

**FRANCHISE AGREEMENT  
FOR THE OPERATION OF THE CLINTON E. PHIPPS  
RACETRACK  
BETWEEN THE GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS AND  
SGVI, INC.**

**THIS FRANCHISE AGREEMENT FOR THE OPERATION OF HORSE RACING AT THE CLINTON E. PHIPPS RACETRACK** (hereinafter the "**Agreement**") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2026 by and between the **GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS** (hereinafter the "**Government**" or "**Grantor**") and **SGVI, INC.**, a Virgin Islands corporation (hereinafter "**Grantee**") ("**Party**" as to each; collectively the "**Parties**").

**WITNESSETH:**

**WHEREAS**, the equine industry and horse racing, the Sport of Kings, have been an integral part of the culture and economy of the Virgin Islands for over a century; and

**WHEREAS**, prior to the hurricanes in 2017, the Clinton E. Phipps Racetrack on St. Thomas was a showplace for horse racing and other social activities providing enjoyment as well as employment opportunities; and

**WHEREAS**, from 2017 until 2024, the Clinton E. Phipps Racetrack was unusable due to hurricane damage, until the track was rebuilt by Grantee, the Territory's video lottery contractor, at its own expense in exchange for an extension to the rights and benefits contained in its video lottery agreement; and

**WHEREAS**, since completing construction of the track in 2024, Grantee has voluntarily, and at its significant economic cost, acted as a temporary race promoter and has held 10 successful horse races at the Clinton E. Phipps Racetrack; and

**WHEREAS**, following two Requests for Qualifications ("RFQ") by the Government that received no responses, Grantee stepped forward with the recent experience, interest, and proven capability to continue hosting and promoting horse racing at the Clinton E. Phipps Racetrack by serving as the Franchise holder; and

**WHEREAS**, the Virgin Islands Horse Racing Commission (hereinafter the "**Commission**") is authorized to grant a Franchise Agreement, pursuant to Title 32, Chapter 11, of the Virgin Islands Code, to an appropriate entity to assist, promote, and conduct horse racing and related activities in the U.S. Virgin Islands; and

**WHEREAS**, Grantee has applied to the Commission to promote and conduct horse racing and related activities in the Virgin Islands, at the Clinton E. Phipps Racetrack, and the Commission and the Grantor have accepted to grant 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 at the Clinton E. Phipps

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Racetrack and to work to make operating the racetrack a profitable business that will be attractive to the international horse racing industry; and

**WHEREAS**, in order to preserve and enhance the Clinton E. Phipps Racetrack and the heritage of horseracing in the Virgin Islands, the Government and Grantee have agreed to (1) the terms of this Franchise Agreement; (2) a Lease Agreement for the Clinton E. Phipps Racetrack, (the "Property" or the "Racetrack"); (Lease Agreement attached as Exhibit A); and (3) the Third Amendment to the Video Lottery Services Agreement between the Grantor and Grantee (attached as Exhibit B), all subject to approval by the Legislature through legislation in accordance with Exhibit C hereto.

**NOW, THEREFORE**, for and in consideration of these promises, of the mutual covenants herein set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and the above-referenced recitals incorporated into this Agreement herein by reference, the Parties hereto hereby agree as follows:

**I. DEFINITIONS**

- A. "***Days***" as appearing in this Agreement shall mean calendar days, unless otherwise indicated.
- B. "***Effective Date***" the date on which this Agreement, the Lease and the Third Amendment to the Video Lottery Services Agreement are approved by the Legislature in accordance with Exhibit C hereto.
- C. "***Gaming Center***" means the portion of the Racing Entertainment Center at which Video Lottery Terminals are operated and offered to the Public.
- D. "***Horse Racing Commission***" means the St. Thomas-St. John Horse Racing Commission.
- E. "***Live Horse Racing***" means the competitive racing of horses at the Property in accordance with Virgin Islands law and regulations.
- F. "***Race Days***" means the days on which Live Horse Racing will take place on the Property under this Agreement.
- G. "***Racing Activities***" means Live Horse Racing and related events held at the Property on Race Days.
- H. "***Racing Entertainment Center***" means the multipurpose entertainment facility at the Property including, *inter alia*, the Gaming Center.



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## **II. GRANT OF FRANCHISE - EXCLUSIVE AUTHORITY TO CONDUCT RACING AND OTHER ACTIVITIES.**

- A. **Exclusive Rights.** The Grantor hereby awards to Grantee a Franchise pursuant to 32 V.I.C. §209 and 32 V.I. Rules & Reg. §209-1 to promote and conduct horseracing and related activities at the Property. The Franchise granted hereby includes an exclusive concession on the island of St Thomas for Live Horse Racing, Pari-Mutuel Wagering, Telephonic Account Betting, and Simulcast Wagering, and the daily occupancy, operation and use of all of the facilities and equipment located at the Racetrack 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, Pari-Mutuel Wagering, Telephonic Account Betting, and Simulcast Wagering for profit using the Racetrack 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 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 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 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 (hereinafter defined) for the Racetrack.
- C. Grantee promises and guarantees, as a condition of exercising the privileges granted by this Agreement, subject to the provisions of Section 11 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, Pari-Mutuel Wagering, Telephonic Account Betting, and Simulcast Wagering under this Agreement will also comply with the terms and conditions of this Agreement.
- D. **Acknowledgment.** By becoming a party to this Agreement, the Grantee:

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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.

E. 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.

F. 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.

G. Retention of Right. 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 this Agreement, 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.

H. Operation. Grantee will manage and operate the Property, conduct Live Horse Racing and Video Lottery Operations, and conduct other entertainment events. In addition, Grantee will retain and pay for a veterinarian to conduct pre-race examination, and post-race testing of horses, including all necessary laboratory supplies and equipment, as required by the Anti-Doping statute, 32 Virgin Islands Code, Chapter 11, subchapter II.

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At all times, the Horse Racing Commission shall be solely responsible on Race Days for the provision and payment of judges, stewards, and other officials necessary for racing, as well as operating the racing camera system.

- I. Wagering. Grantee is exclusively authorized to operate on-track and off-track pari-mutuel wagering and simulcasting as provided in 32 V.I.C. §§204-208. Grantee shall provide Pari-Mutuel Betting on live races at the Racetrack and any other facility as the Grantee deems appropriate within the District of St. Thomas & St. John, 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.

Government agrees that based on the Final Turnover Agreement dated July 21, 2025, between the Parties, Grantee has been deemed to have fulfilled the Simulcast Facility License application requirements of 32 V.I. Rules & 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. Rules & Reg. §§206-4(e) and 208-1.

In the event that the 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. Rules & 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.

- J. License. Pursuant to 32 V.I. Rules & 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. Thomas/St. John, in each case, to the extent permitted by law. The Licenses shall go into effect on the Effective Date of this Agreement.
- K. Oversight by Horse Racing Commission. The Horse Racing Commission shall administer and regulate Grantee's Racing Activities and race wagering, except that the operation of Video Lottery Terminals at the Gaming Center shall be subject to the sole and exclusive oversight and regulation by the Virgin Islands Lottery. Upon request by the Horse Racing Commission for documentation and other materials

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that it may require so that it can exercise its administrative role under this Agreement and under the law, the Grantee shall produce all documentation requested within fifteen (15) days of receipt of the request.

L. Agreement with Horsemen's Organization. Grantee shall obtain a live horse racing agreement pertaining to distribution of funds generated by Simulcast Wager, and other agreed-upon activities, with the Horsemen's Organization recognized by the Horse Racing Commission for the District of St. Thomas/St. John. 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 Racetrack.

M. Hosting of Entertainment Events. Grantee may, at its discretion, organize, conduct and host other entertainment events at the Property; provided, however, that any such events shall not interfere with Race Days or the conduct of Live Horse Racing at the Property. Grantee shall be exclusively entitled to all revenues derived from such entertainment events at the Property. However, Grantee shall be responsible for all taxes in accordance with U.S.V.I. Law.

N. Race Track Improvements. In further consideration for this Franchise Agreement, Grantee agrees to provide to the Government, the following improvements at the Property:

- Picnic area
- Children's play area
- Enhanced landscaping
- Furnished VIP area
- Bandstand
- Parking lot lighting
- Infield enhancements
- Stable enhancements
- Interior upfit of Gaming Center
- Grandstand lighting
- Signage
- Covering for VIP area
- Generator for stable area
- Public Announcement (PA) system for stable area
- Renovate and/or replace running rail system as necessary to conform to horse racetrack standards
- Water trucks, tractors
- New starting gate

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Any permanent alterations, additions, and improvements shall, unless Grantor elects otherwise, become the sole property of the Grantor upon the expiration of this Agreement.

O. Race Promotion Enhancements. As part of its duties as race promoter, Grantee will purchase and utilize at the Property the following:

- Jumbotron
- Toteboard
- Automated Pari-Mutuel Wagering System
- Amplifier and speaker system
- Kitchen and bar equipment
- Furnishings for office
- Furnishings for VIP area
- Generator
- Tents
- Audio-video equipment suitable for racetracks
- Point of sale system

### **III. TERM**

This Agreement shall be effective for a term commencing on the Effective Date and extending for a period of eight (8) years. The Parties, no earlier than five (5) years after the Effective Date, may agree to a replacement Franchise Agreement with a qualified racing operator possessing substantial experience in the promotion, management, and operation of pari-mutuel horse racing facilities approved by the Grantor. If no replacement promoter is agreed upon, this Agreement will renew under these same conditions for three (3) additional five (5) year terms, unless Grantee provides the Government with written notice of its intent not to renew, at least ninety (90) days prior to the end of the then current term.

### **IV. FEES AND TAXES**

A. License Fee. Pursuant to 32 V.I. Rules & Reg. § 202-26(b) and as compensation for the issuance of an Association license in accordance with the Act and 32 V.I. Rules & Reg. §§ 202-25 to operate the Racetrack, their facilities and equipment, Grantee shall pay to the Government, throughout the duration of this Agreement, Five Thousand Dollars (\$5,000.00) annually (the "License Fee"). The first payment of the License Fee shall be due and payable to the Commission 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 10<sup>th</sup> of each year.

B. Franchise Fee. Pursuant to 32 V.I. Rules & Reg. § 209-1(d), as compensation for the benefits and privileges granted under this Agreement, Grantee shall pay to the Government an annual franchise fee of \$5,000 ("Franchise Fee"). The first payment

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of the Franchise Fee shall be due and payable to the Commission 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 10<sup>th</sup> of each year.

**C. Maintenance & Preservation of Racetrack.** The Grantee shall, at its sole cost and expense, preserve, maintain, repair, and improve the racetrack surface throughout the Term of this Agreement in a manner consistent with first-class, professional standards prevailing in the horse racing industry. Such obligations shall include maintaining the racetrack in a condition suitable for safe and lawful operations and at a level capable of meeting or exceeding standards required for expert inspection within the industry.

1. The Grantee shall ensure that the racetrack and operations are subject to periodic inspections, as reasonably necessary or customary in the horse racing industry, including inspections conducted by qualified independent experts where appropriate.
2. The Grantee shall provide to the Commission, on a periodic basis as required by the Commission (but no less than annually), a written report detailing the measures undertaken to preserve, maintain, repair, and improve the racetrack surface. Such report shall include, without limitation, a summary of maintenance activities, capital improvements, operational enhancements, and copies of any third-party inspection reports, expert evaluations, certifications, or similar documentation evidencing compliance with applicable industry standards.

**D. 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.

**E. 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.

**F. 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 paragraph 4.a and 4.b to the Government. Grantee agrees that all other additional commitments herein are not



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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.

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

H. 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.

I. Payment of Fee to the Horse Racing Commission.

1. So long as the amount contributed by the VI Lottery pursuant to 32 V.I.C. §246(a)(11)(iv)(I) to the St. Thomas/St. John Horse Racing Commission is no less than .75% of its Video Lottery revenue from St. Thomas and St. John as calculated pursuant to that section, Grantee shall pay annually to the St. Thomas/St. John Horse Racing Commission, prorated for the first year, any additional amount needed over the amount paid by the Lottery so that the Horse Racing Commission receives the total sum of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000.00), payable in equal quarterly installments.
2. Following the fifth (5th) anniversary of the Effective Date of this Agreement, the Government and the Grantee shall review the commitment to assess whether any adjustment is warranted based on the actual operating budget of the Horse Racing Commission.

J. 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.

V. ADMINISTRATION & REGULATION

A. Annual Evaluation.

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1. 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.
2. 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 Racetrack and other facilities, the Racetrack's 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.
3. 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.
4. 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.
5. 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.
6. 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.

B. Administration and Regulation by the Horse Racing Commission. 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.

**VI. INSURANCE**

- A. Insurance Requirements. Grantee shall obtain insurance policies as set forth in the Lease Agreement to lease the Racetrack.
- B. Indemnification. 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

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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 or 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.

**VII. LIVE HORSE RACING, OPERATIONS, & COMMUNITY SUPPORT**

A. Live Horse Racing. Absent force majeure events, and with the approval by the Commission of the requisite number of eligible horses, Grantee shall conduct Live Horse Racing at the Property for a minimum of eight (8) Race Days annually. All Race Days shall be scheduled by Grantee and approved by 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 proposed dates for the race cards for the ensuing calendar year.

C. Purses.

1. Minimum Purses. For the minimum number of race days required by this Agreement, the total purse for each day shall be at least \$100,000.00 so long as the contribution from the VI Lottery pursuant to Title 32 V.I.C. § 246(a)(11)(iv)(ii) is no less than 1.25% of the Lottery's video lottery revenue from St. Thomas and St. John, and includes the required contribution from the Video Lottery Service Agreement with SGVI, Inc., with any remainder covered by the Grantee via sponsorships or other subsidies. The Grantee may agree with the Commission and the Horsemen's Organization regarding funding of purses for any races held in excess of the minimum required number of race days.
2. Notwithstanding the foregoing, the Grantee and the Horse Racing Commission may, prior to any race day, agree to a lesser Minimum Purse.

D. Training and Scholarships.

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1. The Grantee shall establish and fund a scholarship program for no fewer than two (2) individuals who are qualified for admission to an accredited institution of higher learning and who intend to pursue academic studies or professional training in disciplines deemed by the Horse Racing Commission to be beneficial to the horse racing industry. The scholarship program shall be jointly developed and administered by the Grantee and the Horse Racing Commission, with consultation and input from recognized Horsemen's Organizations. Priority consideration shall be given to applicants pursuing studies in veterinary medicine or related equine health disciplines.
2. The Grantee shall contribute Ten Thousand Dollars (\$10,000.00) per year toward the scholarship program, with such amount increasing by five percent (5%) annually on a compounded basis for the duration of the obligation.
3. In the event that, for any academic year, there are no applicants who meet the eligibility criteria established for the scholarship program, or no applicants deemed qualified by the Horse Racing Commission and the Grantee, the Grantee shall not be deemed in default of its scholarship funding obligation for that year. In such event, the funds otherwise allocated for scholarship awards shall be either:
  - a. carried forward and applied to scholarship awards in a subsequent academic year; or
  - b. upon mutual agreement of the Grantee and the Horse Racing Commission, redirected to alternative educational, training, or workforce development initiatives.

Any reallocation or carryforward of funds pursuant to this subsection shall be documented in writing and shall not reduce, waive, or otherwise impair the Grantee's ongoing annual funding obligation, including applicable annual increases.

**E. Charity, Horse Retirement and Aftercare Contributions**

1. The Grantee shall make annual monetary contributions to one or more reputable horse retirement, aftercare, or rehoming organizations or facilities that are recognized as tax-exempt charitable organizations under Section 501(c)(3) of the Internal Revenue Code. The total amount of such contributions shall be Thirty Thousand Dollars (\$30,000.00) per year.
2. In selecting recipient organizations, preferential consideration shall be given to horse retirement or aftercare facilities that are accredited by the Thoroughbred Aftercare Alliance (TAA), provided that such organizations are in good standing and otherwise meet applicable eligibility requirements.
3. All recipient organizations shall be subject to approval by the Horse Racing Commission. Approved organizations may be afforded reasonable access to designated space at the Racetrack on live race days, subject to availability and operational considerations, for the purpose of conducting approved charitable, educational, or awareness-related activities, so long as they do not

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disparage the Grantee, the Horse Racing Commission, the Horsemen's Organization, or the sport of horse racing.

- F. Gaming Center. Grantee may operate the Gaming Center for its video lottery terminals throughout the term of the Video Lottery Service Agreement. The Gaming Center will include a bar and concession area and may include on-track and off-track pari-mutuel betting and simulcasting.

#### **VIII. REPORTS AND RECORDS.**

- A. Quarterly Reporting. SGVI, Inc. shall submit quarterly reports of the gaming revenue at the Racetrack to the Department of Sports, Parks and Recreation, the Legislature, the Horse Racing Commission and recognized Horsemen's Organizations.
- B. 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.
- C. Inspections 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.
- D. 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 and applicable law.
- E. 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.

#### **VIII. FORCE MAJEURE**

In the event that either Party including SGVI's architects, engineers, contractors or sub-contractors shall be delayed or hindered in or prevented from the performance required under this Agreement, including without limitation, the performance of the Project, by reason of strikes, lock-outs, Act of God, inability to procure labor, or materials, legislation or regulation, riots,

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insurrection, war, pandemic, hurricane or other weather-related occurrence, or other reasons beyond the reasonable control of a Party (each, a "***Force Majeure Delay***"), then the performance of such act shall be excused for the period of delay and the performance of any such act shall be extended for a period equivalent to the period of each delay.

## **IX. DISPUTE RESOLUTION**

**Dispute Resolution.** Any dispute between the Parties as to the interpretation, performance or alleged breach of this Agreement 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 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 authorized representative(s) of the Government and Grantee shall meet to resolve such Dispute. If a settlement of any such Dispute or difference is not reached within sixty (60) days after such notice of Dispute is delivered, then the provisions of (ii) below shall apply.
- B. If the settlement of any Dispute is not reached, then the Parties agree to mediate the disputed matter. Should mediation not result in a mutually accepted resolution of the disputed matter, then either Party may file an action, suit, or proceeding in a court of competent jurisdiction in the United States Virgin Islands.
- C. This Agreement will continue to be performed according to its terms during the Dispute Resolution Process, including court proceedings and any appeals.

## **X. FRANCHISE TRANSFER**

The rights under this agreement shall not be assigned or transferred, in whole or in part, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld in accordance with Section 3.

## **XI. 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).

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Franchise Agreement  
Clinton E. Phipps Racetrack

- 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 Government 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 (iv) 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 Government, 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.

## XII. 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

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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

**XIII. MISCELLANEOUS PROVISIONS.**

- A. Governing Law: The laws of the U.S. Virgin Islands shall govern this Agreement in all respects. Jurisdiction over all disputes arising under this Contract is exclusive in the Courts of the United States Virgin Islands.
- B. Successors And Assigns: Government and Grantee bind themselves, their successors, assigns, executors, administrators and other legal representatives to the other party hereto and to successors, assigns, executors, administrators and other legal representatives of such other party in respect to all terms and conditions of this Agreement.
- C. Notices: Any notice required to be given herein shall be deemed to have been given to the other party if (1) given by first class mail, registered or express mail, courier service, or hand delivery; or (2) by email, provided that such notice is also confirmed and made by first class mail, registered or express mail, courier service, or hand delivery to the following addresses:

If to Government:

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

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

and

Department of Property and Procurement  
Attention: Commissioner  
8201 Subbase Building 1, 3<sup>rd</sup> Floor  
St. Thomas, VI 00802

and

Department of Sports Parks & Recreation

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Attention: Commissioner  
8201 Subbase, Suite 206  
St. Thomas, VI 00802

If to Grantee:

SGVI, Inc.  
Attn: Robert E. Huckabee  
232 Causeway Drive, Suite 2A  
Wrightsville Beach, North Carolina 28480  
Email: bobby@sgvi.com

With a copy to:

Womble Bond Dickinson (US) LLP  
Attention: Jason C. Hicks  
201 East Main Street, Suite P  
Charlottesville, VA 22902  
Email: [Jason.Hicks@wbd-us.com](mailto:Jason.Hicks@wbd-us.com)

and

Mark N. Poovey  
Poovey Law Firm, PLLC  
1428 Scotland Avenue  
Charlotte, NC 28207  
Email: [Mark@PooveyLawFirm.com](mailto:Mark@PooveyLawFirm.com)

All notices shall be effective upon receipt. Throughout the term of this Agreement, Grantee shall maintain and file with the Grantor a designated legal or local address for the service of notices by mail.

- D. Non-Waiver: Any waiver of any default by either Party to this Agreement shall not constitute waiver of any subsequent default, nor shall it operate to require either Party to waive, or entitle either Party to a waiver of, any subsequent default hereunder. Nothing in this Agreement shall be to interpreted limit the regulatory and enforcement powers of the Government of the U.S. Virgin Islands or any of its Agencies or Instrumentalities.
- E. 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.

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*Franchise Agreement  
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- F. Entire Agreement: This Agreement, together with the Lease and the Third Amendment to the Video Lottery Services Agreement, and authorizing Legislation attached hereto, constitutes the entire understanding and contract between the Parties hereto with respect to the development and operation of the Property, and supersedes prior and contemporaneous written and oral contracts between the Parties and their predecessors in interest regarding the development and operation of the Property.
- G. Authority to Amend: This Agreement, or any provision thereof, may not be changed, altered, amended, modified, waived, or terminated orally, except as specifically provided, and any such change, alteration, amendment, waiver, or modification must be in writing and executed by the Parties hereto with the approval of the Governor of the U.S. Virgin Islands.
- H. No Agency or Partnership: It is understood that in fulfilling its duties under this Agreement, Grantee shall be acting as an independent contractor. Furthermore, no express or implied term, provision, or condition of this Agreement shall be deemed to constitute the parties as partners or joint venturers.
- I. Preferential or Discriminatory 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.
- J. Conflict of Interests.
1. Grantee covenants that it has no interest and shall not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.
  2. Grantee further covenants that it is:
    - a. not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive, or judicial branch of the Government or any agency, board, commission, or independent instrumentality of the Government, whether compensated on a salary, fee, or contractual basis); or
    - b. a territorial officer or employee and, as such, has:
      - i. familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
      - ii. not made, negotiated, or influenced this Agreement, in its official capacity; and
      - iii. no financial interest in the Agreement as that term is defined in section 1101(1) of said Code chapter

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*Franchise Agreement  
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**\*\*\*Remainder of Page Intentionally Left Blank\*\*\***  
**[Signatures on Following Pages]**

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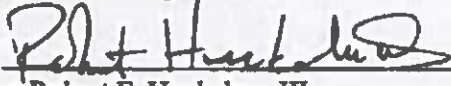
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*Franchise Agreement  
Clinton E. Phipps Racetrack*

The Parties executed this Agreement under their several seals the day and year first written above, by the Parties' duly authorized representatives as indicated by their signatures below.

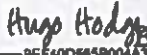
**FOR GRANTEE:**

**SGVI, INC., a corporation**

By:   
Name: Robert E. Huckabee, III  
Its: President

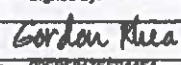
**FOR GRANTOR:**

**GOVERNMENT OF THE UNITED STATES  
VIRGIN ISLANDS**

Signed by:   
By: \_\_\_\_\_  
Name: Hugo Hodge, Jr., Chairperson  
St. Thomas/St. John Horse Racing Commission

By:   
Name: The Honorable Albert Bryan Jr.,  
Governor of the United States Virgin Islands

**APPROVED AS TO LEGAL SUFFICIENCY  
VIRGIN ISLANDS DEPARTMENT OF JUSTICE**

Signed by: \_\_\_\_\_  
By:   
Title: Attorney General

**APPROVED LEGISLATURE OF THE VIRGIN ISLANDS**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Honorable Milton E. Potter  
Senate President

*Franchise Agreement  
Clinton E. Phipps Racetrack*

**EXHIBIT A**

**LEASE AGREEMENT**

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**EXHIBIT B**

**THIRD AMENDMENT TO VIDEO LOTTERY SERVICES AGREEMENT**



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**EXHIBIT C**

**(DRAFT LEGISLATIVE APPROVAL)**

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