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

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

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

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

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

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

14.15 Consents.

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

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

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

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

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

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

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

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

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

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

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

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

SIGNATURE PAGES TO FOLLOW

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

LESSOR:

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

By: _____
Title: _____

Approved as to form by:

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

By: _____
Name:
Title:

LESSEE:

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

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

State of New York)

County of _____) ss.:

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

Signature and Office of individual
taking acknowledgment

State of New York)

County of _____) ss.:

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

Signature and Office of individual
taking acknowledgment

State of New York)

County of _____) ss.:

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

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