

## FRANCHISE AGREEMENT

Government of the Virgin Islands and TRAXCO, Inc.

THIS AGREEMENT, made and entered into this 9th day of July, 2004, by and between the Virgin Islands Horse Racing Commission together with its District Commission, the St. Croix Racing Commission, both acting on behalf of the Government of the Virgin Islands, and TRAXCO, Inc.;

## SECTION 1. 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.

1.1 "Act" means Chapter 11 of Title 32 of the Virgin Islands Code, as existing on the date of Grantee's execution of this Agreement.

1.2 "District Commission" means the St. Croix Racing Commission.

1.3 "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 VIC § 209.

1.4 "Grantee" means TRAXCO, Inc. a United States Virgin Islands Corporation.

1.5 "Grantor" means the Government of the Virgin Islands.

1.6 "Horsemen's Organization" means the District Commission's recognized group or any successor recognized group representing the interests of the majority of horse owners and trainers who race at the Racetrack.

1.7 "Installation Ready" means the preparedness for all electrical (electronic), technology, cabling, wiring, and cabinet structures to conduct pari-mutuel simulcast wagering as approved by the Grantor.

1.8 "Person" means any individual, natural Person, sole proprietorship, partnership, association, corporation, or other entity.

1.9 "Racetrack" means the Doctor Randall Nicholas "Doc" James Racetrack, its facilities, buildings, and equipment (such as starting gate) on the island of St. Croix.

1.10 "Simulcast Wagering" means pari-mutuel betting on the simultaneous transmission of live races to multiple facilities.

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1.11 "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.

1.12 "Totalizator System" means a network of computers and wagering terminals linked by, including but not limited to, modems, wireless apparatus and other available technology, which electronically combines wagers into "pools".

1.13 "V.I. Commission" means the Virgin Islands Horse Racing Commission.

1.14 "Days" as appearing in this agreement shall mean working days.

## SECTION 2. GRANT OF FRANCHISE

### 2.1 Grant

(A) This Franchise Agreement is granted to promote and conduct horseracing and related activities in the United States Virgin Islands and includes an exclusive concession on St. Croix for live horse racing, telephonic account betting, off track and simulcast wagering, and the daily occupancy, operation and use of all of the facilities and equipment located at the Doctor Randall Nicholas "Doc" James Racetrack on St. Croix, and shall be subject to approval by the Governor and the Legislature.

(B) This Agreement is intended to convey limited franchise or concession rights and interests only as to the Racetrack in which the Grantor has an actual interest. It is not a warranty of title or interest in the Racetrack; 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 or the V.I. and District Commission of any powers, rights or privileges it 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 Racetrack 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 Lease Agreement for the Racetrack.

(C) It is acknowledged that conditions precedent of this Franchise Agreement being submitted to the Legislature for approval shall be:

(a) The execution of a sub-lease agreement (herein "the Sub-Lease") for the Randall Doc James Racetrack between Grantee and Grantor, on behalf of the Virgin Islands Department of Housing Park and Recreation. The terms and conditions of the Sublease Agreement and this Franchise Agreement are incorporated by reference and the instruments are mutually dependent; and

(b) the execution of an Agreement with the Horsemen's Organization.

(D) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Agreement, subject to the provisions of section 11.2 herein, that any joint venturer or partner of Grantee directly involved in the offering of Live Horse Racing and Simulcast Wagering on the Island of St. Croix, or directly involved in the management or operation of the Live Horse Racing and Simulcast Wagering on the Island of St. Croix will also comply with the terms and conditions of this Agreement.

## 2.2 Use of Racetrack Facilities and Equipment

Subject to the District Commission's approval rights as set forth in section 7.6 herein, and the Sub-Lease, Grantee may erect, install, construct, repair, replace, reconstruct, and maintain within the Racetrack satellite dishes and other property and equipment as are necessary and appurtenant to the operation of a Simulcast Wagering System. 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. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Live Horse Racing and Simulcast Wagering Service for profit using the Racetrack and other approved facilities on the Island of St. Croix 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 these valuable rights throughout the term of this Agreement, as provided for herein.

## 2.3 Duration

(A) The term of this Agreement and all rights, privileges, obligations and restrictions pertaining thereto shall be for a period of ten (10) years commencing on the Effective Date (as defined in Section 2.4).

Option. Provided Grantee is not in default of its obligations to perform any material provision of this Agreement within one hundred eighty days (180) of the expiration of the initial term, Grantee shall have the option to renew this Franchise Agreement for an additional ten (10) years. If the Grantee chooses to exercise the option to renew, all terms and conditions of this Agreement shall

remain unchanged except that Section 3.1 B shall be reopened for the purpose of renegotiation of the multipliers (i.e., 0.0004, 0.001, 0.0025, 0.005, and 0.01) for determination of the Franchise Fees upon written notice by either party on or before 180 days prior to the expiration of the initial 10 years of the Franchise Agreement. In the event an agreement is not reached within 90 days of the expiration date of the initial 10 years both parties shall submit the issue of the franchise Fee Schedule to Arbitration. If both parties cannot agree on a local arbitrator a panel of 9 arbitrators shall be requested from the American Arbitration Association. Once the panel is received by both parties it shall be struck within 10 days. When striking the panel each party will strike (delete) a name on the panel until an arbitrator is selected. In the event either party fails to participate in the striking on the panel within the 10 day period the other party shall have the right to unilaterally select the arbitrator and advise the American Arbitration Association. The arbitrator shall have the right to exercise one of the following options.

- (A) select one of the Franchise Fee schedules proposed by either Traxco or the District Commission and rule that whichever schedule is selected be implemented
- (B) Select a modified version of the District Commission and Traxco proposals.
- (C) Create a Franchise Fee Schedule that he/she deems necessary to bring about a fair and just resolution to the dispute.

The total cost of the arbitration shall be shared equally by the parties.

In no event shall the renegotiation or arbitration result in any multiplier being increased more than ten percent (10%) (i.e., the new multiplier can be no greater than the old multiplier times 1.10).

**2.4 Effective Date.** The effective date ("Effective Date") of this Agreement shall be the date this Agreement is ratified by the Legislature, (it being understood that the District Commission shall submit both this Agreement and the Sub-Lease to the Legislature for ratification simultaneously and shall not do so until the Agreement with the Horsemen's Organization has been executed and approved), unless Grantee shall have failed to pay the required licenses fees and post the security required by section 5.4 hereunder by fifteen (15) days after Effective Date, in which event this Agreement shall be null and void, and any and all rights of Grantee to operate Live Horse Racing and Simulcast Wagering on the Island of St. Croix under this Agreement are hereby terminated.

#### **2.5 Acknowledgement**

By, becoming a party to this Agreement, the Grantee:

(1) acknowledges and accepts the Grantor or the V.I. and District Commissions' legal right to issue and enforce the Agreement pursuant to the Act and rules & regulations and procedures promulgated pursuant to the Act, 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 laws, rules & regulations and procedures, applicable and

(4) agrees that it will not raise any claim to the contrary.

## **2.6 Police Powers**

Grantee's rights hereunder are subject to the lawful police powers of Grantor and V.I. Commission authority to promulgate, and the District Commission to enforce rules and regulations necessary for horse racing, and related activities. Grantee agrees to comply with all applicable laws enacted, and rules and regulations promulgated, by Grantor, the V.I. and District Commissions or any other governmental unit having jurisdiction over the subject matter herein, provided further that subject to the lawful police powers of the Grantor, 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.

## **2.7 Relations to Other Provisions of Law**

This Franchise Agreement and all rights and privileges granted under the Franchise are subject to, and the Grantee must exercise all rights in accordance with, applicable laws, rules and regulations and procedures. However, this Franchise is a contract, subject only to the Grantor's exercise of its police powers and applicable law. This Franchise does not confer rights or privileges upon the Grantee other than as expressly provided herein.

## **2.8 Retention of Rights.**

Grantee recognizes that the Grantor and/or the V.I./District Commission shall have the continued right to adopt such Rules and Regulations it deems necessary to maintain the integrity of Live Horseracing, pari-mutuel wagering, simulcast wagering, and telephonic account betting placed, received, or otherwise made in the United States Virgin Islands. Grantee does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights. The Franchise and/or any License(s) issued, and the Franchise and License(s) fees paid hereunder, are not in lieu of any other required permit, authorization, fee, charge or tax.

## **SECTION 3. GRANT OF LICENSE, FRANCHISE FEE AND FINANCIAL CONTROLS**

### **3.0 Grant of License**

This Agreement hereby grants Grantee an exclusive Association license to conduct horse racing on St. Croix to include pari-mutuel betting, off track betting on its horse racing meeting, simulcast wagering and telephonic account betting as permitted by the Act.

3.01 The Racetrack shall serve as the hub for all approved pari-mutual bets, simulcast wagering, telephonic account betting or satellite facility (secondary recipients), wagered placed, received or otherwise made on the Island of St. Croix as long as this Agreement remains in effect. Provided further that until such time as construction at the Racetrack is sufficiently completed to provide a clean and secure location for equipment relating to simulcast wagering, telephonic account betting and/or satellite facility, temporary facilities may be used elsewhere on the Island of St. Croix to serve as a temporary hub for no more than 12 months from the Effective Date.

3.02 Grantee shall within 6 months after the Effective Date of this Agreement meet with the Horsemen's Organization and the District Commission to discuss the feasibility of the Racetrack being a host facility.

3.03 Subject to the provisions of this Agreement, no rights granted to Grantee may be assigned without approval of Grantor.

### 3.1 License and Franchise Fee

(A) As compensation for the issuance of an Association license in accordance with the Act and section 202-25 of the V.I. Horse Racing Rules and Regulations to operate the Racetrack, its facilities and equipment, Grantee shall pay to the District Commission, throughout the duration of this Agreement, Five Thousand Dollars (\$5,000.00) annually. This License fee obligation shall commence as of the Effective Date of this Agreement. This License fee is in addition to all other fees, assessments, taxes or payments that the Grantee is required to pay under Federal or Territorial law. This Agreement and the License fee paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge or tax.

(B) As compensation for the benefits and privileges granted under this Agreement, Grantee shall pay an annual Franchise fee to the District Commission, as follows, for the term of this Agreement.

The Franchise fee for the first year of this Agreement shall be a flat fee of Five Thousand Dollars (\$5,000.00).

The annual Franchise fee obligation for each of the Franchise years thereafter shall be computed, based on the previous Franchise year's twelve month Gross Pari-Mutuel Handle, and

for the respective years shall be the sum of:

- a) Grantee's Gross Pari-Mutuel Handle up to and including 12.5 Million Dollars (\$12,500,000.00) times a multiplier of 0.0004<sup>1</sup>; plus
- b) Grantee's Gross Pari-Mutuel Handle from \$12.5 Million One Dollars (\$12,500,001.00) to 25 Million Dollars (\$25,000,000.00) times a multiplier of 0.001<sup>2</sup>; plus

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<sup>1</sup>For example, if Grantee's Gross Pari-Mutuel Handle in the previous franchise year totaled \$12,500,000.00, the Franchise Fee shall be:

a)  $\$12,500,000.00 \times .0004$  equals \$5,000.00.

- c) Grantee's Gross Pari-Mutuel Handle from 25 Million One Dollars (\$25,000,001.00) to \$50,000,000 times a multiplier of 0.0025<sup>3</sup>; plus
- d) Grantee's Gross Pari-Mutuel Handle from \$50 Million One Dollars (\$50,000,001.00) to \$100 Million Dollars (100,000,000.00) times a multiplier of 0.005<sup>4</sup>; plus
- e) All of Grantee's Gross Pari-Mutuel Handle in excess of 100 Million Dollars (\$100,000,000.00) times a multiplier of 0.01<sup>5</sup>.

Provided further that the Franchise fee for the first year shall be a flat \$5,000.00 which shall be payable in advance five (5) days after the Effective Date and provided further that in no event shall the Franchise fee for any year be less than Five Thousand Dollars (\$5,000.00).

For purposes of this Agreement, the term Gross-Pari-Mutuel Handle shall mean the total dollar amount wagered on Pari-Mutuel betting on:

- a) Live Horse Racing;
- b) Simulcast (to include and not be limited to horse and greyhound racing); and
- c) Telephonic Account Betting (which includes all wagers received on St. Croix from all sources in the world)

on St. Croix.

The Annual Franchise fees shall commence as of the Effective Date of this Agreement. The Franchise fees are in addition to all other fees, assessments, taxes or payments that the Grantee may be required to pay under Federal, State or Territorial law.

<sup>2</sup> For example, if Grantee's Gross Pari-Mutuel Handle in the previous franchise year totaled \$20,000,000, the Franchise Fee shall be:

- a) \$12,500,000.00 x .0004 equals \$5,000.00; plus
- b) (\$20,000,000.00 minus \$12,500,000.00 equals \$7,500,000.00) x .001 equals \$7,500.00

for a total of \$12,500.00.

<sup>3</sup> For example, if Grantee's Gross Pari-Mutuel Handle for the previous franchise year totaled \$35,000,000.00, the Franchise Fee shall be:

- a) \$12,500,000.00 x .0004 equals \$5,000.00; plus
- b) \$12,500,000.00 x .001 equals \$12,500.00; plus
- c) (\$35,000,000.00 minus \$25,000,000.00 equals \$10,000,000.00) x .0025 equals \$25,000.00

for a total of \$42,500.00.

<sup>4</sup> For example, if Grantee's Gross Pari-Mutuel Handle for the previous franchise year totaled \$75,000,000.00, the Franchise Fee shall be:

- a) \$12,500,000.00 x .0004 equals \$5,000.00; plus
- b) \$12,500,000.00 x .001 equals \$12,500.00; plus
- c) \$25,000,000.00 x .0025 equals \$62,500.00; plus
- d) (\$75,000,000.00 minus \$50,000,000.00 equals \$25,000,000.00) x .005 equals \$125,000.00

for a total of \$205,000.00.

<sup>5</sup> For example, if Grantee's Gross Pari-Mutuel Handle for the previous franchise year totaled \$110,000,000.00, the Franchise Fee shall be:

- a) \$12,500,000.00 x .0004 equals \$5,000.00; plus
- b) \$12,500,000.00 x .001 equals \$12,500.00; plus
- c) \$25,000,000.00 x .0025 equals \$62,500.00; plus
- d) \$50,000,000.00 x .005 equals \$250,000.00; plus
- e) (\$110,000,000.00 minus \$100,000,000.00 equals \$10,000,000.00) x .01 equals \$100,000.00

for a total of \$430,000.00.

(C) By execution of this Agreement Grantor acknowledges that Grantee has fulfilled the simulcast facility license application requirements of Section 206-4 (a) - (d) of the Horseracing Commission Rules and Regulations, and said simulcast facility license shall be effective twenty (20) days after the filing of the information required by V.I. Horseracing Commission Rules and Regulations Section 206-4(e). and Section 208-1; Further, by execution of this Agreement, Grantor acknowledges that Grantee is deemed to have fulfilled the lease-franchise requirements of Section 209-1 of the Horseracing Commission Rules and Regulations, at the Race Track which lease-franchise licenses, shall become effective upon payment of the license fee provided for in Section 3.1 (A) above.

(D) In the event that Grantee desires to establish a simulcast site at a location (herein "the Remote Location") other than the Racetrack, then in such event it is acknowledged that the Grantee shall make application pursuant to the applicable V. I. Horseracing Commission Rules and Regulations, provided the V.I./District Commission agrees that upon production of the information required by law it shall expeditiously consider all applications filed by Grantee, including but not limited to those described in Section 208-1 of the V. I. Horseracing Commission Rules and Regulations, and that approval of such applications and contracts will not be unreasonably denied.

### 3.2 Payments

Grantee's License and Franchise fee payments described in Section 3.1 of this agreement shall be paid to the District Commission as provided in subparts (A) and (B).

(A) The first annual Association license fee is due and payable at the execution of this Agreement, and each annual Association license fee thereafter is due and payable on the anniversary of the Effective Date for the term of this agreement.

(B) The Franchise fee for the first year is due and payable five (5) days after the Effective Date of this Agreement. The Franchise fee for the second year is due and payable on the 15<sup>th</sup> day following the second anniversary of the Effective Date, and each annual Franchise Fee thereafter is due and payable fifteen (15) days after the last day of the preceding 12 month period.

### 3.3 Acceptance of Payment

Acceptance of any payment by Grantor from Grantee in connection with this Franchise shall not be construed as an accord by or with Grantor or the V.I. and District Commissions 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 Grantor and/or the V.I./District Commissions may have for further or additional sums owed, pursuant to this Franchise Agreement.

### 3.4 Annual Reports

(A) Grantee shall, no later than the second Saturday of each and every February, during the term of this Franchise furnish to the District 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 one-hundred eighty (180) days after the end of each calendar year, furnish to the District 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 District Commission. The income statement shall include the total amount of money wagered from all sources derived from the granting of this Franchise Agreement.

(C) The District Commission may request of Grantee other reports of a reasonable nature that will assist the V.I./District Commissions in the exercise of its authority pursuant to the Act and applicable Rules and Regulations.

### 3.5 Audits

On an annual basis, upon thirty (30) days' prior written notice, the District 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 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.

### 3.6 Interest on Late Payments

In the event that a franchise fee payment or other sum is not received by the District Commission on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to ten percent (10%) per annum.

### 3.7 Alternative Remedies

If any Section, subsection, paragraph, term or provision of this Franchise Agreement or any law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term or provision directly involved in the controversy in which such holding shall have been rendered and shall not in any way affect the validity of any other Section, subsection, paragraph, term or provision hereof. Under such a circumstance, the Grantee shall, upon the V.I./District Commission's request, meet and confer with the V.I./District Commissions to consider amendments to the Franchise Agreement. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with the applicable law. In the event the parties are unable to agree to a modification of

this Agreement within forty-five (45) days, either party may make a request, delivered to the other party, to resort to arbitration to amend the Agreement. Each party agrees to participate in negotiations during the forty-five (45) day period.

Arbitration as provided for herein will be instituted as follows:

At the conclusion of the forty-five (45) day negotiation period, either party may serve upon the other party a written demand for arbitration. If the other party agrees to arbitration, arbitration shall proceed as set forth herein. The other party may refuse arbitration by delivering notice to the requesting party within ten (10) days of the arbitration request, in which case the parties may seek remedies in the appropriate court on St. Croix, United States Virgin Islands. The parties shall have ten (10) days from the date of delivery of the demand of arbitration to attempt to agree on a mutually acceptable arbitrator or arbitrators. Either party, within this ten-day period, can serve written demand on the other party indicating that there shall be three (3), rather than one (1), arbitrators. If, at the conclusion of the ten-day period, the parties have not been able to agree upon an arbitrator or arbitrators, the party demanding arbitration shall contact the American Arbitration Association and submit the dispute to be decided pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The parties shall request a panel of nine (9) arbitrators, or in the event one party has demanded that the matter be determined by three (3) arbitrators, a panel of twenty-five (25) arbitrators. Within fifteen (15) days of the parties having received the panel of arbitrators, the parties shall meet and strike the panel, selecting one or three arbitrators (as demanded by the parties as set forth above) with each party alternatively striking a name on the panel until the arbitrator(s) is selected. In the event either party fails to strike the panel within this fifteen-day period, then the other party shall have the right to select the arbitrator(s) and advise the American Arbitration Association of the arbitrator(s) selected. The party demanding arbitration shall pay the registration fees required by the American Arbitration Association, as well as any "upfront" fees and/or costs reimbursements required by the arbitrator(s) initially. The arbitration shall be held on St. Croix, or at such other location as mutually agreed to by the parties. Arbitration shall be "baseball" arbitration, and the arbitrator will only be allowed to award one of the two final offers submitted by the parties. The arbitrator shall further make an award of costs and attorney's fees in favor of the prevailing party, and the losing party shall reimburse the prevailing party for all registration fees, costs, etc. paid to the American Arbitration Association and/or the arbitrator(s), as well as reimburse the prevailing party for its reasonable costs and attorney's fees expended. The award of the arbitrator shall be deemed enforceable by the appropriate court pursuant to the Federal Arbitration Act.

### **3.8 Additional Commitments Not Franchise Fees**

No term or condition in this Agreement shall in any way modify or affect Grantee obligation to pay the Franchise Fees described in §3.1 to the District Commission. Grantee agrees that the additional commitments herein are not Franchise Fees as

defined under any federal law, nor are they to be offset or credit against any Franchise Fee payments due to the District Commission.

### **3.9 Tax Liability**

Payment of the Franchise fees 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 law, Rules and Regulations.

### **3.10 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 Grantor or applicable law. In no event however shall Grantee be required to pay in excess of One Thousand Five hundred Dollars (\$1,500.00) in any given twelve-month period.

### **3.11 Payment on Termination**

If this Agreement terminates for any reason, the Grantee shall file with the District Commission within ninety (90) calendar days of the date of the 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 District Commission reserves the right to satisfy any unpaid financial obligations of the Grantee to the District Commission by utilizing the funds available in any security provided by the Grantee.

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 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 the District Commission to invoke any relevant provision of 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), 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 District Commission. Grantee shall not be excused by economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

### **4.2 Annual Meeting**

(A) The District Commission may with notice to Grantee hold regular performance evaluation sessions annually on the anniversary dates of the effective date of this Agreement. All such evaluation sessions shall be conducted by the District Commission.

(B) All regular evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation on the Island of St. Croix.

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

(D) As part of the annual performance evaluation session, Grantee shall submit to the District Commission an annual report, acceptable to the District Commission which includes a description of the improvements to the Racetrack and other facilities.

(E) During evaluations under this Section, Grantee shall fully cooperate with the District Commission and shall provide such information and documents as necessary and reasonable for the District Commission to perform the evaluation.

## SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

### 5.1 Insurance Requirements

(A) General Requirements. Grantee shall obtain policies with the following insurance limits:

Commercial General Liability: Five Hundred Thousand Dollars (\$500,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, One Million Dollars (\$1,000,000) aggregate limit.

### 5.2 Verification of Coverage

The Grantee shall furnish the District Commission with an appropriate Certificate of Insurance coverage or Insurance Binder Agreement.

### 5.3 Indemnification

(A) Scope of Indemnity. Grantee shall, indemnify and hold harmless the Grantor and its 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 and its employees for acts caused or determined to be caused by Grantor and/or its employees. Subject to the foregoing, and without limiting in any way the Grantee's obligation to indemnify the Grantor and its employees, set forth above, this indemnity provision also includes damages and liabilities such as:

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 or local statute, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies.

(B) The parties agree that it is not intended for any third party to be a beneficiary of the Grantor's indemnification rights under this Agreement.

#### 5.4 Security Deposit

(A) No later than fifteen (15) days after the Effective Date of this Agreement Grantee shall pay to the District Commission, as security for the faithful performance by Grantee of all provisions of this Agreement, a deposit in the amount of Ten Thousand Dollars (\$10,000). In the alternative, the Grantee may post a Letter of Credit or surety bond issued by an appropriate financial institution or insurance company licensed to do business in the Virgin Islands.

(B) If Grantee fails within thirty (30) days after the date of written notice to pay to the District Commission any franchise or license fees due Grantor pursuant to this Agreement, Grantor may withdraw the amount thereof from the Security Deposit. Upon such withdrawal, Grantor shall notify Grantee of the amount and date thereof. Within seven (7) days following receipt by Grantee of written notice from Grantor that any amount has been withdrawn from the Security Deposit, Grantee shall restore the Security Deposit to the amount required under this Agreement.

(C) Upon termination of this Agreement, Grantee shall be entitled to the return of this Security Deposit.

(D) The rights reserved to Grantor with respect to the Security Deposit are in addition to all other rights of Grantor.

#### 5.5 Performance Bond

Five (5) days after the Effective Date of this Agreement, Grantee shall post a performance bond in the amount of \$100,000. Upon the completion of the improvements to the Racetrack described in Sections 6.3, 7.1(A), 7.2, 7.3, 7.5, and 7.11 (herein the Listed Projects), the bond shall be released. The V.I./District Commission 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 \$10,000 until all of the Listed Projects are completed. 5.6 Termination Fee

At the election of Grantee, Grantee may terminate this Agreement, along with the Lease Agreement by payment of a total Termination Fee of One Hundred Thousand Dollars (\$100,000) which shall be divided equally among the District Commission and the Sub-Lessor ( under the Sub-Lease).

## **SECTION 6. LIVE HORSE RACING AND COMMUNITY SUPPORT**

### **6.1 Number of Race Cards**

The Grantee shall conduct a minimum of

- (A) Twelve (12) live race days annually during years one through five after the Effective Date;
- (B) Sixteen (16) live race days annually during years six, seven, and eight after the Effective Date; and
- (C) Twenty (20) live race days annually for years nine through twenty after the Effective Date.

unless granted approval by the District Commission to do otherwise, or the live racing agreement with the Horsemen's Organization specifies otherwise.

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

### **6.2 Pari-Mutuel Wagering and Equipment**

Grantee shall provide pari-mutuel wagering on live races at the Racetrack and any other facility as the Grantee deems appropriate on the Island of St. Croix. Grantee shall provide the totalizator system equipment subject to the approval of the District Commission; such approval shall not be unreasonably withheld. Pari-mutuel wagering or betting shall be conducted under the supervision and subject to the control of the V. I. Commission and the District Commission in accordance with Title 32 Virgin Islands Code, Subsection 204 and 205, and in accordance with such rules and regulations which exist as of the date of Grantee's execution hereof.

### **6.3 Complete Camera system**

Grantee shall provide for the purchase or lease of a complete camera equipment system 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 system for the purpose of constant monitoring on race day of horses and personnel while saddling in the paddock area. This camera system will assist racing officials in monitoring illegal activities.

- (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) Upon termination of this Agreement, said equipment shall remain in place.

#### **6.4 Agreement with Horsemen's Organization**

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 the Commission's recognized Horsemen's Organization representing horseowners and trainers of St. Croix. Such agreement shall be approved by the District Commission (which approval shall not be unreasonably withheld) and shall be binding on any successor or future horseowners organization recognized by the District Commission during the term of this Agreement as the representative of the majority of horseowners and trainers who race at the Racetrack.

#### **6.5 Purse Account**

Grantee shall at all times maintain a purse account held in any financial institution located on the Island of St. Croix. The balance of this account shall not be less than 100% of the total purse amount within seven (7) days of race day. Upon the Effective Date of this Franchise Agreement, Grantee shall deliver to the District Commission and the Horsemen's Organization a statement which includes (1) the account number and (2) the present account balance.

#### **6.6 Training and Scholarships**

- A. Grantee shall formulate a training program for its employees at the racetrack and related facilities.
- 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 up to a maximum of Five Thousand Dollars (\$5,000) per year for two individuals qualified to attend an institution of higher learning who intend to study a discipline the District Commission deems useful to the horse racing industry. This scholarship shall be jointly developed and administered by the Grantee and the District Commission with input from the Horsemen's Organization.

#### **6.7 Charity Day**

On one live race day per year, Grantee shall donate all admissions fees collected to a St. Croix charity of Grantee's choice.

## **SECTION 7. IMPROVEMENTS AND MAINTENANCE OF RACETRACK FACILITIES**

### **7.1 Simulcast Area Enclosure**

- (A) Grantee shall immediately commence construction of, and thereafter at all times provide and maintain in an installation ready condition an enclosed area at the Racetrack to serve as a simulcast wagering and recreational facility.
- (B) At such time as Grantee shall have achieved in any year a Gross Pari-Mutuel Handle of \$90,000,000 or greater (herein the "Trigger Date"), Grantee shall be obligated to complete construction of an entertainment center at the Racetrack (the "Entertainment Center"). The total cost of construction of such facility shall be a minimum of \$3,000,000. The Entertainment Center shall include a first-class restaurant, betting machines, and will also serve as the wagering hub of any and all secondary recipients or facilities on the Island of St. Croix. Grantee shall receive a credit toward the \$3,000,000 construction cost of the Entertainment Center in an amount equal to the costs previously expended by Grantee on entertainment facilities at the Racetrack, including but not limited to the simulcast area. In the event that at the Trigger Date Grantee has not previously expended \$3,000,000 on construction of the entertainment facility, then in such event Grantee must commence construction within six months of the Trigger Date to complete the Entertainment Center.

### **7.2 Restrooms**

Grantee shall improve the existing restrooms in the grandstand and barn areas. Improvements to these areas shall be completed within 120 days of the effective date of this agreement. The improvements shall include but not limited to, painting, replacement of fixtures, increased lighting and the installation of new toilet accessories.

### **7.3 Drainage in the Stable (Barn) Area**

Grantee agrees to improve the drainage in the stable (barn) area. Plans for the improvement in this area are to be submitted for evaluation and approval by the District Commission.

### **7.4 Racing Surface**

After one year of the Effective Date of this Agreement, the racing surface shall be evaluated with input obtained from the Horsemen's Organization and the Commission and Grantee shall bring the racing surface to industry standards.

### **7.5 Jockey Quarters**

Grantee shall refurbish the jockey quarters to include adequate seats and lockers to secure personal items. The refurbishment of the jockey quarters includes the upgrade of the bathroom facilities.

## **7.6 Parties' Responsibility**

Subject to applicable laws, rules and regulations of The V.I. Commission and the provisions of this Section and this Agreement, Grantee may perform all construction necessary for the operation of its Live Horse Racing and Simulcast Wagering Operation. All construction, improvement (including landscaping), and maintenance to the Racetrack and any and all approved facilities incident to Grantee's Live Horse Racing and Simulcast Wagering Operation shall, regardless of who performs the construction, be and remain Grantee's responsibility, at its' own expense, and, prior to performance, shall be evaluated and approved by the District Commission. Approval shall not be unreasonably withheld, and if no decision is rendered by the Commission, approval shall be deemed granted within thirty (30) days of submission by Grantee of request for evaluation and approval. Grantee shall submit architectural plans or renderings or any other plans and schedule, as the District Commission may reasonably deem necessary, before the performance by Grantee with respect to all items in this section. Grantee shall apply for and obtain all permits necessary for construction or installation of any facilities as required by applicable law, and for excavating and laying any facilities on the island of St. Croix. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits. Grantee agrees to complete all improvements with no specific timeline within eighteen (18) months, after the Effective Date of this Agreement. Approval shall not be required for emergency or minor repairs..

## **7.7 Horseracing Improvement Fund**

The V.I./District Commission shall consider all requests from Grantee regarding capital improvement projects for the Racetrack for which funds from the Horseracing Improvement Fund will be utilized. Such requests will not be unreasonably denied.

## **7.8 Test Barn**

Within two (2) years of the Effective Date of this Agreement if so requested by the V.I./District Commission, Grantee shall construct a four-stall test barn to be used exclusively for drug testing of horses after the races. The District commission or its designees shall be responsible for securing the test barn area during the duration of the drug testing period and administering the drug testing program, which program shall be under the direct supervision and control of the District Commission.

## **7.9 Tote Board**

Within five years of the Effective Date of this Agreement, Grantee shall expend One Hundred Fifty Thousand Dollars (\$150,000.00) for the construction of a Tote Board on the infield of the Racetrack. At the option of the V.I. District Commission, the Commission may agree to contribute funds in order that a tote board valued in excess of One Hundred Fifty Thousand Dollars (\$150,000.00) may be constructed. In the event that Grantee shall have collected in excess of Seventy-Five Million Dollars (\$75,000,000.00) as gross pari-mutuel handle in a given fiscal year, then in such event immediately following that fiscal year, Grantee's obligation to expend the One Hundred Fifty

Thousand Dollars (\$150,000.00) towards construction of the tote board shall become effective.

The tote board shall provide all necessary information for the general use of the public, such as the correct order of finish, space for the posting of both an inquiry and objection notices, the display of current odds for each entry, the pool information for win, place and show, and all exotic bets, the elapsed time of race, the time of day, and minutes to post time. All current odds and pool information shall be electronically (not manually) updated with standards of tote systems.

#### **7.10 Race Handicapping Training**

Grantee shall conduct training sessions for interested individuals related to handicapping. Said sessions may take place at the Racetrack or any other facility as the Grantee deems appropriate. Not later than November 1<sup>st</sup> of each year, Grantee shall submit a plan for the handicapping training session for the ensuing calendar year for the evaluation and approval by the District Commission.

#### **7.11 Paddock Area**

Grantee shall complete installation of pavers in the paddock area. The paddock shall be refurbished to include picket fences and four-foot hedges (shrubberies) around its perimeter.

#### **7.12 Time for Completion**

Grantee shall complete the activities described in Sections 6.3, 7.3, 7.5, and 7.11 within eighteen (18) months of the Effective Date of this Agreement.

### **SECTION 8 REPORTS AND RECORDS**

#### **8.1 Confidentiality**

Grantor and the V.I. and District Commissions agree to treat as confidential any information, books and records that constitute proprietary or confidential information relating to Grantee's operations. It is agreed that any books and records relating to Grantee's financial statements, internal controls and procedures relating to the handling of cash and negotiable instruments, customer lists, records of transactions with wagerers, camera locations, matters relating to security concerns at the Racetrack and proprietary software and systems are deemed to be confidential. Grantor and the V.I. and District Commissions agree to advise the independent certified public accountant retained by the Grantor and/or the V.I./District Commissions that the independent certified public accountant is required to comply with this confidentiality agreement. If Grantor or the V.I./District Commission believes it must release any such confidential information for any reason, it

shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If Grantor or the V.I./District Commission receives a demand from any person for disclosure of any information deemed confidential, Grantor and/or the V.I./District Commission shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Unless otherwise ordered by a court or agency of competent jurisdiction, Grantor or the V.I./District Commission agrees that, to the extent permitted by local and federal law, it shall deny access to any of Grantee's confidential information as set forth above to any person.

## **8.2 Inspection of Facilities**

The District 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.

## **8.3 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 to Grantor or the V.I./District Commissions under this Agreement.

# **SECTION 9. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE**

## **9.1 Procedure for Remedying Franchise Violations**

(A) If The District Commission believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, The District Commission 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 District Commission, contesting The District Commission'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 District Commission that Grantee cannot cure the violation within the thirty (30) days, because of the nature of the violation and notify the District Commission 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 V.I. or District Commission shall 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 District Commission that it cannot cure the violation within the thirty (30) day cure period, V.I. or District Commission shall set a hearing within thirty (30) days of the District

Commission'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, the same shall be approved by the District Commission, 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 District Commission pursuant to subsection (B), the V.I. or District Commission shall set a hearing to determine what sanctions shall be applied in accordance with Section 9.1(E). In the event that the Grantee contests the District Commission's assertion that a violation has occurred, and requests a hearing in accordance with subsection (A)(1) above, the V.I. or District Commission shall set a hearing within sixty (60) days of the District Commission'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 9.1 (E) shall be applied.

(D) In the case of any hearing pursuant to this section, the District Commission shall notify 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 V.I. or District Commission shall also hear any other Person interested therein.

(E) The liquidated damages set forth in Section 9.3 of this Agreement may be reduced at the discretion of The District Commission 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, V.I. or District Commission determines that a violation exists, V.I. or District Commission may utilize one or more of the following remedies:

1. Order Grantee to correct or remedy the violation within a reasonable timeframe as The V.I. or District Commission shall determine;
2. Establish the amount of liquidated damages set forth in Section 9.3, 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 V.I. or District Commission, provided that any such final determination shall be subject to review by a court of competent jurisdiction, under applicable law.

(I) The hearings described in this Section 9 shall not be open to the public except if required by law.

## 9.2 Revocation

(A) In addition to all other rights and powers retained by the Grantor and the V.I. District Commissions under this Franchise, the V.I. Commission on behalf of Grantor reserves the right to forfeit and terminate this Franchise and all rights and privileges of the Grantee hereunder, for the following:

1. Abandonment as more fully described in Section 10 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. Section 843.
3. Failure to begin or complete the improvements as provided in Section 7;
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.

## 9.3 Liquidated Damages

(A) Amounts. Because the Grantee's failure to comply with provisions of the Agreement will result in injury to the V.I./District Commissions, and because it will be difficult to estimate the extent of such injury in certain instances, the Grantor and the Grantee agree to the liquidated damages of (\$100) for each day this Agreement is violated, to be imposed in accordance with sub-section (B) below. A violation of a section and/or sub-section 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 notice of the violation. The District Commission must provide written notice of a violation. 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 District Commission a reasonable remedial plan. The District Commission 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 District Commission rejects the plan.

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

#### **9.4 Receivership and Foreclosure**

**(A)** At the option of V.I. District Commissions, 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 property and equipment of Grantee, The V.I./District Commissions 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 V.I./District Commissions 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 V.I./District Commissions to assume and be bound by all of the terms and conditions of this Agreement.

#### **9.5 No Recourse Against Grantor**

The rights of the Grantor and the V.I./District Commissions under this Agreement are in addition to, and shall not be read to limit, any immunities the Grantor and the V.I. District Commissions may have under federal or local law.

#### **9.6 Nonenforcement by Grantor and the V.I. District Commissions**

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Grantor and the V.I. District Commissions to enforce prompt compliance. Grantor and the V.I. District Commission's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions 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.

#### **9.7 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 10. ABANDONMENT**

#### **10.1 Effect of Abandonment**

If the Grantee abandons the Racetrack during the Agreement term, or fails to operate its Live Horse Racing and Simulcast Wagering Operation in accordance with its duty to provide continuous service, the Grantor and the V.I./District Commissions, at its option, may revoke this Agreement pursuant to its rights in this Agreement.

#### **10.2 What Constitutes Abandonment**

The Grantor and the V.I. District Commissions shall be entitled to exercise its options and obtain any required injunctive relief if The Grantee fails to provide Live Horse Racing and Simulcast Wagering in accordance with this Agreement for forty-five (45) consecutive days, unless the District Commission authorizes a longer interruption of service.

### **SECTION 11. FRANCHISE RENEWAL AND TRANSFER**

#### **11.1 Renewal**

(A) The Grantor and the V.I. District Commissions and Grantee agree that any proceedings undertaken by the Grantor and the V.I. District Commissions that relate to the renewal of Grantee's Agreement shall be governed by and comply with the provisions of 32 VIC §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 or the V.I. District Commissions agrees to notify Grantee of the completion of its 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 V.I. District Commissions, 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 V.I. District Commissions, 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.

## 11.2 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 the V.I. District Commissions, which consent shall not be unreasonably withheld.

(B) The Grantee shall promptly notify the District Commission of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders 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 V.I. District Commissions 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 the V.I. District Commissions for its approval of a sale or transfer and furnish all information reasonably required by law and the V.I. District Commissions.

D) The V.I. District Commissions shall render a preliminary written decision on the request within thirty (30) days of the request. The V.I. District Commission 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 the V.I. District Commissions, Grantee shall file with the V.I. District Commissions 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 V.I. District Commissions may inquire into the legal, technical and financial qualifications and any other factor required by 32 VIRR §209-2 of the prospective controlling party or transferee, and Grantee shall assist the V.I. District Commissions in so inquiring. The V.I. District Commissions 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 the V.I. District Commissions to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor and the V. I. District Commissions, 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 V.I. District Commissions 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 V.I. District Commissions and must agree in writing to comply with all provisions of the Agreement.

## **SECTION 12. 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 13. MISCELLANEOUS PROVISIONS**

### **13.1 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.

### **13.2 Notices**

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

President  
TRAXCO, Inc.  
35 Estate Turner Hole  
Christiansted, VI 00820

Notices to be sent by Grantee to Grantor and/or the District Commission under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. The address for Grantor shall be:

Chairman, St. Croix Racing Commission  
P.O. Box 222982  
St. Croix, V.I. 00822

### 13.3 Binding Effect

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

### 13.4 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.

### 13.5 Governing Law

This Agreement shall be governed in all respects by the laws of the Virgin Islands, and the Interstate Horse Racing Act 15 USC Section 3001 et seq.

### 13.6 Captions

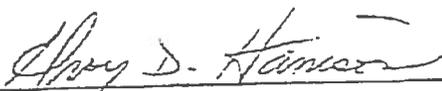
The Captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Agreement.

GRANTOR:

GOVERNMENT OF THE U.S. VIRGIN ISLANDS

VIRGIN ISLANDS HORSE RACING COMMISSION

By:

  
Chairman

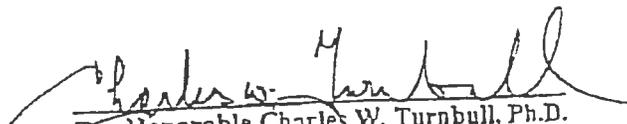
GRANTEE:

TRAXCO, INC.

By:

  
Bernie Burkholder, President

APPROVED:

  
The Honorable Charles W. Turnbull, Ph.D.  
Governor of the U.S. Virgin Islands

APPROVED:

Legislature of the U.S. Virgin Islands

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

By:   
Title: assistant attorney general

"Revision 5/15/04, Final Version"