

FRANCHISE AGREEMENT

BY AND BETWEEN

THE GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

AND

VIGL OPERATIONS, LLC

ENTERED INTO THIS 27th DAY OF OCTOBER 2016

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FRANCHISE AGREEMENT

THIS AGREEMENT, made and entered into this 27th day of October, 2016, by and between the Government of the United States Virgin Islands (the "Government" or the "Grantor") and VIGL OPERATIONS, LLC, a Virgin Islands limited liability company ("Grantee"). Each of Grantor and Grantee is a "Party," and collectively are the "Parties."

SECTION I: DEFINITIONS

For the purposes of this Agreement and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

- (A) "Act" means Chapter 11 of Title 32 of the Virgin Islands Code ("V.I.C.").
- (B) "Casino Control Commission" means the Virgin Islands Casino Control Commission.
- (C) "Conditions Precedent" are the conditions precedent to the Effective Date of this Agreement as set forth in Section 2.1(C) of this Agreement.
- (D) "Confidential Information" has the meaning given in Section 9.4(A) of this Agreement.
- (E) "Effective Date" has the meaning given in Section 2.5 of this Agreement.
- (F) "Franchise" means the exclusive authorization or renewal thereof for the construction or operation of Live Horse Racing, Telephonic Account Betting, and Simulcast Wagering such as is granted by this Agreement and those rights described in 32 V.I.C. § 209.
- (G) "Governor" means the Governor of the United States Virgin Islands.
- (H) "Gross Pari-Mutuel Handle" shall mean the total dollar amount wagered on Pari-Mutuel betting on: (a) Live Horse Racing, (b) Simulcast Wagering (to include and not be limited to horse and greyhound racing); and Telephonic Account Betting (which includes all Telephonic Account Bets received in the Territory from all sources in the world)
- (I) "Horsemen's Organizations" means the groups currently recognized by the St. Croix Racing Commission and the St. Thomas/St. John Racing Commission as representing the interests of the majority of horse owners and trainers who race at the St. Croix Racetrack and the St. Thomas Racetrack, respectively, or any recognized successors to such groups.
- (J) "Horse Racing Commission" means the Virgin Islands Horse Racing Commission.

(K) “Lease” or “Lease Agreement” has the meaning given in Section 2.6(C)(6) of this Agreement.

(L) “Legislature” means the Legislature of the United States Virgin Islands.

(M) “License” has the meaning given in Section 3.1 of this Agreement.

(N) “Live Horse Racing” means the competitive racing of horses at either of the Racetracks in accordance with the provisions of the Act and the Regulations.

(O) “Maintenance Account” has the meaning given in Section 4.3 hereof.

(P) “Maintenance Amount” has the meaning given in Section 4.3 hereof.

(Q) “Pari-Mutuel Betting” has the meaning set forth in 32 V.I.Reg. §203-1(s).

(R) “Party” and “Parties” have the meanings set forth in the preamble to this Agreement.

(S) “Person” means any individual, natural Person, sole proprietorship, partnership, association, corporation, or other entity.

(T) “Race Day” means the day horseracing will take place.

(U) “Racetracks” means the St. Croix Racetrack and the St. Thomas Racetrack, as defined below in subsections (EE) and (FF) of this Section.

(V) “Racino” means a gaming facility licensed by the Casino Control Commission and operated (in conjunction with the Racetracks) by the Grantee.

(W) “Regulations” means the provisions of Chapter 11 of Title 32 of the Virgin Islands Administrative Code “(V.I.Reg.)”.

(X) “Remote Location” has the meaning given in Section 3.2(B) of this Agreement.

(Y) “Satellite Facility” means an authorized Simulcast Facility that is operated in conjunction with the Racetracks.

(Z) “Simulcast” has the meaning given in 32 V.I.Reg. § 203-1(x).

(AA) “Simulcast Facility” has the meaning given in 32 V.I.Reg. § 206-2(b).

(BB) “Simulcast Facility License” means a license to operate a Simulcast Facility awarded pursuant to 32 V.I.Reg. §206-4.

(CC) “Simulcast Wagering” means Pari-Mutuel Betting on a Simulcast.

(DD) “Sub-Leases” and “Sub-Lease Agreements” have the meaning given in Section 2.1(C)(b) of this Agreement and are attached as Appendixes A and B to this Agreement.

(EE) “St. Croix Racetrack” means the Randall “Doc” James Racetrack, its facilities, buildings, and equipment on the island of St. Croix.

(FF) “St. Thomas Racetrack” means the Clinton Phipps Racetrack, its facilities, buildings, and equipment on the island of St. Thomas.

(GG) “Telephonic Account Betting” means a form of Pari-Mutuel Betting via telephone or other device in which an individual may deposit money in an account with a person, corporation, or association licensed to or awarded a lease franchise or concession agreement to conduct horse races and then use the account balance to pay for Pari-Mutuel Betting on horse races or any other pari-mutuel event from any racetrack within or outside the United States Virgin Islands. A telephonic account bet may be made in person, by telephone call or by communication through other electronic media by the holder of the account.

(HH) “Totalizator System” has the meaning given in 32 V.I.Reg. §203.1(bb).

(II) “Days” as appearing in this Agreement shall mean calendar days, unless otherwise indicated.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant.

(A) Grantor hereby awards to Grantee a Franchise pursuant to 32 V.I.C. §209 and 32 V.I.Reg. §209-1 to promote and conduct horseracing and related activities in the United States Virgin Islands. The Franchise granted hereby includes an exclusive concession in the Territory for Live Horse Racing, Telephonic Account Betting, and Simulcast Wagering, and the daily occupancy, operation and use of all of the facilities and equipment located at the Racetracks, and shall be subject to approval by the Governor and the Legislature. Grantee, through this Agreement, is granted exclusive and valuable rights to operate Live Horse Racing, Telephonic Account Betting, and Simulcast Wagering for profit using the Racetracks and other approved facilities in compliance with all applicable, laws, rules & regulations and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for such valuable rights throughout the term of this Agreement, as provided for herein.

(B) This Agreement is intended to convey limited franchise or concession rights and interests only as to the Racetracks in which the Grantor has an actual interest. It is not a warranty of title or interest in the Racetracks; it does not provide the Grantee any interest in any particular location within Racetrack premises; and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive Grantor of any powers, rights or privileges Grantor now has, or may later acquire in the future, to use, perform work on or to regulate all matters relating to horseracing and the use of and to control the Racetracks covered by this Agreement, including without limitation the right to perform work on its roadways, right of way or appurtenant drainage facilities, including constructing, altering,

paving, widening, grading, or excavating thereof, subject however to rights granted to Grantee in the Leases (hereinafter defined) for the Racetracks.

(C) It is acknowledged that the Effective Date of this Franchise Agreement shall be subject to the following Conditions Precedent:

(a) Approval by the Legislature and the Governor of this Franchise Agreement as well as amending Title 32 to permit the terms of this Agreement to take effect;

(b) Execution of lease or sub-lease agreements (herein "Leases" or "Lease Agreements") for the Racetracks between Grantee and Grantor, on behalf of the Virgin Islands Department of Sports, Park and Recreation. The terms and conditions of the Lease Agreements and this Franchise Agreement are incorporated by reference within each other and the instruments are mutually dependent, as both are deemed terminated if one is terminated; and

(c) Execution by Grantee of Live Horse Racing agreements with the Horsemen's Organizations pursuant to Section 7.4 of this Agreement;

(d) Approval of a Racino Gaming License by the Casino Control Commission, which may include a temporary Racino Gaming License.

(e) Approval of all necessary licenses and permits for the construction and operation of at least one of the Racetracks contemplated by this Agreement.

(f) Termination of any other franchise agreements to conduct Live Horse Racing at both the Randall "Doc" James Racetrack on St. Croix and the Clinton Phipps Racetrack on St. Thomas.

(D) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Agreement, subject to the provisions of Section 12.2 herein, that any affiliate, joint venturer or partner of Grantee directly involved in the offering of Live Horse Racing, Telephonic Account Betting, and Simulcast Wagering under this Agreement, or directly involved in the management or operation of the Live Horse Racing, Telephonic Account Betting, and Simulcast Wagering under this Agreement will also comply with the terms and conditions of this Agreement.

2.2 Administration and Regulation by the Horse Racing Commission

Following the Effective Date, and prior to the Effective Date as provided in this Agreement, the administration of this Agreement and the regulation of Grantee's activities hereunder shall be conducted by the Horse Racing Commission in accordance with the terms of this Agreement and applicable law. In this regard, all Racino activities are subject solely to the Casino Control Commission, the Virgin Islands Casino and Resort Control Act of 1995 (as amended), and the regulations promulgated thereunder.

2.3 Right to Construct and Improve Racetrack Facilities and Equipment.

Subject to the Government's approval rights as set forth in Section 8.6 herein, and the Leases, Grantee shall erect, install, construct, repair, replace, reconstruct, and maintain within the Racetracks such other property and equipment as are necessary and appropriate to the operation of Live Horse Racing, Telephonic Account Betting, and Simulcast Wagering at the Racetracks. Grantee shall comply with all applicable, laws, rules & regulations and procedures, now in effect or enacted hereafter, and must obtain any and all necessary permits from the appropriate government agencies prior to commencing any construction activities.

2.4 Duration.

The term of this Agreement and all rights, privileges, obligations and restrictions pertaining thereto shall be for a period of twenty (20) years from the Effective Date.

2.5 Effective Date. The effective date ("Effective Date") of this Agreement shall be the date all Conditions Precedent in Section 2.1 (C) have been satisfied.

2.6 Acknowledgement.

By becoming a party to this Agreement, the Grantee:

- (1) acknowledges and accepts the legal right of Grantor to issue and enforce the Agreement pursuant to the Act, the Regulations, and any rules or procedures promulgated pursuant thereto, and
- (2) agrees to comply with each and every provision of this Agreement; and
- (3) agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable laws, rules & regulations, and procedures; and
- (4) agrees that it will not raise any claim to the contrary.

2.7 Police Powers.

Grantee's rights hereunder are subject to the lawful police powers of Grantor and the Horse Racing Commission, and to the authority of Grantor and the Horse Racing Commission to promulgate and enforce rules and regulations necessary for horse racing, and related activities. Grantee agrees to comply with all applicable laws, rules, and regulations promulgated, by Grantor, the Horse Racing Commission, or any other governmental unit having jurisdiction over the subject matter herein, provided that subject to the lawful police powers of the Government, the terms of this Agreement shall control in case of conflict with any Territorial laws, rules, and regulations adopted subsequent to Grantee's execution of this Agreement which laws, rules and regulations would act to impair the terms of this Agreement.

2.8 Relation to Other Provisions of Law.

This Franchise Agreement and all rights and privileges granted hereunder are subject to, and the Grantee must exercise all rights in accordance with, all applicable laws, rules and regulations and procedures. This Franchise Agreement does not confer rights or privileges upon the Grantee other than as expressly provided herein. If the Grantee cannot operate on both St. Croix and St. Thomas, as set forth herein, due to any court order or any finding of any governmental agency this Franchise Agreement shall be voidable at the option of the franchisee.

2.9 Retention of Rights.

Grantee recognizes that the Grantor and the Horse Racing Commission shall have the continued right to adopt such rules and regulations as they deem necessary to maintain the integrity of Live Horse Racing, Pari-Mutuel Betting, Simulcast Wagering, and Telephonic Account Betting placed, received, or otherwise made in the United States Virgin Islands. The Franchise and/or any License(s) issued pursuant to Section 3.1 below, and the Franchise and License fees paid hereunder, are in addition to, and not in lieu of, any other required permit, authorization, fee, charge or tax.

SECTION 3. GRANT OF LICENSES

3.1 Grant of License.

Pursuant to 32 V.I.Reg. §202-25, Grantor hereby awards Grantee exclusive Association licenses to conduct Live Horse Racing, Pari-Mutuel Betting, Simulcast Wagering, and Telephonic Account Betting in the District of St. Croix and in the District of St. Thomas/St. John, in each case to the extent permitted by law. The Licenses shall go into effect on the Effective Date.

3.2 Racetracks as Hub; Temporary Facilities

To the extent provided by law, the Racetracks shall serve as the hubs for all activity conducted pursuant to the Licenses, including Live Horse Racing, Pari-Mutuel Betting, Simulcast Wagering, Telephonic Account Betting, and Satellite Facility Wagering, for as long as this Agreement remains in effect, except that until such time as the construction and renovation of the Racetracks contemplated in this Agreement is sufficiently completed to provide a clean and secure location for equipment relating to Simulcast Wagering, Telephonic Account Betting, and/or Satellite Facility Wagering, temporary facilities approved by the Casino Control Commission and/or the Horse Racing Commission may be used elsewhere within the Territory to serve as a temporary hub for those activities for no more than twelve (12) months from the Effective Date.

(A) Within sixty (60) days after the Effective Date, Grantee shall submit all documentation and other materials to the Horse Racing Commission as it may require so that it can exercise its administrative role under this Agreement and under the law.

(B) Upon satisfaction of all Conditions Precedent in Section 2.1 (C) of this Agreement, the Government agrees that Grantee also shall be deemed to have fulfilled the

Simulcast Facility License application requirements of 32 V.I. Reg. §206-4(a)-(d), and said Simulcast Facility License shall be effective twenty (20) days after the filing of the information required by 32 V.I.Reg. §§206-4(e) and 208-1. Upon satisfaction of all Conditions Precedent in Section 2.1 (C) of this Agreement, the Government further acknowledges that Grantee shall also be deemed to have fulfilled the lease-franchise requirements of 32 V.I.C. §209 and 32 V.I.Reg. §209-1 at the Racetracks, which lease-franchise licenses shall become effective upon payment of the license fee provided for in Section 4.1 below.

(C) In the event that Grantee desires to establish a Simulcast Facility at a location other than a Racetrack (herein “a Remote Location”), the Grantee shall make application pursuant to the applicable Regulations with the Horse Racing Commission. The Horse Racing Commission, upon receipt of the information required by law, shall expeditiously consider all applications filed by Grantee, including but not limited to those described in 32 V.I.Reg. § 208-1. Approval of such applications and contracts by the Horse Racing Commission will not be unreasonably withheld. Upon approval, all receipts from each such Remote Location shall be treated as being part of this Agreement.

SECTION 4. FEES AND PAYMENTS

4.1 License Fee.

As compensation for the issuance of an Association license in accordance with the Act and 32 V.I.Reg. § 202-25 to operate the Racetracks, their facilities and equipment, Grantee shall pay to the Government, throughout the duration of this Agreement, Twenty Thousand Dollars (\$20,000.00) annually (the “License Fee”), with the first payment due on the Effective Date and then on the same date of each successive year.

4.2 Franchise Fee

As compensation for the benefits and privileges granted under this Agreement, Grantee shall pay to the Government a franchise fee (“Franchise Fee”) after the Effective Date of this Agreement as follows:

(A) For the first and second year of the Agreement, the Franchise Fee shall be Ten Thousand Dollars (\$10,000.00);

(B) For the third and fourth year of this Agreement, the Franchise Fee shall be Twenty-five Thousand (\$25,000).

(C) Thereafter, the Franchise Fee shall be \$50,000.

4.3 Racetrack Maintenance Funding Support

To the extent Grantee receives authorization from the Virgin Islands Casino Control Commission to operate slot machines and other games of chance at the Racetracks, upon commencement of such operations and through the term of this Agreement, Grantee shall on a monthly basis deposit an amount equal to four percent (4%) of the Gross revenue, as defined by 32 VIC 402(36), from such operations (the “Maintenance Amount”) into a designated interest-

bearing bank account in the U.S. Virgin Islands (the "Maintenance Account") to be used by Grantee to preserve, maintain, and improve the Racetracks and their operations for the term of the Agreement. Funds in the Maintenance Account shall be allocated for use at each Racetrack in proportion to that Racetrack's share of the Maintenance Amount in the calendar year prior to use. For the avoidance of doubt, the Maintenance Amount shall be in addition to the Initial Investment described in Section 8.2. Within 30 days of the end of each calendar quarter, Grantee shall provide a written statement to the Commission identifying (1) the current balance in the Maintenance Account, and (2) the deposits and expenditures made into and out of said account in said calendar quarter.

4.4 Payments.

Grantee's License and Franchise Fee payments described in this Section 4 shall be paid to the Government, in a manner as prescribed by the Government, as provided in subparts (A) and (B).

(A) The first annual License Fee is due and payable five (5) days after the Effective Date of this Agreement, and shall be pro-rated for the calendar year in question. Thereafter, the fee shall be paid on or before January 10th of each year.

(B) The first annual Franchise Fee is due and payable five (5) days after the Effective Date of this Agreement, and shall be pro-rated for the calendar year in question. Thereafter, the fee shall be paid on or before January 10th of each year.

4.5 Acceptance of Payment.

Acceptance of any payment by the Horse Racing Commission or the Grantor from Grantee in connection with this Agreement shall not be construed as an accord by or with the Horse Racing Commission or Grantor that the amount paid is, in fact, the correct amount to be paid, nor shall any acceptance of payments be construed as a release of any claim the Horse Racing Commission or Grantor may have for further or additional sums owed, pursuant to this Agreement.

4.6 Interest on Late Payments.

In the event that a Franchise Fee or License Fee payment or other sum is not received by Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest on the balance owed from the due date at a rate equal to ten percent (10%) per annum.

4.7 Additional Commitments Not Franchise Fee.

No term or condition in this Agreement shall in any way modify or affect Grantee's obligation to pay the Franchise Fee and License Fee described in §§4.1 and 4.2 to the Government. Grantee agrees that the additional commitments herein are not franchise fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee or License Fee payments due to the Horse Racing Commission. All funds held by VIGL in any account created under this agreement, such as §4.3 (maintenance account) or §7.5 (purses), shall

be deemed the property of the Government, although VIGL shall always have sole control over these accounts.

4.8 Tax Liability.

Payment of the Franchise Fee and License Fee under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee, except as provided by applicable laws, rules, and regulations.

4.9 Cost of Publication.

Grantee shall pay the reasonable costs of newspaper notices and publication pertaining to this Agreement and any amendments thereto, as such notice or publication is reasonably required by the Horse Racing Commission or applicable law.

4.10 Payment of Fees to the Horse Racing Commission

(A) To defray the cost of funding the Horse Racing Commission's operations for a given year, Grantee shall pay annually to the Horse Racing Commission any additional amount need to increase the amount payable under 32 V.I.C. §901(b)(6) so that the Horse Racing Commission receives the total the total sum of FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000) annually, payable in equal quarterly installments beginning on the first January 10 following the Effective Date. After 5 years, the Government and VIGL agree to revisit this commitment to consider whether an appropriate adjustment should be considered.

(B) Within 30 days of receipt by the Horse Racing Commission of funds distributed pursuant to 32 V.I.C. §901(b)(6) for such year, said Commission shall remit such funds to the Grantee, except that in no event shall the amount remitted by the Horse Racing Commission pursuant to this section 4.10(B) exceed the amount received from Grantee pursuant to Section 4.10(A).

4.11 Payment on Termination.

If this Agreement is terminated for any reason, the Grantee shall file with the Horse Racing Commission within ninety (90) calendar days of the date of such termination, a statement certifying the Gross Pari-Mutuel Handle from all sources and certified by an independent certified public accountant licensed in the Virgin Islands, showing the Gross Pari-Mutuel Handle from all sources handled by the Grantee since the end of the previously completed fiscal year. The Horse Racing Commission and Grantor reserve the right to satisfy any unpaid financial obligations of the Grantee to the Horse Racing Commission or Grantor by utilizing the funds available in any security provided by the Grantee.

SECTION 5. ADMINISTRATION AND REGULATION

5.1 Time Limits Strictly Construed.

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor and the Horse Racing Commission to invoke any and all remedies permitted by this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond the reasonable control of Grantee, such as acts of God (for example, floods, hurricane, earthquakes or unusually severe weather conditions) or as a result of unreasonable governmental agency delays, Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for such obligation which is satisfactory to the Horse Racing Commission and the Grantor. Grantee shall not be excused by economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

5.2 Annual Evaluation.

(A) The Horse Racing Commission shall conduct annual performance evaluations ("Annual Evaluations") of Grantee not fewer than thirty (30) and not more than sixty (60) days after each anniversary of the Effective Date of this Agreement.

(B) To facilitate the Annual Evaluations, Grantee shall submit to the Horse Racing Commission an annual report, in a form acceptable to the Horse Racing Commission, which shall include a description of the improvements to the Racetracks and other facilities, the Racetracks' financial performance for the preceding year, and other information relevant to Grantee's performance of its obligations under this Agreement. Such annual report shall be provided to the Horse Racing Commission not later than twenty (20) days after each anniversary of the Effective Date of this Agreement.

(C) Annual Evaluation sessions shall include review of the Grantee's performance of the terms and conditions of the Franchise and compliance with local and federal laws and regulations.

(D) All Annual Evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Territory.

(E) Grantee shall fully cooperate with the Horse Racing Commission in all Annual Evaluations, and shall provide such information and documents as necessary and reasonable for the Horse Racing Commission to perform the evaluation.

(F) Not later than thirty (30) days after each Annual Evaluation, the Horse Racing Commission shall issue a written report of the results of such Annual Evaluation. Such report shall be available to the public.

SECTION 6. FINANCIAL AND INSURANCE REQUIREMENTS

6.1 Insurance Requirements.

Grantee shall obtain insurance policies as set forth in any Lease or Sub-Lease Agreement to lease the Racetracks.

6.2 * Indemnification.

(A) Scope of Indemnity. Grantee shall, indemnify and hold harmless the Grantor, the Horse Racing Commission, and their employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the operation or maintenance of its Live Horse Racing and related activities; provided, however, that Grantee's indemnification obligation shall not exceed \$1,000,000 for special, incidental and/or indirect damages, and provided further that Grantee will not be obligated to indemnify Grantor, the Horse Racing Commission, and their employees for acts caused or determined to be caused by Grantor, the Horse Racing Commission, or their employees. Subject to the foregoing, and without limiting in any way the Grantee's obligation to indemnify the Grantor, the Horse Racing Commission, and their employees, set forth above, this indemnity provision also includes, but is not limited to, damages and liabilities:

1. To persons or property, in any way arising out of or through the acts of omissions of the Grantee, its contractors, subcontractors and their officers, employees or agents.

2. Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Grantee; or for violation of any other right of any Person;

3. Arising out of Grantee's failure to comply with the provisions of any federal, state, Territorial, or local statute, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies.

6.3 Performance Bond

Five (5) days after the Effective Date of this Agreement, Grantee shall post a performance bond or letter of credit in a form acceptable to the Government from a financial institution acceptable to the Government in the amount of TWENTY FIVE MILLION DOLLARS (\$25,000,000) in favor of the Government. Upon the completion of the improvements to the Racetrack described in Section 8 (herein the "Listed Projects"), the bond shall be released. The Government shall agree to reduce the amount of the bond upon the satisfactory completion of each separate Listed Project. The amount of the bond reduction shall be the demonstrated expenditures on such completed Listed Project. In no event shall the bond be reduced to less than \$1,000,000 until all of the Listed Projects are completed.

SECTION 7. LIVE HORSE RACING AND COMMUNITY SUPPORT

7.1 Live Horse Racing.

(A) The Grantee shall conduct Live Horse Racing at the Racetracks, including a minimum aggregate total for the two Racetracks:

1. Eighteen (18) live race days annually during years one through three after the Effective Date; and

2. Twenty-four (24) live race days annually each year thereafter after the Effective Date;

provided that the aggregate number of races may be reduced below the stated minimum (i) to the extent specified by the live racing agreements with the Horsemen's Organizations required by Section 7.4, or (ii) with the written approval of the Horse Racing Commission.

(B) Not later than November 1 of each year, Grantee shall submit to the Horse Racing Commission, for its approval, a list of specific dates for the race cards for the ensuing calendar year.

7.2 Pari-Mutuel Betting and Equipment.

Grantee shall provide Pari-Mutuel Betting on live races at the Racetracks and any other facility as the Grantee deems appropriate within the Territory, subject to the approval of the Horse Racing Commission (such approval not to be unreasonably withheld). Grantee shall provide the Totalizator System equipment subject to the approval of the Grantor; such approval shall not be unreasonably withheld. Pari-Mutuel Betting shall be conducted under the supervision and subject to the control of the Horse Racing Commission in accordance with 32 V.I.C. §§ 204 and 205, and in accordance with applicable rules and regulations.

7.3 Complete Camera System.

Grantee shall provide for the purchase or lease of a complete camera equipment system during Race Days at each Racetrack to assist racing officials in the discharge of their duties, consisting of the following:

(A) No less than three (3) cameras, strategically located throughout the racing surface, for the purpose of race review and surveillance.

(B) A paddock patrol camera or system of cameras to assist racing officials in the monitoring on race day of horses and personnel while saddling in the paddock area.

(C) A photo finish camera to assist placing judges in determining the order of finish in the event of a close finish for 1st, 2nd, and 3rd positions.

(D) Adequate security cameras for the public areas of the Racetracks, including all parking areas, to assist in providing security for the public attending the races.

(E) Upon termination of this Agreement, said equipment owned by Grantee shall remain in place and shall become the property of the Grantor.

7.4 Agreements with Horsemen's Organizations.

Prior to Grantee's performance hereunder, Grantee shall obtain a live horse racing agreement pertaining to the number of live horse racing purses, distribution of funds generated by Simulcast Wager and other agreed-upon activities, with each Horsemen's Organization. Such agreement shall be approved by the Horse Racing Commission (which approval shall not be unreasonably withheld) and shall be binding on any successor or future horse owners organization recognized by the Horse Racing Commission during the term of this Agreement as the representative of the majority of horse owners and trainers who race at the Racetracks.

7.5 Purses.

(A) Purse Account. Grantee shall at all times maintain a purse account for use at each Racetrack, to be held in any financial institution acceptable to the Horse Racing Commission located in the District of St. Croix (for purses at the St. Croix Racetrack) and the District of St. Thomas (for purses at the St. Thomas Racetrack). The balance of each account shall not be less than 100% of the total purse amount for the corresponding Racetrack within seven (7) days of race day. Upon the Effective Date of this Franchise Agreement, Grantee shall deliver to the Horse Racing Commission and the Horsemen's Organizations a statement which includes (1) the account number and (2) the present account balance.

(B) Minimum Purses.

1. The purse at any Racetrack for any race day shall not be less than One Hundred Thousand Dollars (\$100,000); and

2. The total amount of purses for any given calendar year shall not be less than:

1) Two Million Dollars (\$2,000,000) per year for the first, second, and third years following the Effective Date;

2) Two Million Five Hundred Thousand Dollars (\$2,500,000) per year for fourth, fifth, and sixth years following the Effective Date; and

3) Three Million Dollars (\$3,000,000) for each year thereafter.

provided that the minimum purse for any race or the aggregate purse for any year may be reduced below the stated minimum (i) to the extent specified by the live racing agreements with the Horsemen's Organizations required by Section 7.4, or (ii) with the written approval of the Horse Racing Commission.

3. The annual minimum purse amounts described in this Section 7.5(B) shall be inclusive of amounts distributed for the relevant year pursuant to 32 V.I.C.

§901(b)(2), but exclusive of any funds the Government may, at its election, provide to supplement the total purse amount for any given race day.

4. In any calendar year that the funds distributed pursuant to 32 V.I.C. §901(b)(2) exceed the annual minimum amounts for such calendar year, Grantee shall contribute an amount equal to such excess to the total purse for the following year.

5. After 9 years, the Government and VIGL agree to revisit this commitment to consider whether an appropriate adjustment should be considered by the parties.

7.6 Training and Scholarships.

(A) Grantee shall develop a training program for its employees at the Racetracks and interested students at the University of the Virgin Islands. Grantee shall take reasonable measures to communicate the existence of said program to interested students

(B) Grantee shall allow use of its enclosed areas and audio-video equipment (at times which do not conflict with Simulcast activities) for training sessions.

(C) Grantee agrees to fund, within four years, a scholarship program for two or more individuals qualified to attend an institution of higher learning who intend to study a discipline the Horse Racing Commission deems useful to the horse racing industry. This scholarship shall be jointly developed and administered by the Grantee and the Horse Racing Commission with input from the Horsemen's Organizations. Students who are studying to become veterinarians shall be given priority in considering such scholarships.

(D) The total amount expended for items (A) through (C) shall not be less than \$20,000 per year, increasing 15% each year, capping at a minimum amount of \$100,000.

7.7 Charity.

On each live race day, Grantee shall make three (3) one thousand dollar (\$1,000) donations to three (3) reputable charities (which shall be charitable entities that consider themselves non-profit charitable entities under Section 501(c)(3) of the Internal Revenue Code) to be chosen by Grantee. These amounts must total \$54,000 for the first three years and increase to \$72,000 during the fourth year of this agreement, which shall then increase each 10% each year until it reaches \$150,000, at which time it shall be capped. Selected charities are subject to the approval by the Governor. Selected charities shall be given space at the Racetrack on the live race day for which they were selected to conduct charitable activities.

SECTION 8. IMPROVEMENTS AND MAINTENANCE OF RACETRACK FACILITIES

8.1 Project Management Plan

(A) Not later than 30 days after execution of this Agreement, Grantee shall present for review and approval by the Government a project management plan ("Project Management Plan" or "Plan"), which shall set forth in detail Grantee's plans to restore, improve,

and enhance the Racetracks, its facilities for both racing participant and spectators, the race day experience, and other entertainment options. The Plan shall be consistent with Grantee's obligations as set forth in this Agreement.

(B) Upon receipt of the Plan, the Government shall have fifteen (15) days in which to review said Plan and either approve the Plan or notify Grantee of any aspects of the Plan that it reasonably concludes are inconsistent with this Agreement or are otherwise incomplete or are inadequate for achieving the goals stated in Section 8.1(A). If the Government fails to identify any such aspects within the 15-day period, the Plan shall be deemed approved. To the extent the Government timely identifies aspects of the Plan that it reasonably concludes are inconsistent with this Agreement or are otherwise incomplete or inadequate, Grantee shall within 30 days take all reasonable measures to amend the Plan to address the identified concerns.

8.2 Initial Investment

(A) The Plan shall provide for, and Grantee shall make, an initial investment of not less than TWENTY SEVEN MILLION DOLLARS (\$27,000,000) (the "Initial Investment") to improve and expand the Racetracks as described in this Agreement. The Initial Investment shall be allocated as follows: approximately FOURTEEN MILLION DOLLARS (\$14,000,000) for the St. Croix Racetrack; approximately TWELVE MILLION DOLLARS (\$12,000,000) for the St. Thomas Racetrack, inclusive of the "Lima Property" as set forth in Section C below and agreed to have a value of \$2,000,000; and approximately ONE MILLION DOLLARS (\$1,000,000) in a reserve fund to be allocated to the St. Croix Racetrack or St. Thomas Racetrack as necessary to accomplish the tasks and goals identified in this Section 8.

(B) The improvements and other work described in this Agreement to be funded by the Initial Investment shall begin upon approval of the Plan and shall be 40% completed in not less than twenty-four (24) months and substantially completed within forty-two (42) months following approval of the Plan. Failure to complete the Initial Investment within said time limits shall constitute a breach of this Agreement and entitle the Grantor to pursue any and all remedies permitted by this Agreement.

(C) The purchase price paid by Grantee for the 12.8 acres adjacent to the Clinton Phipps Racetrack in St. Thomas, known as the Lima Property located at 4D Bovoni, will be considered as part of the amount required to be spent on that track to the extent the Lima Property is used in and part of the planned reconfiguration of that racetrack so long as the Grantee remains in possession of the property for the full 20 years, unless the Grantee voluntarily elects to leave earlier or if the Government revokes this Agreement pursuant to Sections 10.1-10.2 hereof, Likewise, should the Grantee reconfigure the entrance to the Clinton Phipps Racetrack in St. Thomas, it will grant the Government an easement over this access upon the termination of this agreement.

8.3 Racing Entertainment Centers

Grantee shall construct a multi-purpose entertainment facility (a "Racing Entertainment Center" or "REC") at an appropriate location at each Racetrack. Each REC shall include at least the following: improved grandstand areas, parking (including paving where appropriate),

including but not limited to renovated bathroom facilities, concessions, and luxury viewing suites; a live betting parlor; a racino featuring slot machines and other games of chance; an off-track betting facility; one or more dining establishments; one or more bar areas and lounges; family picnic areas (similar to what currently exists) and kiosks with access to electricity for use by local vendors on race days. Grantee shall also construct a new entry gate to each REC and grandstand area. It is expressly noted that the operation of the racino and the approval of any gaming (slots or otherwise) are subject to approval by the Casino Control Commission and/or the Division of Gaming Enforcement, as provided by Virgin Islands Casino and Resort Control Act of 1995 (as amended) and the regulations promulgated thereunder.

8.4 Horse, Jockey, and Veterinary Facilities

(A) **St. Croix Racetrack:** Grantee shall construct or renovate facilities for racehorses, jockeys, and veterinary professionals at the St. Croix Racetrack, as follows:

1. New horse barns: Grantee shall construct two (2) new barns for stabling racehorses, to be located immediately south of the existing horse barns at the southwestern end of the Racetrack. The new barns shall have a minimum capacity of eighteen (18) racehorses. Grantee shall also construct a new entry gate to the horse barn complex, to be located to the north of the existing horse barns.

2. New quarantine barn: Grantee shall construct a new quarantine barn, to be located at the northeastern end of the racetrack, for the purpose of separating and quarantining horses from other animals stabled at the Racetrack as needed or required by law. The quarantine barn shall have a minimum capacity of eight (8) horses.

3. New veterinary office: Grantee shall construct a new veterinary office, to be located at the northeastern end of the racing oval. The new veterinary office shall include facilities for the care and treatment of racehorses commensurate in size and sophistication with veterinary facilities at similar racetrack facilities in the United States.

4. Renovated jockey locker rooms: Grantee shall renovate the existing jockey locker rooms to bring them to a standard consistent with industry standards.

5. New equipment shed: Grantee shall construct a new equipment shed, to be located at the northeastern end of the racing oval. The new shed shall contain not less than five hundred (500) square feet of usable storage space.

6. New race chute: Grantee shall construct a new six-furlong race chute for use in horse racing, to be located on the southwestern end of the racing oval.

7. New tote board: Grantee shall construct a new tote board, to be located on the site of the existing tote board on the north side of the racing oval infield opposite the grandstand.

(B) **St. Thomas Racetrack:** Grantee shall construct or renovate facilities for racehorses, jockeys, and veterinary professionals at the St. Thomas Racetrack, as follows:

1. New horse barns: Grantee shall demolish the existing horse barns and construct three (3) new horse barns and a new paddock on Grantee's newly acquired property to the west of the existing facility. The new barns shall have a minimum capacity of eighteen (18) racehorses.

2. New quarantine barn: Grantee shall construct a new quarantine barn at an appropriate site for the purpose of separating potentially contagious horses from other animals stabled at the Racetrack. The quarantine barn shall have a minimum capacity of ten (10) horses.

3. New veterinary office: Grantee shall construct a new veterinary office at an appropriate site adjacent to the new quarantine barn. The new veterinary office shall include facilities for the care and treatment of racehorses commensurate in size and sophistication with veterinary facilities at similar racetrack facilities in the United States.

4. New jockey locker rooms: Grantee shall construct new jockey locker rooms and a new paddock on the northwestern end of the racing oval. The new locker rooms and paddock will be constructed to a standard consistent with industry standards.

5. New tote board: Grantee shall provide a new tote board, to be located on the north side of the racing oval infield opposite the grandstand.

(C) The exact design, configuration, materials, budget, and schedule for the construction and renovation projects described in this Section 8.4 shall be consistent with this Section 8.4 and shall be set forth in the Construction Plan. All design, construction, renovation, and other work performed in accordance with this Section 8 shall be performed in accordance with current best practices in racetrack design and construction and racehorse care and husbandry.

8.5 Racing Surface and Equipment Improvement

(A) **St. Croix Racetrack.** Grantee shall provide improvements to the St. Croix Racetrack racing surface and equipment, to include without limitation resurfacing of the racing oval, installation of a 16' x 10' video screen, a functional starting gate, track-watering equipment, new race track rails as needed, and such other measures as are necessary to restore the Racetrack and equipment to a standard consistent with industry standards.

(B) **St. Thomas Racetrack.** Grantee shall provide improvements to the St. Thomas Racetrack racing surface and equipment, to include without limitation resurfacing of the racing oval, installation of a 16' x 10' video screen, widening of the northwest corner of the racing oval, building out of the northeastern corner of the racing oval to accommodate a starting position for six-furlong races, a new chute on the southwestern corner of the racing oval to accommodate starts for one mile, one mile seventy yard, and one and one-eighth mile races, new race track rails as needed, track-watering equipment, and such other measures as are necessary to restore the Racetrack and equipment to a standard consistent with industry standards.

(C) The exact design, configuration, materials, budget, and schedule for the construction and renovation projects described in this Section 8.5 shall be consistent with this Section 8.5 and shall be set forth in the Construction Plan.

8.6 Construction Plan; Approvals

(A) The exact design, configuration, materials, budget, and schedule for all work to performed ~~under~~ this Section 8 shall be set forth in a construction plan (the "Construction Plan") to be provided by Grantee as an appendix to the Plan. The Construction Plan shall be evaluated and approved by the Government. Approval shall not be unreasonably withheld, and if no decision is rendered by the Government, approval shall be deemed granted within fifteen (15) days of submission by Grantee of submission of the Construction Plan. Approval shall not be required for emergency or minor repairs. All design, construction, renovation, and other work performed in accordance with this Section 8 shall be performed in accordance with current best practices in racetrack and racino design and construction and racehorse care and husbandry. In addition to the foregoing requirements and obligations, construction of the racino is also subject to approval by the Casino Control Commission and/or the Division of Gaming Enforcement, as provided by Virgin Islands Casino and Resort Control Act of 1995 (as amended) and the regulations promulgated thereunder.

(B) Grantee may erect, install, construct, repair, replace, reconstruct, and maintain within the Racetracks such other property and equipment as are consistent with the Plan and the Construction Plan and are necessary and appropriate to meetings its obligations under this Section or otherwise necessary and appropriate to its operation of Live Horse Racing, Telephonic Account Betting, and Simulcast Wagering at the Racetracks.

(C) Grantee shall apply for and obtain all permits necessary for construction or installation of any facilities as required by applicable law. Grantee shall pay, prior to issuance, all applicable fees for the requisite construction permits. The Government agrees to assist in the expediting of such permits.

SECTION 9. REPORTS AND RECORDS

9.1 Annual Reports.

(A) Grantee shall, no later than ninety (90) days after the end of each calendar year, during the term of this Agreement furnish to the Horse Racing Commission a full and complete written report with respect to operations, construction, improvements and maintenance of the Racetrack, its facilities and equipment.

(B) Grantee shall, no later than ninety (90) days after the end of each calendar year, furnish to the Horse Racing Commission financial statements, to include but not limited to, (1) a balance sheet, and (2) an income (profit and loss) statement. Such statements shall be reviewed and audited by an independent certified public accountant licensed to practice in the U.S. Virgin Islands, at Grantee's sole expense, prior to submission to the Horse Racing Commission. The income statement shall include the total amount of money wagered from all sources derived from the granting of this Agreement.

(C) The Horse Racing Commission may request of Grantee other reports of a reasonable nature that will assist the Grantor in the exercise of their authority pursuant to the Act and applicable Rules and Regulations.

9.2 Audits.

On an annual basis, upon thirty (30) days' prior written notice, the Horse Racing Commission shall have the right to conduct an independent audit (as described herein) of Grantee's records reasonably related to the administration or enforcement of this Agreement, in accordance with generally accepted accounting principles. The Horse Racing Commission may hire, at its own expense, an independent certified public accountant licensed in the Virgin Islands, to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant.

9.3 Inspection of Facilities.

The Government and/or the Horse Racing Commission may inspect upon request any of Grantee's facilities and equipment to confirm performance under this Agreement at any time upon at least twenty-four (24) hours' notice, or, in case of an emergency, upon demand without prior notice.

9.4 Confidentiality.

The Horse Racing Commission and the Grantor agree as follows:

(A) **"Confidential Information"** means information provided by one Party to the other in connection with the negotiation or performance of this Agreement that is clearly labeled or designated by the disclosing Party as "confidential" or "proprietary" or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing. Confidential Information shall be deemed not to include (i) information which is or becomes generally available to the public other than as a result of a disclosure by the receiving Party, (ii) information which was available to the receiving Party on a non-confidential basis prior to its disclosure by the disclosing Party, (iii) information which becomes available to the receiving Party on a non-confidential basis from a Person other than the disclosing Party or its representative who is not otherwise bound by a confidentiality agreement with disclosing Party or its agent or is otherwise not under any obligation to disclosing Party or its agent not to disclose the information to the receiving Party or (iv) is independently developed by the receiving Party, without incorporating or relying upon the Confidential Information provided by the other Party.

(B) The Parties will safeguard Confidential Information against disclosure by employing the same means to protect such Confidential Information as that Party uses to protect its own non-public, confidential or proprietary information, and otherwise in accordance with the provisions of this Section 9.4. Specifically, no receiving Party shall itself, or permit its employees, consultants and/or agents to disclose to any Person the Confidential Information without the prior written consent of the Party providing the Confidential Information, except that

a receiving Party may distribute the Confidential Information to its board members, officers, employees, agents, consultants, potential investors and lenders (**and, in the case of the Government, public officials**) who are confidentially bound to the receiving Party and have a need for such Confidential Information. In the event that any Party receiving the Confidential Information becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, regulatory requirement, civil investigative demand or similar process) to disclose any of the Confidential Information, the legally compelled Party shall give the other Party providing the Confidential Information prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the notice terms hereof. Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this Section 9.4 although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of this Section 9.4 whether a claim is based in contract, tort or otherwise. The Parties agree that the respondent in any action for an injunction, specific performance decree or similar relief shall not allege or assert that the initiating Party has an adequate remedy at law in respect to the relief sought in the proceeding, nor shall the respondent seek the posting of a bond by the Party initiating the action. Under no circumstances will either Party's directors, management, employees, agents or consultants (**or, in the case of the Government, public officials**) be individually liable for any damages resulting from the disclosure of Confidential Information in violation of the terms of this Agreement.

9.5 False Statements.

Any intentional false or misleading statement or representation in any report required by this Agreement may be deemed a material violation of this Agreement and may subject Grantee to all remedies, legal or equitable, which are available under this Agreement.

9.6 Documents Property of Government

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and provided to the Government or Commission pursuant to this Agreement shall become the property of the Government and shall be turned over to it at the termination of this Agreement. The above described materials shall not be used by Grantee or by any other person or entity except upon the written permission of the Government.

SECTION 10. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

10.1 Procedure for Remedying Franchise Violations

(A) If the Government believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, the Government

shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation. Grantee shall have thirty (30) days from the date of receipt of such notice to:

1. Respond to the Government, contesting the Government's assertion that a violation has occurred, and request a hearing in accordance with subsection (C) below; or

2. Cure the violation; or

3. Notify the Government that Grantee cannot cure the violation within the thirty (30) days, because of the nature of the violation and notify the Government in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, the Government shall request the Commission to set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (B) below.

(B) In the event that the Grantee notifies the Government that it cannot cure the violation within the thirty (30) day cure period, the Government shall request the Commission to set a hearing within thirty (30) days of the Government's receipt of such notice to review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found to be reasonable by the Commission, the same shall be approved by the Government after notice by the Commission of its findings, who may waive all or part of the liquidated damages for such extended cure period in accordance with the criteria set forth in subsection (E) of this Section.

(C) In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Government pursuant to subsection (B), the Government shall request the Commission to set a hearing to determine what sanctions shall be applied in accordance with Section 10.1(F). In the event that the Grantee contests the Government's assertion that a violation has occurred, and requests a hearing in accordance with subsection (A)1 above, the Government shall request the Commission to set a hearing within sixty (60) days of the Government's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what sanctions in accordance with Section 10.1(F) shall be applied.

(D) In the case of any hearing pursuant to this Section, the Government shall insure that the Commission notifies Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard and to present evidence in its defense. The Government shall require the Commission to also hear any other person interested therein.

(E) The liquidated damages set forth in Section 10.3 of this Agreement may be reduced at the discretion of the Government or designee, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

1. Whether the violation was unintentional;

2. Whether substantial harm resulted;
3. Whether there is a history of prior violations of the same or other requirements;
4. Whether there is a history of overall compliance; and/or
5. Whether the violation was voluntarily disclosed, admitted or cured.

(F) If after the hearing, the Government is notified by the Commission that it has determined that a violation exists, Grantor may utilize one or more of the following remedies:

1. Order Grantee to correct or remedy the violation within a reasonable timeframe as the Government shall determine;
2. Establish the amount of liquidated damages set forth in Section 10.3, taking into consideration the criteria provided for in subsection (E) of this Section; provided that amounts in excess of fifty thousand dollars (\$50,000) shall be subject to subsection (G) of this Section;
3. Revoke this Agreement, subject to subsection (G) of this Section.

(G) This Agreement shall not be revoked nor shall liquidated damages in an amount in excess of fifty thousand dollars (\$50,000) be imposed except after notice and hearing as set forth in this Section.

(H) The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Government, provided that any such final determination shall be subject to review by a court of competent jurisdiction, under applicable law.

10.2 Revocation.

(A) In addition to all other rights and powers retained by the Grantor and the Commission under this Agreement, the Grantor reserves the right to forfeit and terminate this Agreement and all rights and privileges of the Grantee hereunder, for the following:

1. Abandonment as more fully described in Section 11 of this Agreement.
2. If an officer or high level manager of Grantee shall have been convicted of a fraudulent claim relating to this Agreement under 14 V.I.C. § 843.
3. Failure to begin or complete the improvements as provided in Section 8;

4. Material misrepresentation of fact in the application for or negotiation of this Franchise; or

5. If Grantee becomes insolvent, or the subject of a bankruptcy proceeding.

10.3 Liquidated Damages.

(A) Amounts. Because the Grantee's failure to comply with provisions of the Agreement will result in injury to the Government, and because it will be difficult to estimate the extent of such injury in certain instances, the Government and the Grantee agree to the liquidated damages of one thousand five hundred dollars (\$1,500) for each day this Agreement is violated, to be imposed in accordance with subsection (B) below. A violation of a Section and/or subsection of this Agreement shall be deemed a separate violation for which liquidated damages may be assessed.

(B) Date of Violation, Notice and Opportunity to Cure. The date of violation will be the date the Grantee receives written notice of the violation from the Government. Upon receipt of notice, the Grantee will have a period of thirty (30) days to cure the violation or thirty (30) days to present to the Government a reasonable remedial plan. The Government shall decide whether to accept or reject the remedial plan presented by the Grantee. Liquidated damages occur only in the event that either a cure has not occurred within thirty (30) days or the Grantor rejects the plan.

(C) Collection of Liquidated Damages. The collection of liquidated damages by the Government shall in no respect affect the Grantee's obligation to comply with all of the provisions of this Agreement or applicable law.

10.4 Receivership and Foreclosure.

(A) At the option of the Government, and subject to applicable law, this Agreement may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:

1. The receivership or trusteeship is vacated within one-hundred twenty (120) days of appointment; or

2. The receiver(s) or trustee(s) have, within one-hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the assets, property, or equipment of Grantee, the Government may serve notice of revocation

on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:

1. The Government has approved the transfer of the Agreement, in accordance with the procedures set forth in this Agreement and as provided by law, and

2. The purchaser has agreed with the Government to assume and be bound by all of the terms and conditions of this Agreement.

10.5 No Recourse Against Grantor or the Horse Racing Commission.

The rights of the Grantor and the Horse Racing Commission under this Agreement are in addition to, and shall not be read to limit, any rights or immunities the Grantor and the Horse Racing Commission may have under federal, state, Territorial, or local law.

10.6 Non-enforcement by Grantor or the Horse Racing Commission.

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Grantor or the Horse Racing Commission to enforce prompt compliance. Any forbearance or failure by Grantor or the Horse Racing Commission to enforce any provision of this Agreement shall not serve as a basis to preclude any subsequent enforcement. Any failure of Grantor or the Horse Racing Commission to exercise a right or to require compliance or performance under this Agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

10.7 Dispute Resolution

Any dispute between the parties as to the interpretation or effect of this Agreement (which shall include for the purposes of this Agreement any subsequent modification thereof unless otherwise expressly provided by such modification) and any controversy between them or claim by either of them, whether sounding in tort or contract, arising out of or relating to this Agreement or the conduct of the parties, their agents and/or representatives, (collectively, a "*Dispute*") shall during the Term and within one year thereafter, notwithstanding the Grantor's and the Horse Racing Commission' status as Government entities and in the same manner as similar actions, suits or proceedings to which a Government entity is not a party, be the subject of the following dispute resolution procedures:

(A) Following written notice by one party to another of a Dispute, the parties shall attempt to settle such Dispute in the first instance by mutual discussions between their respective designated representatives. Failing such resolution, the senior representative of the Grantor and the chief executive officer (or a person holding a similar position) of Grantee (or their duly appointed representatives) shall meet to resolve such Dispute. The joint decision of such individuals shall be binding upon the parties hereto. If a settlement of any such Dispute or difference is not reached pursuant to this Section 10.7(A) within sixty (60) days after such notice of Dispute is delivered, then the provisions of Sections 10.7(B) and 10.7(C) below shall apply.

(B) If the settlement of any Dispute is not reached pursuant to Section 10.7(A), then an action, suit or proceeding may be brought by a party in a court of competent jurisdiction in the United States Virgin Islands.

(C) If no court in the United States Virgin Islands has jurisdiction over a Dispute, or upon mutual agreement of the parties, the matter shall be referred to an arbitration proceeding brought by a party either in accord with the Rules of the American Arbitration Association or as otherwise agreed by the parties. Judgment upon any award rendered by the arbitrator(s) in any such proceeding may be entered in any court having jurisdiction.

10.8 Relationship of Remedies.

The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another.

SECTION 11. ABANDONMENT

11.1 Effect of Abandonment.

If the Grantee abandons a Racetrack during the Agreement term, or fails to operate its Live Horse Racing, Telephonic Account Betting, or Simulcast Wagering operation in accordance with its duty to provide continuous service hereunder, the Government, at its option, may exercise any remedy permitted under this Agreement and at law or equity, including the revocation of Grantee's rights under this Agreement.

11.2 What Constitutes Abandonment.

Grantee shall be deemed to have abandoned a Racetrack if the Grantee fails to provide Live Horse Racing, Telephonic Account Betting, and Simulcast Wagering at such Racetrack in accordance with this Agreement for forty-five (45) consecutive days, unless the Grantor authorizes a longer interruption of service.

SECTION 12. FRANCHISE RENEWAL AND TRANSFER

12.1 Renewal.

(A) In addition to the term set forth in Section 2.4, the Grantor and the Grantee agree that any proceedings undertaken by any of them that relate to the further renewal of Grantee's Agreement beyond the term set forth in Section 2.4 shall be governed by and comply with the provisions of 32 V.I.C. §209 unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal law.

(B) The Grantor and the Horse Racing Commission agree to notify Grantee of the completion of their assessments regarding the identification of future horse racing and pari-mutuel wagering community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor and the Horse Racing Commission agree that at any time during the term of

the then current Franchise, while affording the public adequate notice and opportunity for comment, the Grantor and the Horse Racing Commission and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Such renewal shall be subject to the approval of the Legislature and Governor of the Virgin Islands.

12.2 Transfer of Ownership or Control.

(A) This Agreement or rights there under shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by voluntary sale or by involuntary sale, merger, consolidation, exchange nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to, or vest in any person or entity, without the prior written consent of Grantor, which consent shall not be unreasonably withheld. Additionally, transfer of ownership/control of the racino portion of the operation is subject to approval by the Casino Control Commission and/or the Division of Gaming Enforcement.

(B) The Grantee shall promptly notify Grantor and the Horse Racing Commission of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. "Promptly," for purposes of this Section 12.2(B), means not more than 10 days after Grantee knows or has reason to know of such a proposed change, transfer, or acquisition. The word "control" as used herein is not limited to actual ownership of a majority of equity in Grantee but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any person or group of persons of five percent (5%) of the shares or the general partnership interest in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a five percent (5%) interest of the shares or the general partnership interest in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Grantor shall have consented thereto, which consent shall not be unreasonably withheld.

(C) The parties to the sale or transfer shall make a written request to Grantor for its approval of a sale or transfer and furnish all information reasonably requested by Grantor or required by law.

(D) Grantor shall render a preliminary written decision on the request within thirty (30) days of the request. Grantor shall use all best faith efforts to process the request, and shall have a total of 120 days in which to perform its investigation, at which time a final decision will be rendered.

(E) Within thirty (30) days of any transfer or sale, if approved or deemed granted by Grantor, Grantee shall file with Grantor a copy of the deed, Agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.

(F) In reviewing a request for sale or transfer, the Grantor and the Horse Racing Commission may inquire into the legal, technical and financial qualifications and any other factor required by 32 V.I.Reg. §209-2 of the prospective controlling party or transferee,

and Grantee shall assist Grantor in so inquiring. Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.

(G) **The** consent or approval of Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor or the Horse Racing Commission, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.

(H) Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement to an entity controlling, controlled by or under the same common control as Grantee provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement.

(I) Any transfer of the Grantee's interest in the Clinton Phipps Track in St. Thomas must include title to the 12.8 acres adjacent to the Clinton Phipps Racetrack in St. Thomas, known as the Lima Property located at 4D Bovoni,, currently owned by Grantee. Upon termination of this Agreement, the Lima Property will be transferred to the Grantor or its designee, except that in the event that the Government terminates the Agreement prior to the expiration of the Term, the Lima Property shall remain property of the Grantee.

SECTION 13. REPRESENTATIONS AND WARRANTIES OF GRANTEE

Grantee hereby represents and warrants as of the date hereof and as of the Effective Date that:

(A) **Organization and Authority.** Grantee has been duly organized and is validly existing and in good standing under the laws of the U.S. Virgin Islands, with all necessary power and authority to enter into, deliver and perform all its obligations under this Agreement (including a valid license to do business in the U.S. Virgin Islands).

(B) **Due Authorization; Enforceability.** This Agreement has been duly authorized and constitutes the legal, valid and binding obligations of Grantee, and assuming the due authorization, execution and delivery of this Agreement by the Grantor and the Horse Racing Commission is enforceable against Grantee in accordance with its terms. Grantee has the absolute and unrestricted right, power, authority and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.

(C) **No Conflict.** Neither the execution and delivery of this Agreement nor the consummation or performance of any of the transactions contemplated by this Agreement will, directly or indirectly (with or without notice or lapse of time) contravene, conflict with or result in a violation of (i) any provision of Grantee's organizational documents, (ii) any contract or other agreement by which Grantee is bound, or (iii) any resolutions adopted by

Grantee's board of directors, members, or stockholders or (2) contravene, conflict with, or result in a violation of applicable law to which Grantee or its affiliates may be subject. There are no actions, suits or other proceedings pending or, to the best of Grantee's knowledge, threatened against or affecting Grantee or its affiliates before any court or administrative body or arbitral panel that could reasonably be expected to have a material adverse effect on Grantee's ability to perform its obligations of this Agreement.

(D) **Consents and Notices.** Grantee is not required to give any notice to or obtain any approval, consent, ratification, waiver or other authorization of any person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated by this Agreement.

(E) **No Litigation.** Neither Grantee nor any of its affiliates is involved in any litigation, arbitration, or claim against the Grantor, or the Horse Racing Commission, except for claims arising in the ordinary course of Grantee's business.

(F) **Solvency.** There are no bankruptcy, reorganization or receivership proceedings pending against, being contemplated by, or, to its actual knowledge, threatened against Grantee or any of the shareholders of Grantee. Grantee is solvent.

(G) **Financial capacity.** Grantee has the financial capacity to undertake its obligations under this Agreement. Prior to the Effective Date, Grantee shall provide to the Government, in consultation with the Casino Control Commission, proof of such financial capacity to carry out the obligations set forth hereunder.

SECTION 14. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement.

SECTION 15. MISCELLANEOUS PROVISIONS

15.1 Preferential or Discrimination Practices Prohibited.

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Agreement, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal and local law.

15.2 Notices.

Throughout the term of the Agreement, Grantee shall maintain and file with the Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from

Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. The address for Grantee is:

President
VIGL OPERATIONS, LLC.
2006 Eastern Suburb Suite 100
Christiansted, VI 00820

in each case with a copy to:

Duane Morris LLP
200 South Biscayne Boulevard
Suite 3400
Miami, Florida 33131
Attn: Miles L. Plaskett, Esq.

Notices to be sent by Grantee to Grantor must be sent to the Government and the Horse Racing Commission, which shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. The addresses for the Horse Racing Commission and the Grantor are:

Attention: Attorney General
V.I. Department of Justice
3438 Kronprindsens Gade
GERS Building, 2nd Floor
St. Thomas, VI 00802

in each case with a copy to:

Office of the Governor
Attention: [Governor and Governor's Chief of Staff]
Government House
21-22 Kongens Gade
Charlotte Amalie, St Thomas 00804

15.3 Binding Effect.

This Agreement shall be binding upon the parties hereto, their permitted successors and assigns.

15.4 Authority to Amend.

This Agreement may be amended at any time by written agreement between the parties with the approval of the Governor of the Virgin Islands.

15.5 Governing Law.

This Agreement shall be governed in all respects by the laws of the Virgin Islands and jurisdiction over all disputes arising under this Contract is exclusive in the courts of the United States Virgin Islands, unless arbitration is invoked hereunder as provided herein. This Agreement is also governed by the Interstate Horse Racing Act, 15 U.S.C. §§ 3001 et seq.

15.6 Captions.

The Captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Agreement.

15.7 Entire Agreement.

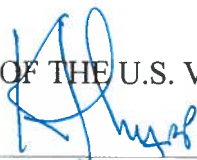
This Agreement constitutes the entire agreement between the parties hereto, and all prior understandings or communications, written or oral, with respect to the subject matter of this Agreement, are merged herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be executed and delivered by their duly authorized representatives as of the date first set forth above.

GRANTOR:

GOVERNMENT OF THE U.S. VIRGIN ISLANDS

By: 
The Honorable Kenneth E. Mapp
Governor of the United States Virgin Islands

GRANTEE:

VIGL OPERATIONS, LLC

By: 
Lance Griffith, President

APPROVED:

Legislature of the U.S. Virgin Islands

By: _____

Title: _____

APPROVED as to legal sufficiency.
Dept. of Justice of the Government of the
U.S. Virgin Islands

By: 

Title: ATTORNEY GENERAL