

File No.: 04-1000-20-2022-446

December 8, 2022

s.22(1)

Dear s.22(1)

Re: **Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")**

I am responding to your request of August 24, 2022 under the ***Freedom of Information and Protection of Privacy Act (the Act)*** for:

The current rental or lease agreement between City of Vancouver and Great Canadian Gaming (or its subsidiary) for the operation and maintenance of Hastings Racecourse for thoroughbred horse racing, casino, food and beverage, and related uses.

All responsive records are attached.

Under section 52 of the Act, and within 30 business days of receipt of this letter, you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your FOI request by writing to: Office of the Information & Privacy Commissioner, info@oipc.bc.ca or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number (#04-1000-20-2022-446); 2) a copy of this letter; 3) a copy of your original request; and 4) detailed reasons why you are seeking the review.

Yours truly,

[Signed by Cobi Falconer]

Cobi Falconer, MAS, MLIS, CIPP/C
Director, Access to Information & Privacy
cobi.falconer@vancouver.ca
453 W. 12th Avenue Vancouver BC V5Y 1V4

If you have any questions, please email us at foi@vancouver.ca and we will respond to you as soon as possible. Or you can call the FOI Case Manager at 604-871-6584.

Encl. (Response Package)

:dl

OPERATING AGREEMENT

THIS AGREEMENT is effective as of the 1st day of November, 2007,
(the "Effective Date")

AMONG:

CITY OF VANCOUVER, a municipal corporation
with offices at 453 West 12th Avenue,
Vancouver, British Columbia, V5Y 1V4

(hereinafter called the "City")

AND:

HASTINGS ENTERTAINMENT INC.,
(incorporation no. 626095), a company having
a registered office at 1500 Royal Centre
1055 West Georgia Street,
Vancouver, British Columbia, V6E 4N7,
incorporated pursuant to the laws of the
Province of British Columbia

(hereinafter called "HEI")

AND:

GREAT CANADIAN GAMING CORPORATION
(incorporation no. 388982), a company having
a registered office at 1500 Royal Centre
1055 West Georgia Street,
Vancouver, British Columbia, V6E 4N7,
incorporated pursuant to the laws of the
Province of British Columbia

(hereinafter called "GCGC")

(collectively HEI and GCGC shall be hereinafter defined as the "Operator")

WITNESSES THAT WHEREAS:

A. The City is the owner of all and singular those certain lands and premises situate in the City of Vancouver, Province of British Columbia, legally described as Firstly, a portion of (PID 008-348-219) Lot 90 Except Part in Plan 13045 Town of Hasting Suburban Lands Plan 100; Secondly, a portion of (PID 007-262-841) Block X, Except Part in Explanatory Plan 13247, Town of Hastings Plan 17745 and Thirdly, portions of Eton Street and Nootka Street adjacent to the said Remainders of Lt 90 and Block X (the "Hastings Park Lands"), all as more particularly

shown outlined in bold black on the plan attached hereto as Schedule "A" and marginally numbered LF11868. The Hastings Park Lands consists of the City Lands (hereinafter defined) generally as shown in bold outline on Plan LB903, a copy of which is attached as Schedule "B" hereto, and the Site (as hereinafter defined) being that portion of the Hastings Park Lands generally as shown outlined in bold on Plan LB594A (the "Site"), a copy of which is attached hereto as Schedule "C", on which Site is situate a horse race track, a grandstand building, stables, paddocks, jockey quarters and attendant facilities and various other facilities and improvements;

B. The City previously leased the Site to the Pacific Racing Association (the "PRA") for the purpose of carrying on horse racing on the Site upon the terms and conditions set out in that certain lease agreement dated January 1, 1994 (the "1994 Agreement") which expired December 31, 1998 (the "1994 Agreement Expiry Date");

C. During the period between the 1994 Agreement Expiry Date and April 30, 2002, the PRA was using and occupying the Site on a month to month basis for the conduct of its horse racing operations, subject to termination on thirty (30) days notice;

D. By an agreement to purchase dated for reference April 30, 2002, as amended, supplemented, restated or replaced from time to time (the "Purchase Agreement"), Woodbine Entertainment Group ("WEG") and Hastings Entertainment Inc. ("HEI") agreed to purchase from the PRA all of its assets, rights, benefits and interests with respect to the Racetrack (hereinafter defined) and the operation thereof on the terms and conditions set forth in the Purchase Agreement;

E. HEI and/or WEG requested that the City consent to the assignment of the PRA's right to use and occupy the Site, in accordance with the terms and conditions of that certain assignment and assumption agreement and consent to assignment dated for reference April 30, 2002 (the "Assignment Agreement"), which HEI and WEG never executed;

F. Based upon HEI and WEG's commitment to execute the Assignment Agreement and to assume the obligations and liabilities of the PRA with respect to the operation of the Racetrack, City Council on March 28, 2002 approved the preparation of a long term operating agreement between the City and HEI and/or WEG for their continued operation of the Racetrack on and subject to certain terms and conditions, as set forth in the aforesaid Council approval, as subsequently amended;

G. Notwithstanding City Council's aforementioned approval, final terms and conditions of a long term operating agreement for the Racetrack operation were not agreed upon between the parties. However, WEG, operating through its wholly owned subsidiary HEI, took over the operations of the Racetrack on a month to month basis, generally in accordance with the terms of the 1994 Agreement, except for the continued operation being on a month to month basis and the fees being changed to be SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) per year, payable in equal monthly instalments;

H. On March 22, 2004, WEG sold its rights and interests in the operation of the Racetrack and its shares of HEI to 686486 B.C. Ltd. (a wholly owned subsidiary of Great Canadian Gaming Corporation ("GCGC")) and the new ownership took over the Racetrack operations on the same terms and conditions governing WEG's operations as described in Recital G above;

I. On July 22, 2004, City Council approved, subject to a number of conditions, an application by HEI and British Columbia Lottery Corporation to amend CD-1 By-law No. 3656

for 2901 East Hastings Street to permit the introduction of no more than nine hundred (900) slot machines at the Racetrack; Provided That all the terms and conditions of such approval are satisfied, including that HEI, or any other operator, operate no more than six hundred (600) slot machines on the Site. On October 4, 2005, Council enacted the Rezoning By-law to permit slot machines as a use on the Site;

J. The Operator has now requested and the City has agreed to grant to the Operator a non-exclusive right or license to use the Site, the boundaries and configuration of which may be amended from time to time as permitted pursuant to the terms of this Agreement, for purposes of conducting the Horse Racing Operations (hereinafter defined), and the Slots Operations (hereinafter defined), all in accordance with and subject to the terms and conditions herein contained;

NOW THEREFORE in consideration of the sum of TEN DOLLARS (\$10.00) now paid by each party to the other, the Operating Fees (hereinafter defined), the covenants and agreements hereinafter reserved and contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

DEFINITIONS

1. In this Agreement the following terms shall have the meanings hereinafter specified, in this section, unless otherwise specifically defined or provided for in this Agreement and any other terms defined throughout this Agreement shall be as specifically defined therein:

- (a) "*Abated Minimum Operating Fees*" means the Minimum Operating Fees (as adjusted annually by the CPI Inflation Adjustment) less the Operating Fees Abatement, which amount shall be payable and used in the calculation of the Additional Percentage Operating Fees payable by the Operator to the City in the respective Operating Year during which the Olympic Suspension Period occurs;
- (b) "*Acceptable Contamination Levels*" means
 - (i) with respect to soil contamination on the Site, for the top three (3) metres in depth of the soil, the contamination levels, criteria, standards or concentrations applicable for residential land use as defined in the EMA or any other Environment Laws and for soils that are more than three (3) metres in depth beneath the surface of the Site, the commercial land use standards as provided for in the EMA or any other Environmental Laws, as such criteria may be amended and become applicable from time to time hereafter; and
 - (ii) with respect to groundwater contamination on or beneath the Site, the contamination levels applicable to the most restrictive standard for fresh water or marine aquatic life as prescribed in the EMA or any other Environmental Laws;
- (c) "*Additional Percentage Operating Fees*" means that amount, if any, by which the Percentage Operating Fees exceeds the Minimum Operating Fees or the Abated Minimum Operating Fees, for each respective Operating Year, as more specifically provided for and as calculated in accordance with Section 12 herein;

- (d) "Affiliate" means any corporation that is affiliated with HEI or GCGC, as defined or provided for in the *Business Corporations Act*, SBC 2002, c. 57, or any "related persons" or "affiliated persons" as defined in the *Income Tax Act* of Canada, as amended from time to time and all replacements thereof;
- (e) "Agreement" means this licence/operating agreement and all schedules attached hereto;
- (f) "Alterations" means all alterations, adjustments, changes, repairs, renewals, restorations, renovations, rearrangements, deletions, additions, expansions, removals, replacements, improvements, betterments, installations and decorations or any one or more of them to the Site or the Hastings Park Lands, including without limitation to the Grandstand Building, the Backstretch Area and to any other buildings, structures, improvements or Utilities thereon, for purposes of or related to the Operator's or Operator's Personnel's use of the Site for any of the Racino Operations;
- (g) "Annual Fair" means an exhibition and fair similar to the exhibition and fair previously held annually on the City Lands known as the "Pacific National Exhibition";
- (h) "Approved Capital Expenditure Plans" means those respective plans prepared by the Operator or the Operator's Personnel, at the Operator's sole cost and expense, as approved by the City Manager, which plans shall describe in detail, satisfactory to the City, the Initial Term Capital Improvements and, if applicable, the Renewal Term Capital Improvements, respectively. All such plan(s) shall set out the amounts estimated to be expended by the Operator in relation to the respective capital improvements to be made by the Operator, as agreed to and approved by the City, based upon drawings, plans and quotations prepared by the Operator or the Operator's Personnel, all to the satisfaction of the City, including plans, quotations and estimates prepared or certified by the Operator's Architect;
- (i) "Architect" means a qualified architect duly accredited to practice in the Province of British Columbia that is retained by the Operator for purposes of this Agreement, but which is not on staff or employed full time by the Operator;
- (j) "Average Daily Net Win" means the aggregate annual Net Win from all the Slots for each Operating Year divided by the product of the number of Slots multiplied by 365 or by such lesser number of days, as applicable, in any Operating Year, as provided for in this Agreement,

$$\text{Average Daily Net Win} = \frac{\text{Aggregate Net Win (all Slots for the respective Operating Year)}}{\# \text{ of slots actually operated on the Site multiplied by } 365^* \text{ (or such lesser \# of days in the Operating Year)}}$$

If the number of slots installed and operated on the Site changes during any Operating Year, then there shall be an adjustment to the calculation to give

effect to the number of slots installed and operated for each portion of a respective Operating Year;

- (k) "*Backstretch Area*" means that portion of the Site where the horses are stabled, trained or cared for by the owners, trainers and/or any grooms, including without limitation all stables, barns, tack rooms, walking rings, training facilities and any open areas incidental to the stabling or training of the race horses;
- (l) "*Backstretch Personnel*" means all horse owners, trainers, jockeys, apprentice jockeys, grooms and their assistants, jockey's agents, jockey's valets, exercise riders, trades persons, walkers, concessionaires in the Backstretch Area and any other persons employed or working in or about the Backstretch Area, regardless of whether such persons are employed by the Operator, and includes for greater certainty all independent contractors performing any of the foregoing duties or acting in any capacities on the Site relating to the stabling, training or caring for any horses located on the Site;
- (m) "*Base Year*" means the calendar year in which the Commencement Date occurs;
- (n) "*BCLC*" means the British Columbia Lottery Corporation or any successor thereto;
- (o) "*BCLC Operating Agreement*" or "*RCOSA*" means that agreement made between HEI and/or GCGC and BCLC, which grants to HEI and/or GCGC the right to operate the Slots and to conduct horse racing and governs the use, operation and financial terms related to the Slots and horse racing located at the Site;
- (p) "*Childcare Agreement(s)*" means that agreement or those agreements that are now or at any time hereafter entered into by the City and the Operator, or either of HEI or GCGC, related to and governing the construction and operation of the Childcare Facility or the Temporary Childcare Facility, or both, during the Term and any Renewal Term, if applicable, as a prior to condition to the issuance of the Development Permit, all on terms and conditions satisfactory to the Director of Legal Services and the City Manager, in consultation with the Director of Social Planning;
- (q) "*Childcare Facility*" means that forty-four (44) space permanent childcare facility to be built and operated at the Operator's sole cost and expense, to a standard acceptable to the City and the provincial licensing authorities, and in a location on the Site or within close proximity to the Site acceptable to the City Manager in consultation with the City's Director of Social Planning;
- (r) "*Children*" or "*Child*" means those persons under the age of twelve (12) that are on the Site, including without limitation all children belonging to or under the supervision of any Backstretch Personnel and any and all children of any patrons, invitees or licensees of or to the Racetrack or the Backstretch Area;
- (s) "*City Lands*" means those lands shown outlined in bold on the plan attached hereto as Schedule "B" and the buildings, facilities and other improvements

situate thereon, but specifically excluding the Site, and generally described to include the following:

- (i) all land bounded by Hastings, Renfrew, McGill, Bridgeway and the Trans-Canada Highway (including land that is "restored as park"), except the land used by the Operator pursuant to this Agreement;
- (ii) that parking lot known as Parking Lot #10 located at the northwest corner of McGill and Bridgeway; and
- (iii) the parking lot bounded by Hastings, Windermere, Pender and Rupert;
- (t) "*City Manager*" means the chief administrator of the City of Vancouver or the person acting in that capacity from time to time and their respective nominees;
- (u) "*City of Vancouver Consumer Price Index*" means the annual All-Items Consumer Price Index (not seasonally adjusted) for Vancouver, British Columbia, having 1981 as its base year, as published by Statistics Canada;
- (v) "*City Utilities*" means main water, sewer and storm sewer pipes, conduits, drains and all equipment and parts thereof or incidental thereto which are necessary to provide such services;
- (w) "*City's Personnel*" means the City of Vancouver's elected and appointed officials, officers, employees, agents, volunteers, workmen, contractors, subcontractors, licensees and permittees, including without limitation any licensee or permittee of the City related to the hosting of the 2010 Olympic Games, including VANOC or VANOC's Personnel to the extent authorized or permitted by the City, and the PNE and the PNE's Personnel, but for greater certainty specifically excludes the Operator and the Operator's Personnel;
- (x) "*City's Proportionate Share of Parkade Costs*" means the proportionate share, if any, of all of the Parkade Construction Costs and the Parkade Operating Costs, respectively, that are to be paid by the City, calculated by multiplying the actual Parkade Construction Costs or the Parkade Operating Costs, respectively, incurred by a percentage equal to:

The total number of parking stalls within or to be constructed in
the Parkade minus 500 or such greater number of parking stalls
within the Parkade that are available for use by the Operator's Personnel
Total number of Parking Stalls in Parkade

Provided that the City is only obligated to pay a portion of the Parkade Costs if the City requires that more than five hundred (500) stalls be constructed in the Parkade and an agreement is entered into between the City and the Operator for the joint use and operation of the Parkade and a sharing of the revenue therefrom;

- (y) "*Claim*" or "*Claims*", respectively, means all costs, losses (including loss of use, loss of profits and any and all economic losses), damages (including all direct, indirect and consequential damages), claims, demands, actions, causes of action, judgements, liabilities, expenses (including reasonable legal expenses

on a solicitor and client basis), worker's compensation claims, builders' lien claims and all legal obligations and compensation of whatsoever kind or nature, including without limitation for or related to injuries to persons, including death, damage to property or any economic loss, whether known or unknown, suspected or unsuspected;

- (z) "*Commencement Date*" means the date that the Slots, or any portion thereof, begin operating on the Site; Provided That a binding and subsisting BCLC Operating Agreement has been executed by that date and all the Rezoning and Development Permit Conditions have been satisfied to the City's satisfaction;
- (aa) "*Community Legacy Fund*" means the required annual payment of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) to be made by the Operator to the City to assist the City in providing benefits to the community and mitigating any potential problems arising from the Slots Operations;
- (bb) "*Council*" means the City Council for the City of Vancouver, including the Mayor and Councillors, elected from time to time;
- (cc) "*CPI Inflation Adjustment*" means the percentage change in the City of Vancouver Consumer Price Index for a particular calendar year in relation to the Base Year, such percentage change to be calculated using the following formula:

City of Vancouver
Consumer Price
Index for a
particular calendar
year

City of Vancouver
Consumer Price
Index for the
Base Year

x 100

City of Vancouver Consumer Price Index for the Base Year

and the resulting percentage shall be rounded to the nearest tenth of a percent. This calculation of percentage change shall not incorporate a "folding in" or other mechanism which would consider the effect of financial compounding.

Provided however that:

- (i) if Statistics Canada, or its successors in function, change the methodology or presentation of the City of Vancouver Consumer Price Index prior to a particular calendar year to the extent that, in the opinion of either the City or the Operator, an appropriate CPI Inflation Adjustment to reflect the general change in prices in Vancouver between the Base Year and the particular calendar year cannot be made by reference to the City of Vancouver Consumer Price Index; or
- (ii) if either Statistics Canada, including its successors in function, or the City of Vancouver Consumer Price Index is ceased prior to a particular calendar year;

then the City and the Operator shall agree on another price index which in their opinions most accurately reflects the general change in prices in

Vancouver between the Base Year and the particular calendar year or the CPI Inflation Adjustment shall be deemed to be the annual rate of inflation for Canada for the previous twelve (12) months as determined by the Bank of Canada;

- (dd) *"Development Permit"* means that development permit issued or to be issued at any time hereafter pursuant to development permit application DE409601;
- (ee) *"Director of Legal Services"* means the City's Director of Legal Services and her successor in function and their respective nominees;
- (ff) *"Director of Social Planning"* means the City's Director of Social Planning and his successor in function and their respective nominees;
- (gg) *"Effective Date"* means the effective date of this Agreement being that date the Agreement is signed by all the parties hereto;
- (hh) *"Eligible Capital Expenditures"* means only those capital expenditures to be made or incurred or which are made or incurred by the Operator, as approved in writing by the City Manager in her sole discretion, as qualifying or constituting as capital expenditures made for or in satisfaction of the completion of the Initial Term Capital Improvements or the Renewal Term Capital Improvements, if applicable, respectively, and in satisfaction of the Operator's Initial Term Capital Expenditure Obligations or the capital expenditure obligations provided for in the Renewal Term Capital Improvements Agreement, if applicable. For greater certainty, Eligible Capital Expenditures specifically excludes all Operating Fees, the Community Legacy Fund Fee, the Hastings Park Greening Fee, all ordinary maintenance and repair and all general operating expenses and improvements, as determined by the City, which are made or incurred by the Operator in respect of or related to their use of the Site, including of the Grandstand Building, and only includes those capital expenditures made pursuant to or in accordance with an Approved Capital Expenditure Plan and constituting capital costs in accordance with generally accepted accounting principles;
- (ii) *"EMA"* means the Environmental Management Act of British Columbia, S.B.C. 2003, c.53, as amended or substituted from time to time and all regulations pursuant thereto;
- (jj) *"Environment"* includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill and lands submerged under water) and water (including oceans, lakes, rivers, streams, groundwater and surface water);
- (kk) *"Environmental Laws"* means all laws, statutes, regulations, rules, by-laws, orders, directives, standards, guidelines and other lawful requirements of any Government Authority, and all principles of common law and equity concerning the quality of the environment, that apply to the Site and its surrounding environment, including without limitation the EMA;
- (ll) *"Exhibition Period"* means that period of time in each year of the Term, or any Renewal Term, ordinarily running approximately seventeen (17) consecutive

days and terminating on or about the Labour Day weekend during which the PNE, or any successor or assign, holds the Annual Fair;

- (mm) *"Expanded Gaming"* means any new or additional forms of gambling, gaming events, casino gaming, electronic gaming tables or devices, lottery schemes, any activity or game of chance or mixed skill and chance designed to be carried out by one (1) or more players mechanically, electronically, by a computerized system or which is otherwise operated or intended to be operated for gaming purposes, including any other gambling or gaming activities of any nature or kind whatsoever that were not conducted, operated or available types of gaming on the Site at the Rezoning Date or which have been or are proposed to be added, played, made available or expanded on the Site at any time after the Rezoning Date, including without limitation any new or expanded off-track betting teletheatres on the Site and any Prohibited Gaming, but Expanded Gaming specifically does not include the Slots or the use of the Slots as part of a slots progressive jackpot pool and any types of betting on the live horse racing on the Site, any off-track betting teletheatres of a size or square footage similar to any existing teletheatre facilities on the Site which are constructed to replace existing teletheatre facilities on Site, as permitted by this Agreement, or those gaming activities or expanded gaming activities permitted by Council, in writing, within the meaning of Horse Racing Operations or otherwise;
- (nn) *"Expiry Date"* means the date that is five (5) years after the Commencement Date; Provided That, if the Slots, or any portion thereof, are not installed and operated there shall be no fixed Expiry Date and this Agreement shall continue on a month to month basis in respect of the Horse Racing Operations only on those terms and conditions as specifically provided for herein;
- (oo) *"FDF"* means the Facilities Development Fee Fund administered by BCLC which provides to operators or "gaming service providers" of casinos, slot machines or racetracks, approved by BCLC under the *Gaming Control Act*, a facilities development commission of five (5%) percent of the Net Win (*"FDF Rate"*) generated at the gaming facility. This commission or facilities development fee is intended to provide operators or gaming service providers with a means to recover a portion of the initial capital investment made by the operator or gaming service provider in respect of the gaming facility and may be available to recover a portion of any subsequent capital replacements, operating expenses and enhancements to such gaming facilities, as determined by BCLC. Projects eligible under the FDF include:
 - (i) capital costs of new building construction or improvements to existing facilities, leasehold improvements, land improvements and equipment upgrades;
 - (ii) surveillance equipment;
 - (iii) gaming equipment; and
 - (iv) financing or interest costs associated with loans or other financing arrangements for new capital construction or improvements to existing facilities, until the project has reached substantial completion.

Subsequent financing or interest costs do not qualify because they are considered to be operating expenditures. The interest component of capital leases also do not qualify.

Pursuant to the FDF program, prior to commencement of any capital projects, a business plan and capital budget must be submitted to the BCLC for approval and after completion capital project expenditures can be submitted to BCLC for consideration of funding under the FDF program;

- (pp) "*FDF Renewal Term Estimate*" means that amount deemed to be payable by BCLC to the Operator as the FDF payment(s) over the Renewal Term for purposes of calculating or determining the Operator's Renewal Term Minimum Capital Expenditures, and shall be calculated as follows:

Average Daily Net Win in the 4th full Operating Year or calendar year of the Slots Term (or for such other full year period most immediately preceding the end of the 4th Operating Year if during the 4th Operating Year there is any suspension of the Slots Operations related to the Olympics or if the 4th Operating Year is less than 365 days for any other reason whatsoever) multiplied by 365 (number of days in a year) multiplied by 600 (maximum number of Slots permitted) multiplied by .05 (or 5% representing the FDF Rate) multiplied by 15 (or the number of years in the Renewal Term),

As an example: If the Average Daily Net Win is \$400.00, then:

FDF Renewal Term Estimate = $(400) \times (365) \times (600) \times (.05) \times (15) = \$65,700,000.00$;

- (qq) "*FDF Renewal Term Surplus*" is equal to the FDF Renewal Term Estimate minus the Initial Term FDF Deficit minus the estimated cost, as approved by the City Manager, to complete the Unconditional Renewal Term Capital Improvements (as defined in the definition of "*Renewal Term Capital Improvements*"); Provided That if the Parkade is constructed by the Operator during the Term, then the calculation shall be adjusted or modified by subtracting the actual Parkade Construction Costs incurred by the Operator, as approved by the City Manager as Eligible Capital Expenditures pursuant to the approved Plans and Specifications, in place of the estimated cost to construct the Parkade which would otherwise form part of the estimated cost to complete the Unconditional Renewal Term Capital Improvements;

- (rr) "*FDF Slots Term Payment*" means the greater of:

- (i) the FDF amount actually paid by BCLC to the Operator in relation to any costs incurred by the Operator with respect to the Racino Operations for the period between the Effective Date and the expiry of the Slots Term; and
- (ii) that FDF amount deemed to be payable by BCLC to the Operator for purposes of this Agreement calculated as follows:

The aggregate of 5% of the Net Win for each Operating Year during the Slots Term;

- (ss) "*Force Majeure*" means any event or circumstance as described in section 109;
- (tt) "*Gaming Control Act*" means the *Gaming Control Act* of British Columbia, S.B.C. 2002, c. 14, as amended or substituted from time to time, including all regulations, policies and directives made pursuant thereto, including without limitation the Racetrack Casino Standards, Policies and Procedures for the Horse Racing Operations and Slots Operations as prescribed by BCLC from time to time;
- (uu) "*Garbage Compound*" means that service area of approximately one thousand square feet (1,000 ft²) located adjacent to the northwest end of the Grandstand Building as shown on the plan or drawing attached hereto as Schedule "F";
- (vv) "*GCGC's Personnel*" means GCGC's elected and appointed officials, officers, employees, agents, volunteers, workmen, contractors, subcontractors, licensees, permittees and invitees, including without limitation the Backstretch Personnel and all members of the public and patrons of any of the Racino Operations;
- (ww) "*Governmental Authority(ies)*" means any level of government, whether federal or provincial; and any governmental agency, ministry, department, tribunal, commission, bureau, branches, corporations, boards or court of competent jurisdiction or other instrumentality or quasi-governmental authority exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government in respect of any of the Racino Operations or any use of the Site, including BCLC and GPEB;
- (xx) "*Grandstand Alterations*" means those alterations and improvements to the Grandstand Building, as defined in the definition of "*Initial Term Capital Improvements*";
- (yy) "*Grandstand Alterations Phase Letter(s) of Credit*" means each respective clean, unconditional, irrevocable letter(s) of credit issued by a financial institution and on terms and conditions satisfactory to the Director of Legal Services in an amount(s) equal to 1.5 times or one hundred fifty (150%) percent of the sum estimated by the Operator, and approved by the City Manager, in her sole discretion, to undertake and complete the respective work, construction or installation of that portion or phase of the Grandstand Alterations proposed to be commenced by the Operator, from time to time, that involves any demolition of any portion of the Grandstand or any Structural Alterations, Structural Repairs or Structural Replacements or such other work to the Grandstand Building which would need to be repaired, replaced or reconstructed or would result in any costs to the City to complete if left unfinished by the Operator;
- (zz) "*Grandstand Building*" means that grandstand building existing on the Site, as shown in bold outline on the plan attached hereto as Schedule "E", including

all improvements and alterations thereto, which is used or to be used by the Operator for the Racino Operations;

- (aaa) "*GPEB*" means the Gaming Policy Enforcement Branch or any other provincial authority or entity having jurisdiction over the conduct of live horse racing days or the operation of gaming facilities in British Columbia, pursuant to the *Gaming Control Act* or any other relevant legislation;
- (bbb) "*Hastings Park Greening Fee*" means that sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) to be paid annually during the Slots Term by the Operator to the City, which amount shall be subject to adjustment for the Renewal Term, if applicable, all in accordance with Section 15 herein;
- (ccc) "*Hastings Park Lands*" means the lands legally described in Recital A which includes both the Site and the City Lands;
- (ddd) "*Hastings Park Implementation Plans*" means the City's and the City Personnel's park development and restoration plans for the Hastings Park Lands, as may be provided for in the future plans related to the use and development of Hastings Park, prepared or to be prepared by or for the City, all as may be amended from time to time hereafter by the City;
- (eee) "*Hazardous Substances*" means any substance capable of creating harm to people, property and/or the environment, including without limitation, all Waste (as defined in the EMA), flammable liquids, flammable or reactive solids, oxidizers, poisons, gases (compressed, liquefied or dissolved), explosives, radio active materials, urea formaldehyde, asbestos materials, underground or aboveground tanks, fecal matter, groundwater contaminants or any other pollutants, contaminants, hazardous, or toxic substances, special waste or waste of any kind or any substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or release thereof into the environment is prohibited, controlled, regulated or licensed by any federal, provincial or municipal authority or by any Environmental Laws;
- (fff) "*HEI's Personnel*" means HEI's elected and appointed officials, officers, employees, agents, volunteers, workmen, contractors, subcontractors, licensees, permittees and invitees, including without limitation the Backstretch Personnel and all members of the public and patrons of any of the Racino Operations;
- (ggg) "*Horse Racing Meet*" means the series or accumulation of days that the Operator conducts live thoroughbred horse racing on the Site in each Operating Year or calendar year of the Term, the Slots Term or the Renewal Term, if applicable;
- (hhh) "*Horse Racing Operations*" means the carrying on of a Horse Racing Meet and the operation and maintenance of a thoroughbred horse racing facility at the Site which consists of:
 - (i) carrying on live and simulcast horse racing on the Site, including all pari-mutuel betting or types of wagering thereon which utilizes the betting system and equipment on the Site or any upgraded or

replacement equipment, in accordance with the terms and conditions of this Agreement, including the Minimum Live Racing Requirements;

- (ii) the operation of those food and beverage concessions as approved by the City through its ordinary permitting, licensing and approval procedures and as permitted pursuant to all Laws of any Governmental Authorities, but in any event and notwithstanding the approval of any Governmental Authority other than the City, such uses shall be subject to the permitted uses pursuant to the Rezoning By-law and Council's prohibition on the sale or consumption of alcoholic beverages on the Slots Floor or Phase 1 Slots Floor;
- (iii) the sale of BCLC lottery tickets and the sale or playing of KENO lottery tickets only from BCLC outlets; and
- (iv) such other activities or operations related to the carrying on of the horse racing operation that may be permitted by the City, in writing, in its sole and absolute discretion;

but, notwithstanding the foregoing, Horse Racing Operations specifically excludes and prohibits the carrying on, installation, operation or making available on the Site of any Prohibited Gaming or any Expanded Gaming without the prior written consent and approval of Council, in its sole and absolute discretion, which consent or approval may be unreasonably or arbitrarily withheld, except for the permitted Slots Operations. For greater certainty, Horse Racing Operations does not include, permit or authorize any simulcast venues or teletheatres operated by the Operator or by any Affiliate or any of the Operator's Personnel within the boundaries of the City of Vancouver other than a teletheatre on the Site of a size and nature generally as in existence as at the Rezoning Date;

- (iii) *"Initial Term Capital Expenditure Obligations"* means the aggregate minimum amount of FORTY MILLION DOLLARS (\$40,000,000.00) of capital expenditures required to be made or expended by the Operator for purposes of constructing, installing or performing the Initial Term Capital Improvements and which are estimated, as of the Effective Date, to be expended on the respective Initial Term Capital Improvements as follows:

- (i) Childcare Facility = Estimated amount of \$3,400,000.00;
- (ii) Redevelopment of the Grandstand Building = Estimated amount of \$32,400,000.00; and
- (iii) Site Infrastructure = Estimated amount of \$4,200,000.00.

- (jjj) *"Initial Term Capital Improvements"* means all those capital improvements required to be made by the Operator, at its sole cost and expense, during the Term, to the satisfaction of the City, to the Site or related to the use thereof, and as a condition of Council agreeing to permit the use and development of the Site for Slots Operations, and includes the following capital improvements in order of priority:

- (i) the construction, installation, development and operation of the Childcare Facility, including all operating costs and subsidies to be paid by the Operator for the Childcare Facility's operation during the Slots Term;
- (ii) renovations, alterations, improvements and redevelopment of the Grandstand Building, including seismic upgrading (the "*Grandstand Alterations*"); and
- (iii) all associated Site infrastructure installations and improvements, including major repairs and upgrading of the Utilities and the addition of new, improved or expanded Utilities to service the Site in relation to the Grandstand Building, the Childcare Facility or as otherwise necessary for the Operator to carry on the Racino Operations, including any capital improvements to be made to satisfy the conditions for issuance of the Development Permit;

Provided That the Initial Term Capital Improvements shall include only those capital improvements and any and all capital expenditures made or incurred in respect thereof which are Eligible Capital Expenditures and made pursuant to an Approved Capital Expenditures Plan and in accordance with the Plans and Specifications, but shall specifically exclude all ordinary maintenance and repair, and all general operating expenses or improvements made or incurred by the Operator related to the Racino Operations, the Grandstand Building or their use of the Site (except in respect of the Childcare Facility) and all costs to purchase or acquire the Slots or any Trade Fixtures or to install, maintain, repair, affix, replace or remove the Slots, any Trade Fixtures or any Surveillance Equipment;

- (kkk) "*Initial Term FDF Deficit*" means that amount by which the actual costs incurred by the Operator to complete the Initial Term Capital Improvements, to the satisfaction of the City, exceeds the aggregate FDF Slots Term Payment;
- (lll) "*Interim Operating Fees*" means that amount payable by the Operator to the City for the right to use the Site, or portions thereof, for purposes of conducting the Horse Racing Operations only, as provided for in this Agreement, during the period from the Effective Date to the earlier of the Commencement Date or the Expiry Date;
- (mmm) "*Laws*" means all laws, statutes, regulations, by-laws, rules, declarations, ordinances, requirements, directions, regulatory policies, codes or standards, including without limitation the Racetrack Casino Standards, Policies and Procedures (all as may be amended from time to time), and lawful orders, decisions or judgements made by any Governmental Authority, or the City, having jurisdiction over the Slots Operations, Horse Racing Operations, any and all gaming activities or any other permitted operations, uses or activities on or pertaining to the Site or the Operator's or the Operator's Personnel's use of the Hastings Park Lands, except to the extent that any such Laws are in conflict with or inconsistent with the terms of this Agreement or any City approval, requirement or restriction;

- (nnn) "*Minimum Live Racing Requirements*" means conducting a Horse Racing Meet in each calendar year during the Term, the Slots Term and the Renewal Term, if applicable, that satisfies both the Minimum Live Racing Days and the Minimum Live Races as provided for in Section 5 of this Agreement;
- (ooo) "*Minimum Operating Fee*" means the minimum operating fees payable by the Operator to the City on an annual basis during the Slots Term in accordance with Section 12 herein, and the Renewal Term, if applicable;
- (ppp) "*MOE*" means the Ministry of Environment for the Province of British Columbia or any replacement or successor ministry with authority or jurisdiction over environmental matters within the Province of British Columbia;
- (qqq) "*Multiple Player Gaming Machine*" means any activity or game of chance for money or other valuable consideration designed to be carried out or played by more than one player either mechanically, electronically or otherwise operated or intended to be operated for gaming purposes, but specifically excludes the operation of Slots for purposes of or which participate in progressive jackpots;
- (rrr) "*Net Insurance Proceeds*" means the insurance proceeds received by the City or payable from or by the Operator or the Operator's insurer(s) to rebuild or repair the damaged or destroyed buildings, structures or Site Improvements on the Site or the Hastings Park Lands less any costs incurred by the City to collect the insurance proceeds;
- (sss) "*Net Win*" means, for any respective period, the aggregate of all revenue or monies collected by the Operator, the Operator's Personnel or any Affiliate, on behalf of BCLC, as the operator or gaming service provider, in respect of the Slots, or by BCLC directly, from the operation of the Slots on the Site less only the aggregate of all Winnings paid out over the same respective period;
- (ttt) "*Net Win Reports*" means such daily, weekly, monthly and annual reports certified by the Operator and in such format prescribed by the Racetrack Casino Standards, Policies and Procedures of BCLC, or as otherwise prescribed by BCLC, or as deemed necessary by the City to show the Average Daily Net Win and the Net Win and to calculate the Additional Percentage Operating Fees, including copies of all material in relation thereto which BCLC provides to the Operator;
- (uuu) "*New Brighton Park Connection*" means that structure or improvement that may be constructed by the City, in its sole and absolute discretion, on a portion of the Site or the Hastings Park Lands and used in the future to connect New Brighton Park, at the north end, to the Site or any portion of Lot 90, at the south end, and all publicly accessible sidewalks, bridges, overpasses, walkways, tunnels, paths, paving and other improvements or structures forming part of, connected to or incidental thereto;
- (vvv) "*Olympics*" means the 2010 Winter Olympic Games and Para-Olympic Games to be held, in part, in the City of Vancouver and includes without limitation all pre and post Olympic Games related events, ceremonies, athletic competitions and all construction, demolition and other work or activities on the Site or the

Hastings Park Lands related or incidental to hosting the Olympics, as determined necessary by the City or the City Personnel in their sole discretion;

- (www) "*Olympics Games Period*" means the period from February 5, 2010 to February 28, 2010 inclusive, or such other period as set by the City or VANOC for the ceremonies and all athletic competitions associated with the Olympics;
- (xxx) "*Olympics Restricted Operations and Access Period*" means the period from January 4, 2010 to January 31, 2010 and from March 2, 2010 to March 7, 2010, inclusive, or such other period as the City deems necessary, in its sole discretion, during which access to and use of certain portions of the Site and the Hastings Park Lands may be restricted or impacted, as provided for in Section 10 herein;
- (yyy) "*Olympics Suspension Period*" means that period from February 1, 2010 to March 2, 2010, inclusive, on a 24-hour basis, or such other period as deemed necessary by the City, in its sole discretion, for Olympics related purposes, during which the Operator's and the Operator's Personnel's rights to use the Site and the Hastings Park Lands, or any portion thereof, shall be suspended or restricted in accordance with Section 10 herein;
- (zzz) "*Operating Fees*" means those amounts payable by the Operator to the City for the right to use the Site, or portions thereof, including without limitation the Interim Operating Fees, the Minimum Operating Fees or Abated Minimum Operating Fees, the Additional Percentage Operating Fees, the Hastings Park Greening Fee and any and all such other fees or amounts payable by the Operator to the City as provided for in this Agreement;
- (aaaa) "*Operating Fees Abatement*" means or is equal to that portion of the Minimum Operating Fees that shall be abated in the respective Operating Year of the Slots Term in which the Olympic Games Period occurs, which amount shall be calculated based upon the duration of the Olympic Suspension Period and in accordance with the formula provided for in Section 10(c) herein;
- (bbbb) "*Operating Year*" means each respective calendar year during the Slots Term, except for the first Operating Year commencing on the Commencement Date (if other than January 1 of any year) and ending on the last day of the month of December of that calendar year and the last Operating Year which shall commence January 1 of the calendar year of the Expiry Date and terminate on the Expiry Date. Each Operating Year, other than the first and last Operating Year which may commence and end other than on January 1 and December 31, respectively, shall be the twelve (12) month calendar year, all subject to the early termination rights herein provided and the Olympic Suspension Period. If the Renewal Term is granted, each respective Operating Year thereof shall have a corresponding meaning with the first Operating Year of the Renewal Term commencing on the commencement date of the Renewal Term and ending on the last day of that calendar year and thereafter, each successive Operating Year shall be the corresponding calendar year thereafter, all subject to the early termination or expiry of the Renewal Term;
- (cccc) "*Operator*" means HEI and GCGC, jointly and severally, with respect to each of the covenants and all of the rights and obligations herein contained and any

reference in this Agreement to any other agreements entered into or to be entered into between the City and the Operator shall be deemed to include any agreement between the City and both or either of HEI or GCGC;

(dddd) "*Operator's Personnel*" means any or all of HEI's Personnel and GCGC's Personnel;

(eeee) "*Operator's Proportionate Share of Parkade Costs*" means the Operator's proportionate share of all of the Parkade Construction Costs or the Parkade Operating Costs, respectively, calculated by multiplying the actual Parkade Construction Costs and the Parkade Operating Costs, respectively, incurred by a percentage equal to:

500 or such greater number of parking stalls within the
Parkade minus the number of parking stalls in the Parkade
that are not available for the use of the Operator or the
Operator's Personnel or which are reserved for the exclusive use
of the City, the City's Personnel, the PNE or the PNE's Personnel
Total number of Parking Stalls in the Parkade

Provided that the City is only obligated to pay any portion of the Parkade Costs if the City requires that more than 500 stalls be constructed in the Parkade and an agreement is entered into between the City and the Operator for the joint use and operation of the Parkade and a sharing of the revenue therefrom;

(ffff) "*Park Board*" means the Board of Parks and Recreation for the City of Vancouver;

(gggg) "*Park Board's Personnel*" means the Park Board's elected and appointed officials, officers, employees, agents, volunteers, consultants, workmen, contractors, subcontractors, licensees and permittees, but for greater certainty specifically excludes the Operator and the Operator's Personnel;

(hhhh) "*Parkade*" means a new permanent parking structure to be constructed underground beneath the Racetrack oval or, in the northwest corner of the Hastings Park Lands or at such other location, as approved by Council in its sole discretion, as part of the comprehensive Hastings Park Implementation Plans or otherwise, and which shall have at a minimum five hundred (500) parking stalls and be constructed in accordance with and pursuant to the terms and conditions of the Parkade Agreement, as defined in Section 96 herein;

(iiii) "*Parkade Construction Costs*" means all costs and expenses actually incurred to complete the construction of the Parkade, including all design costs, labour costs of those persons doing the actual design and construction of the Parkade and all material used in the construction thereof, as approved by the City as Eligible Capital Expenditures pursuant to the Plans and Specifications;

(jjjj) "*Parkade Operating Costs*" means all costs and expenses directly related to the operation of the Parkade, including without limitation all labour costs of persons working at or within the Parkade or whose principal function is the

management and operation thereof and all maintenance and repair costs associated with the Parkade;

- (kkkk) "*Parkade Agreement*" means that certain agreement, if applicable, to be entered into between the City and the Operator, as a prior to condition to the City granting to the Operator any renewal of this Agreement or of the Slots Term or which is entered into by the parties during the Term if the Operator elects to build the Parkade during the Term. The agreement shall be on terms and conditions satisfactory to the City Manager and the Director of Legal Services, including without limitation those provisions provided for in Section 96(f) of this Agreement;
- (llll) "*Parking and Access Management Plan*" means that plan prepared by the City which outlines the access to and from the Site and Hastings Park Lands and the parking locations and number of spaces permitted to be used by the Operator and the Operator's Personnel on the Hastings Park Lands, which plan is subject to change by the City, in its sole discretion, from time to time during the Term and the Renewal Term, if applicable, a copy of the current parking and access management plan is attached hereto as Schedule "K";
- (mmmm) "*Percentage Operating Fee*" means the percentage operating fees calculated pursuant to Section 12 herein and used to determine the amount, if any, of the Additional Percentage Operating Fees payable by the Operator to the City during the Slots Term and the Renewal Term, if applicable
- (nnnn) "*Person*" includes any individual, partnership, firm, company, corporation, incorporated or unincorporated association, co-tenancy, joint venture, syndicate, fiduciary, estate, trust, government, governmental or quasi governmental agency, board, commission or authority, organization or any other form of entity howsoever designated or constituted, or any group, combination or aggregation of any of them;
- (oooo) "*Phase 1 Slots Floor*" means that area within the Grandstand Building, as approved by the City in writing, where the Operator intends to install and operate up to a maximum of 200 Slots pending any Slots on the Slots Floor becoming operational, as shown on the plan attached hereto as Schedule "H";
- (pppp) "*Plans and Specifications*" means those drawings, plans and specifications for the Initial Term Capital Improvements and any other Site Improvements and Alterations and, if applicable, the Renewal Term Capital Improvements, including without limitation descriptions of the materials to be used and the locations and elevations of any such improvements, as required for obtaining the City's approval and issuance of a Development Permit and Building Permit, including amendments thereto, all as approved by the City in writing and, once delivered, includes the "as built" plans and specifications;
- (qqqq) "*PNE*" means the Pacific National Exhibition, a body corporate continued under the *Pacific National Exhibition Incorporation Act*, S.B.C. 1973, c.66, as amended from time to time thereafter, and all its elected and appointed officials, officers, employees, agents, volunteers, workmen, contractors, subcontractors and licensees;

- (rrrr) *"Pre-Slots Alterations Period"* means that period from the Effective Date to the Commencement Date which for greater certainty ends upon the operation of the first Slot anywhere on the Site, including on the Phase 1 Slots Floor;
- (ssss) *"Prime Rate"* means the floating annual percentage rate of interest established from time to time by the Bank of Montreal, 595 Burrard Street, Vancouver, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as its prime rate; Provided That if a Court declares or holds the prime rate to be void or unenforceable for any reason, including uncertainty, then the rate of interest payable on amounts in arrears hereunder shall be fourteen (14%) percent per annum calculated monthly not in advance from the date due until paid;
- (tttt) *"Prohibited Gaming"* means the installation, operation or making available on the Site of any gaming tables or table games (including without limitation all card games, roulette, all dice games and baccarat), video lottery terminals, all automated, electronic or computerized gaming tables or machines, including without limitation all Multiple Player Gaming Machines, dealerless table games (including for poker, blackjack, roulette or other similar table games), used for the operation of table games, or any activity or game of chance for money or other valuable consideration designed to be carried out or played by one or more players either mechanically, electronically or otherwise operated or intended to be operated for casino gaming purposes or "lottery schemes" (as defined in the Canadian Criminal Code), except for the Slots or any gaming or games of chance as specifically permitted in this Agreement as part of the Horse Racing Operations or as otherwise approved by Council at any time hereafter. For greater certainty, Prohibited Gaming includes the installation and operation of any Slots in excess of the maximum six hundred (600) slot machines permitted by this Agreement;
- (uuuu) *"Racetrack"* means that racetrack existing or constructed on the Site which is used for live horse races and is known as Hastings Park Racetrack;
- (vvvv) *"Racino Operations"* means the Horse Racing Operations and the Slots Operations;
- (wwwv) *"Renewal Term"* means that period of fifteen (15) years commencing on the expiry of the Slots Term of this Agreement, if the City, in accordance with the terms and conditions of this Agreement, grants to the Operator a renewal of this Agreement, all subject to any early termination rights of the Renewal Term;
- (xxxx) *"Renewal Term Minimum Capital Expenditures"* means the greater of:
- (i) that capital amount required to be expended by the Operator to complete, to the satisfaction of the City, the Unconditional Renewal Term Capital Improvements (as defined in the definition of Renewal Term Capital Improvements); and

- (ii) the FDF Renewal Term Estimate minus the Initial Term FDF Deficit (hereinafter defined as the "*Residual FDF Amount*"), subject to a reduction by an amount equal to the Operator's Parkade Construction Costs if the Parkade is constructed during the Slots Term;

(yyyy) "*Renewal Term Capital Improvements*" means all those capital cost improvements (as approved in writing by the City Manager pursuant to an Approved Capital Expenditure Plan) required to be made by the Operator, at its sole cost and expense, to the Site or related to the Operator's use of the Site (in addition to the Initial Term Capital Improvements), during the Renewal Term, pursuant to this Agreement or such other agreements required by the City to be entered into by the Operator to secure the completion thereof, all on terms satisfactory to the Director of Legal Services and the City Manager, as a condition of the City granting to the Operator a right of renewal. The capital improvements required to be completed during the Renewal Term include the following in the order of priority to be undertaken:

- (i) the construction of the Parkade, in accordance with the terms and conditions of the Parkade Agreement or as otherwise agreed to by the parties, unless the Parkade is constructed during the Slots Term;
- (ii) the demolition, relocation and reconstruction of the horse barns and stables in the Backstretch Area to the satisfaction of the City;
- (iii) all associated Site infrastructure installation and improvements related to (i) or (ii), if necessary, including major repairs, upgrading of Utilities and the addition of new, improved or expanded Utilities to service the Site,

(collectively those Renewal Term Capital Improvements referred to in subsections (i) to (iii) inclusive shall be hereinafter defined as the "*Unconditional Renewal Term Capital Improvements*", except if the Parkade is constructed during the Slots Term in which case sub-section (i) shall be excluded from the Unconditional Renewal Term Capital Improvements); and

- (iv) subject to as hereinafter provided, all such other capital improvements, as may be required by the City Manager, as a condition of the City agreeing to a renewal of the Slots Term, as more specifically provided for in section 96(g) (the "*Conditional Renewal Term Capital Improvements*"); Provided That any Conditional Renewal Term Capital Improvements are only required if there is a positive FDF Renewal Term Surplus;

Provided That the Renewal Term Capital Improvements shall include only those capital improvements and any and all capital expenditures made or incurred in respect thereof which are approved by the City as Eligible Capital Expenditures and made pursuant to an Approved Capital Expenditures Plan(s) and in accordance with Plans and Specifications. Renewal Term Capital Improvements shall specifically exclude ordinary maintenance and repair work and any general operating expenses related to the Racino Operations, the Site or any

buildings, structures or improvements thereon and all costs to purchase or acquire the Slots or any Trade Fixtures or to install, maintain, repair, affix, replace, upgrade or remove the Slots or any Trade Fixtures;

(zzzz) "**Rezoning**" means the enactment of By-law No. 9119 on the Rezoning Date to amend the City's CD-1 By-law No. 3656 for 2901 East Hastings Street (the Hastings Park Lands) in order to permit slot machines at Hastings Racecourse;

(aaaaa) "**Rezoning By-law**" means By-law No. 9119 to amend CD-1 By-law No. 3656(3-B);

(bbbbb) "**Rezoning Date**" means the date that Council enacted the Rezoning, that being October 4, 2005;

(ccccc) "**Rezoning Preliminary Approval**" means the approval by Council on July 22, 2004, with conditions attached, of the application to permit the operation of the Slots at the Site;

(dddd) "**Shop Drawings**" means drawings submitted by the construction contractor or a sub-contractor at any tier or required under a construction contract, showing in detail either or both of the following:

- (i) the proposed fabrication and assembly of structural elements; and
- (ii) the installation (i.e. form, fit, and attachment details) of materials or equipment.

(eeee) "**Single Player Gaming Machine**" means any activity or game of chance for money or other valuable consideration carried out or played by one player either mechanically, electronically or otherwise operated or intended to operated for gaming purposes;

(ggggg) "**Site**" means that portion of the Hastings Park Lands, as generally shown in bold outline on the plan attached hereto as Schedule "C", including the Racetrack, the Grandstand Building, the stables, paddocks, jockey quarters and attendant facilities, but specifically excludes the following portions of the Hastings Park Lands:

- (i) any lands leased, licensed or which the City grants the right to use to or in favour of the PNE or any successor or assign or future operator of the City Lands; and
- (ii) those portions of the Hastings Park Lands which have been converted or developed or may at any time hereafter be converted or developed for park or other park related purposes as provided for herein, including without limitation the New Brighton Park Connection, if constructed at any time hereafter;

In the event of any disagreement as to the exact boundaries of the Site, such will be determined by the City Manager.

(hhhhh) "*Site Improvements*" means all buildings, structures, capital improvements and any other improvements which would constitute leasehold improvements in, on, to, for or which serve the Site or used by the Operator or the Operator's Personnel on the Hastings Park Lands, as determined according to common law, and includes without limitation, the Grandstand Building and all erections, improvements, fixtures (excluding the Slots and Operator's Trade Fixtures), equipment, and Utilities from time to time made, constructed, erected or installed by, for, on behalf of the Operator or any previous occupant or operator of the Site, in, on, to, for or which serve the Site, whether or not easily disconnected or moveable, including without limitation, all:

- (i) Initial Term Capital Improvements;
- (ii) Renewal Term Capital Improvements, if applicable;
- (iii) the Parkade, regardless of when constructed;
- (iv) partitions, doors, safes, vaults and hardware;
- (v) mechanical, plumbing, electrical, sprinkler, fire detection, safety, Utilities, communication, telecommunication, satellite, heating, humidity, ventilating and air conditioning systems, facilities, installations, fixtures, devices, controls, fittings and equipment;
- (vi) carpeting, drapes and other floor, wall, ceiling and window coverings and drapery hardware;
- (vii) light fixtures;
- (viii) security or locking devices securing all or any part of the Site;
- (ix) counters, cabinets, shelves and built-in furniture and furnishings;
- (x) internal stairways, escalators, elevators and any other transportation equipment or systems;
- (xi) ceilings and ceiling panels;
- (xii) ceiling heaters (suspended or otherwise);
- (xiii) electric baseboard heaters, furnaces and air conditioning units and all controls, fittings and equipments;
- (xiv) awnings, canopies, signs and exterior sign boxes; and

any items that would not normally be considered to be the Operator's Trade Fixtures;

- (iiiiii) "*Slots*" means the actual number of slot machines installed and operated on the Site within the Slots Floor or the Phase 1 Slots Floor, which shall not exceed a maximum of six hundred (600) slot machines, as permitted by Council to be

operated thereon and as provided for in this Agreement and the Development Permit Application (DE409601);

(jjjjj) "*Slots Floor*" means that area within the Grandstand Building, as approved by the City in writing, where the Slots are to be located or installed as shown in heavy black outline on that plan attached hereto as Schedule "G";

(kkkkk) "*Slots Operations*" means the installation and operation of a maximum of 600 Slots on the Site within the Slots Floor or 200 Slots within the Phase 1 Slots Floor, but specifically excluding and prohibiting as part of or related to such operations:

- (i) the sale, consumption or possession of any alcoholic beverages of every nature or kind whatsoever on or within the Slots Floor or in any area of the Grandstand Building designated for Slots Operations;
- (ii) any Prohibited Gaming or Expanded Gaming;
- (iii) any other gaming events, operations or devices of any nature or kind whatsoever without the prior written consent and approval of Council, in its sole and absolute discretion, except for the Horse Racing Operations as specifically permitted herein;
- (iv) any persons under the age of 19 from being within the Slots Floor or in any area within the Grandstand Building designated for or where Slots Operations are being carried on; and

any other uses of the Site without the approval of the City, except for the Horse Racing Operations;

(lllll) "*Slots Term*" means the period of five (5) years beginning on the Commencement Date and terminating at midnight, Vancouver, British Columbia time on the last day prior to the 5th anniversary of the Commencement Date, subject to the earlier termination rights set out herein;

(mmmmm) "*Structural Repairs*", "*Structural Replacements*" and "*Structural Alterations*" shall mean and refer to structural repairs, replacements or alterations, as the case may be, to footings, structural floor slabs, foundations, structural steel, load bearing exterior walls, load-bearing walls and columns, retaining walls, Utilities or to the structural roofs and any and all structural alterations and replacements thereof, additions thereto, and substitutes therefor;

(nnnnn) "*Temporary Childcare Facility*" means that interim childcare facility for the children of the Backstretch Personnel and other Racetrack workers, which is to be operated by or on behalf of the Operator, at its sole cost and expense, in co-ordination with Kiwassa Neighbourhood House, and is to be fully operational by February 1, 2008 and continuing in operation each horse racing season as provided for in the Temporary Childcare Facility Agreement until the completion of construction and opening of the Childcare Facility, all as more specifically provided for in Section 35 herein;

- (ooooo) "*Temporary Structures and Alterations*" means all those structures and alterations to be constructed, placed, installed or made to the Site, or any portion thereof, by the Operator which are necessary for carrying on the Racino Operations, including but not limited to all signs, stands, seating structures, trailers, fencing, temporary barns and stables, tents, or other structures or improvements of any nature or kind whatsoever, whether or not affixed to the Site, which are readily removable by the Operator;
- (ppppp) "*Term*" means the period from the Effective Date to the Expiry Date, subject to the earlier termination rights set out herein
- (qqqqq) "*Trade Fixtures*" means all trade fixtures as determined at common law and includes the personal chattels of the Operator installed on the Site, including without limitation the Slots, at the commencement of the Term or during the Term by or on behalf of the Operator for the sole purpose of the Operator carrying on its Racino Operations and which trade fixtures the Operator is permitted to remove as provided for in this Agreement, but "*Trade Fixtures*" specifically excludes all the Initial Term Capital Improvements, all Site Improvements and any Renewal Term Capital Improvements, if applicable;
- (rrrrr) "*Utilities*" means any and all public works or utilities, including without limitation all City Utilities and all manholes, pipes, electrical ducts, gas ducts, conduits, equipment and apparatus respecting cablevision, heat, gas, power, television, electricity, water, garbage collection, telecommunication systems and any and all other utilities of any nature or kind serving the Site, including all equipment, facilities or apparatus of any nature or kind whatsoever associated therewith or related thereto;
- (sssss) "*VANOC*" means the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Games;
- (ttttt) "*VANOC's Personnel*" means VANOC's elected and appointed officials, officers, employees, agents, volunteers, workmen, contractors, subcontractors, licensees and permittees;
- (uuuuu) "*Waste*" means "waste" as such term is defined in the EMA; and
- (vvvvv) "*Winnings*" means the aggregate amount of all monies paid out to all persons playing the Slots by the Operator, the Operator's Personnel or any Affiliate or by BCLC directly.

RIGHTS OF USE AND TERM

2. Subject to the terms and conditions set out in this Agreement, including the early termination rights provided for herein, the City hereby grants to the Operator:
 - (a) a non-exclusive right by way of license to use the Site, in common with the City, the City's Personnel, including members of the public (as authorized by the City for such purposes as specifically provided for herein or in any other agreements between the Operator and the City), and VANOC and VANOC's Personnel (for VANOC and VANOC's Personnel such rights shall only be to the extent permitted or authorized by the City, at any time hereafter, and as

required for any Olympics' related purposes, including without limitation the construction and demolition of any Olympics' related structures, facilities and improvements and all security and hosting requirements related to the Olympics), for the specific purposes only of performing the Alterations and the Initial Term Capital Improvements and for conducting the Horse Racing Operations during the Term and the Slots Operations during the Slots Term;

- (b) a non-exclusive right by way of license to use the Garbage Compound, located outside of the Site, but within the Hastings Park Lands, in common with the PNE and other users of the Garbage Compound, as approved by the City or the PNE; Provided That the Operator and the Operator's Personnel comply with all directives, rules, regulations, clean up and maintenance standards and use schedules set by the City or the PNE with regard to such area; and
- (c) a non-exclusive right by way of license to use and operate the gatehouse which provides access to the barns and Backstretch Area from Lot 9A, as shown on the plan or diagram attached hereto as Schedule "D".

3. The Operator covenants and agrees that:

- (a) the Operator shall only use the Site for the purpose of carrying on the Horse Racing Operations and Slots Operations, subject to the terms and conditions as provided in this Agreement, including without limitation Section 5 herein;
- (b) the Operator's right to conduct any Slots Operations on the Site is contingent and conditional upon the Operator throughout the Term conducting the Horse Racing Operations in accordance with the terms and conditions of this Agreement and all required approvals of any Government Authorities, including complying with the Minimum Live Racing Requirements, and having a valid and subsisting BCLC Operating Agreement, on terms and conditions satisfactory to the City, in good standing continuously throughout the Slots Term for the Racino Operations;
- (c) the Operator shall not commence any Slots Operations on the Site until all the conditions and requirements of the City pursuant to the Rezoning, the Development Permit and this Agreement have been completed to the City's satisfaction or legal agreements, on terms and conditions to the satisfaction of the City Manager and the Director of Legal Services, have been entered into to secure the Operator's completion of any and all conditions and requirements related to the Slots Operations;
- (d) subject to sub-section (e), the use of the Site, or any portion thereof, for any purposes whatsoever other than or in addition to the Horse Racing Operations and the Slots Operations, shall only be conducted with the prior written consent of the City, which consent may be arbitrarily withheld;
- (e) the Operator covenants and agrees that the Slots may only be operated on the Slots Floor or the Phase 1 Slots Floor, as approved by the City. The Operator covenants and agrees that the Phase 1 Slots Floor may only be used for Slots Operations prior to the opening and operation of any Slots on the Slots Floor and thereafter the Phase 1 Slots Floor shall be converted to some other permitted use. Any Slots installed on the Phase 1 Slots Floor must cease to be

operated prior to the operation of any Slots on the Slots Floor and must be removed by the Operator within sixty (60) days of the operation of any Slots on the Slots Floor;

- (f) the Operator shall not operate or make available for use on the Site more than six hundred (600) Slots, any Expanded Gaming or any Prohibited Gaming, without the prior written approval of Council, notwithstanding any uses permitted in the Rezoning By-law or any permission or authority granted to the Operator to do so from any Governmental Authority, other than the City, including without limitation from BCLC or the GPEB. At no time during the Slots Term shall the aggregate number of Slots in operation be greater than six hundred (600) and, subject to sub-section (e) herein, if more than six hundred (600) Slots at any time are installed or present on the Site, then any Slots in excess of the maximum six hundred (600) must immediately be removed by the Operator;
- (g) if at any time hereafter during the Term, the Slots Term or any Renewal Term, if applicable, the Operator seeks to install and operate or makes an application to install or operate more than six hundred (600) slot machines, such request or application must be brought forward to Council for Council's determination, in its sole and absolute discretion, as to whether or not to approve any such increase in the number of slot machines permitted to be operated on the Site;
- (h) during the Pre-Slots Alterations Period, the Operator covenants and agrees that it shall be bound by, to the same extent as during the remainder of the Term, all the covenants, obligations, terms and conditions of this Agreement, including without limitation the payment of the Interim Operating Fees, all provisions and restrictions related to the use of the Site, all obligations in respect of the Initial Term Capital Improvements, the provisions relating to insurance, the liability of the Operator for its acts and omissions and the acts and omissions of Operator's Personnel, all the indemnification and release provisions provided for herein, but specifically excluding:
 - (i) any obligation to pay to the City the Minimum Operating Fees, Additional Percentage Operating Fees and the Hastings Park Greening Fee;
 - (ii) any obligation to operate the Childcare Facility, but not the Temporary Childcare Facility; and
 - (iii) any obligation to make payment of the Community Legacy Fund fee;
- (i) the Operator shall provide, prior to the Commencement Date and as requested by the City at any time thereafter, to the City Manager an executed copy of a BCLC Operating Agreement, which must be to the City's satisfaction, and shall provide all other licences, permits, authorizations or documentation issued by BCLC or GPEB that authorizes or grants to the Operator the right to conduct the Slots Operations and the Horse Racing Operations, respectively, prior to conducting the Slots Operations or the Horse Racing Operations. Notwithstanding any provision herein, all rights of the Operator to conduct any Slots Operations and to operate any Slots on the Site shall immediately be suspended and this Agreement shall be subject to termination in accordance

with Section 84, if the City is not provided with a valid and subsisting BCLC Operating Agreement, satisfactory to the City Manager, as herein provided, or if the Operator is otherwise in breach of this sub-section; and

- (j) the Operator shall carry on the Racino Operations in conformity with all Laws, the BCLC Operating Agreement and all licenses, permits, authorizations or approvals issued by BCLC, GPEB or any other Governmental Authority related to the use and operation of the Racino Operations on the Site, except to the extent that any such Laws or the BCLC Operating Agreement are in conflict with or inconsistent with the terms of this Agreement or any City approval, requirement or restriction.

4. The Operator covenants and agrees that any right to conduct any new activities on or any new uses of the Site or any Expanded Gaming on the Site at any time hereafter shall be:

- (a) subject to the prior written approval of the City and specifically of Council with respect to any Expanded Gaming or Prohibited Gaming. Any such approval will be granted only in consideration for the payment to the City of such additional fees, revenue or compensation of any nature or kind whatsoever as may be required by Council;
- (b) only permitted and performed in accordance with such terms and conditions set by the City and/or Council, respectively, from time to time hereafter; and
- (c) only permitted or conducted, if done in compliance with all Laws, including without limitation the zoning of the Site, all City of Vancouver by-laws applicable to the Site and the *Gaming Control Act*.

Notwithstanding the foregoing or any other terms or conditions of this Agreement or any approvals by any Governmental Authority other than the City, including without limitation, by BCLC or GPEB, to the Operator or to any of the Operator's Personnel or to any Affiliate, with respect to carrying on the Horse Racing Operations or any Slots Operations, the Operator covenants and agrees that the City is in no way obligated or bound to permit and is in no way liable for any Claims related directly or indirectly to refusing to permit any new or additional activities or uses of the Site or any Expanded Gaming or Prohibited Gaming on the Site.

5. The Operator covenants and agrees that it shall carry on or conduct a Horse Racing Meet in each calendar year commencing on the Effective Date, in accordance with the following requirements, and the Operator's rights to conduct the Racino Operations shall be subject to the following terms and conditions:

- (a) there shall be a minimum of seventy-one (71) live thoroughbred horse racing days (the "*Minimum Live Racing Days*") at the Site in each Horse Racing Meet; and
- (b) there shall be a minimum of six hundred ninety-one (691) live thoroughbred horse races conducted during the Minimum Live Racing Days (the "*Minimum Live Races*");

subject to any Force Majeure. It being understood and agreed that financial reasons, a lack of horses for any reason whatsoever (other than due to an event of Force Majeure) or the Operator not being granted a permit, authorization or

right to conduct live horse racing by any Governmental Authority, including the GPEB, shall not be considered to be beyond the reasonable control of the Operator or an exception to the Minimum Live Racing Requirements;

- (c) forthwith after the Operator has set its schedule of live racing days for each Horse Racing Meet, the Operator will advise or cause the City to be advised of those live racing days and subsequently of any amendments thereto;
- (d) the Operator shall, within thirty (30) days after the end of each respective Horse Racing Meet provide the City with written confirmation, satisfactory to the City, as to the number of live racing days and the number of live races held during each respective Horse Racing Meet at the Site (the "*Live Racing Report*"). The Live Racing Report shall be certified as being true and accurate by an officer or director of the Operator, and shall include a statement as to whether the Operator has or has not satisfied the Minimum Live Racing Requirements;
- (e) without limiting or derogating from any other terms of this Agreement, the Operator acknowledges and agrees that, the City shall have the right to terminate this Agreement, including without limitation all rights to conduct the Slots Operations, on thirty (30) days' written notice, upon a default by the Operator of its obligations to conduct on the Site in any calendar year during the Term or the Renewal Term, if applicable, a Horse Racing Meet that satisfies the Minimum Live Racing Requirements;
- (f) notwithstanding any other provisions in this Agreement, the Operator covenants and agrees that it shall immediately cease and desist all Slots Operations and Horse Racing Operations, if the Operator loses or no longer has the authority, license, permit or authorization of the necessary Governmental Authorities including GPEB, to conduct the Horse Racing Operations as required herein; and
- (g) the City acknowledges and agrees that the Operator shall be permitted to simultaneously conduct or hold live horse racing at another facility within the Province of British Columbia, but any live racing days at another location shall not count towards the Minimum Live Racing Requirements.

6. The Operator acknowledges that the City has advised the Operator that the Site is contained within certain lands granted by the Crown in the Right of the Province of British Columbia to the City in 1889 in fee in trust (the "*Trust*") for those uses permitted by the Trust, which is deemed to include those uses permitted and as provided for in the *Pacific National Exhibition Enabling and Validating Act*, SBC 2003, c. 76 (the "*PNE Enabling and Validating Act*"). The Operator covenants and agrees that this Agreement is entered into for the purpose of passing to the Operator no greater right to use the Site than the City has the power to grant and only for such purposes or uses as may be permitted under the Trust, the PNE Enabling and Validating Act and any other Laws. The Operator covenants and agrees that the City, its successors and assigns, shall not be liable, and that the Operator, its successors and assigns, shall have no recourse against the City, its successors and assigns or any City Personnel, should this Agreement be found ineffectual to grant any right to use the Site to the Operator or should any restrictions be placed by any Governmental Authority, including by court order, upon the use to which the Site may be put pursuant to the terms of this Agreement, or should such purposes be found unlawful or in breach of the Trust, the PNE Enabling and Validating Act or any other Laws, or should the City be required to terminate

this Agreement in whole or in part on account of any breach of the Trust or on account of matters herein referred to.

7. In the event of the occurrence of any of the circumstances or events set forth in Section 6 hereof which renders the Site usable only for the Slots Operations or which in any way prohibits or prevents the use of the Site for Horse Racing Operations, such that the Operator cannot fulfill or comply with the Minimum Live Racing Requirements, then this Agreement shall be automatically terminated thirty (30) days following the occurrence of any of the circumstances or events set forth in Section 6 hereof without any liability or compensation being payable to the Operator or the Operator's Personnel by the City for any prior capital investments made by the Operator or the Operator's Personnel or for any Claims for future economic losses, of any nature or kind whatsoever, suffered or incurred by the Operator or the Operator's Personnel. Each party shall be responsible for their obligations accruing under this Agreement for all periods prior to the date of termination. In the event of the occurrence of any of the circumstances or events set forth in Section 6 herein which renders the Site not usable for the Slots Operations, then this Agreement shall continue in full force and effect with respect to the Horse Racing Operations with the Minimum Operating Fees and all other Operating Fees continuing to be payable, except for the Hastings Park Greening Fees and the Community Legacy Fund which are not due and payable for any future Operating Year after the date that the Slots Operations is no longer permitted; Provided That the Operator covenants and agrees that there shall be no abatement of any Hastings Park Greening Fee, Community Legacy Fund payment or any Additional Percentage Operating Fees paid or payable prior to such date that the Slots Operations cease to be conducted. In the event of the termination of this Agreement for any of the reasons hereinbefore provided, the Operator covenants and agrees that it shall complete any Initial Term Capital Improvements that have been commenced and restore the Site and all buildings, structures and improvements thereon, to a condition and in a manner satisfactory to the City, including without limitation if the Grandstand Alterations have been commenced to complete those that have been commenced in accordance with the terms and conditions of this Agreement.

8. The City and the Operator covenant and agree that the City may, at its option, which may be exercised arbitrarily, terminate this Agreement in accordance with Section 84, so that the Agreement shall be without any further force or effect, subject to as hereinafter provided and any releases and indemnities and any other covenants which are said to survive any termination of this Agreement, if the Operator, at any time during the Term, does not provide, within fourteen (14) days of being requested thereof by the City, written evidence satisfactory to the City that the Operator has a valid and subsisting licence, authorization, permit or approval from all necessary Governmental Authorities conferring on the Operator the full and continuing right to hold and conduct live and simulcast horse races on the Site for whatever period the Governmental Authorities allow under their applicable policies and regulations. The exercise of the option to terminate this Agreement shall be without any liability whatsoever or compensation of any nature or kind being payable by the City to the Operator. Each party shall be responsible for their obligations accruing under this Agreement for all periods prior to the date of termination.

9. The Operator covenants and agrees that in the event of any conflict or inconsistency between the terms of this Agreement, specifically in regards to the uses and the restrictions on the use of the Site pursuant hereto, and the Development Permit and the uses and the approval of any plans pursuant thereto, or the terms and conditions of the RCOSA, the terms of this Operating Agreement shall prevail and be paramount in application. The Operator covenants and agrees that the City and all City Personnel shall not be liable and that the Operator and all of the Operator's Personnel shall have no Claims or recourse against the City

or any City Personnel in the event any such conflict or inconsistency restricts or prohibits any use or development on or of the Site by the Operator in accordance with the Development Permit or the RCOSA.

OLYMPIC GAMES PROVISIONS

10. Notwithstanding any rights granted by the City to the Operator in this Agreement or otherwise to use the Site, the Hastings Park Lands or any portions thereof, the City shall have the right to suspend or restrict, in whole or in part, all rights granted to the Operator or the Operator's Personnel to use the Site and the Hastings Park Lands, or any portion thereof, and the Operator's right to carry on all the Racino Operations for such period of time, as the City deems necessary, but generally within the time parameters set forth below, for purposes of enabling the City, the City's Personnel, or VANOC and VANOC's Personnel, to carry out, perform and complete all the Olympics' related commitments, activities and works that are to take place on or relate to the Site or the Hastings Park Lands, whether such occur before, during or after the Olympics Games Period, in accordance with the following terms and conditions:

- (a) without limiting or derogating from the generality of the foregoing right of the City to suspend all, or such portion, of the rights granted to the Operator pursuant hereto, the Operator acknowledges and agrees that the Racino Operations and all other activities or operations related or incidental thereto and any use of the Site and the Hastings Park Lands by the Operator and the Operator's Personnel shall be suspended and all access to the Site and the Hastings Park Lands by the Operator and the Operator's Personnel shall be prohibited during the Olympic Suspension Period, except for emergency or essential access (as approved by the City or the City's Personnel) to the Site by the Operator or the Operator's Personnel (excluding its patrons), including to the Grandstand Building, the Backstretch Area or the Racetrack. The City may, if possible and subject to sub-section (b), permit the Operator or the Operator's Personnel to access the barns and stables in the Backstretch Area for purposes only of feeding and caring for any horses stabled thereon, but the City provides no assurance that horses will be permitted to remain on the Site during the Olympic Suspension Period. For greater certainty, no public access or access by the Operator's patrons for any Horse Racing Operations or Slots Operations shall be permitted during the Olympic Suspension Period;
- (b) the Operator covenants and agrees that any access to the Site, including to the Grandstand Building, the Backstretch Area or the Racetrack, for emergency or essential purposes by the Operator or any of the Operator's Personnel during the Olympic Suspension Period shall be subject to security clearances, background checks, an accreditation program and such other security restrictions or requirements, conducted or imposed by the City or the City's Personnel, in its sole discretion (including VANOC as so authorized by the City), for Olympics' security related purposes prior to any entry to the Site;
- (c) the City covenants and agrees that the Operator shall be entitled to an abatement of the Minimum Operating Fees due and payable to the City in the Operating Year(s) during which the Olympic Suspension Period occurs. The abatement shall be calculated on a pro rated per diem basis based upon the duration of the Olympic Suspension Period using the following formula:

Fee Abatement = Minimum Operating Fees x # of days in Olympic
Suspension Period
 365 or # days in the
 Operating Year

(the "Operating Fees Abatement");

- (d) the Operator covenants and agrees that there shall be no abatement of the Percentage Operating Fees, Additional Percentage Operating Fees or any other Operating Fees payable by the Operator in relation to the Olympic Suspension Period, except that the calculation of the Additional Percentage Operating Fees payable shall be based upon the Abated Minimum Operating Fees in that respective Operating Year(s) which includes the Olympic Suspension Period. In the event that the Slots Term has not commenced prior to the Olympic Suspension Period, but this Agreement is still in full force and effect based upon the Operator continuing to carry on the Horse Racing Operations only, there shall be an abatement of the Interim Operating Fees calculated on the same per diem basis as the Operating Fees Abatement;
- (e) in addition to the rights of the City to suspend the rights granted to the Operator in this Agreement and to require the closure or ceasing of all Horse Racing Operations and Slots Operations by the Operator during the Olympic Suspension Period (as described in subsection (a) herein), the Operator acknowledges and agrees that during the Olympics Restricted Operations and Access Period that, notwithstanding the Site shall remain open for the Operator's Racino Operations, access and/or use of certain portions of the Site or of the Hastings Park Lands by the Operator and the Operator's Personnel shall be restricted, controlled or prohibited, as the City or the City's Personnel deems necessary, and certain aspects of the Operator's Racino Operations may be negatively impacted or restricted, including without limitation, as follows:
 - (i) the Operator and the Operator's Personnel shall not be permitted to park any vehicles within Lots 7 or 8, as shown on the plan attached hereto as Schedule "L". However, the City, without any liability or obligation therefor, shall make reasonable attempts to provide and to relocate the parking available for the Operator and the Operator's Personnel to Lot 9 (as shown on Schedule "L") or to such other locations on the Hastings Park Lands or in the vicinity thereof, as the City so determines;
 - (ii) access to and use of the Site by the Operator and the Operator's Personnel shall be restricted or controlled by the City or the City's Personnel (including VANOC or VANOC's Personnel as so authorized by the City) such that vehicle access will be permitted only within and to specific locations within the Site and the Hastings Park Lands, as designated by the City or the City's Personnel for specific user groups, including the Operator and the Operator's Personnel, with a predetermined number of parking stalls allocated by the City or the City's Personnel, in their sole discretion, for the respective users or types of users of the Site;
 - (iii) the City and the City's Personnel shall each have the right to place restrictions on the use of or access to or within certain portions of the

Site or the Hastings Park Lands, such that either no vehicles will be permitted or access would be restricted to only those vehicles having certain parking passes issued by the City or the City's Personnel;

- (iv) the City and the City's Personnel shall each have the right to restrict the Operator and the Operator's Personnel's walking access to certain portions of the Site or the Hastings Park Lands and to develop safe pedestrian walkways or pathways from permitted parking locations to various areas of the Site that the Operator or the Operator's Personnel would need access to for purposes of the Racino Operations; and
- (v) the City and the City's Personnel shall each have the right to install or construct fencing on, within or around the Site, or portions thereof, or the Hastings Park Lands, to restrict or prohibit access to certain portions of the Site or the Hastings Park Lands, as deemed necessary in their sole discretion;
- (f) the Operator acknowledges and agrees that the City and the City's Personnel shall each have the right to require that the Operator or the Operator's Personnel, at their sole cost and expense, cover up or, if not possible or satisfactory, remove any signage, commercial identification or advertisements of every nature or kind whatsoever that the Operator or the Operator's Personnel places or permits to be placed, installed or erected on the Site, during either or both of the Olympic Suspension Period and the Olympics Restricted Operations and Access Period, as determined by the City or the City's Personnel. The Operator acknowledges and agrees that the City or the City's Personnel shall be entitled to install or erect any signage or advertisements related to or in sponsorship of the Olympics that either deems necessary on the Site during the Olympic Suspension Period or the Olympic Restricted Operations and Access Period at the City's sole cost and expense;
- (g) the Operator covenants and agrees that it shall not disclose or promote its relationship with the City or any rights granted to the Operator by this Agreement in any communications, including without limitation any verbal declarations, announcements, sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials (collectively, the "*Communications*") in a manner which would suggest or create an association express or implied, between the Operator and the International Olympic Committee, the 2010 Olympic and Para-Olympic Winter Games, the Olympic Movement or VANOC. Without limiting the generality of the foregoing, the Operator shall not refer to "VANOC", "VANCOUVER 2010", "THE 2010 GAMES", "THE GAMES", "HOST CITY", "OLYMPIC OR OLYMPICS" and shall not use any official emblem, logo or mascot of the 2010 GAMES or the Olympics in any Communications, without the express prior written consent of the City, which may be withheld in the City's sole and absolute discretion;
- (h) the Operator covenants and agrees that it shall not be entitled to any compensation, damages or payments from or by the City or VANOC or any abatement of any Operating Fees or of any other amounts payable by the Operator to the City of any nature or kind whatsoever as a result of any suspension of this Agreement or of the Operator's or the Operator's Personnel's rights to use the Site, or any portion thereof, or as a result of, relating to or

incidental to any restrictions on the Operator's or the Operator's Personnel's rights to use or access the Site or the Hastings Park Lands, as provided for herein, during the Olympics Suspension Period or the Olympics Restricted Operations and Access Period, except for the Operating Fees Abatement and the abatement of the Interim Operating Fees as specifically provided for in this Agreement. The Operator covenants and agrees that the City, the City Personnel, VANOC and VANOC's Personnel shall not be liable to the Operator or the Operator's Personnel and the Operator releases and waives any and all Claims for damages, losses, economic losses, loss of use, costs and any other compensation of every nature or kind whatsoever it may have, now or at any time in the future, against the City, the City Personnel, VANOC or VANOC's Personnel resulting from or incidental to the suspension or restrictions of the Operator's or the Operator's Personnel's rights to use or access the Site, or any portion thereof, or the Hastings Park Lands, or to conduct any of its Racino Operations or any other activities or operations on the Site during the Olympic Suspension Period or the Olympics Restricted Operations and Access Period. This release shall survive the termination of this Agreement for any reason whatsoever;

- (i) the Operator covenants and agrees to comply with and to cause the Operator's Personnel to comply with any notice or direction of the City, any City Personnel, VANOC or any of VANOC's Personnel in respect of the Olympic Suspension Period and the Olympic Restricted Operations and Access Period with respect to use of the Site or the Hastings Park Lands. The Operator agrees that it shall not seek any injunctive relief or other remedies in order to remain in possession of or to continue using the Site, the Hastings Park Lands, or any portion thereof, in a manner that conflicts with any such notice or direction; and
- (j) any and all rights of VANOC or VANOC's Personnel, as provided for in this Agreement, including without limitation those to be exercised by VANOC or VANOC'S Personnel in its sole discretion, shall only exist if and as may be granted, approved or authorized by the City from time to time hereafter. Any disagreements arising from VANOC or VANOC's Personnel's exercise of any rights pursuant to this Agreement shall be decided or determined by the City Manager, in her sole and absolute discretion.

OPERATING FEES

11. The Operator covenants and agrees to pay to the City, when due, by delivery to the City's Real Estate Services Department (or to such other place or to such other department as designated by the City from time to time hereafter) all Operating Fees and any other fees, charges or amounts payable in accordance with the terms of this Agreement, without deduction, set off or abatement, except as specifically provided for in respect of the Olympic Suspension Period or otherwise in this Agreement.

12. The Operator covenants and agrees to pay to the City, without any prior demand by the City or notice thereof, those Operating Fees in each Operating Year during the Slots Term calculated and payable as follows:

- (a) an annual minimum fee of ONE MILLION DOLLARS (\$1,000,000.00), subject to a pro-rata adjustment on a per diem basis for the first and last Operating Year if

less than 365 days, plus all applicable taxes payable thereon, with the first payment payable on the Commencement Date and, subject to an increase at the commencement of each Operating Year thereafter by the CPI Inflation Adjustment, each successive payment being due in advance on the first day of each and every Operating Year during the Slots Term and of any Renewal Term, if applicable, (the "*Minimum Operating Fees*"). The Minimum Operating Fees shall be payable during the Slots Term, regardless of whether the Operator is conducting the Slots Operations for any reason whatsoever, subject to the abatement related to the Olympic Suspension Period in the respective Operating Year;

- (b) in addition to the Minimum Operating Fees payable by the Operator to the City, the Operator shall pay to the City at the end of each Operating Year or within thirty (30) days of the Expiry Date or the earlier termination of this Agreement, as hereinafter provided, as additional operating fees (the "*Additional Percentage Operating Fees*") that amount, if any, equal to the amount by which the Percentage Operating Fees (calculated in accordance with Section 12(c)) for each respective Operating Year exceeds the Minimum Operating Fees for that respective Operating Year (as adjusted by the CPI Inflation Adjustment in accordance with Section 12(a) herein and as adjusted on a pro-rata per diem basis for any Operating Year that is less than three hundred sixty-five (365) days or as abated, if applicable, based upon the Olympic Suspension Period), plus all applicable taxes thereon. For greater certainty, the Additional Percentage Operating Fees for any respective Operating Year shall only be due and payable for any respective Operating Year, if the Percentage Operating Fees for a respective Operating Year (calculated pursuant to Section 12(c)) exceeds the lesser of:
 - (i) ONE MILLION DOLLARS (\$1,000,000.00) or such amount adjusted pro-rata on a per diem basis for any Operating Year that is less than three hundred sixty-five (365) days, as adjusted annually by the CPI Inflation Adjustment, for the corresponding Operating Year; and
 - (ii) the Abated Minimum Operating Fees, if applicable, in any Operating Year.

In such event, the Operator shall pay to the City, in addition to the Minimum Operating Fees, the difference between the Percentage Operating Fee for the respective Operating Year and the Minimum Operating Fees or the Abated Minimum Operating Fees, respectively, for that corresponding Operating Year, as herein provided, plus applicable taxes;

- (c) for purposes of determining and calculating the amount of the Additional Percentage Operating Fees payable by the Operator, the Percentage Operating Fees for each respective Operating Year during the Slots Term shall be equal to the aggregate sum derived by adding together the following amounts, calculated based upon the percentages of the aggregate Net Win for each Operating Year:
 - (i) two (2%) percent of the aggregate Net Win for each respective Operating Year for that portion of the Net Win which when calculated

on an Average Daily Net Win basis is less than TWO HUNDRED DOLLARS (\$200.00) per day per slot machine; plus

- (ii) three (3%) percent of the aggregate Net Win for each respective Operating Year for that portion of the Net Win which when calculated on an Average Daily Net Win basis is between TWO HUNDRED DOLLARS (\$200.00) per day per slot machine and THREE HUNDRED DOLLARS (\$300.00) per day per slot machine; plus
- (iii) four (4%) percent of the aggregate Net Win for each respective Operating Year for that portion of the Net Win which when calculated on an Average Daily Net Win basis is greater than THREE HUNDRED DOLLARS (\$300.00) per day per slot machine;
- (d) the Additional Percentage Operating Fees shall be payable by the Operator to the City on or before the thirtieth (30th) day after the last day of each respective Operating Year during the Slots Term or the Expiry Date, as applicable, unless the Agreement is earlier terminated and in such event within thirty (30) days of the termination date;
- (e) if any Operating Year during the Slots Term of this Agreement is less than twelve (12) calendar months due to the Olympic Suspension Period, the Minimum Operating Fees that the Operator shall be required to pay pursuant to Section 12(a) shall be subject to a per diem abatement and the Minimum Operating Fees and Additional Percentage Operating Fees payable by the Operator to the City shall be subject to the following adjustments:
 - (i) if the Percentage Operating Fees exceed the Abated Minimum Operating Fees, the Operator shall pay to the City the amount equal to the Abated Minimum Operating Fees plus, as Additional Percentage Operating Fees, the amount equal to the difference between or the amount by which the Percentage Operating Fees for that respective Operating Year exceeds the Abated Minimum Operating Fees; or
 - (ii) if the Abated Minimum Operating Fees exceed the Percentage Operating Fees payable for that shortened Operating Year, then within thirty (30) days after the later of the end of that respective Operating Year (or the Expiry Date) and the Operator providing to the City the Net Win Reports, the City shall refund to the Operator as an abatement of the Minimum Operating Fees that amount equal to the difference between the Minimum Operating Fees already paid by the Operator to the City at the commencement of that respective Operating Year and the Abated Minimum Operating Fees.

13. During the Pre-Slots Alterations Period, the Operator shall not be required to pay the Minimum Operating Fees, Additional Percentage Operating Fees, Hastings Park Greening Fees or any Community Legacy Funds payments, but shall pay to the City as a licence/operating fees (the "Interim Operating Fees") the following amounts and charges:

- (a) the Operator, subject only to the earlier termination of this Agreement and its Horse Racing Operations, shall pay for the period from May 1, 2007 to the earlier of April 30, 2012 or the Commencement Date, Interim Operating Fees

per month of EIGHTY-THREE THOUSAND THREE HUNDRED THIRTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$83,333.33) (or ONE MILLION DOLLARS (\$1,000,000.00) on an annual basis) payable in advance on the first day of each and every month;

- (b) if the Commencement Date does not occur prior to April 30, 2012, then the Operator, subject only to the earlier termination of this Agreement and its Horse Racing Operations, shall pay for the period from May 1, 2012 to the earlier of April 30, 2017 or the Commencement Date Interim Operating Fees per month of ONE HUNDRED EIGHT THOUSAND THREE HUNDRED THIRTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$108,333.33) (or ONE MILLION THREE HUNDRED THOUSAND DOLLARS (\$1,300,000.00) on an annual basis) payable in advance on the first day of each and every month; and
- (c) all charges or costs for all Utilities, consumed by it on the Site and all taxes and any other Operating Fees, except as specifically herein provided.

If the Commencement Date occurs at any time prior to April 30, 2012, then the Operator shall discontinue paying the Interim Operating Fees, as hereinbefore provided, as of the Commencement Date and in substitution thereof shall pay all the other Operating Fees and all other amounts, charges and fees as provided for in this Agreement, including without limitation the Hastings Park Greening Fees and Community Legacy Fund payments.

14. The Percentage Operating Fees and corresponding Additional Percentage Operating Fees payable shall be computed for each Operating Year. There shall be no carry backs or carry forwards. All Percentage Operating Fees and Additional Percentage Operating Fees shall accrue from day to day and any calculation thereof for a period of less than one (1) year shall be pro-rated on a per diem basis.

15. In addition to the Minimum Operating Fees, the Additional Percentage Operating Fees and any other Operating Fees payable pursuant to this Agreement, the Operator covenants and agrees to pay, annually in advance, to the City during the Slots Term:

- (a) the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) being the Hastings Park Greening Fee. The City will use or direct the Hastings Park Greening Fee towards the greening of Hastings Park, as approved by Council from time to time hereafter. Council shall have absolute discretion in terms of how and to what improvements the Hastings Park Greening Fees are allocated and spent. The Hastings Park Greening Fee shall be payable on the Commencement Date and on each anniversary date of the Commencement Date thereafter during the Slots Term without any prior demand by the City. As a prior to condition to the City granting any renewal of this Agreement for the Renewal Term, the Operator shall agree to pay and during the Renewal Term, if applicable, the Operator shall pay to the City on the commencement date of any Renewal Term that amount equal to the Hastings Park Greening Fee as increased or adjusted by the CPI Inflation Adjustment compounded annually for each year of the Slots Term from the Base Year to the calendar year of the commencement date of the Renewal Term and shall be increased for each year thereafter during the Renewal Term by the CPI Inflation Adjustment with the base year for purposes of the CPI Inflation Adjustment calculation being the calendar year of the commencement of the Renewal Term, but shall not in any

event be less than the amount of the Hastings Park Greening Fee payable during the Slots Term; and

- (b) the Community Legacy Fund fee in accordance with the Community Legacy Fund Agreement between the City and the Operator entered into or to be entered into as a condition of issuance of the Development Permit. The Community Legacy Fund fee shall be payable on the Commencement Date and on each anniversary of the Commencement Date thereafter during the Slots Term and during the Renewal Term, if applicable. The amount of the Community Legacy Fund payment shall be increased annually by the CPI Inflation Adjustment both during the Slots Term and the Renewal Term, if applicable, pursuant to Council's approval of the public benefits made on October 4, 2005.

16. If the audited statements to be furnished by the Operator to the City, pursuant to this Agreement, at the end of each Operating Year discloses a deficiency or underpayment of the Additional Percentage Operating Fees or any other Operating Fees paid by the Operator during the Operating Year or at the end of each Operating Year, then simultaneously with the furnishing of such audited statements the Operator shall pay to the City any deficiency.

17. Within thirty (30) days following the end of each Operating Year during the Slots Term, (including the last Operating Year of the Slots Term), the Operator shall deliver to the City, at the place then fixed for the payment of the Operating Fees, together with payment of the annual Additional Percentage Operating Fees, a written statement (the "*Net Win Reports*") signed by an authorized signatory for the Operator which Net Win Reports shall provide:

- (a) confirmation of the aggregate Net Win for the respective Operating Year and on a month by month basis during each Operating Year for all the Slots;
- (b) a certification by an officer or director of the Operator that the Net Win as reported in the Net Win Reports is true and correct;
- (c) copies of all financial information and records related to the Slots, including without limitation the Net Win, the Winnings and all revenue or monies taken in from the Slots, which the Operator provides or is obligated to provide to BCLC or which BCLC maintains and provides to the Operator in relation to the Slots and the Operator's compensation as a gaming service provider; and
- (d) all such other financial details and records in such form and scope as the City determines necessary, including without limiting the previous requirements, the Net Win Reports showing the gross amount wagered for each month during the Operating Year for each of the Slots and the gross prize payouts for each month of the Operating Year for each of the Slots.

18. Within ninety (90) days following the end of each Operating Year (including the last Operating Year of the Slots Term), the Operator shall deliver to the City, at the place then fixed for the payment of Operating Fees a written statement confirming the aggregate amount of the Net Win for all and for each of the Slots that was earned in the most recent Operating Year, duly audited by an independent chartered accountant (the "*Auditor*"), whose professional opinion shall without qualification, state specifically that the Auditor has examined the Net Win Reports and all supporting financial reports, records and information related to the operation of the Slots (the "*Slots Financial Records*") for the completed

Operating Year, and that the Auditor's examination included a general review of the Operator's accounting procedures and the Operator's books and records and other supporting evidence, as the Auditor considers necessary in the circumstances, and that, in the Auditor's opinion, such Net Win Reports presents fairly and accurately the amount of the Net Win for the most recently completed Operating Year in accordance with the provisions of this Agreement and generally accepted accounting principles.

19. For the purposes of ascertaining the amount payable as Additional Percentage Operating Fees, the Operator shall prepare and keep at the Operator's head office in Richmond, British Columbia for at least three (3) years following the end of the each Operating Year, complete and accurate books and records that adhere to generally accepted accounting principles, which shall include without limitation daily receipts and payouts from each of the Slots and any such other records as the City or BCLC, pursuant to the RCOSA, reasonably requires for purposes of determining and calculating the Net Win from the Slots, those records required to satisfy the requirements of the income, sales tax and GST authorities and all such other financial information that would normally be examined by an auditor pursuant to generally accepted auditing standards, in performing a detailed audit of the Operator's Slots Operations.

20. The receipt or use by the City of any Net Win Reports from the Operator, or any payment by the Operator of the Additional Percentage Operating Fees based thereon, shall neither constitute acceptance by the City of such statement or of the accuracy of the amount of Additional Percentage Operating Fees payable with respect to any Operating Year nor shall such constitute a waiver by the City of any obligation of the Operator hereunder. Any receipt by the City of any Operating Fees shall be without prejudice to the City's right to an examination of the Operator's books and records relating to the Net Win derived from its Slots Operations at the Site. The City and the City's Personnel shall have the right to examine, inspect or reproduce (including causing the Operator to provide any reproductions) the Operator's records and procedures and Net Win Reports as aforesaid during the regular business hours and shall have the right to have a person at the Site to examine, inspect or reproduce any accounting records and procedures.

21. In the event of any inconsistency between the Net Win Reports of the Operator or those of BCLC's Computer System (as defined in the RCOSA), the financial record shall, if the Operator's calculation of Net Win is lower, be determined by BCLC's Computer System and the Operator shall be bound thereby and shall account to the City on the basis of the financial information generated by BCLC's Computer System. Alternatively, the City may from time to time conduct or cause a complete audit to be performed and audited statements to be prepared by the City's auditors or chartered accounts of the Operator's Slots Operations and its records and procedures relating to the calculation of the Net Win and the Operating Fees payable to the City pursuant to this Agreement. If the City's auditor or chartered accountants performing such audit report to the City that, in its opinion, the Operator's records and procedures are insufficient to permit a determination of the Net Win for any Operating Year, or part thereof, or if the Operator is not complying with each of the provisions of this Agreement related to the calculation of the Net Win and the Operating Fees or the accounting or reporting thereof, the Operator shall immediately, after notice from the City, take such steps as are necessary to remedy such default. If the Operator is unable to satisfy forthwith the objections contained in the City's auditor's report, the City may thereafter deliver to the Operator an estimate (which shall be final and binding on the Operator) made by the City of the Net Win for the period under consideration (which estimate shall be based on any further information or records of the Operator that have been made available and such other information that the City considers relevant) and the Operator shall immediately pay to the

City any amount shown thereby to be owing on account of the Additional Percentage Operating Fees. If the City's auditor reports that the Operator is in default pursuant to the requirements of this Agreement or that, in its opinion, the Operator's records and procedures are insufficient to permit a determination of the Operator's Net Win or if such audit discloses that the Net Win for any Operating Year is understated by two (2%) percent or more, the Operator shall forthwith after notice from the City pay to the City as additional Operating Fees the cost of such audit plus any deficiency, which deficiency is payable in any event. Furthermore, in the event of a deficiency of two (2%) percent or greater for any Operating Year, the City shall perform an audit in the following Operating Year and the Operator shall pay the City's cost of such audit in the following year. In addition to any other rights or remedies of the City under this Agreement or at all, the City may, at its option, terminate this Agreement upon thirty (30) days notice to the Operator in the event of a breach of the financial reporting provisions on more than one occasion or if a deficiency greater than five (5%) percent shall be determined to exist for any Operating Year.

22. If the Operator fails to pay any Operating Fees or any other amount when due hereunder (the "Unpaid Amount"), the Operator shall pay upon demand a financial charge on any such Unpaid Amount from the date due thereof to the date of payment thereof, the amount of which financial charge shall be the amount obtained by multiplying the Unpaid Amount by the rate per annum which is five (5%) percentage points in excess of the Prime Rate, calculated monthly not in advance. Nothing herein contained shall be construed so as to compel the City to accept any payment of Operating Fees in arrears should the City elect to exercise any of its other rights or remedies under the provisions of this Agreement in the event of a default by the Operator. The City shall have all the remedies for the collection of any interest due on Unpaid Amounts as in the case of Operating Fees in arrears.

23. Save and except for any real property taxes payable under the *Vancouver Charter* or any other legislation, the Operator shall pay when due all taxes, including all good and services taxes, value added taxes, sales taxes, business taxes and consumption based taxes, rates, levies and assessments which are from time to time payable by or levied, assessed or imposed upon the Operator or the City as a result of or that would not be payable but for the rights and obligations contained in this Agreement, the Operator's use of the Site or the conducting of any Racino Operations thereon, including without limiting the generality of the foregoing, such taxes, rates, levies and assessments payable as a result of any payment obligations herein of the Operator to the City of any of the Operating Fees, but not including any income or capital taxes, if any, levied in respect of the City's income or capital. Any losses, costs, charges and expenses incurred or suffered by the City which relate to such taxes, rates, levies and assessments are deemed to be and may be collected by the City as additional Operating Fees with all rights and remedies under this Agreement being available to the City as are reserved to the City in respect of any Operating Fees in arrears.

CAPITAL EXPENDITURES

24. The Operator covenants and agrees that it shall make all the necessary capital expenditures to cause the Initial Term Capital Improvements to be completed to the satisfaction of the City, at the Operator's sole cost and expense, and for the Parkade if the Operator, in its sole discretion, determines that it desires to construct the Parkade during the Term, all in accordance with the following terms and conditions:

- (a) subject to as hereinafter provided, if any Slots are at any time operated on the Site, then each of the Initial Term Capital Improvements shall be completed to the City's satisfaction by no later than the Expiry Date, and in any event prior

to and as a condition of any renewal or extension of the Slots Term of this Agreement and of the City granting any Renewal Term to the Operator, save and except for:

- (i) the Childcare Facility which shall be completed in accordance with subsection (b) herein; and
 - (ii) any capital improvements required to be made to satisfy any of the Development Permit conditions shall be completed prior to the Expiry Date or by such date as per the terms of any agreements between the parties made in satisfaction of the Development Permit conditions;
- (b) the construction of the Childcare Facility shall be completed by the Operator within two (2) years of the Commencement Date or such later date as approved by the City, in accordance with the terms and conditions of the Childcare Agreement(s);
- (c) prior to the commencement of the construction, installation or other work related to the Initial Term Capital Improvements or the Parkade, if the Operator wishes to construct the Parkade during the Term, the Operator shall apply for and obtain from the City any development permits, building permits and any other permits necessary to construct or install the Initial Term Capital Improvements or the Parkade, which includes any works, services or landscaping required pursuant to any agreements to be entered into between the parties pursuant to the Development Permit conditions, and at the same time shall deliver to the City the Plans and Specifications and exterior decoration and design of the proposed Initial Term Capital Improvements or the Parkade for the City's approval;
- (d) the Operator shall not construct, install or demolish or cause to be constructed, demolished or installed on the Site or on the Hastings Park Lands any buildings, structures, installations, facilities or other improvements, including without limitation any Initial Term Capital Improvements or the Parkade, without first obtaining the written approval of the City of an Approved Capital Expenditure Plans and of the Plans and Specifications. The Operator shall not make or cause or permit to be made any changes, alterations, replacements, substitutions or additions to the Grandstand Building or to any Site Improvements presently situate on the Site or the Hastings Park Lands, or hereafter constructed thereon, without first obtaining the written approval of the City therefor. The Operator covenants and agrees that in constructing any buildings, structures or improvements or in making any Alterations to any buildings, structures or Site Improvements pursuant hereto, it shall comply with all applicable Laws, including all bylaws of the City, and shall apply for and obtain all necessary approvals and permits from the City prior to commencing any construction or making any Alterations that require a permit. The Operator acknowledges and agrees that by consenting to any Alterations, the City is not in any way stating, warranting or representing that the Alterations are permitted under the City of Vancouver's building bylaws or any other relevant Laws, bylaws, policies or procedures. No consent given by the City will affect the Operator's obligations to comply, at its sole cost and expense, with all City of Vancouver bylaws, policies or procedures or any Laws;

- (e) no material changes or related series of changes shall be made to the Plans and Specifications or to the location, exterior decoration, design or exterior appearance of the Grandstand Building or the appearance of the Site without the prior written approval of the City;
- (f) if the Operator constructs any buildings, structures, improvements or additions on the Site or the Hastings Park Lands or makes any Alterations to the existing buildings, structures or any Site Improvements, it shall be the sole responsibility of the Operator to determine the location of any Utilities on, under or within the Site or the Hastings Park Lands and to ensure that any work performed by the Operator or any of the Operator's Personnel on the Site or on the Hastings Park Lands is carried out in such a manner as not to damage or interfere with the Utilities in any way whatsoever. Without in any way limiting any indemnity provided by the Operator in favour of the City in this Agreement, the Operator does hereby covenant with the City that the Operator shall indemnify and save harmless the City and the City's Personnel from all Claims incurred or suffered by or made against the City or the City's Personnel with respect to any damage to or interference with the City Utilities or any other Utilities;
- (g) any Initial Term Capital Improvements or other Site Improvements shall be made only in accordance with an Approved Capital Expenditure Plan and the Plans and Specifications and shall be completed and performed expeditiously and in good and workmanlike manner. All products or materials to be used or supplied in connection with the Initial Term Capital Improvements or other Site Improvements, including any Renewal Term Capital Improvements, if applicable, shall be new and of a quality acceptable to the City;
- (h) if the Operator incurs any costs or makes any capital expenditures or is required to incur any costs or make any capital expenditures in excess of the minimum Initial Term Capital Expenditure Obligations, in order to complete the Initial Term Capital Improvements to the satisfaction of the City, all such capital expenditures shall be made at the Operator's sole cost and expense;
- (i) the Operator and the City acknowledge that the estimated amounts provided for in the definition of "Initial Term Capital Expenditure Obligations" (Section 1(iii)) are only estimates of the cost to complete each of the respective Initial Capital Improvements. The City and the Operator agree that the Operator shall not be required to expend the full estimated amount on each of the respective Initial Term Capital Improvements; Provided That the Operator completes each respective Initial Term Capital Improvements to the satisfaction of the City and in the aggregate, the Operator expends a minimum of FORTY MILLION DOLLARS (\$40,000,000.00) to complete all of the Initial Term Capital Improvements to the satisfaction of the City;
- (j) only those capital expenditures made by the Operator which are Eligible Capital Expenditures shall qualify as, be applied towards or be deemed to be in satisfaction of the Operator's Initial Term Capital Expenditure Obligations;
- (k) in addition to any other rights of the City, as provided for in this Agreement, if all the Initial Term Capital Improvements are not completed by the Operator to the City's satisfaction within the time requirements set out in this section, then

the Operator shall pay to the City in cash by no later than the Expiry Date the difference between FORTY MILLION DOLLARS (\$40,000,000.00) and the dollar amount of the Eligible Capital Expenditures made prior thereto. This covenant shall survive the termination of this Agreement;

- (l) the Operator shall provide to the City during the Term, within sixty (60) days of the completion of each of the respective Initial Term Capital Improvements, such documentation and invoices, satisfactory to the City which confirm that the Eligible Capital Expenditures made by the Operator, pursuant to the Approved Capital Expenditure Plan, satisfy and meet the Operator's Initial Term Capital Expenditure Obligations. In the event of any disagreement between the Operator and the City as to whether any capital expenditure made by the Operator for the Initial Term Capital Improvements constitutes an Eligible Capital Expenditure, such disagreement will be settled by the City Manager. This provision shall apply equally to the Renewal Term Capital Improvements, if applicable;
- (m) all the Initial Term Capital Improvements and any Renewal Term Capital Improvements, if applicable, including without limitation the Parkade (subject to any rights granted by the City to the Operator to operate and to receive any or all revenue from the Parkade, pursuant to this Agreement and the Parkade Agreement) in, on, for or which serve the Site shall immediately become the absolute property of the City upon construction, completion, affixation or installation, without any compensation therefor being payable by the City to the Operator, but the City shall have no obligation to repair, replace, operate, maintain, insure or be responsible in any way for any such improvements during the Term or the Renewal Term, if applicable, all of which shall be the Operator's responsibility, subject to the terms of this Agreement related to the sharing of any Parkade Operating Costs and the Parkade Agreement;
- (n) during the period of construction or installation of any of the Initial Term Capital Improvements and during any subsequent period of construction or installation relating to any material alteration, reconstruction or replacement of all or any part of the Site Improvements, the Operator shall deliver to the City every two (2) months during such construction a certificate from the Architect to confirm the percentage of the work done to the date of such certificate and the cost of such work as approved by such Architect;
- (o) the Operator warrants for itself and all contractors and subcontractors that the Initial Term Capital Improvements, all Site Improvements, any Renewal Term Capital Improvements, if applicable, and any and all Alterations, including all labour and materials, are and will be of good professional quality and conform in all respects to the Plans and Specifications, building permits and applicable Laws. Furthermore, the Operator warrants that the Initial Term Capital Improvements and the Renewal Term Capital Improvements, if applicable, and all Site Improvements and Alterations shall be free from defects in workmanship or materials, whether supplied by the Operator or any contractor, subcontractor or any Person providing the labour or materials related thereto, for the Warranty Period as hereinafter provided. Nothing contained herein limits the rights of the City in relation to recovery for latent defects or otherwise limits the rights of the City at law or in equity;

- (p) any contractors or subcontractors retained or hired by the Operator or any of the Operator's Personnel shall be responsible to the Operator and nothing contained in the contract documents shall create a contractual relationship between such contractors or subcontractors and the City; and
- (q) if the Operator or the Operator's Personnel installs any surveillance cameras or equipment (the "*Surveillance Equipment*") on the Site or on the Hastings Park Lands, including with the permission of the City, all such Surveillance Equipment shall be the absolute property of the Operator during the Term or any Renewal Term, if applicable. The Operator shall be responsible for all maintenance, repairs and monitoring during the Term and Renewal Term of the Surveillance Equipment and the removal thereof at the end of the Term or Renewal Term, if applicable, except if the cost of installing the Surveillance Equipment is part of the Initial Term Capital Improvements or the Renewal Term Capital Improvements in which event the Surveillance Equipment shall become the property of the City upon the expiration of the Term or Renewal Term, if applicable.

LETTER OF CREDIT

25. As security for the obligations of the Operator to complete the Grandstand Alterations to the satisfaction of the City Manager, the Operator shall, prior to the commencement of any phase or portion of the Grandstand Alterations, deliver or cause to be delivered to the City the Grandstand Alterations Phase Letter(s) of Credit to secure the completion of each respective phase or portion of the Grandstand Alterations being commenced. Neither the City nor any of the City's Personnel shall have any obligation to issue any building permit for any of the Grandstand Alterations until the Grandstand Alterations Phase Letter(s) of Credit has been deposited with the City and the Director of Legal Services has approved the terms of the Grandstand Alterations Phase Letter(s) of Credit.

The Operator and the City acknowledge and agree that:

- (a) Grandstand Alterations Phase Letter(s) of Credit will be required for all structural demolition and for all Structural Repairs, Structural Replacements and Structural Alterations only;
- (b) the Operator, at its sole cost, will provide the City with paper prints of the Shop Drawings for each phase or portion of the Grandstand Alterations, with a schedule of construction and a detailed estimate of the cost of the respective Grandstand Alterations for such phase, prepared and signed by an Architect or Professional Engineer in good standing in the Province of British Columbia, all to the satisfaction of the City Manager, prior to commencement of any phase or portion thereof which clearly identifies all structural demolition and Structural Repairs, Structural Replacements and Structural Alterations being effected in such phase or portion thereof; and
- (c) following completion of any phase or portion of the Grandstand Alterations the Operator shall deliver to the City a written statement, signed by an authorized signatory for the Operator and certified in writing by a suitably accredited Architect or Professional Engineer in good standing in the Province of British Columbia, and satisfactory to the City Manager, of the actual amount expended

for structural and non structural Grandstand Alterations during such phase or portion thereof on an itemized basis.

The obligations of the Operator in this Agreement shall not be lessened or reduced by reason of any estimate made by the Operator in arriving at the amount of the Grandstand Alterations Phase Letter(s) of Credit and at all times the Operator shall be responsible for all costs of the obligations contained in this Agreement to complete the Grandstand Alterations.

26. The Operator shall ensure that, unless the City has drawn under any Grandstand Alterations Phase Letter(s) of Credit, at all times after delivery of the Grandstand Alterations Phase Letter(s) of Credit until the City's Acceptance (as defined in Section 32) of the Grandstand Alterations, or any phase or portion thereof, the City is in possession of an unconditional, irrevocable letter of credit satisfactory to the City Manager and the Director of Legal Services and in an amount not less than that required by the City Manager, from time to time, to complete any structural demolition, Structural Alterations, Structural Repairs and Structural Replacements, or any portion or phase thereof, not otherwise secured by funds drawn and held by the City under the Grandstand Alterations Phase Letter(s) of Credit. All of the provisions in this Agreement related to the Grandstand Alterations Phase Letter(s) of Credit and the cashing thereof by the City shall survive the termination or expiry of this Agreement.

27. The Operator acknowledges and agrees that:

- (a) the amount of the Grandstand Alterations Phase Letter(s) of Credit may at the City Manager's discretion, be increased or decreased, from time to time, as a result of any revisions that the City Manager makes or receives with respect to the estimated costs of completing any phase or portion of the Grandstand Alterations; and
- (b) subject as hereinafter provided, the City Manager shall allow reductions in the amount of the Grandstand Alterations Phase Letter(s) of Credit, up to a maximum reduction of ninety (90%) percent of the amount of the original letter of credit for such phase, as significant phases or portions of the Grandstand Alterations are completed to the City's satisfaction; provided however that the amount of any reduction in the amount of any letter of credit shall be in the sole discretion of the City Manager.

28. The City may cash any Grandstand Alterations Phase Letter(s) held by the City in any of the following events:

- (a) if, at any time until the Grandstand Alterations, or any phase or portion thereof, have been completed to the satisfaction of the City, the balance of the term remaining of any Grandstand Alterations Phase Letter(s) of Credit, securing the completion of the Grandstand Alterations, or any phase or portion thereof, respectively, then held by the City is less than thirty (30) days (unless a replacement letter of credit has been provided to the City by the Operator);
- (b) if the Operator makes a general assignment for the benefit of creditors, or if the Operator institutes proceedings to have itself adjudicated as bankrupt or insolvent, including without limitation, any applications or orders under the *Companies' Creditors Arrangement Act* (Canada) or any legislation *in pari materia* therewith or, if the Operator becomes the subject of bankruptcy or

insolvency proceedings, or if a judgment, decree or order is entered by a court of competent jurisdiction judging the Operator bankrupt or insolvent, or if the Operator or its directors passes any resolution authorizing the dissolution or winding up of the Operator, or if a receiver, interim receiver, manager, receiver-manager, trustee or liquidator of all or any part of the Operator's property is appointed or applied for by the Operator or by one or more of the Operator's creditors; or

- (c) if at any time the Operator breaches or fails to observe any provision of this Agreement or defaults in carrying out any of its obligations under the terms of this Agreement related to the Grandstand Alterations or any phase or portion thereof, respectively, to an extent the City Manager considers material and for which the City has provided thirty (30) days written notice to the Operator and the Operator has failed to cure the breach (or if the breach cannot reasonably be cured within such thirty (30) days, then the Operator shall not be in breach if it commences to remedy the default within such 30 day period and continues to cure the default with all reasonable diligence).

29. If the City cashes any letter of credit pursuant to Section 28, then:

- (a) with respect to Section 28(a) and (b), the City may; and
- (b) with respect to Section 28(c), the City shall,

apply the proceeds, so far as possible, towards:

- (c) completion of the Grandstand Alterations, or any phase or portion thereof, to a standard satisfactory to the City; and
- (d) if there remains an unused balance of the proceeds, completion of any other obligations of the Operator to the City in respect of which the Operator is in default, relating to the Grandstand Alterations;

as determined by the City Manager in her sole discretion. The City shall carry out any of the Grandstand Alterations at such times as the City Manager, in her sole discretion, deems appropriate if any of the events of Section 28 occur.

If the proceeds from the Grandstand Alterations Phase Letter(s) of Credit are not sufficient to pay all costs and expenses incurred by the City (including the City's normal overhead charges) in completing the Grandstand Alterations, or any part thereof, the Operator forthwith shall pay to the City the difference upon receipt from the City of invoices therefor.

30. After all the Grandstand Alterations, or any phase or portion thereof, have been completed to the satisfaction of the City Manager and accepted by the City, the City shall within thirty (30) days following receipt of a written request from the Operator to do so, return to the Operator the Grandstand Alteration Phase Letter of Credit, then held by the City or, if the City cashes the Grandstand Alteration Phase Letter of Credit, any funds not required to carry out any of the Operator's obligations under the terms of this Agreement, or not required to complete, as far as possible, any unsatisfied obligations of the Operator to the City relating to the Grandstand Alterations.

31. In the event that the City cashes the Grandstand Alteration Phase Letter of Credit, delivered by the Operator by reason of the failure of the Operator to deliver a replacement letter of credit within the time limits required therefor under Section 28, the City will return to (or to the order of) the Operator any unused portion of such funds cashed within thirty (30) days following delivery by the Operator to the City of a replacement letter of credit in the amount of the balance of funds held by the City.

WARRANTIES

32. Subject to as hereinafter provided, the Operator covenants and agrees, at its sole cost and expense, to promptly make good and correct any and all defects and deficiencies in the Initial Term Capital Improvements, any Alterations or Site Improvements made to the Site or the Hastings Park Lands, or any buildings, structures or improvements thereon, including without limitation the Parkade if constructed during the Term, and, if applicable, in respect of the Renewal Term Capital Improvements, respectively. The Operator shall keep the Initial Term Capital Improvements, all Alterations, the Parkade if constructed during the Term and the Renewal Term Capital Improvements, if applicable, in a condition of good repair and free of defects and deficiencies, including any defects arising from or related to design or construction or installation (including without limitation, the materials used), to the satisfaction of the City Manager for a period of two (2) years following the dates that the Operator has delivered to the City a certificate of inspection for each of the Initial Term Capital Improvements, any Alterations, Site Improvements and the Renewal Term Capital Improvements, if applicable, in a form and content acceptable to the City Manager, and prepared and sealed by a professional engineer or the Operator's Architect in good standing in the Province of British Columbia certifying that the particular capital improvement, or Alteration has been constructed, installed and completed in accordance with any all Plans and Specifications approved by the City pursuant to this Agreement or otherwise or such longer period as may be applicable to any warranties provided to the Operator for any of the work, materials or services performed by any contractors or subcontractors in respect of the Site (hereinafter defined as the "Warranty Period"). Within sixty (60) days of the delivery of the aforesaid certificate, the City shall acknowledge in writing to the Operator that the respective Initial Term Capital Improvement, any Alterations, Site Improvements and the Renewal Term Capital Improvements, if applicable, have been completed to the City's satisfaction and that the City accepts same (the "City's Acceptance").

33. The Operator covenants and agrees that if the Operator fails to carry out any repairs as required pursuant to this Agreement or fails to remedy all defects and deficiencies within thirty (30) days following a written request by the City to do so or such other reasonable period given the nature of the repair, the City may effect such repair and make good any such defects and deficiencies, but the City shall have no obligation to effect such repair or make good any defects or deficiencies. In the event of an emergency or apprehended emergency where, in the sole opinion of the city, delay could cause serious loss, damage or injury, or inconvenience to the public, the repair or corrections may be made by the City without prior notice being sent to the Operator.

34. In the event that the City performs any such repairs or corrections of any defects or deficiencies, the Operator shall pay to the City, within seven (7) calendar days of receiving an invoice from the City, any amounts expended or costs incurred by the City to perform such repairs plus the City's normal overhead charge not to exceed twenty (20%) percent added to the direct costs and expenses.

CHILDCARE**35. The Operator covenants and agrees that:**

- (a) the Operator shall prohibit and take all steps necessary to prevent any Children from being in the Backstretch Area, except for those Children accompanied by an adult(s) in accordance with the following conditions:
 - (i) the adult accompanying the Child or Children must not come within the definition of being a Backstretch Personnel, as herein defined, except if the adult is an owner of a race horse(s) and not involved in or responsible for the hands on training, grooming, riding, walking, exercising, care or custody of any horse(s) on the Site; and
 - (ii) the Child or Children must be within an arms length reach of his/her accompanying adult at all times;
- (b) the Operator shall release and indemnify the City and all City Personnel, as provided for in Sections 56 and 57 herein, from any and all Claims related to any personal injury or death to any Child or Children in the Backstretch Area regardless of whether or not the Operator or any of the Operator's Personnel have been negligent, and notwithstanding the Operator's full compliance with the terms and conditions of this Section 35 of the Agreement;
- (c) the Operator shall be responsible to post appropriate signage and otherwise take all steps necessary to notify, in writing, all Backstretch Personnel and any other persons in the Backstretch Area that the presence of Children in the Backstretch Area, except as provided for in Section 35(a), is restricted or prohibited. The Operator shall be responsible for employing and utilizing all necessary safety and security measures to ensure that Children are not present in the Backstretch Area and shall monitor the Backstretch Area to make sure that only Children, as permitted by Section 35(a) herein, are anywhere within the Backstretch Area;
- (d) the Operator shall take out and maintain in full force all insurance as provided for in this Agreement or otherwise to cover the risks of any personal injury or death of or to any Children in the Backstretch Area regardless of whether such Children were permitted to be there pursuant to this Agreement and regardless of whether the Operator or the Operator's Personnel were negligent in preventing any Child from being in the Backstretch Area;
- (e) the Operator shall, at its sole cost and expense, develop, operate and provide, in conjunction with Kiwassa Neighbourhood House, or such other licensed childcare operator satisfactory to the City, the Temporary Childcare Facility. The Temporary Childcare Facility shall be in a location satisfactory to and be operated to a standard acceptable to the childcare provincial licensing Governmental Authority and the City Manager, in consultation with the City's Director of Social Planning and be fully operational by February 1, 2008 in accordance with the terms of the Temporary Childcare Facility agreement. The Operator shall be required to enter into an agreement with a non-profit childcare operator and the City to operate the Temporary Childcare Facility and to provide child development services as part of the operation thereof, with

the choice of operator and the terms of such agreement being to the satisfaction of the City's Director of Social Planning; and

- (f) the Operator must enter into the Childcare Agreement(s) on terms and conditions satisfactory to the City Manager and the Director of Legal Services and build the Childcare Facility as provided for therein. The Operator shall pay all costs associated with the construction and operation of the Childcare Facility during the Slots Term and any Renewal Term, if applicable.

UTILITIES

36. In respect of the provision of the City Utilities and any other Utilities on or servicing the Site, as necessary for carrying on any of the Racino Operations, the City and the Operator covenant and agree as follows:

- (a) the City shall have no responsibility, obligation or liability of any nature or kind whatsoever to relocate, expand, upgrade, increase the capacity or improve the condition of any of the City Utilities or any other Utilities servicing the Site or the Hastings Park Lands generally, regardless of whether any of the Utilities, including the City Utilities, are not sufficient or satisfactory for the Operator's Racino Operations. The Operator shall be responsible, at its sole cost and expense, for all repairs, maintenance, replacement, upgrades, additions and all other costs of every nature whatsoever with respect to the Utilities, including the City Utilities, within the boundaries of the Site and as necessary to service the Site for the Operator's Racino Operations even if outside of the Site boundaries;
- (b) the City makes no representations or warranties to the Operator or the Operator's Personnel regarding the adequacy, condition, capacity or usefulness of any of the Utilities, including the City Utilities, servicing the Site, either within or outside the boundaries of the Site, for purposes of carrying on the Operator's Racino Operations. The Operator acknowledges that the City Utilities and/or any other Utilities may not be sufficient or adequate for the Operator's uses of the Site and the Operator is accepting the right to use the Site on an "as is" basis. The Operator hereby agrees to fully release the City and all City Personnel in respect of any and all Claims directly or indirectly caused by or related to the Utilities, including the City Utilities, or the failure or inadequacy thereof, which Claims are suffered or incurred by the Operator or any of the Operator's Personnel, including without limitation those Claims as provided for in Section 57 herein;
- (c) the Operator, at its sole cost and expense, as part of its Initial Term Capital Expenditure Obligations and its obligations to provide the Renewal Term Capital Improvements, including without limitation the Parkade, shall be responsible for the installation of any new Utilities, including City Utilities, and all additions, replacements, relocations, substitutions, upgrades, expansions, modifications and enhancements to any and all Utilities, including City Utilities, both on and off the Site, as necessary for the Operator to carry on its Racino Operations (collectively defined as the "Utility Upgrades"). No Utility Upgrades shall be made or caused to be made by the Operator or any of the Operator's Personnel without the prior written approval of the City Engineer, pursuant to an Approved Capital Expenditure Plan and the approval by the City

Engineer and of the suppliers of any Utilities of all Plans and Specifications related thereto. Any Utility Upgrades of any Utilities which run through the City Lands and are supplied by the PNE shall also require the PNE's prior written approval. The Operator shall provide to the City a letter(s) of credit in an amount satisfactory to the City, and on terms and conditions satisfactory to the City's Director of Legal Services, prior to the Operator installing or carrying out any new Utilities or Utility Upgrades, respectively, to cover and secure the costs of all such works and the completion of such work in respect of any Utilities and any Utility Upgrades to the City's satisfaction;

- (d) all Utility Upgrades, whether within or outside the boundaries of the Site, which are necessary to service the Site or to carry on the Racino Operations shall be at the sole expense of the Operator and any costs so incurred or required to be incurred to adequately service the Site shall not be limited by but shall count towards the FORTY MILLION DOLLARS (\$40,000,000.00) Initial Term Capital Expenditure Obligations;
- (e) the City shall have the right at any time and from time to time, in its sole and absolute discretion, to alter the points of entry or the routing into the Site of any or all of the City Utilities and any other Utilities (to the extent that it has the right and power to do so) feeding into the Site from the surrounding Hastings Park Lands or any other City owned property; Provided That such alterations or re-routing does not materially impair the Operator's ability to carry on the Racino Operations;
- (f) the City shall pay all the costs associated with the City's re-routing and altering of the entry points onto the Site of the City Utilities and such other Utilities re-routed by the City, including any necessary costs incurred by the Operator in moving or altering any Utilities or equipment on the Site as a result of the re-routing; Provided That the re-routing is done pursuant to the City's sole initiative;
- (g) without limiting or derogating from any of the obligations in this section, the Operator acknowledges and agrees that the City retains the right, at all times, in its sole and absolute discretion, to perform any maintenance, repair, replacement, removal or Utility Upgrades with respect to any Utilities, including the City Utilities, within the Site or outside the boundaries of the Site, but which service the Site. In the event that the City determines it necessary to perform any of the foregoing work, the Operator agrees that it shall pay all or that portion of the costs incurred by the City in so doing, as determined by the City Manager. The City Manager shall in making the determination of the portion of the costs payable by the Operator shall consider and take into account the proportionate benefit to and use of such Utilities, including the City Utilities, by the Operator and the Operator's Personnel and the City Manager's determination regarding the allocation of the costs related to the Utilities shall be final; Provided That such maintenance, repair, replacement, removal or Utility Upgrades do not materially impair the Operator's ability to carry on its Racino Operations;
- (h) the City and the City's Personnel shall have the right, but no obligation, to be on and to access the Site, or any portions thereof, at all times to perform any inspections, testing, repair, maintenance, replacement, upgrade, installation or

removal of the City Utilities. In such instance, the City agrees to take reasonable steps to minimize disruption and interference with the Operator's Racino Operations, except in the event of an emergency;

- (i) the Operator shall pay to all the respective suppliers of the Utilities, including the City, all charges, rates, levies and expenses on account of the Utilities, including the City Utilities, related to, levied or assessed in connection with the Site or incidental to their use and occupation of the Site or the Hastings Park Lands, the conducting of the Racino Operations, including without limitation the operation of the Parkade, the use or consumption of any and all Utilities or related to any of the Operator's Personnel's use of the Site or the Utilities (including the Backstretch Area), as charged by the Utility suppliers, including the City, immediately when due. Upon request, the Operator shall provide the City with receipts evidencing all such payments. The Operator shall be responsible for the distribution of the City Utilities and any other Utilities within the Site, including all costs related or incidental thereto and if any Utilities provided to the Site and related to the Operator's or the Operator's Personnel's use of the Site or the City Lands are billed directly to the City or the PNE by any Utility suppliers, the Operator covenants and agrees to pay to the City or the PNE, respectively, all rates, charges, costs and expenses levied against or incurred by the City or the PNE in respect of any Utilities supplied to the Site or related to the Operator's or the Operator's Personnel's use of the City Lands, within fifteen (15) days of receipt of an invoice therefor, at the rates so assessed or levied by the Utility supplier. If any Utility costs are not separately assessed or metered against the Site or any buildings or structures thereon, then the Operator covenants and agrees to pay such amounts as reasonably allocated by the City or the PNE to the buildings, structures or improvements used by the Operator or the Operator's Personnel, based upon the Operator's or the Operator's Personnel's use of the Utilities on or supplied to the Site or the City Lands; and
- (j) notwithstanding anything to the contrary contained in this Agreement, the City shall not be liable to the Operator or the Operator's Personnel for any Claims related to or resulting from any interruption or failure in the supply of any City Utilities or any other Utilities or services to the Site or the City Lands which occur at any time during the Term, or any Renewal Term, if applicable, for any reason or cause whatsoever, including without limitation due to the inadequacy or the poor condition of any of the Utilities, including the City Utilities, or resulting from any negligence by the City, any City Personnel or any other Utility suppliers to the Site in respect of the supply, provision, maintenance, repair, replacement or Utility Upgrading of any of the Utilities, including the City Utilities. This covenant shall survive the termination of this Agreement.

AS-BUILT DRAWINGS

37. Upon completion of each of the Initial Term Capital Improvements, including without limitation the Childcare Facility, the Grandstand Alterations and all Utility Upgrades, and within sixty (60) days of the City's Acceptance thereof and approval by the City of the Eligible Capital Expenditures made in relation thereto, the Operator covenants and agrees that it shall, at its own cost and expense, provide the City with:

- (a) the As-built Drawings for each of the Initial Term Capital Improvements, satisfactory to the City Manager, prepared and signed by a Professional Engineer in good standing in the Province of British Columbia;
- (b) four (4) paper prints and a copy on disk of the As-built Drawings signed and sealed by a Professional Engineer in good standing in the Province of British Columbia;
- (c) a plan of survey prepared by a British Columbia Land Surveyor and to the satisfaction of the City Engineer, showing final location of each of the Initial Term Capital Improvements; and
- (d) one (1) copy of the diskettes containing the as-built information, referencing at least two (2) Integrated Survey Monuments and using the N.A.D. 83 (North American Datum 83) U.T.M (Universal Transverse Mercator) co-ordinate system, to the satisfaction of the City Engineer.

38. The Operator covenants and agrees that the foregoing obligations shall apply equally with respect to each of the Renewal Term Capital Improvements, if the Operator is granted a Renewal Term and the Parkade regardless of when constructed.

GENERAL OPERATING OBLIGATIONS AND COVENANTS

39. The Operator covenants and agrees to give to the City's Director of Real Estate Services thirty (30) days written notice of the commencement of any construction or Alterations greater than FIFTY THOUSAND DOLLARS (\$50,000.00) in value, including without limitation in respect of the Initial Term Capital Improvements, to be done on or to the Site or the Hastings Park Lands or to any Site Improvements which could result in the filing of a builders' lien claim against the Site or the Hastings Park Lands. Concerning all labour and services performed on or in connection with, or materials supplied to or in connection with, the making, erection, installation or alteration of any work or installations or of any Initial Term Capital Improvements, Site Improvements or Renewal Term Capital Improvements, if applicable, made by or for the Operator or the Operator's Personnel on the Site or any City Lands, the Operator shall comply with all the provisions of the *Builders Lien Act*, S.B.C. 1997, c.45, as amended or substituted from time to time, and all other Laws from time to time applicable thereto (including any provision requiring or enabling the retention of portions of any sums payable by way of hold-backs) and, pursuant to such act or such other Laws, shall register, post and maintain or otherwise perfect the delivery of all such registered or written notices at the appropriate Land Title Office and upon the Site or City Lands stating that the City shall not be responsible for any work or improvements, as are required by law to ensure that the City's title does not become charged with any liens related to this Agreement or any work or services provided by, for or in relation to the Operator's or the Operator's Personnel's use of the Site or the City Lands. Within one (1) week after the Operator files any notices in the Land Title Office in connection with the Site or any City Lands, the Operator shall provide to the City copies of any such notices. Notwithstanding the foregoing, the City reserves the right throughout the Term:

- (a) to enter upon the Site at the City's option for the purpose of posting and maintaining such notices; and
- (b) to file such notices as the City sees fit at the Land Title Office.

40. The Operator shall promptly pay all charges payable for any work, materials or services that may be done, supplied or performed in respect of the Site or the Hastings Park Lands by or at the request of or on behalf of the Operator or the Operator's Personnel and shall forthwith discharge any liens in respect of same at any time filed against the Site or the Hastings Park Lands and shall keep the Site and the Hastings Park Lands free from such liens. In the event that the Operator fails to do so, the City may, but shall be under no obligation to, pay into court the amount required to obtain a discharge of any such lien in the name of the City or the Operator and any amount so paid together with all disbursements and costs in respect of such proceedings on a solicitor and client basis shall forthwith be due and payable by the Operator to the City as additional Operating Fees.

41. The Operator and those claiming through the Operator, including without limitation the Operator's Personnel, shall not remove, deface or obscure such notices posted on the Site or the City Lands, nor release or discharge such notices at the Land Title Office. If and whenever any builders' lien or other liens for work, labour, services, or materials supplied to or for the Operator or the Operator's Personnel or for the cost of which the Operator or the Operator's Personnel may be in any way liable, or Claims therefor shall arise or be filed, the Operator shall within fifteen (15) days after receipt of notice thereof procure the discharges thereof, including any *lis pendens* registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law; Provided however, that in the event of a bona fide dispute by the Operator of the validity or correctness of any claim for any such lien, the Operator shall not be bound by the foregoing, but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into a court of competent jurisdiction the amount claimed or sufficient security therefor and such costs as the court may direct.

42. The Operator covenants and agrees that it shall be responsible to supply all necessary racing equipment, *pari mutuel* betting equipment, the Slots and all equipment, materials, supplies and facilities of every nature or kind whatsoever necessary for conducting the Racino Operations and all other furnishings and equipment for the buildings and other facilities situate on the Site.

43. The Operator covenants and agrees to pay when due all operating expenses relating to the Racino Operations and the Site, including without limitation, all rates and charges for all Utilities and all other costs associated with operating all buildings, structures or Site Improvements used or consumed by the Operator or the Operator's Personnel.

44. The Operator covenants and agrees that in conducting the Racino Operations on the Site, it shall comply with and conform to the demands of the City and all City Personnel in regard to the keeping of such Racino Operations clean and free from objectionable features, and will in all respects conduct the same strictly in accordance with the provisions of all Laws governing the conduct of the Racino Operations and in a reputable and professional manner.

45. The Operator covenants and agrees that it shall and shall cause the Operator's Personnel to take all steps necessary to prohibit and prevent the serving, selling, consuming, existence or possession of any alcoholic beverages on the Slots Floor or the Phase 1 Slots Floor and to comply with and conform to all demands of the City in this regard. Without limiting or derogating from the generality of the foregoing, the Operator covenants and agrees to take the following steps to prevent any alcoholic beverages from being on the Slots Floor or the Phase 1 Slots Floor:

- (a) to install physical barriers, satisfactory to the City, to separate any bars or alcohol serving areas or any of the Operator's patrons that are consuming or in possession of alcoholic beverages from the Slots Floor or the Phase 1 Slots Floor;
- (b) security guards shall be located at each stairwell, hallway or entrance which accesses the Slots Floor and the Phase 1 Slots Floor in order to prevent any alcohol from being brought onto the Slots Floor or the Phase 1 Slots Floor;
- (c) alcoholic beverages will only be served in easily identifiable glassware of a size and shape completely different from all non-alcoholic beverages served on the Site;
- (d) signage will be installed saying "No Alcohol Beyond This Point" at all entrances to the Slots Floor and the Phase 1 Slots Floor;
- (e) all of the Operator's Personnel which perform any functions relating to the serving, sale or consumption of alcoholic beverages shall have completed and obtained a "Serving It Right" certification; and
- (f) state of the art surveillance equipment will be installed and monitored at all times while the Slots Operations are being conducted and the Operator shall immediately respond to and enforce the no alcohol prohibition among any of its patrons located on the Slots Floor and the Phase 1 Slots Floor.

46. The Operator covenants and agrees that it shall at all times during the Term, at its own cost and expense, keep and maintain the Site and all buildings, structures and all Site Improvements, in a sanitary, neat, tidy and safe condition and free from nuisance and hazards, all to a standard acceptable to the City. The Operator acknowledges and agrees that the condition of the Site and all buildings and structures thereon and all Site Improvements, as at the Effective Date, shall not be deemed to be and nothing herein contained shall imply that the condition thereof, as at the Effective Date, meets the standard for being "in good repair as would be kept by a reasonable and prudent owner" or to a standard acceptable to the City. The City shall not be restricted or in any way prevented from requiring that the condition of the Site and all buildings and structures thereon and all Site Improvements thereon be maintained, repaired or kept by the Operator in a better condition than as at the Effective Date of this Agreement.

47. The Operator covenants and agrees that it shall perform all needed structural repairs and the repair of all buildings, structures, Site Improvements and all equipment of every nature or kind whatsoever on or servicing the Site. Without limiting or derogating from any other access rights of the City provided for in this Agreement, or otherwise, the Operator further covenants and agrees that the City and the City's Personnel shall have access to the Site and any City Lands used by the Operator at all times for the purpose of inspection and the Operator shall repair according to notice; Provided That the City agrees to take reasonable steps in performing any inspection to minimize any disruption of the Operator's Racino Operations. If the Operator shall fail promptly to commence repairs and diligently pursue same to completion after receipt of written notice from the City requiring repairs, then in addition to any other right or remedy possessed by the City, the City may, but is in no way obligated, to carry out or cause to be carried out such repairs, the costs of which shall be payable by the Operator to the City as additional Operating Fees and the City and the City's Personnel shall not be liable to the Operator or any of the Operator's Personnel for any

inconvenience, annoyance, disruption, loss of income or liability or any Claims of any nature or kind whatsoever suffered or incurred by the Operator or any of the Operator's Personnel by reason of the City effecting such repairs.

48. The Operator shall have the right, from time to time,

- (a) to conduct routine repairs and cosmetic renovations which are not part of the Initial Term Capital Improvements or Renewal Term Capital Improvements, if applicable, without the consent of the City in accordance with all applicable Laws; and
- (b) to undertake expansion, construction, alterations, demolition, reconstruction or replacement of all or any part of the Site Improvements, including the Initial Term Capital Improvements, provided that the written consent of the City is first obtained and provided that:
 - (i) all construction, installation and work requirements provided for in this Agreement which apply to the Initial Term Capital Improvements shall apply to any subsequent construction or work as hereinbefore provided;
 - (ii) any such construction, reconstruction or replacement is in accordance with Plans and Specifications which the City shall first have approved;
 - (iii) the Operator observes and complies with all applicable Laws in force which pertain to or affect the construction, use or operation of the Site, or the making of any repairs, replacements, Alterations or additions to the Site Improvements or the Site generally; and
 - (iv) the Operator carries out all modifications, Alterations or changes of or to the Site and of the Site Improvements as required by the City.

49. All Site Improvements and all buildings, structures and facilities (with the exception of those things properly characterized as Trade Fixtures and any tanks, equipment or installations that contain any Hazardous Substances which shall remain the property of the Operator and any Utilities other than City Utilities which shall be the property of the respective Utility supplier) in, on, for, or which serve the Site, currently thereon or hereafter affixed or installed on the Hastings Park Lands, are or shall immediately become and at all times thereafter shall remain the absolute property of the City upon affixation or installation free and clear of all liens, charges and encumbrances, except as consented to in writing by the City, without compensation therefor to the Operator or any of the Operator's Personnel. The City shall have no obligation to repair, replace, operate, maintain, insure or be responsible in any way for the Site Improvements or any of the foregoing during the Term or any Renewal Term, if applicable, all of which shall be the Operator's responsibility. At the request of the City, the Operator shall execute and deliver to the City, such conveyances and other documents as reasonably requested by the City from time to time to give effect to the foregoing. No Site Improvements or Trade Fixtures shall be removed by, or on behalf of, the Operator from the Site either during or at the expiration or earlier termination of this Agreement, except that:

- (a) the Operator may during the Term in the usual or normal course of its business remove its Trade Fixtures from the Site, if such Trade Fixtures have become

excess for the Operator's purposes or if the Operator is substituting new and similar Trade Fixtures therefor, but only if in each case:

- (i) the Operator is not in default under this Agreement, and
 - (ii) such removal is done at the Operator's sole cost and expense; and
- (b) the Operator shall, at the expiration or within one (1) month of the earlier termination of this Agreement, at its own cost and expense, remove from the Site all its Trade Fixtures.

In the event that the Operator does not remove its property within the said period, the City shall have the right, at the sole cost and expense of the Operator, to remove or demolish any of the Operator's assets or property not removed by the Operator.

50. The Operator covenants and agrees that:

- (a) if the Operator does not remove its Trade Fixtures at the expiration or earlier termination of the Term, as herein required, such Trade Fixtures shall, at the option of the City, thereupon become the property of the City, without compensation therefor to the Operator or any of the Operator's Personnel and without notice to the Operator, and the City may enter the Site and remove such Trade Fixtures, without liability on the City's part, at the Operator's expense, which removal costs shall be paid by the Operator to the City as Operating Fees on demand, and such Trade Fixtures may, without notice to the Operator or to any other Person and without obligation to account for them, be sold, destroyed, disposed of or used by the City in such manner as the City determines, or may be stored in a public warehouse or elsewhere, all at the Operator's expense, which shall be paid by the Operator to the City as additional Operating Fees on demand;
- (b) the Operator, at its expense, shall, in the case of every such installation or removal, either during or at the expiration or earlier termination of this Agreement, effect such installation or removal and immediately make good any damage caused to the Site by the installation or removal of any such Trade Fixtures. The Operator agrees that each and every such installation or removal shall take place only at a time or times designated by the City and in the presence of the City or the City's Personnel;
- (c) if the Operator removes, or commences, attempts or threatens to remove any of the goods, Trade Fixtures, equipment, furniture, stock-in-trade, chattels or inventory (collectively, "*Items*") of or belonging to the Operator on or within the Site (contrary to the provisions of this section or any other provision of this Agreement), the Operator hereby consents (without limiting any of the City's other rights or remedies hereunder) to the City obtaining an injunction in a court of competent jurisdiction to restrain the Operator from removing any of such Items from the Site, and the Operator shall pay to the City all fees (including, without limitation, all professional fees and all legal fees on a solicitor and his client basis) and expenses incurred by or on behalf of the City with respect to obtaining such injunction, which shall be paid by the Operator to the City as additional Operating Fees on demand; and

- (d) the Operator's obligation to observe and perform the provisions of this section shall survive the expiration or earlier termination of this Agreement.

51. The Operator shall register and provide the City with the Operator's Workers' Compensation Board registration number and shall pay when due, all Workers' Compensation Board assessments, levies, premiums or other charges levied against the Operator with respect to its employees and its business operations. At any time during the Term, the Operator shall provide, upon request by the City, proof that all Workers' Compensation Board payments which are due and owing by the Operator have been paid.

52. The Operator acknowledges and agrees that it is intended that this Agreement shall be a completely carefree net operating agreement for the City, except as shall be otherwise specifically provided herein, and that the City shall not be responsible during the Term or any Renewal Term, if applicable, for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Site or the contents thereof or the use thereof by the Operator or the Operator's Personnel, excepting only income and capital taxes payable by the City, if any, levied in respect of the City's income and capital and any other costs or expenses expressly provided for herein to be paid by the City. Without limiting the generality of the foregoing, the Operator acknowledges and agrees that the City shall not be responsible, during the Term or any Renewal Term, if applicable, to repair, maintain, alter or improve or furnish any services or facilities to the Site or the Site Improvements in any manner whatsoever and shall have no financial obligations whatsoever concerning the design, development, construction, operation or financing of any of the Initial Term Capital Improvements, the Renewal Term Capital Improvements or any Alterations or otherwise in respect of the Racino Operations, save as expressly provided for in this Agreement.

53. The Operator shall produce to the City, from time to time at the request of the City, satisfactory evidence of the due payment by the Operator of all payments required to be made by the Operator under this Agreement.

54. The Operator shall not at any time during the Term or any Renewal Term, if applicable, use, exercise or carry on or permit or suffer to be used, exercised or carried on, in or upon the Site or the Hastings Park Lands, or any portion thereof, any noxious, noisome or offensive act, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the Term or any Renewal Term, if applicable, be done in or upon the Site, or any portion thereof, which shall cause an annoyance, be a nuisance to or damage or disturb the adjoining lands and properties. The City acknowledges that the operation of the Racino Operations, so long as it is operated strictly in accordance with the terms of this Agreement does not and will not constitute a breach of the provisions of this section.

55. The Operator covenants and agrees that it shall not permit any vehicles belonging to the Operator or any of the Operator's Personnel to cause any obstruction on any roads or driveways on or adjacent to the Site or the Hastings Park Lands, or any portions thereof, or prevent the ingress and egress to occupants of adjacent properties, and will use its best efforts to ensure that persons doing business with the Operator or any of the Operator's Personnel shall not permit any vehicles to cause any such obstruction and shall at all times comply with the Parking and Access Management Plan attached hereto as Schedule "K".

RELEASE AND INDEMNITY

56. The Operator covenants and agrees that it shall be responsible for and liable to the City for any and all losses or damages sustained to the Site or the Hastings Park Lands or to

any buildings, structures, improvements or Site Improvements thereon, including without limitation the Initial Term Capital Improvements and the Renewal Term Capital Term Improvements, if applicable, caused by, related to or due to the Racino Operations or any use or misuse thereof by the Operator or any of the Operator's Personnel. In addition, the Operator shall be liable for and shall indemnify the City and the City Personnel for any Claims related to any injury or death to any persons or any property damage resulting from or relating directly or indirectly from or to any use, construction, installations, work, activities, operations, acts or omissions of or by the Operator or by any of the Operator's Personnel, whether by negligence, accident or otherwise on the Site or the Hastings Park Lands. Without limiting the generality of the foregoing, the Operator will indemnify and save harmless the City and the City's Personnel from and against any and all Claims which may be brought, made or prosecuted against or suffered or incurred by the City or the City's Personnel in respect of or resulting from:

- (a) any damage to property, including without limitation to the Site, the Hastings Park Lands, the Grandstand Building, any Site Improvements, any other buildings, structures or improvements on the Site or the Hastings Park Lands or any property of the City, the City Personnel or of the PNE thereon, any economic loss, or any personal injury or death to any person or persons or animals on the Site or the Hastings Park Lands, including whether or not such Claims arose from the negligence of the City or any of the City Personnel, or howsoever occasioned (except for any gross negligence or wilful misconduct of the City or any City Personnel) resulting from or incidental to the Racino Operations or any construction, use, activities or occupation of or on the Site or the Hastings Park Lands or of the Site Improvements by the Operator or any of the Operator's Personnel, including any Claims for personal injury, death, property damage or economic loss resulting from those activities and uses approved or permitted by the City or any City Personnel to be done on the Site or the Hastings Park Lands, including without limitation resulting from or arising directly or indirectly from performing any surveillance, any use of the Parkade or any parking lots or areas, as permitted herein, any movie nights, community days, public access to the infield of the racetrack, grooming school and learning centre, Temporary Childcare Facility, Childcare Facility or any training performed pursuant to any local hiring agreement;
- (b) any breach, violation or non-performance by the Operator or any of the Operator's Personnel of any covenant, obligation or agreement of the Operator contained in this Agreement, the RCOSA or of any Laws in relation to the use of the Site or the Hastings Park Lands, except in respect of breaches of the RCOSA or any Laws which conflict with this Agreement;
- (c) without limiting the generality of the foregoing, the Operator shall be responsible and liable and shall indemnify the City and the City's Personnel for any and all Claims incurred by or made against the City or the City's Personnel relating to or resulting from any personal injury or death to any Children caused by, resulting from or incidental to any Children being in the Backstretch Area for any reason whatsoever or howsoever caused regardless of whether the Operator or the Operator's Personnel were negligent or whether such injury or death is caused by any wilful act or omission of the Operator or the Operator's Personnel or the City or the City's Personnel;
- (d) any lost or stolen monies, chips, markers or tokens; and

- (e) all costs, expenses and legal fees (on a solicitor-client basis) that may be incurred or paid by the City in enforcing the terms, covenants and conditions of this Agreement, if the Operator or any of the Operator's Personnel admits or is found to be in breach thereof by a court of competent jurisdiction, and if the City is made a party to any litigation commenced by or against the Operator or any the Operator's Personnel, then the Operator will indemnify and hold the City harmless and pay all expenses and legal fees incurred or paid by the City in connection with the litigation.

57. The Operator covenants and agrees to waive, remise and release the City, the City's Personnel, and the PNE and the PNE's Personnel and agrees that the City, the City's Personnel, the PNE and the PNE's Personnel, or any of them, shall not be liable or responsible to the Operator in any way for any Claims, whether caused by the City's, the City's Personnel's, the PNE's or the PNE's Personnel's negligence or otherwise (except to the extent caused by any gross negligence or wilful misconduct by the City, the PNE or their respective personnel), resulting from, related to or incidental to any of the following:

- (a) any personal injury, death, consequential damage or economic loss (direct or indirect) of any nature whatsoever, however caused, that may be suffered or sustained by the Operator or the Operator's Personnel or by any other Person who may be on the Site or any portion of the Hastings Park Lands used by the Operator or the Operator's Personnel, including the Parkade or any parking areas, or any loss or damage of any nature whatsoever, howsoever caused, to the Site or to any property, including any animals, belonging to the Operator, the Operator's Personnel or to any other Person while such property is on the Site, including, without limitation, injury, death or damage:
 - (i) caused by failure, by reason of breakdown or any other cause whatsoever, to supply adequate drainage, or by any interruptions in the supply or provision of any Utilities, including without limitation any City Utilities, or by steam, water, rain, snow, or other substances leaking, entering, issuing or flowing into any part of the Site or into any buildings, structures or improvements used by the Operator or the Operator's Personnel, including the Site Improvements;
 - (ii) caused by any act, omission or negligence on the part of the City, any City Personnel or the PNE or the PNE's Personnel from time to time (except for any gross negligence or wilful misconduct) engaged or employed, as the case may be, to perform maintenance, construction, repair or other services, in or about the Site or the Hastings Park Lands; or
 - (iii) howsoever caused, if the City or the City's Personnel enter upon the Site in the case of an emergency;
- (b) any loss or damage of any nature whatsoever, howsoever caused, to books, records, files, money, securities, negotiable instruments, papers or other valuables of the Operator or any of the Operator's Personnel;

- (c) any business, economic or indirect loss or damage suffered or sustained by the Operator or the Operator's Personnel of any nature whatsoever, howsoever caused;
- (d) any loss caused by any of the perils which the Operator is obligated to insure against pursuant to this Agreement or has insured against; or
- (e) any injury to or death of any Children in the Backstretch Area howsoever caused.

All releases and indemnities provided for in this Agreement, including without limitation Sections 56 and 57 shall survive the termination of this Agreement.

58. Excepting only any gross negligence or wilful misconduct of the City or any City Personnel, the City shall have no liability whatsoever with respect to any Claims of or damages suffered by any third parties resulting from the use, occupation, management or financing of the Site, the Hastings Park Lands or any Alterations or Site Improvements. Without limiting the generality of the foregoing, the City shall not be liable for any loss, death or injury arising from or out of any occurrence in, upon, at or relating to the Site Improvements, the Site or the Hastings Park Lands generally or any damage to or loss of any property of the Operator or the Operator's Personnel located on the Site or the Hastings Park Lands, whether or not resulting from the exercise by the City of any of its rights under this Agreement. The intent of this section is that the Operator, except as provided for herein (and all other Persons having business with the Operator) is to look solely to the Operator's insurers to satisfy any Claim which may arise on account of death, injury, loss or damage irrespective of its cause. Nothing herein contained will prevent the Operator from exercising any remedy at law that they may have as result of any act or omission by any third party, except as against the City or the City's Personnel.

INSURANCE

59. Prior to the commencement of any demolition, construction or installation activities at the Site or the Hastings Park Lands, including of any Site Improvements, the Operator shall obtain and maintain in force, or cause to be obtained and maintained in force until completion and the City's Acceptance of all the Site Improvements, including the Initial Term Capital Improvements, the Parkade and all Renewal Term Capital Improvements, if applicable:

- (a) Course of Construction Insurance in "All Risk Builders' form" including the perils of Flood and Earthquake, up to the full completed replacement cost value thereof, jointly naming the Operator and the City as named insureds, protecting the Operator and the City (the "Insureds") against loss or damage to all Site Improvements, including the Grandstand Building, the Parkade, all Initial Term Capital Improvements and Renewal Term Capital Improvements, if applicable, Trade fixtures and all materials, equipment and machinery, labour and supplies of any nature whatsoever, Work-in-Progress, property of the Insureds or of others for which the Insureds may have assumed responsibility, to be used in or incidental the Site preparation, demolition of existing structures, erection and/or fabrication and/or reconstruction and/or repair of the project insured, commencing when the property becomes at the Insured's risk, at the Site or the Hastings Park Lands, and while there awaiting, during and subsequent to erection and/or fabrication and/or repair and/or testing. The All Risks Builders' Form insurance shall include:

- (i) a breach of conditions clause, including a clause substantially in the following form:

“Notwithstanding anything contained elsewhere in this policy, any breach of a condition of this policy, whether by commission or omission by one of the parties hereby insured shall not prevent recovery by any other party who is innocent of such act or breach.”;
 - (ii) coverage for resultant damage from error in design; and
 - (iii) the deductible shall be no greater than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) per occurrence;
- (b) “Wrap Up Liability Insurance” coverage in the joint names of the City, the City’s Personnel, the Operator, the Operator’s Personnel, all their contractors, consultants and their sub-contractors, sub-consultants, their employees and agents with a limit of not less than TEN MILLION DOLLARS (\$10,000,000.00) per occurrence and annual aggregate for any personal or bodily injury, death, damage to property including loss of use thereof. This insurance shall be maintained continuously throughout the entire period of construction and until completion and City’s acceptance, and thereafter, in the case of completed operations coverage, for a further period of not less than two (2) years and shall contain the following extensions of coverage:
- (i) broad form products and completed operations;
 - (ii) contingent employers’ liability;
 - (iii) non-owned automobile liability;
 - (iv) blanket contractual liability;
 - (v) cross liability and severability of interest clause;
 - (vi) shoring, blasting, excavating, underpinning, demolition, removal, pile-driving and grading, and caisson work, as applicable;
 - (vii) the Landlord’s and the Tenant’s protective;
 - (viii) loading and unloading of automobiles;
 - (ix) unlicensed and specialty licensed vehicles;
 - (x) hoist liability;
 - (xi) operation of attached machinery;
 - (xii) employees as additional insureds; and
 - (xiii) standard IBC Limited Pollution Endorsement Form 2313 providing limited sudden and accidental pollution coverage; and
- (c) Professional Liability (Errors and Omissions) Insurance must be maintained in full force by each of the Operator’s or the Operator’s Personnel’s consultants, architects and engineers involved in the design and performance of any of the Alterations or Site Improvements for the Term of this Agreement or any Renewal Term, if applicable. These policies must protect the Operator’s and the Operator’s Personnel’s professional consultants, sub-consultants and their respective officers, officials, employees and agents performing any services for or on behalf of the Operator against all liability for any error, omission or negligent act in the performance of any Alterations or Site Improvements pursuant to this Agreement. The limits of these policies must not be less than

TWO MILLION DOLLARS (\$2,000,000.00) per occurrence and TWO MILLION DOLLARS (\$2,000,000.00) annual aggregate.

60. Without limiting the foregoing insurance obligations, but in addition thereto, the Operator covenants and agrees that, at all times during the Term and any Renewal Term, if applicable, and during any period when it is in possession or using all or any portion of the Site or the Hastings Park Lands, it shall, at its own expense, maintain with one or more companies duly authorized to carry on business in the Province of British Columbia:

(a) Commercial General Liability Insurance. The policy shall:

- (i) name the City and the City Personnel, as additional insureds thereunder, and shall indemnify and protect the Operator, the Operator's Personnel, the City and the City's Personnel against all Claims for any loss, damage, personal injury or death to any person or persons and for damage to any public or private property occurring within or about the Site or any portion of the Hastings Park Lands used by the Operator or the Operator's Personnel or arising by virtue of the Operator's or the Operator's Personnel's use of the Site or the Hastings Park Lands;
- (ii) provide that the limit of such insurance shall not be less than TEN MILLION DOLLARS (\$10,000,000.00) for loss, property damage, personal injury or death arising out of any one occurrence, or such higher limit of coverage as the City's Director of Risk Management may reasonably require from time to time having regard to inflation and changes in the exposure to liability;
- (iii) contain a broad "cross liability" clause so that the Operator, the City, the City's Personnel and the Operator's Personnel shall be insured in the same manner and to the same extent as if separate policies had been issued to each and the insurance shall apply with respect to any action brought against one party by the other or by any agent of one party;
- (iv) contain a blanket contractual liability extension (if the Operator's insurance excludes liability assumed by contract, the Operator shall have its insurer specifically acknowledge this Agreement as an insured contract under the Operator's policy of insurance);
- (v) provide that any breach of a condition of the policy or misrepresentation, either before or after any loss, by any insured shall not affect the protection given by any such policy to any other insured; and
- (vi) not provide for a limit of deductibility greater than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) per occurrence except for Horse Legal Liability which may have a deductible not exceeding ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence, or such other limit as the City's Director of Risk Management may sanction from time to time;

(b) All Risks Insurance on property of every description on the Site and all Site Improvements on the Site or the Hastings Park Lands, including without

limitation the Grandstand Building, all property owned by the Operator or for which the Operator is legally liable or which is installed by or on behalf of the Operator in which the Operator has an ownership interest (and which is located in the buildings, structures or Site Improvements on the Site or the Hastings Park Lands), including furniture, fittings, installations, alterations, additions, partitions, fixtures, Trade Fixtures, instruments or any other devices within any building, structure or improvement on the Site in furtherance of the Racino Operations hereunder in a stated amount not less than the full replacement cost thereof and without a co-insurance penalty to the named insured. The policy shall:

- (i) name the City as a named insured (loss payee) and each policy shall carry a loss payable clause stating that the proceeds of any claim against the insurers shall be payable to the City and the Operator as their respective interests shall appear. The deductible for any claim shall be paid by the Operator;
 - (ii) include broad comprehensive boiler and machinery insurance with respect to all installed equipment supplying services to the buildings on the Site;
 - (iii) not provide for deductibility greater than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) per occurrence with respect to all perils except earthquake. The deductible under the policy for earthquake shall be an amount being the lowest generally extended by insurers at the effective date of coverage;
 - (iv) contain a waiver of any subrogation rights that the insurers may have against the City, the City's Personnel and against those for whom the City is responsible at law whether the loss or damage is caused by the fault, default, act, omission or negligence of the City, the City's Personnel or those for whom the City is in law responsible (but if the Operator fails to procure such waiver, the Operator will pay to the City as liquidated damages payable as additional Operating Fees, on demand, all monies to which any subrogor hereunder becomes entitled and the cost of any legal defence of any claim of subrogation); and
 - (v) provide for by-law coverage;
- (c) Business interruption insurance in "Profits form" covering loss of all revenue and profits from the Operator's or the Operator's Personnel's operations on the Site or the Hastings Park Lands or with respect to the use of the Site Improvements for a period of twenty-four (24) months, including without limitation all amounts payable or that would have been payable, but for the damage or destruction, to the Operator by BCLC, pursuant to the RCOSA, related to the Net Win from the Slots. The Operator shall assign or cause to be assigned sufficient proceeds of such insurance to the City to pay the Operating Fees and all other fees and charges payable pursuant to this Agreement for such twenty-four (24) month period or the actual period which the Operator is prevented from carrying on the Slots Operations at the Site, whichever is lesser; and

- (d) motor vehicle liability insurance on all owned, leased and licensed vehicles used directly or indirectly in carrying on the Racino Operations on the Site, protecting against damages arising from bodily injury (including death) and from claims for property damage arising from the operations of the Operator, or the Operator's Personnel; this insurance shall be for a minimum amount of FIVE MILLION DOLLARS (\$5,000,000.00) inclusive per accident.

61. Subject to the provisions of 59 and 60, it shall be the Operator's sole responsibility to determine if any additional coverage is required by law or which the Operator shall maintain at the Operator's own expense.

62. The Operator shall cause each policy of insurance required to be taken out and maintained by the Operator pursuant to this Agreement to comply with the following:

- (a) all insurance coverage shall be primary coverage, non-contributing with, and not excess of any other insurance or self-insurance maintained by the City;
- (b) all insurance policies shall contain a provision that each policy shall not be cancelled or materially altered unless the insurer provides the City with sixty (60) days written notice stating when such cancellations or material alteration shall be effected. The policy must provide that the notice shall identify the contract title, policy holder and be delivered in accordance with Section 117 herein;
- (c) the insurer will cover claims made after the expiry of any policy provided the claims relate to events occurring prior to the expiry of the policy term (ie the insurance shall be written on an "occurrence" basis and not a "claims made" basis);
- (d) all insurance policies where the City or the City's Personnel are insureds, contain a waiver in respect of the interests of the City or the City's Personnel of any provision in such insurance policies with respect to any breach or violation of any warranties, representations, declarations or conditions in such policies;
- (e) all insurance policies and coverage shall be in a form and with insurers satisfactory to the City's Director of Risk Management. If the City shall disapprove of the insurance policies required pursuant to this Agreement, the Operator shall forthwith obtain or cause to be obtained new policies from an insurer and in a form satisfactory to the City in accordance with the terms of this Agreement;
- (f) all policies of property insurance to be taken out pursuant to this Agreement shall contain a waiver of subrogation clause in favour of the City and the City's Personnel. All policies of liability insurance to be taken out shall contain a cross-liability/severability of interests clause so that the policies will protect the City and the Operator and any other insureds as if each were individually and separately insured under such policies; and
- (g) neither the providing of any of the insurance by the Operator in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any Claim accruing shall be held to relieve the

Operator from any other provisions of this Agreement with respect to the liability of the Operator or otherwise.

The Operator shall, upon execution of this Agreement and prior to commencing any construction or Alterations on the Site or Hastings Park Lands deliver to the City certificates of insurance or the original or a certified copy of the insurance policy(ies) in force for the time being as well as receipts or other proof showing that the premiums thereon have been paid. If the Operator fails to adduce proof of such coverage being in full force and effect at all times, the City, although not required to do so, may secure such insurance and the Operator shall pay the cost of same to the City upon demand and the failure to do so shall constitute a breach entitling the City to terminate this Agreement on thirty (30) days written notice. No review or approval of any such insurance certificate or policy by the City or any of the City's Personnel shall derogate from or diminish the City's rights or the Operator's obligations contained in this Agreement.

63. The Operator covenants and agrees that it shall, at its sole cost and expense, have a professional building appraisal done by a qualified property appraiser satisfactory to the City every three (3) years during the Term and the Renewal Term, if applicable, starting on the Commencement Date to determine the full replacement cost for insurance purposes of all Site Improvements, including the Grandstand Building. The Operator shall provide a copy of the appraisal to the City's Director of Real Estate Services and the Director of Risk Management within thirty (30) days of the commencement of every third (3rd) anniversary of the Commencement Date during the Term and any Renewal Term.

64. The City and the Operator agree that:

- (a) in the event that the Site or the Site Improvements, or any portion thereof, is substantially or completely damaged or destroyed such that, in the reasonable opinion of the City or the Operator, it is not feasible for the Operator to continue to carry on Horse Racing Operations or Slots Operations at the Site and the cost of repairing or replacing the Site Improvements is not substantially covered by insurance, this Agreement may be terminated by the Operator within the earlier of ninety (90) days from the receipt of confirmation from the insurer that such loss is eligible for recovery under the applicable insurance or one hundred eighty (180) days of the damage or destruction occurring (the "Termination Period") by providing written notice of termination (the "Termination Notice") to the City. If terminated, the Agreement will thereafter be of no further force and effect, except for the release and indemnity provisions, the insurance provisions, including the obligation of the Operator to pay or to cause the insurance proceeds, as provided herein, to be paid to the City pursuant to a loss payable clause as referred to in sub-section (d) (save for any insurance proceeds related to the Operator's or the Operator's Personnel's Trade Fixtures or any leased equipment and save that the Operator shall only be responsible to assign sufficient proceeds of the Business Interruption Insurance to the City to pay the Operating Fees and all other fees and charges payable pursuant to this Agreement as provided in Section 60(c) herein), and the Operator's obligation to pay to the City the full replacement cost of all Site Improvements pursuant to sub-section (d) less any Net Insurance Proceeds actually received by the City if the damage or destruction is not fully insured against as required by this Agreement, and all such other provisions of this Agreement which are said to survive the termination of this Agreement;

- (b) without limiting or derogating from any of the foregoing, the partial or complete damage or destruction by fire or other casualty of any Site Improvements on the Site or the Hastings Park Lands shall not automatically terminate this Agreement or, except as specifically provided herein, entitle the Operator to any abatement or refund of any Operating Fees or any other fees, costs or charges provided for herein;
- (c) in the event of any partial or complete damage to any Site Improvements, including if this Agreement is terminated by the Operator as herein provided, the Operator shall not be entitled to compensation out of any insurance proceeds received by the City or by the Operator, except as follows:
 - (i) the Operator shall be entitled to insurance proceeds pursuant to subsection 64(i) herein, if applicable;
 - (ii) the Operator shall be entitled to any insurance proceeds received by the City or by the Operator as reimbursement or insurance for any damaged or destroyed personal property or Trade Fixtures owned by the Operator, the Operator's Personnel or any equipment leased by the Operator; and
 - (iii) the Operator shall be entitled to all Business Interruption Insurance proceeds save for the portion that the Operator is required to assign or pay to the City under section 60(c);
- (d) subject to Section 64(c), in the event of any partial or complete damage to any Site Improvements, the Operator covenants and agrees, pursuant to a loss payable clause, or otherwise, to pay or cause to be paid all insurance proceeds to the City which are received or receivable from any claim with respect to any partial, substantial or complete damage to the Site Improvements, including but not limited to the Minimum Operating Fees, Additional Percentage Operating Fees or any other fees, costs or charges, and to pay to the City all insurance proceeds that the Operator receives, has a right to receive or which the Operator would or should have received or had a right to receive pursuant to all insurance coverages or policies required to be taken out pursuant to this Agreement. No breach by the Operator of its obligations to obtain and maintain the required insurance coverage and policies, as specified herein, shall relieve or provide any waiver or defence, in whole or in part, to the Operator's obligations to pay to the City the insurance proceeds received or which should have been received had the Operator obtained and maintained the required insurance, including without limitation the full replacement cost of all Site Improvements, based upon the professional appraisal done pursuant to Section 63 herein and such amounts to cover or reimburse the City for all Operating Fees and other fees, costs and expenses that would, but for the damage or destruction, have been payable to the City for the period set out in Section 60(c). This obligation shall survive the termination of this Agreement and the amount shall be payable within thirty (30) days of the Operator providing the Termination Notice;
- (e) the City has no obligation to obtain fire or other physical asset or property damage insurance on any buildings, structures or Site Improvements on the Site or the Hastings Park Lands;

- (f) except as provided in Section 64(c), the Operator agrees that no compensation of any nature whatsoever shall be payable by the City to the Operator in the event of the termination of this Agreement or any damage or destruction to any buildings, structures or Site Improvements on the Site or the Hastings Park Lands;
- (g) if this Agreement is not terminated by the Operator, as herein provided, then the City shall, within the later of three (3) months from the date of the expiration of the Termination Period, or three (3) months from the date of receipt of confirmation from the insurer that such loss or damage is eligible for recovery under the insurance, give notice to the Operator as to whether the City elects, at the City's option in its sole discretion, to either rebuild or repair or cause the damaged Site Improvements to be rebuilt or repaired, or to provide to the Operator, on terms and conditions satisfactory to the City, the Net Insurance Proceeds, in accordance with section 64(i), or agree:
 - (i) that the insurer shall provide the Net Insurance Proceeds to the Operator (as hereinafter provided in Section 64(i)), or
 - (ii) that the insurer shall expend the Net Insurance Proceeds,
 and require that the Operator or the Operator's insurer, respectively, repair or rebuild any damaged or destroyed Site Improvements, in a good and workmanlike manner to the City's satisfaction. If the cost to rebuild or repair the damaged or destroyed Site Improvements exceeds the Net Insurance Proceeds, then the balance required to rebuild or repair, regardless of the cost or whether such rebuilding or repairing is being done by the City, the Operator or by the Operator's insurer, shall be paid by and be at the sole cost and expense of the Operator;
- (h) if the City elects to give notice to the Operator that the City intends to use the Net Insurance Proceeds to rebuild or repair any damaged or destroyed Site Improvements then, the City shall have such amount of time, as the City determines necessary or as the insurer requires in assuming conduct of any rebuilding or repairing, to rebuild or repair the Site Improvements and the Operator, prior to the City or the insurer incurring any costs or expenses to rebuild or repair any of the Site Improvements, shall in the City's sole discretion either pay to the City or provide financial security to the City, in a form and on terms satisfactory to the Director of Legal Services, the estimated cost to rebuild or repair any damaged or destroyed Site Improvements, based upon an independent professional appraisal, estimate or opinion satisfactory to the City, and provided at the Operator's sole cost and expense less the Net Insurance Proceeds received by the City or paid or to be paid by the insurer for the respective damaged or destroyed Site Improvements. Upon completion of the rebuilding or repairing of the Site Improvements, the Operator shall pay to the City, within thirty (30) days of being invoiced therefor, any costs or expenses incurred by the City or the insurer which exceed the amount previously paid by the Operator to the City prior to commencement of the rebuilding or repairing or the amount of any financial security cashed or realized upon by the City, regardless of whether the actual costs exceed the estimated cost to rebuild or repair. If the amount paid by the Operator to the

City prior to commencement by the City of the repairing or rebuilding of any Site Improvements together with the Net Insurance Proceeds received by the City or paid by the insurer for the respective Site Improvements exceeds the costs and expenses incurred by the City or the insurer to complete the repairing or rebuilding of the Site Improvements to the City's satisfaction, the City shall refund to the Operator any excess amount paid. If the damage or destruction is such that the Operator cannot carry on any of its Slots Operations, but can carry on only the Horse Racing Operations, then only the Minimum Operating Fees and that portion of the Business Interruption Insurance proceeds payable to the City as required to be maintained pursuant to this Agreement for lost revenue from the Slots Operations shall be payable to the City for the period until the earlier of the Operator recommencing its Slots Operations on the Site or the expiry of the Business Interruption Insurance coverage as required by this Agreement;

- (i) if the City elects to have the Operator rebuild or repair the damage to any Site Improvements, then the City shall pay or release to the Operator or consent to the insurer doing so, up to a maximum amount equal to the Net Insurance Proceeds, in progress payments or stages, upon the written request of the Operator, that amount certified by the Operator or the Operator's Personnel (including the provision of receipts and a certificate of the Operator's Architect that repairs to the Site or the Site Improvements have been satisfactorily completed, free of all liens) to have been expended to repair or rebuild the Site Improvements; and
- (j) if the Operator does not terminate this Agreement, as hereinbefore provided, and if the City requires that the Operator carry out the rebuilding or repairs, then, if for any reason whatsoever, except for a Force Majeure, the Operator fails to complete in a timely manner given the extent of the rebuilding and repairs required and using all reasonable diligence in the rebuilding or repairing of all Site Improvements that are damaged or destroyed, the City may, in its sole and absolute discretion, give sixty (60) days' written notice to the Operator that the City elects to complete or cause to be completed the rebuilding and repairing to the City's satisfaction and all costs and expenses incurred by the City in so doing shall be charged to and paid by the Operator within thirty (30) days of being invoiced therefor by the City. The Operator acknowledges and agrees that its liability to the City to pay all costs incurred by the City to rebuild or repair any Site Improvements shall not be limited by the Net Insurance Proceeds.

65. INTENTIONALLY DELETED

66. The Operator shall pay all insurance premium costs and all applicable deductibles in the event of any loss, damage or claim eligible for recovery under all the insurance policies required to be effected or maintained pursuant to this Agreement; Provided That under no circumstances does the payment of such premiums give the Operator or the Operator's Personnel any interest in the proceeds of such insurance as they relate to the City's interests in the Site, the Grandstand Building or any Site Improvements, except for the Operator's Trade Fixtures. The Operator agrees that, if the Operator fails to take out or keep in full force and effect any of the required insurance coverages referred to in this Agreement at any time, or should any such insurance not be approved by the City and should the Operator not commence diligently to rectify (and thereafter proceed diligently to rectify) the situation

within forty-eight (48) hours after written notice by the City (stating the City's reasons for not approving the insurance), the City has the right, without assuming any obligation in connection therewith and without prejudice to any other rights and remedies of the City under this Agreement, to effect any of the foregoing insurance at the sole cost and expense of the Operator and all expenses so incurred by the City, shall be immediately paid by the Operator to the City as additional Operating Fees on the first day of the next month following such payment by the City.

67. The Operator shall not keep, use, sell or offer for sale in or upon the Site any article which may be prohibited by any insurance policy in force from time to time covering the Site. If:

- (a) the occupancy or use of the Site or the Hastings Park Lands (even though permitted hereunder);
- (b) the conduct of business or the conducting of the Racino Operations on the Site or the Hastings Park Lands;
- (c) the use of any materials or supplies on the Site or the Hastings Park Lands;
- (d) any acts or omissions of the Operator or the Operator's Personnel on the Site or the Hastings Park Lands; or
- (e) any breach by the Operator or any of the Operator's Personnel of any of the provisions of this Agreement,

causes or results in any increase in insurance premiums or requires an increase in the amount of insurance carried from time to time by the City with respect to the Site or the Hastings Park Lands, then the Operator shall pay any such increase in premiums as additional Operating Fees forthwith after invoices for such additional premiums are rendered by the City to the Operator.

PARKING AND ACCESS RIGHTS

68. The City and the Operator covenant and agree that parking shall be made available for the Operator and the Operator's Personnel, including its patrons, in accordance with the following terms and conditions and the Parking and Access Management Plan, subject to as otherwise specifically provided in this Agreement:

- (a) subject to subsection (f) herein, the City shall make available during the Term for the non-exclusive use of the Operator and the Operator's Personnel, including its patrons, at least five hundred (500) parking stalls within the Hastings Park Lands or any area adjacent thereto, with the exact number and the location being as determined by the City in its sole discretion from time to time hereafter (the "Initial Term Parking");
- (b) subject to section 68(c) and the Parking and Access Management Plan, the City intends to make the Initial Term Parking available for the non-exclusive use of the Operator and the Operator's Personnel in the following parking lots:

- (i) in the parking lots located in the northwest corner of the Hastings Park Lands (known and hereinafter defined as "**Lot 7**" and "**Lot 8**", respectively) with access off McGill Street;
- (ii) in the parking lot on the east side of the Hastings Park Lands (known as "**Lot 9**");
- (iii) in the parking lot centrally located in the Hastings Park Lands (known as "**Lot 12**"); and
- (iv) with additional parking spaces being made available in Lot 9A (the "**Horsemen's Lot**") as delineated in bold on Schedule "**D**", in the City's sole discretion, for use only by the Operator's employees, the horsemen using the Backstretch Area and various workers involved in the Horse Racing Operations;

all such parking lots being as shown in bold outline and as marked on the plan attached as Schedule "**L**" and in accordance with the Parking and Access Management Plan, as approved by the City, from time to time hereafter;

- (c) on any days or evenings during the Term that the Pacific Coliseum Building is being used by the Vancouver Giants Hockey Team for the playing of their hockey games or is otherwise being used for any special events, including without limitation, any sporting events, concerts or large exhibitions, the Operator and the Operator's Personnel shall not have any right to use Lot 7 or Lot 8 for parking, but instead shall use only Lot 9, Lot 9A and Lot 12 for its Initial Term Parking, as herein before described;
- (d) the City, the City's Personnel or any designate thereof (including the PNE for all purposes of this Parking section of the Agreement) shall be entitled to charge market rates, as determined by the City, the City's Personnel or the PNE, for any use of the Initial Term Parking by the Operator or the Operator's Personnel, including its patrons, with all revenue derived therefrom being the sole property of the City or its designate, in the City's sole discretion, except that there shall be no charge for the Operator's or the Operator's Personnel's use of the Horseman's Lot;
- (e) the City, the City's Personnel or its designate shall have the authority to set all rules and regulations related to the use of the Initial Term Parking and all the parking lots within the Hastings Park Lands and any parking on any other City property adjacent thereto, including without limitation the hours of operation, all access routes to and from the parking lots, the use of all lots for temporary storage of any waste, containers, equipment or other property or material of the Operator or the Operator's Personnel, and the use of any of the parking lots for loading, drop-off or any other purposes. The Operator shall comply and shall cause all of the Operator's Personnel to comply and adhere to the Parking and Access Management Plan, as may be amended, all traffic management plans, loading requirements, access management plans and all other rules and regulations in relation to any of the foregoing set by the City, the City's Personnel, or the PNE, from time to time hereafter;

- (f) notwithstanding any of the foregoing, the City's obligations to make the Initial Term Parking available during the Term or the Renewal Term, if applicable, shall not apply at or during any of the following times or upon any of the following occurrences:
 - (i) the early termination of this Agreement for any reason whatsoever;
 - (ii) the Olympics Suspension Period;
 - (iii) the Olympics Restricted Operations and Access Period;
 - (iv) the Annual Fair;
 - (v) in the event of substantial damage or destruction of any of the parking areas within the Hastings Park Lands or of the Grandstand Building; and
 - (vi) upon completion of construction and the opening of the Parkade, except for the parking permitted on the Horseman's Lot;
- (g) without limiting or derogating from the generality of the foregoing, the Operator covenants and agrees that the Operator shall comply with and shall cause the Operator's Personnel, including its patrons, to access Lot 7 and Lot 8 only from a newly constructed Gate 8, which shall have entry and exit from or on McGill Street, and to access Lot 9 and Lot 9A from Gate 9, unless otherwise permitted or directed by the City, from time to time hereafter;
- (h) the Operator shall pay to the City or the PNE, if so directed by the City, the full amount of all maintenance, repair and operating costs incurred by the City or the PNE in respect of the Horseman's Lot; and
- (i) during the Renewal Term, if applicable, parking for the Operator and the Operator's Personnel, including its patrons, shall be in accordance with the terms and conditions of the Parkade Agreement (as hereinafter provided for in the Renewal Provisions) with temporary parking, prior to completion of construction of the Parkade, being made available by the City for the Operator and the Operator's Personnel in such number and such location(s) within the Hastings Park Lands or in the vicinity thereof as the City determines in its sole discretion.

EXPROPRIATION

69. The City and the Operator covenant and agree that:

- (a) in the event that the whole or any portion of the Site shall be expropriated, confiscated or otherwise taken by any legislative body, public or quasi-public authority or by any Governmental Authority, except the City, created by any enactment, or in the event that the use of the Site as a race track facility or for the Slots Operations is frustrated by any Laws or the exercise of any power under any enactment, or by any decision of a court of competent jurisdiction, then the Operator covenants not to make any demand or Claim from or commence any action or proceeding of any nature whatsoever against the City or any City Personnel in respect of any such expropriation, confiscation, taking

or frustration and the Operator further covenants and agrees to waive and release the City and City's Personnel from any Claims whatsoever arising out of any such expropriation, confiscation, taking or frustration or the failure to perform any obligations in this Agreement to be performed after the expropriation, confiscation, taking of possession or frustration, as a result thereof. In the event of any such expropriation, confiscation, taking possession of or frustration which renders the Site unsuitable for conducting the Horse Racing Operations or the Slots Operation, as herein required, either party may, at its option, within thirty (30) days following the occurrence of any such expropriation, confiscation, taking or frustration, cancel or terminate this Agreement on sixty (60) days' notice to the other party; Provided That:

- (i) all Operating Fees and all other fees and charges payable, as provided herein, for that Operating Year shall be paid in full without any abatement or refund based upon the early termination of the Agreement, except for a pro-rata adjustment or abatement of the Minimum Operating Fees calculated on a per diem basis; and
 - (ii) the Operator shall have no further obligations to make any Initial Term Capital Improvements or Renewal Term Capital Improvements, except that the Operator shall be obligated to return the Site and all buildings and improvements thereon to the City in a good condition and state of repair such that the City does not have to complete any Alterations or Site Improvements that have been commenced by the Operator and are in a partially finished condition;
- (b) all compensation or damages of any kind awarded on such taking in respect of the Site or diminution in value of the remainder thereof or the loss to the City of the revenue received from the Site shall be the property of the City and the Operator shall have no Claim whatsoever against the City for the value of any unexpired Term or any Renewal Term, if applicable, or for damages for any reason whatsoever; Provided That the Operator shall be entitled to claim from the expropriating authority (other than the City) as compensation for such damages that it shall sustain by reason of such taking for such sums as it may be able to establish against that Governmental Authority in respect of loss of its business or depreciation thereof or any other loss, the value of its improvements and the cost of removal of its equipment.

HASTINGS PARK DEVELOPMENT AND NEW BRIGHTON PARK CONNECTION CONSTRUCTION

70. The Operator covenants and agrees to cooperate with the City during the Term or any Renewal Term, if applicable, so as to facilitate and enable the City and the City's Personnel to carry out its Hastings Park Implementation Plans and the City's plans to construct, install, build or create the New Brighton Park Connection.

71. The Operator covenants and agrees that the City may unilaterally adjust the boundaries of the Site, as required by the City, for the New Brighton Park Connection and/or if the area required for barns and stables is reduced during the Renewal Term. The Operator will relinquish the use of those certain areas within the Site, as required by the City for the aforementioned purposes, at any time after the fifth (5th) anniversary of the Effective Date; Provided That the adjustment to the boundaries of the Site shall not prevent the Operator's use of the Grandstand Building, the Backstretch Area, as specifically provided for in Section

72 herein or the Racetrack oval for the Racino Operations. It being acknowledged by the Operator that the Site area may be less than the acreage of the Site at the Effective Date.

72. The Operator covenants and agrees that it shall demolish, remove, relocate and rebuild, at its sole cost and expense, any structures, improvements, Temporary Structures and Alterations and any other fixtures on the Site used by the Operator or the Operator's Personnel, including without limitation any barns, stables or other buildings in the Backstretch Area, to such other areas on the Site, as may be approved in writing by the City, within six (6) months after receipt of notice, in writing, from the City requiring such removal or relocation, for purposes of the City or any City Personnel carrying out its Hastings Park Implementation Plans or the construction of the New Brighton Park Connection; Provided That the City and the Operator acknowledge and agree that the Operator shall be entitled to use for purposes of carrying on its Horse Racing Operations an area within the Backstretch Area of a size large enough to enable the Operator to carry out its obligations in this section to relocate and rebuild the barns, stables or other buildings or improvements in the Backstretch Area as at the Effective Date or such lesser number or size or barns or stables and other buildings and improvements as required by the City in its sole discretion.

73. The Operator and the City covenant and agree that those capital expenditures incurred by the Operator, as approved by the City, to demolish, remove, relocate and rebuild any of the buildings, structures or improvements in the Backstretch Area, including the barns and stables, in order to facilitate the City or any City Personnel carrying out the Hastings Park Implementation Plans, any park development or the construction of the New Brighton Park Connection, shall qualify towards and be part of the Operator's capital expenditure obligations in completing the Renewal Term Capital Improvements.

74. The Operator covenants and agrees that once a portion of the Site has been developed or re-developed as park land or is required by the City for park or to construct the New Brighton Park Connection, then the Operator shall relinquish all rights of use thereto pursuant to this Agreement or otherwise and discontinue using such portions of the Site, as directed by the City, without any compensation being due or payable by the City to the Operator or the Operator's Personnel or any Claims being made by the Operator or the Operator's Personnel against the City or any City Personnel as a result thereof.

75. In the event that the Operator or the Operator's Personnel fails to demolish or remove any building, structure or improvement in the Backstretch Area, including any barns or stables, as required by the City, within the time frame specified herein or such longer notice period as may be provided by the City, the City, in addition to any other right or remedy secured by this Agreement or otherwise, shall have the right to do all things necessary to demolish or remove any such buildings, structures or improvements, all without liability for damages or Claims being made by the Operator or the Operator's Personnel. The Operator shall forthwith, upon receipt of an invoice from the City, pay to and reimburse the City for all costs, charges, and expenses, which the City incurs in so doing. The Operator further covenants and agrees to release the City and the City Personnel from any and all Claims and shall indemnify the City and all City Personnel in respect of any Claims made against the City or any City Personnel by any of the Operator's Personnel in respect of the demolition, removal, relocation or rebuilding of any of the foregoing or in any way related thereto as a result of the Operator's failure to do so. This covenant shall survive the termination of this Agreement.

76. Without derogating from any of the foregoing, the City covenants and agrees that if the City elects to build the New Brighton Park Connection, it shall build or cause such to be

built and shall pay all costs and expenses to build the New Brighton Park Connection, except for those costs and expenses to clear the required Backstretch Area of all buildings, structures and improvements, including the barns and stables.

CITY'S ACCESS RIGHTS

77. Notwithstanding the permission and any rights granted by the City to the Operator to use the Site, or portions thereof, or the Hastings Park Lands, as provided for herein and without limiting or derogating from any other rights of access to the Site or the Hastings Park Lands in favour of the City and the City's Personnel or the public, as provided for in this Agreement or any other agreements between the City and the Operator related to the use of the Site or the Hastings Park Lands, the Operator acknowledges, covenants and agrees that the City and the City's Personnel shall have the full, free and uninterrupted right and liberty, (but nothing herein shall obligate the City to exercise such right or liberty) at all times hereafter by day and by night at their will and pleasure for so long as may be necessary (together with all necessary equipment, machinery, tools, appliances and materials) for the benefit of the City and the City's Personnel:

- (a) to enter, labour, go, be, return, pass and repass in and over the Site or the Hastings Park Lands on foot or with vehicles and every other mode of conveyance and with or without tools, materials, supplies and equipment for all purposes necessary or incidental to:
 - (i) constructing, installing, inspecting, maintaining, altering, enlarging, repairing and reconstructing any Utilities on the Site or on the Hastings Park Lands adjacent thereto;
 - (ii) constructing, installing, inspecting, maintaining, repairing, enlarging, altering or reconstructing the New Brighton Park Connection at any time after the fifth (5th) anniversary of the Commencement Date;
 - (iii) for any other purposes necessary to the performance of the park development generally in accordance with Hastings Park Implementation Plans;
 - (iv) for purposes of inspecting any of the Racino Operations and the Operator and the Operator's Personnel's compliance with the terms of this Agreement, including without limitation in regard to the Operator's satisfaction of its obligations respecting the Initial Term Capital Improvements;
 - (v) in respect of the Hastings Park Lands for any and all purposes related to the City's the City Personnel's and the PNE's use of the Hastings Park Lands; and
 - (vi) for any other purposes, as deemed reasonably necessary by the City, in relation to this Agreement;
- (b) to dig up the soil thereof and to lay down, construct or install any structures, improvements, walkways or Utilities of any nature or type whatsoever, including without limitation, those which are incidental to the New Brighton Park Connection, subject to as hereinbefore provided, in, over or on the Site

(all of which structures, improvements, buildings, works, walkways and Utilities and other things and matters in this section are collectively called the "*City's Improvements*"), together with the right to alter, enlarge, remove, repair, renew, maintain, inspect and replace the City's Improvements as may be deemed necessary or expedient by the City or the City's Personnel;

- (c) for any purposes related to or incidental to the City's bid to host the Olympics and to use any portion of the Hastings Park Lands, including without limitation any City Lands, the Site or any buildings, structures or improvements thereon for any Olympics-related purposes; and
- (d) to permit the City to enter and inspect the Site and the operations conducted thereon, to conduct tests and environmental assessments, to remove samples from the Site, to examine and make copies of any documents or records relating to the Site, to interview any of the Operator's Personnel and to take such steps as the City deems necessary for the safety and preservation of the Site,

Provided That, except in the event of an emergency or apprehended emergency or during the Olympic Suspension Period or Olympic Restricted Operations and Access Period, the City and the City's Personnel shall in performing any such work or exercising the access rights provided for herein shall take all reasonable steps to minimize any disruption or interference with the Operator or the Operator's Personnel's use of the Site for the Racino Operations and shall provide ten (10) days notice in writing to the Operator if such entry or access will cause any disruption or interference with the Operator's Racino Operations, except in the event of an emergency or apprehended emergency when no notice shall be required.

78. The Operator covenants and agrees that it shall, upon receiving notice from the City Engineer (except in the event of an emergency when no notice shall be required), vacate such portion of the Site for such period of time as the City Engineer deems necessary in order to allow any such work or access to be carried out as provided for herein; Provided however that, except in the event of an emergency or in the event of circumstances which in the opinion of the City Engineer requires that the City have immediate access to the Site to perform any work, including access during times when the Operator is conducting a Horse Racing Meet, the City shall use reasonable efforts to perform such work at times other than on a live horse racing day so as to minimize any disruption or interference with the Racino Operations, except as necessary for any purposes related to hosting the Olympics. The City and the City's Personnel shall not be liable to pay any compensation or damages of any nature or kind whatsoever to the Operator or any of the Operator's Personnel for any inconvenience, annoyance, disruption, loss of income or liability suffered or incurred by the Operator or any of the Operator's Personnel arising either directly or indirectly from the exercise of this right or liberty hereby granted, whether caused by accident or negligence, and there shall be no abatement of the Operating Fees payable hereunder, except as for the Operating Fees Abatement, if the Operator's rights to use the Site, or a portion thereof, are suspended for the Olympic Suspension Period.

79. Notwithstanding the permission and rights granted by the City to the Operator to use the Site, or portions thereof, as provided for herein, and without limiting or derogating from any other rights of access to the Site in favour of the City and the City's Personnel, the Operator acknowledges, covenants and agrees that the City, the City's Personnel and the public, as authorized by and to the extent permitted by the City, shall have the right to access the Site, or portions thereof, including the infield of the Racetrack Oval, as provided

for in any other agreement between the City and the Operator pursuant to or as a condition of the issuance of the Development Permit.

ASSIGNMENT OR GRANTING RIGHTS TO THIRD PARTIES

80. No assignment, transfer or other disposition of this Agreement or of any rights or obligations of the Operator hereunder, including without limitation by way of any sublicence, any parting with or sharing possession of the Site, or any portion thereof, or any sale or transfer of more than fifty percent (50%) of the outstanding shares of GCGC or HEI, any corporate reorganization, amalgamation or any other transaction which would result in a change in effective control or voting control of HEI or GCGC or a change in control of the Racino Operations, or any portion thereof, (hereafter all assignments, transfers and any of the foregoing dispositions or transactions relating to the use of the Site or of the rights or obligations herein or control over the Racino Operations, or any portion thereof, shall collectively be deemed to be and are herein defined as a "Transfer" or "Transferred" for purposes of this provision) during the Term or any Renewal Term is valid to transfer this Agreement or the rights or obligations herein, except if done in accordance with and subject to the following terms and conditions:

- (a) this Agreement shall not be Transferred by the Operator to any Person (hereafter any Person to whom the Operator Transfers or purports to Transfer this Agreement, or any rights or interests herein, shall be referred to and defined as a "Transferee") without the prior written consent of the City, which consent may be withheld in the sole discretion of the City, or approved or consented to on terms and conditions satisfactory to the City, except as otherwise set out in sub-section (c) herein; Provided That and subject to the terms and conditions set out in sub-section (d) herein;
- (b) in the event that the Operator Transfers or purports to Transfer its rights and interests under this Agreement to a Transferee without the prior written consent and approval of the City, this Agreement may, in the sole discretion of the City, be at any time thereafter, without notice, terminated and shall become of no further force and effect, subject to the survival of all the release and indemnity provisions herein contained and any other covenants that are said to survive pursuant to this Agreement, including without limitation the Operator's obligations to pay all Operating Fees and all other fees and charges as provided for herein;
- (c) notwithstanding sub-section (a) herein, the Operator shall be permitted to Transfer this Agreement, with the prior written consent of the City, which consent may not be unreasonably withheld or delayed, to an Affiliate or to a Person that acquires more than fifty percent (50%) of all the issued and outstanding shares of GCGC; Provided That and subject to the terms and conditions set out in sub-section (d) herein;
- (d) any Transfer of this Agreement whether to an Affiliate or to a Person acquiring more than fifty percent (50%) of the outstanding shares of GCGC (City consent not to be unreasonably withheld or delayed) or to any other Person (City's consent may be withheld for any reason in its sole discretion) shall be subject to the following terms and conditions:

- (i) the Operator shall not by virtue of any Transfer be released or deemed to be released from any of its obligations under this Agreement or any other agreements related to the use of the Site or the Hastings Park Lands (including without limitation the Childcare Agreements and any public benefit agreements pursuant to the rezoning of the Site) during the Term or any Renewal Term and the Operator shall execute an assignment and assumption agreement on terms and conditions satisfactory to the City's Director of Legal Services confirming that the Operator shall remain jointly and severally bound with any Transferee during the Term and any Renewal Terms;
- (ii) the Transferee shall be required to enter into a written assignment and assumption agreement with the City on terms and conditions satisfactory to the City's Director of Legal Services, pursuant to which the Transferee agrees to be bound by and to all the obligations of the Operator under this Agreement, expressly including without limitation all financial covenants, capital expenditure obligations, releases, warranties, indemnities, restrictions on use of the Site and the delivery of letters of credit, in every way as if such Transferee were to be a party to this Agreement, in addition to the Operator, and to being jointly and severally liable with the Operator;
- (iii) the Transferee has been approved in writing by BCLC and GPEB, as a "Service Provider" under the BCLC Operating Agreement, and has obtained all required permits, licenses and authorizations to conduct the Horse Racing Operations and Slots Operations and all such approvals have been provided to the City's satisfaction;
- (iv) any Transfer of this Agreement must be of the whole of the Agreement and all the Racino Operations;
- (v) the City being satisfied that the Transferee is of equal or better financial strength, stability and credit worthiness than the Operator based upon a review of any detailed financial information to be provided to the City, as requested by the City, concerning the financial status, strength and stability of the proposed Transferee, including without limitation bank particulars, audited financial statements accompanied by an auditor's report for two (2) years immediately preceding the proposed Transfer or if unavailable such other financial statements and information as required by the City, in its sole discretion;
- (vi) the Operator shall provide to the City detailed information on the proposed Transfer, including all its terms and copies of any executed offers, agreements or documents which contain the terms of the transaction;
- (vii) if the Transferee exercises any right of renewal of this Agreement, then, notwithstanding any such exercise, the Operator agrees that it shall continue during the Renewal Term to remain liable under the terms of this Agreement and under the terms of any and all Renewal Term agreements resulting from the exercise of such right of renewal;

- (viii) any consent granted by the City to a Transfer shall not constitute a waiver of the necessity for the Operator or any Transferee to obtain the prior written consent of the City to any subsequent Transfer;
- (ix) the restrictions or prohibition against a Transfer is construed to include a restriction or prohibition against any Transfer by operation of law;
- (x) no Transfer shall take place by reason of the failure of the City to reply to a request by the Operator or any Transferee for a consent to a Transfer;
- (xi) the City may, without prejudice to any of its rights under this Operating Agreement, collect any Operating Fees from the Transferee and apply the amount collected to the Operating Fees required to be paid pursuant to this Operating Agreement, but no acceptance by the City of any payments by the Transferee shall be deemed a waiver of the requirement for City consent to the Transfer, or the acceptance or consent by the City of the Transferee, as the operator of the Racino Operations, or a release of the Operator's continuing liability for the performance by the Operator of all the terms, covenants and obligations on the part of the Operator herein contained;
- (xii) the Operator shall retain no rights under the Agreement in respect of obligations to be performed by the City or in respect of the use of the Site or the Hastings Park Lands after the Transfer;
- (xiii) the City shall have the right as a condition of approving the Transfer to require the Transferee to provide financial security to secure all the Initial Term Capital Improvements or Renewal Term Capital Improvements, if applicable, that have not been completed prior to the Transfer;
- (xiv) any Transfer not expressly permitted by this Agreement and consented to by the City shall be null and void and of no force or effect;
- (xv) the Operator agrees that the City shall have no liability in connection with any Claims of any nature or kind whatsoever of the Operator as a result of the City withholding its consent to any Transfer pursuant to this Agreement and the Operator's only remedy in respect of the City withholding its consent shall be to bring an application to a court of competent jurisdiction seeking an order that such Transfer should be allowed; and
- (xvi) upon receipt of the City's written consent to a Transfer, the Operator shall have a period of one hundred and twenty (120) days thereafter to complete the Transfer in accordance with the terms and conditions herein, failing which the City's consent to the Transfer shall, in the absence of a written agreement by the City to extend such time period, at the City's option and upon written notice to the Operator, be null and void and of no force and effect.

81. The Operator shall be entitled to enter into contracts with third parties for purposes of supplying or providing any goods or services related to the Operator conducting any of the Racino Operations, which are in the ordinary course of business for the Operator; Provided That:

- (a) the third party's uses of the Site or the provision of goods or services by the third party are within the permitted uses of the Site as provided for herein; and
- (b) the Operator shall not enter into any contracts with third parties, other than BCLC, which transfers or has the effect of transferring or assigning or which by any other means transfers the control, management and operational responsibilities in regard to the Slots, including the right to receive the revenue from the Slots Operations or to payout the Winnings derived therefrom or the conducting of the Horse Racing Meet or any simulcast Horse Racing Operations or any operations related to the wagering on horse racing (live or simulcast) or over any gaming activities of any nature or kind whatsoever on the Site.

The Operator shall be responsible and liable for any works, activities, acts, omissions, negligence or wilful misconduct of any such third parties to which the Operator grants any right to use or to be on any portion of the Site or to supply any goods and services to the Operator related to the Racino Operations. The Operator shall be liable to indemnify and save harmless the City and the City's Personnel, as provided for in Sections 56 and 57 herein, for all losses, costs, expenses and damages caused by any acts, omissions, works, activities, negligence or wilful misconduct of any such third parties.

82. The City shall be entitled to assign this Agreement and its rights and obligations hereunder, without the consent of the Operator, provided that the assignee assumes all of the City's rights and obligations under this Agreement.

EXPIRY, TERMINATION AND BREACHES

83. Subject to Section 3(i), if at any time and so often as the same shall happen, the Operator or the Operator's Personnel defaults in the observance or performance of or is in breach of any covenant, agreement, stipulation, obligation, condition or other provision of this Agreement or any other agreements between the Operator and the City entered into pursuant to or in satisfaction of the Development Permit conditions on the public benefit requirements to be observed or performed by the Operator and such breach (excluding any breach of any payment obligations of the Operator to the City) has not been cured by the Operator within thirty (30) days following written notice thereof from the City (or within such longer period as otherwise specifically provided for or as is reasonably required by the Operator to cure any such breach which cannot be remedied within thirty (30) days; Provided That the Operator commences to remedy the breach within thirty (30) days and thereafter diligently proceeds to rectify the breach), then the City shall have the right, but shall not be obligated, without waiving or releasing the Operator from its obligations under the terms of this Agreement, to itself observe and perform the covenant, agreement, stipulation, obligation, condition or other provision in respect of which the Operator or any of the Operator's Personnel has defaulted or is in breach. In the performance of any of the foregoing by the City, the City may pay or expend such money, as may be required or as the City may reasonably deem expedient, and the City may thereupon charge to the Operator and recover from the Operator all money so paid out or expended and all costs incurred by the City in remedying or attempting to remedy such default or breach by the Operator or any of

the Operator's Personnel, and the Operator covenants to repay to the City any such money paid out or expended or costs incurred by the City, including the City's normal overhead charge not to exceed twenty (20%) percent added to any direct expenses or other costs incurred by the City, and the Operator shall pay same to the City forthwith on demand upon being invoiced therefor.

84. Without limiting or derogating from any other termination right or provision contained in this Agreement, the Operator covenants and agrees that if and whenever during the Term or the Renewal Term, if applicable,

- (a) any Interim Operating Fees or other Operating Fees, or any part thereof, are not paid within ten (10) days of the day appointed for payment thereof;
- (b) the Operator is in default in the payment of any other monies or charges required to be paid by the Operator to the City under this Agreement, other than the Interim Operating Fees or any other Operating Fees, and such default shall continue for thirty (30) days following any specific due date on which the Operator is to make such payment or, in the absence of such specific due date, for thirty (30) days following written notice by the City requiring the Operator to pay the same, or if on two or more prior occasions the Operator has defaulted in paying any such money or charges on such due date, where there is such a due date, or within thirty (30) days of such written notice, notwithstanding the payment is made after the 30-day period provided for in this section;
- (c) the Operator does not observe and perform each and every covenant, agreement, stipulation, obligation, condition and other provision of this Agreement, including without limitation all the insurance obligations herein, to be observed and performed by the Operator, other than a provision regarding the payment of money as described above, or except as otherwise specifically provided herein in which instances a shorter notice period is specified or in the event of an emergency, in the sole discretion of the City, which requires a shorter notice period, and persists in such default or breach for thirty (30) days following written notice from the City requiring that the Operator rectify such default or breach or, in the case of any such default which would reasonably require more than thirty (30) days to rectify, the Operator does not commence the rectification of such default or breach within the said 30-day notice period and thereafter promptly, diligently and continuously proceed with such rectification;
- (d) the Operator fails to conduct on the Site in any Operating Year or in any calendar year of the Term a Horse Racing Meet that satisfies the Minimum Live Racing Requirements for any reason whatsoever, except in the event of a Force Majeure;
- (e) the Operator loses or is no longer granted or does not have in place at all times during the Term a valid and subsisting right, permit, registration, entitlement or license to be a Gaming Service Provider, as a Horse Racing Operator, or is otherwise not authorized to conduct or operate a Horse Racing Meet with the Minimum Live Racing Days pursuant to the *Gaming Control Act*, or any other Laws, by the GPEB, or any other Governmental Authority, or is no longer granted or does not have in place a valid "Permit To Conduct Pari-Mutuel

Betting" by Agriculture and Agri-Food Canada or any other Governmental Authority pursuant to the provisions of the Criminal Code of Canada Pari-Mutuel Betting Supervision Regulations or any other federal Laws;

- (f) the Operator does not hold a valid or subsisting "gaming event license" or any other required permit, authority or registration under the *Gaming Control Act*, or any other Laws, from any Governmental Authority at all times during the Term to conduct, manage or operate a "gaming facility" or all the "gaming services" conducted on the Site, all within the meaning of the *Gaming Control Act*, including specifically as required to be a Gaming Service Provider for the Horse Racing Operations and the Slots Operations;
- (g) the Operator does not have in place and in full force and effect a valid, subsisting BCLC Operating Agreement (RCOSA) between HEI and/or GCGC and BCLC which grants to HEI and/or GCGC the contractual rights from BCLC to manage and operate the Slots and to conduct the Horse Racing Meet and which entitles HEI and/or GCGC, as the "Service Provider", to a percentage of the Net Win from the Slots Operations sufficient to pay all the Operating Fees to the City as provided for herein;
- (h) the Operator has not paid within fifteen (15) days of the day appointed for payment or such other period as may be provided for in the Community Legacy Fund agreement hereinafter described, or is in default in the payment of the Community Legacy Fund, as required to be paid by the Operator as a condition of Council permitting the Slots Operations on the Site, including without limitation any default by the Operator of the terms and conditions as may be provided for in that certain agreement now or at any time hereafter entered into between the City and the Operator, as required by the City's Director of Legal Services, to secure the payment of the Community Legacy Fund;
- (i) the Operator for any reason whatsoever, excluding the City not providing the Operator with a form of Childcare Agreement(s), has not entered into the Childcare Agreement(s) prior to the Commencement Date;
- (j) the Operator fails to construct the Childcare Facility within two (2) years of the Commencement Date or by such later date as otherwise subsequently approved or required by the City, in its sole discretion, pursuant to the Childcare Agreement(s);
- (k) the Operator fails to operate or to cause to be operated the Childcare Facility or any Temporary Childcare Facility, as approved by and to a standard acceptable to the City Manager, in consultation with the City's Director of Social Planning, and the Provincial licensing authorities, including without limitation if the Operator fails to pay all the operating costs and all subsidies for all the childcare spaces related to the Childcare Facility or the Temporary Childcare Facility or fails to meet the City's and the Provincial licensing authorities' requirements;
- (l) the Operator fails to carry out the Initial Term Capital Improvements during the Term to the satisfaction of the City within the time requirements set forth in this Agreement and in accordance with an Approved Capital Expenditure Plan and the Plans and Specifications;

- (m) the Operator fails to observe or to cause to be observed the prohibition on the serving, selling, consuming, existence or possession of alcohol on the Slots Floor;
- (n) any policy of insurance related to the Site or any uses thereof from time to time effected by the City or by the Operator is cancelled or about to be cancelled because of the Operator's Racino Operations or any of its activities or uses on the Site and if the Operator does not forthwith upon receipt of written notice from the City take immediate steps to enable the City or the Operator to reinstate or avoid cancellation of such policy of insurance;
- (o) the Site is abandoned by the Operator;
- (p) the Operator fails or refuses to enter into any agreements with the City, as required by the City pursuant to the Development Permit conditions or Council's approval of the public benefits, on such terms and conditions satisfactory to the City Manager and the Director of Legal Services;
- (q) the Operator is in breach or default of any other agreement between the City and the Operator related to the Operator's use of the Site, including any agreement entered into pursuant to or in satisfaction of the Development Permit conditions or to secure the provision of the public benefits approved by Council on October 4, 2005; or
- (r) this Agreement is terminable pursuant to any other provision hereof and the City has given any required notice terminating this Agreement,

then and in every such case, the City may, in its sole discretion, and it shall be lawful for the City, based upon Council approval, at any time thereafter without notice or demand, except as herein provided, with or without process of law and by forcible entry if necessary, to re-enter into and upon and repossess the Site, or any part thereof, in the name of the whole, and to terminate this Agreement, if not already terminated, on thirty (30) days' written notice by leaving upon the Site notice in writing of such termination, except in the event of an emergency or apprehended emergency, in the City's sole discretion, in which case the breach or default must be rectified within such shorter period required by the City failing which the City can terminate this Agreement immediately after the period for rectifying the breach has passed. If the City terminates this Agreement, pursuant to this section, or otherwise as a result of any such default by the Operator, then the Operator will be liable to the City for all the current Interim Operating Fees, or, if during the Slots Term for the Minimum Operating Fees payable for the entire Operating Year in which this Agreement is terminated plus any other Operating Fees payable up to the date of termination, and the City may immediately claim the same together with any other Interim Operating Fees or Operating Fees in arrears and any other amounts owing to the City by the Operator under this Agreement. Without limiting or derogating from the termination rights herein provided, in the event of any of sub-sections (e), (f) or (g) herein occurring all rights of the Operator to operate the Racino Operations, or any portion thereof as determined by the City Manager in her sole and absolute discretion, shall immediately be deemed to be suspended, without any period of notice required to be given by the City, until such default or occurrence has been rectified.

85. The Operator hereby waives and renounces the benefit of any present or future Law taking away or limiting the City's rights against the property of the Operator and, notwithstanding any such Law, the City may seize and sell all the Operator's goods and property within the Site, and apply the proceeds of such sale towards any arrears of Operating Fees or other amounts deemed to be owing under this Agreement and upon the costs of the seizure and sale, in the same manner as might have been done at common law or in equity in the absence of such law. The Operator further agrees that if it abandons the Site and any Operating Fees or other amounts required to be paid by the Operator under this Agreement remain unpaid, the City, in addition to any remedy otherwise provided by Law, may seize and sell the goods and property of the Operator at any place to which the Operator or any other person may have removed them from the Site, in the same manner as if such goods and property had remained in, about or upon the Site.

86. The Operator covenants and agrees that if at any time:

- (a) the Term is at any time seized or taken in execution by any creditor of the Operator;
- (b) the Operator becomes bankrupt or insolvent, makes a general assignment for the benefit of creditors or an application under the *Company Creditors Arrangement Act*;
- (c) the Operator institutes proceedings to have the Operator adjudicated as bankrupt or insolvent;
- (d) the Operator becomes the subject of bankruptcy or insolvency proceedings, or if a judgment, decree or order be entered by a court of competent jurisdiction adjudging the Operator bankrupt or insolvent;
- (e) the Operator is unable to meet all debts as they fall due for a period of not less than three (3) months; or
- (f) the Operator or its directors shall pass any resolution authorizing the dissolution or winding-up of the Operator, or if a receiver, interim receiver manager, receiver-manager, trustee or liquidator of all or any part of the Operator's property shall be appointed or applied for by the Operator or by one or more of the Operator's creditors,

then the City shall be notified and the then current Interim Operating Fees and any other Operating Fees shall immediately become due and owing and at the option of the City the Term is subject to termination forthwith. If the Operator becomes defunct or amalgamates with any other body without obtaining the prior written consent of the City, then at the option of the City, the Term shall forthwith terminate. If the Operator surrenders up its certificate of incorporation or otherwise ceases to exist the Term terminates as of such surrender or dissolution.

87. If at any time during the Term the validity of the Rezoning is successfully challenged by any Person such that the Rezoning is declared by a court of competent jurisdiction to be quashed, void for illegality or otherwise of no force or effect and correspondingly, the Site can no longer be used for the Slots Operations (a "*Successful Rezoning Challenge*"), then:

- (a) either party may terminate this Agreement on ninety (90) days notice and all Operating Fees shall be payable on a pro-rated basis for that Operating Year based upon the Operating Year being shorter than a full calendar year, except that there shall be no adjustment or abatement or refund of the Hastings Park Greening Fee or the Community Legacy Fund payment for that respective year;
- (b) if this Agreement is not terminated in accordance with sub-section (a), then the Operator may continue to carry on the Horse Racing Operations on the Site, as provided for herein, and no Additional Percentage Operating Fees shall be payable for any portion of the Slots Term after the date of any ruling by a court of competent jurisdiction that provides or gives effect to a Successful Rezoning Challenge, but all Additional Percentage Operating Fees shall be payable on a pro-rated basis for the period up to the date of the Successful Rezoning Challenge. In such event, there shall be no adjustment, abatement or refund of any Hastings Park Greening Fee or Community Legacy Fund payment for that Operating Year, but, thereafter, no additional Hastings Park Greening Fee or Community Legacy Fund payment shall be due or payable; and
- (c) the Initial Term Capital Improvements and any Renewal Term Capital Improvements, if applicable, shall no longer be required to be constructed or installed, except that if any of the Initial Term Capital Improvements or Renewal Term Capital Improvements have commenced to be constructed or installed, then the Operator shall be obligated to complete those respective capital improvements, including without limitation those certain Grandstand Alterations, to the extent that any Site Improvements that have been commenced, altered or demolished must be repaired, replaced or completed and any work related thereto that has been commenced must be completed, all to the satisfaction of the City. For greater certainty, the parties agree that the commencement by the Operator of any Grandstand Alterations does not obligate the Operator to complete all the Grandstand Alterations, but only that portion of and/or only those respective Grandstand Alterations that have been commenced must be completed to the City's satisfaction.

In the event of a Successful Rezoning Challenge, the Operator covenants and agrees that the City and all City Personnel shall not be liable and that the Operator and the Operator's Personnel shall have no Claim or recourse against the City or any City Personnel for any damages, losses or compensation of any nature or kind whatsoever resulting from the Successful Rezoning Challenge, including without limitation should this Agreement be found ineffectual to grant any right to use the Site for the Slots Operations or should any restrictions be placed by any Governmental Authority, including by court order, upon the use to which the Site may be put pursuant to the terms of this Agreement or should any such purposes or uses granted by the Rezoning or in this Agreement be found to be unlawful or void for any reason.

88. At the expiration of the Term, the Slots Term or the Renewal Term, if applicable, or in the event of the earlier termination of this Operating Agreement, without notice, the Operator shall at its expense:

- (a) peaceably surrender and yield up vacant possession of the Site to the City in a clean and tidy condition and with the Initial Term Capital Improvements and all Site Improvements (except as hereinafter provided) in as good a condition and

state of repair as the Operator is required to maintain the Site throughout the Term, without any payment to the Operator by the City;

- (b) surrender all keys and security devices for the Site to the City at the place then fixed for the payment of the Operating Fees and inform the City of all combinations of all locks, safes and vaults of any kind and the code for any security devices, in or for the Site;
- (c) remove all of the Operator's Trade Fixtures installed by the Operator as the City shall, at the City's option and in its sole discretion, upon notice to the Operator, require (pursuant to Section 49 hereof) to be removed and the Operator shall immediately repair, at its expense, all damage to the Site caused by their removal;
- (d) remove any material which may be deemed by any applicable legislation, or by any Governmental Authority, or by the City, to be a Hazardous Substance; Provided That such material was brought onto the Site by the Operator or any previous owner or operator of the Horse Racing Operations or which is a result of the Operator's or any previous owner's or operator's use or occupation of the Site for Horse Racing Operations. The Operator shall immediately repair, at the Operator's expense, all damages to the Site caused by such removal; and
- (e) deliver to the City copies of all available surveys and construction, engineering and design drawings and maintenance logs, reports and records in the possession or control of the Operator which pertain to the Operator's use of the Site during the Term or the Renewal Term for the Racino Operations.

If the Site is not surrendered at the time and in the manner set out in this Section 88, the Operator shall promptly indemnify and hold harmless the City from and against any and all Claims resulting from the delay by the Operator in so surrendering the Site, including, without limitation, any Claims made by any succeeding tenant or occupant founded on such delay. the Operator's obligation to observe and perform the provisions of this Section 88 shall survive the expiration or earlier termination of this Operating Agreement.

89. Notwithstanding the termination of this Agreement, whether at the Expiry Date of the Term, the Slots Term or the Renewal Term or earlier for any reason whatsoever, the Operator shall remain liable to the City after the termination for any default by the Operator or any of the Operator's Personnel of the terms of this Agreement prior to the termination.

90. In addition to any other rights of the City under this Agreement, in the event of a default of breach by the Operator, the City may elect to re-enter the Site, or if it takes possession pursuant to legal proceedings, it may either terminate this Agreement or it may from time to time, without terminating this Agreement, make all such alterations and repairs as are necessary in order to allow any other Persons to use the Site, or any part thereof, for such period of time and at such operating fees and upon such other terms, conditions and covenants as the City in its sole discretion considers advisable.

91. Upon granting to any other Person the right to use the Site, all Operating Fees received by the City from such granting shall be applied: first, to the payment of any indebtedness other than Operating Fees due from the Operator; second, to the payment of any costs and expenses of such granting to any other Person the right to use the Site, including all solicitors fees and costs of such alterations and repairs; third, to the payment of

Operating Fees due and unpaid hereunder; and the residue, if any, shall be held by the City and applied in payment of future Operating Fees as same become due and payable pursuant to this Agreement. If any such operating fees received from the re-granting of the use of the Site during any month is less than that to be paid during that month by the Operator pursuant to this Agreement, the Operator shall pay any such deficiency monthly in advance on or before the first day of each and every month. No such re-entry or taking of possession of the Site by the City shall be construed as an election on the City's part to terminate this Agreement unless a written notice of such intention is given by the City to the Operator. Notwithstanding any such grant by the City to another Person without termination, the City may at any time thereafter elect to terminate this Agreement for such previous breach.

92. If the City at any time terminates this Agreement for any breach, in addition to any remedies the City may have, it may recover from the Operator all damages it incurs by reason of such breach, including the cost of recovering possession of the Site, solicitor's fees (on a solicitor and client basis) and including the worth at the time of such termination of the excess, if any, of the amount of the Operating Fees and charges equivalent to Operating Fees required to be paid pursuant to this Agreement for the remainder of the Term over the then reasonable rental value of the Site for the remainder of the Term, all of which amounts shall immediately be due and payable by the Operator to the City.

ENVIRONMENTAL

93. The Operator acknowledges and agrees that the City has made no representations or warranties with respect to the environmental condition of the Site and is licensing the use of the Site to the Operator under this Agreement on an "as is, where is" basis with respect to the environmental condition on the terms and conditions set out herein. Prior to the Effective Date of this Agreement, the Operator shall have performed such investigations of the Site as it considered appropriate and is hereby deemed to be satisfied as to the environmental condition of the Site.

94. The Operator covenants and agrees that it shall be responsible for and shall perform the following environmental preventative and remediation activities with respect to soils and groundwater contaminants in relation to the Site during the Term and any Renewal Term, if applicable, and shall use the Site in accordance with the following terms and conditions:

- (a) the Operator shall not use or permit to be used all or any part of the Site for the sale, storage, manufacture, disposal, treatment, generation, use, transport, refinement, processing, production or release into the Environment of, or other dealing with, any Hazardous Substances, except in compliance with Environmental Laws, without the prior written consent of the City which consent may be unreasonably and arbitrarily withheld. Without limiting the generality of the foregoing, the Operator shall in no event, and does not plan or intend to use the Site to dispose of, handle, treat or release any Hazardous Substances in a manner that in whole or in part, causes the Site or any adjacent property to become a contaminated site under Environmental Laws;
- (b) not to commit or permit any Hazardous Substances or injury to or on the Site or in the area immediately surrounding the Site or allow any nuisance therein;
- (c) not to permit any Hazardous Substances, including without limitation fecal coliform, to be released or discharged into the City's sewer or storm sewer system and to take such remedial action and install such equipment as deemed

necessary by the City, the Greater Vancouver Regional District (the "GVRD"), the Greater Vancouver Sewerage and Drainage District (the "GVS&DD") or any other Governmental Authority with jurisdiction over the release or discharge of Hazardous Substances from the Site, including into the Burrard Inlet, to prevent any future release or discharge of any Hazardous Substances and to clean up or remediate any past release or discharge of Hazardous Substances which have entered or migrated into the Burrard Inlet through the City's sewer systems from the Site; Provided That such are related to any Horse Racing Operations conducted on the Site by the Operator or any previous owner or operator of the Racetrack;

- (d) without limiting any of the foregoing, not to bring upon, discharge, or permit to be released into or on or from the Site any Hazardous Substances and promptly and strictly comply, and cause all of the Operator's Personnel and any Person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Site pursuant to this Agreement, including without limitation obtaining all required permits or other authorizations and making all required registrations, filings and notifications;
- (e) if the Operator or any of the Operator's Personnel brings or deposits or any past user(s) or operator(s) of the Site for Horse Racing Operations brought or deposited any Hazardous Substances, onto the Site or is or was responsible for the Site becoming contaminated or for any migration of any Hazardous Substances from the Site onto any other property related or incidental to the use of the Site for Horse Racing Operations, the Operator shall:
 - (i) immediately give the City notice to that effect and thereafter give the City from time to time written notice of the extent and nature of the Operator's compliance with the following provisions of this subsection;
 - (ii) promptly, at its own expense, remove and remediate to Acceptable Contamination Levels those Hazardous Substances from the Site or from any adjacent property resulting from any Hazardous Substances that migrated or were released from the Site by the Operator or any of the Operator's Personnel or by past user(s) or operator(s) of the Site for Horse Racing Operations in a manner which conforms with all Environmental Laws governing the movement and remediation of Hazardous Substances or as otherwise required by the MOE, any Governmental Authority or the City, as owner of the Site;
 - (iii) use a qualified environmental consultant approved by the City to perform any required remediation;
 - (iv) obtain, at the Operator's sole cost and expense, from an independent environmental consultant, satisfactory to the City, and provide to the City a letter of reliance verifying the complete and proper removal or remediation of the Hazardous Substances from the Site and obtain such approvals from MOE and any other applicable Governmental Authority in respect of the remediation as are required under the Environmental Laws or by the City, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to

the MOE to Acceptable Contamination Levels without any conditions, except as approved by the City, acting reasonably; and

- (v) remediate any Hazardous Substances brought or deposited on the Site by the Operator or any of the Operator's Personnel or by any past user(s) or operator(s) of the Site for Horse Racing Operations which migrate from the Site onto any other property, including without limitation into the City's sewer or storm sewer and then into the Burrard Inlet;
- (f) the Operator hereby assumes and agrees that it shall be responsible for the performance of any and all duties, obligations or liabilities under the EMA or any other applicable Environmental Laws, including without limitation, any costs, expenses or liabilities pertaining to any remediation activities necessary to remediate to Acceptable Contamination Levels any Hazardous Substances on the Site or which migrate or previously migrated from the Site and which are or were caused by the Operator or the Operator's Personnel or by any past use of the Site related to horse racing, including any use of the Site by any previous operator or user of the Site that carried on live Horse Racing Operations. All the environmental provisions and obligations of the Operator in this Agreement shall apply equally to any Hazardous Substances brought or deposited thereon by any past user of the Site for Horse Racing Operations;
- (g) that the Operator shall indemnify, defend and save harmless the City and the City's Personnel, in respect of any and all Claims for bodily injury (including death), property damage, the costs of removal, remediation, treatment, storage and disposal of any Hazardous Substances or any other loss or damage to the Site or to any persons or animals thereon, or damage to any property outside of the Site, which losses or damages arise out of or is in any way connected or caused by the manufacture, storage, transportation, handling, discharge or migration of any Hazardous Substances from the Site onto any other private or public property, which Claims may be paid by, incurred by or asserted against the City or any of the City's Personnel during or after the Term or any Renewal Term; Provided That such Claims relate to Hazardous Substances caused by or related to the Operator's or the Operator's Personnel's use of the Site during the Term, or the Renewal Term, if applicable, or the use of the Site at any time prior thereto or by any past activities on the Site by any previous operators or users of the Site, or any portion thereof, related to live horse racing or which arise from any breach of or non-compliance by the Operator or the Operator's Personnel of the provisions of this section of the Agreement;
- (h) if any Governmental Authority having jurisdiction shall require the clean up of any Hazardous Substances held, released, spilled, abandoned or placed upon the Site by the Operator or the Operator's Personnel or by any previous user or operator of the Site, or any portion thereof, for live horse racing purposes, or which migrates or migrated from the Site as a result of the foregoing, then the Operator shall, at its own cost and expense, prepare all necessary studies, plans and proposals and submit the same for approval and provide all other security required by any Governmental Authorities, including without limitation the MOE, related to the carrying out of any remediation activities and shall keep the City fully informed and provide to the City full information with

respect to the proposed plans and comply with the City's requirements with respect to such plans and remediation activities; PROVIDED THAT the Operator agrees that if the City determines, in its sole discretion, that the City or its property is being placed in any jeopardy by the requirement for any such remediation activities, the City may itself undertake such remediation activities, or any part thereof, at the sole cost and expense of the Operator;

- (i) if the Operator or any of the Operator's Personnel shall bring or create upon the Site any Hazardous Substances or suffer or permit the bringing or creation upon the Site of any Hazardous Substances, or if the Horse Racing Operations, or any activities or uses related thereto, shall cause there to be any Hazardous Substances upon the Site, then, notwithstanding any rule of law or equity to the contrary or any provisions of this Agreement, such substances shall be and remain the sole and exclusive property of the Operator and shall not become the property of the City, notwithstanding the degree of affixation of such substances to the Site and notwithstanding the expiry or earlier termination of this Agreement. This clause supersedes any other provision of this Agreement to the contrary;
- (j) if any groundwater discharges or dewatering discharges at any time during the Term or any Renewal Term, if applicable, including without limitation while any remediation activities are being performed, are intended to be discharged into or are in fact discharged into a City's sewer or storm sewer system, the Operator will:
 - (i) ensure that in respect of all such discharges and dewaterings, it obtains and keeps current all necessary discharge permits and approvals required and meets all standards, pursuant to any municipal or regional by-law or provincial or federal statutes which are applicable from time to time, including, without limitation, Greater Vancouver Sewerage and Drainage District Sewer Use By-laws, any City of Vancouver Wastewater, Storm Water and Watercourse By-laws, and any Special Waste Regulations of the EMA and the Contaminated Sites Regulation (CSR) standards;
 - (ii) monitor discharge contaminant levels, during any remediation excavation dewatering, in accordance with the remediation plan or as otherwise directed from time to time by the MOE, the GVS&DD, GVRD or the City, to ensure compliance with all applicable standards at all times; and
 - (iii) apply to the City for permission to direct discharges to the City's sanitary sewer system and will comply with the City's requirements and conditions therefor and will pay the City's fees required in connection therewith; provided however that if the City Engineer determines that discharges into the sanitary sewer system are not possible or practicable, then the City may permit discharges into the City storm sewer; any such approvals will require that the Owner also obtain any required discharge permits or authorizations from any relevant governmental authorities;

- (k) the Operator shall promptly provide to the City a copy of any environmental site assessments, audits, reports and test results relating to the Site conducted by or for or on behalf of the Operator at any time before, during or after the Term or any Renewal Term, if applicable. The Operator shall, at its own cost and expense, at the City's request from time to time, acting reasonably and in any event, no more frequently than once during the Term or once every five (5) years during the Renewal Term, if applicable, except in either case in the event of an emergency, obtain from an independent environmental consultant approved by the City an environmental site assessment of the Site, or an environmental audit of the operations at the Site, which shall include any additional investigation as the environmental consultant may recommend. On request from the City, the Operator shall cause its environmental consultant to provide a letter of reliance to the City. The Operator shall, at the City's reasonable request from time to time, provide the City with a certificate of a senior officer of the Operator certifying that the Operator and the Operator's Personnel are using the Site in compliance with all Environmental Laws and that no adverse environmental occurrences have taken place at the Site other than as disclosed in writing to the City; and
- (l) the Operator shall promptly notify the City in writing of:
 - (i) any release or migration of any Hazardous Substances or any occurrence or condition at the Site or any adjacent property that could contaminate the Site or subject the Operator or the City to any fines, penalties, orders, investigations or proceedings under any Environmental Laws;
 - (ii) any charge, order, investigation or notice of violation or non-compliance issued against the Operator or relating to the Racino Operations at the Site under any Environmental Laws; and
 - (iii) any notice, claim, action or other proceeding by any third party against the Operator or in respect of the Site concerning any release or migration or alleged release or migration of any Hazardous Substances at or from the Site or the environmental condition of the Site or related to the Operator's use and operations on the Site.

95. The Operator shall maintain at the Site all environmental and operating documents and records, including permits, licenses, orders, approvals, certificates, authorizations, registrations and other such records relating to the operations at the Site, which may be reviewed by the City at anytime during the Term or the Renewal Term, if applicable, on twenty-four (24) hours prior written notice except in the case of an emergency, when no prior notice shall be required.

RENEWAL PROVISIONS

96. Subject to any termination rights and the Renewal Conditions specified for in this Agreement, the City hereby grants to the Operator a conditional right to renew the Slots Term for the Renewal Term on the same terms and conditions as set out in this Agreement, as applicable to or during the Slots Term, except for those terms and conditions as specifically provided for in sub-section (h) herein; Provided That the Operator's right to use the Site during the Renewal Term shall also be subject to such additional terms and conditions to the

satisfaction of the City Manager and the Director of Legal Services to be provided for in the Parkade Agreement, the Renewal Term Capital Improvements Agreement and that renewal agreement referred to in sub-section (h) herein. The Operator, as a condition of being granted any renewal of the Slots Term of this Agreement, must comply with and must have satisfied prior to any renewal the following conditions (the "*Renewal Conditions*"):

- (a) the Operator shall have paid to the City all Interim Operating Fees, Minimum Operating Fees, Additional Percentage Operating Fees, the Hastings Park Greening Fees, the Community Legacy Fund payments and all other Operating Fees and amounts, as and when due pursuant to this Agreement during the Term, and the Operator shall have punctually observed and performed the terms, covenants and conditions to be observed and performed by it during the Term in accordance with the terms and conditions of this Agreement;
- (b) the Operator shall have constructed the Childcare Facility and paid all construction costs, operating costs and subsidies related to the construction and continued operation of the Childcare Facility during the Slots Term and performed all its childcare obligations, pursuant to this Agreement and any other agreements between the City and the Operator related to the Childcare Facility and its operation, all to the satisfaction of the City;
- (c) the Operator shall give written notice to the City not less than twelve (12) months and not more than eighteen (18) months prior to the Expiry Date of the Operator's intention to renew the Slots Term of this Agreement (the "Operator's Renewal Notice");
- (d) the Operator shall have completed the installation, construction and performance of all the obligations related to the Initial Term Capital Improvements to the satisfaction of the City, in accordance with the Approved Capital Expenditure Plan, at a cost of not less than FORTY MILLION DOLLARS (\$40,000,000.00), as provided for herein or in any other agreements between the parties pursuant to the Development Permit application or otherwise;
- (e) at least three (3) months prior to the Expiry Date, the Operator shall provide to the City Manager an unconditional letter of approval from BCLC which confirms that the Operator is not in default of the BCLC Operating Agreement and that BCLC approves the use and expenditure by the Operator of any FDF amount to be provided by BCLC towards the cost of the Renewal Term Capital Improvements;
- (f) the Operator shall have entered into a Parkade Agreement on such terms and conditions to the satisfaction of the City Manager and the Director of Legal Services, including without limitation amongst its terms and conditions the following provisions:
 - (i) If the City determines, in its sole discretion, that it does not want to contribute to the Parkade Construction Costs and the Parkade Operating Costs and to jointly operate the Parkade, then:
 - (A) the Operator shall be solely liable and responsible for all aspects of the construction and all construction and capital costs related to the Parkade, which shall have a minimum of five hundred

(500) parking stalls or such greater number of parking stalls as the Operator wishes to construct, as approved by the City;

- (B) the Operator shall be required to commence construction of the Parkade within a period of one (1) year from the commencement date of the Renewal Term, but not before the end of the Horse Racing Meet in the first Operating Year during the Renewal Term, in a location and in accordance with Plans and Specifications approved by the City. The Operator shall proceed with the construction of the Parkade in a diligent manner in accordance with a schedule of construction approved by the City failing which the City shall have the right to terminate the Renewal Term on sixty (60) days notice;
 - (C) the Operator shall be solely liable and responsible for the operation of the Parkade and all operating costs related thereto, including without limitation all labour, maintenance, insurance and repair costs;
 - (D) the Operator shall operate and be entitled to all parking revenue derived from the operation of the Parkade; provided that the Parkade is located within the boundaries of the Site; and
 - (E) the Operator shall be entitled to charge such fees as it determines, in its sole discretion, for all parking stalls within the Parkade and to restrict the use of the Parkade to the Operator's Personnel;
- (ii) If the City requires that the Parkade be constructed to accommodate or contain more than five hundred (500) parking stalls, so that the Parkade would have a minimum of five hundred (500) parking stalls for the use of the Operator and the Operator's Personnel plus such additional number of parking stalls, as the City determines appropriate, for the use of the City, the City's Personnel, the PNE, the PNE's Personnel and members of the public using the Hastings Park Lands, then the following provisions shall apply:
- (A) the City shall provide written notice to the Operator within three (3) months of receipt of the Operator's Renewal Notice that the City wants a Parkade with more than five hundred (500) parking stalls to be constructed on the Site or at a location on the Hastings Park Lands;
 - (B) the Operator and the City shall thereafter commence negotiations and enter into a Parkade Agreement, which shall include, without limitation, terms and conditions governing each party's respective rights and obligations with respect to the construction and operation of the Parkade, a cost sharing or allocation of all construction and operating costs between the parties, including an agreement that the City pay the City's Proportionate Share of Parkade Costs and the Operator shall pay the Operator's Proportionate Share of Parkade Costs based upon

the number of parking stalls in the Parkade, a formula for sharing all of the Parkade revenue and an agreement on the use, procedures, rules, schedules and requirements related to the construction and operation of the Parkade. Without limiting the generality of the foregoing, the Parkade Agreement shall include those terms and conditions as provided for hereafter in subsections 96(f)(ii)(C), (D), (E) and (F) and section 96(f)(iii), inclusive. If a Parkade Agreement, including those terms and conditions as aforesaid, to the satisfaction of the City Manager and the Director of Legal Services is not agreed to by the parties and not executed prior to the Expiry Date of the Slots Term, then the Operator shall, as a condition of being granted a Renewal Term, be obligated to construct a minimum five hundred (500) parking stall Parkade within the Site boundaries at a location underground beneath the Racetrack oval or in such other location approved by the City, at the Operator's sole cost and expense in accordance with a Parkade Agreement on terms and conditions outlined in subsections 96(f)(i) and (f)(iii) herein;

- (C) regardless of whether the Operator or the City is to assume control over the construction of the Parkade, the construction of the Parkade shall commence within a period of one (1) year from the commencement date of the Renewal Term, but not before the end of the Horse Racing Meet in the first Operating Year of the Renewal Term and must proceed to be completed in a diligent manner;
- (D) if the Parkade is to be located within the Site, then the Operator will operate the Parkade and shall be entitled to charge market rates, as set by the Operator and as approved or agreed to by the City or its designate, for all parking stalls within the Parkade used by the Operator, the Operator's Personnel, the City, the City's Personnel or any members of the public. In no event shall the Operator be entitled to charge higher rates to Persons using the Parkade that are not the Operator's Personnel, including its patrons;
- (E) if the Parkade is to be located outside the boundaries of the Site, then the City or the PNE, shall operate the Parkade and shall be entitled to charge market rates, as set by the City or the PNE in their sole discretion, for all parking stalls within the Parkade used by the City, the City's Personnel, the Operator or the Operator's Personnel, including its patrons, or any members of the public. The City or the PNE shall not charge the Operator or the Operator's Personnel, including its patrons, a higher hourly/daily rate than that rate charged to any other members of the public; and
- (F) In the case of either subsections (D) or (E) herein being applicable, the Operator and the City, or the PNE, shall each be entitled to a portion of the Parkade revenue less all the Parkade Operating Costs (the "*Net Parkade Revenue*") based upon their

respective proportionate number of stalls in the Parkade designated for each party's respective use and as agreed upon in the Parkade Agreement;

- (iii) in the event that the Operator shall be responsible for the construction of the Parkade, whether of five hundred (500) parking stalls or more as hereinbefore provided, the Operator covenants and agrees to comply with the following:
 - (A) detailed drawings, working plans and specifications related to the construction of the Parkade shall be prepared at the Operator's sole cost and expense by qualified architects or engineers and conforming to good architectural or engineering practice and shall be submitted to the City for written approval prior to construction of the Parkade commencing;
 - (B) the Operator shall construct the Parkade in accordance with a schedule approved by the City and shall have the parking spaces therein available for use by such date as agreed to by the City and the Operator as a condition of renewal of this Agreement;
 - (C) the Parkade shall be constructed and installed in strict accordance with the design, working plans and specifications prepared or caused to be prepared by the Operator, sealed by a responsible supervising professional engineer in good standing in the Province of British Columbia and accepted by the City Engineer;
 - (D) the Parkade, upon completion of construction to the satisfaction of the City, shall be the absolute property of the City, even if constructed and operated by and at the sole cost and expense of the Operator;
 - (E) the Operator shall indemnify and provide such security in favour of the City against any and all Claims and liens with respect to the construction and operation of the Parkade as the City's Director of Legal Services requires;
 - (F) the Operator shall provide a warranty, in accordance with Section 32, with respect to the construction of the Parkade and the materials used as required by the City's Director of Legal Services and the City Engineer; and
 - (G) all such other terms and conditions related to the construction of the Parkade as determined necessary by the City's Director of Legal Services, acting reasonably, including without limitation obtaining and maintaining insurance coverage for the construction and operation as deemed necessary by the City; and
- (iv) nothing herein contained shall prevent the Operator from seeking the approval of the City to construct the Parkade during the Term, in accordance with the City's ordinary permitting process, and the terms

and conditions related to the Parkade and the Parkade Agreement shall apply equally in such instance, except for the appropriate changes related to the timing of the construction;

- (g) at least three (3) months prior to the Expiry Date, the Operator shall have entered into an agreement with the City, on terms and conditions to the satisfaction of the City Manager and the Director of Legal Services, with respect to the construction, installation or provision by the Operator of the Renewal Term Capital Improvements during the Renewal Term (the "*Renewal Term Capital Improvements Agreement*"). Without limiting the generality of the foregoing, the Renewal Term Capital Improvements Agreement shall include, without limitation, the following terms and conditions:

- (i) the Operator's covenant to expend not less than the Renewal Term Minimum Capital Expenditures during the Renewal Term on Eligible Capital Expenditures in order to complete the Renewal Term Capital Improvements, to the satisfaction of the City:

i.e. As an example: if the Average Daily Net Win for the Slots in the 4th Operating Year of the Slots Term is \$400 per slot machine per day and the Operator expended \$40,000,000.00 as Eligible Capital Expenditures during the Term for the Initial Term Capital Improvements and the Operator received or based upon the FDF Slots Term Payment was deemed to receive only \$28,000,000.00 from BCLC as FDF payments, then the Renewal Term Minimum Capital Expenditures to be expended by the Operator, as a condition of renewal of this Agreement, shall be calculated as follows:

$$\begin{aligned}
 \text{Renewal Term Minimum} &= (\$400) \times (365) \times (600) \times (0.05) \times (15) - \\
 \text{Capital Expenditures} &= (\$40,000,000.00 - \$28,000,000.00) \\
 &= \$53,700,000.00 \text{ or such larger amount} \\
 &\text{as is required to be expended by the} \\
 &\text{Operator to construct the Parkade or to} \\
 &\text{pay the Operator's Proportionate} \\
 &\text{Share of Parkade Costs (in respect of} \\
 &\text{the construction thereof) plus that} \\
 &\text{amount to be expended to relocate and} \\
 &\text{rebuild the barns and stables and to pay} \\
 &\text{for all associated Site infrastructure;} \\
 &(*\text{subject to an adjustment or reduction} \\
 &\text{equal to the amount of the Operator's} \\
 &\text{Parkade Construction Costs, if the} \\
 &\text{Parkade is constructed during the Term})
 \end{aligned}$$

- (ii) without derogating from the foregoing, the Operator covenants to expend during the Renewal Term whatever sum is necessary to complete the Unconditional Renewal Term Capital Improvements to the satisfaction of the City, regardless of whether the cost to complete the Unconditional Renewal Term Capital Improvements exceeds the Residual FDF Amount provided for in the definition of Renewal Term Minimum Capital Expenditures;

- (iii) the Operator covenants to expend, during the Renewal Term, on the Conditional Renewal Term Capital Improvements, as required by the City, that sum, if any, by which the Residual FDF Amount exceeds the Operator's estimated cost, as approved by the City Manager, to complete the Unconditional Renewal Term Capital Improvements. For greater certainty, the Operator shall covenant to expend that sum equal to the FDF Renewal Term Surplus on Eligible Capital Expenditures to complete the Conditional Renewal Term Capital Improvements; Provided That the Operator shall have no obligation to complete, construct, install or perform any Conditional Renewal Term Capital Improvement if there is no FDF Renewal Term Surplus;
- (iv) an agreement by the Operator and the City on the list of Conditional Renewal Term Capital Improvements to be completed by the Operator with the FDF Renewal Term Surplus amount, if any. In the absence of the Operator agreeing with the City on these Conditional Renewal Term Capital Improvements, the Operator shall not be granted any right to renew the Slots Term of this Agreement;
- (v) the Operator's covenant to undertake and complete the Renewal Term Capital Improvements, at its sole cost and expense, within such time periods as required by the City during the Renewal Term, except for the Parkade which shall be completed at such time as provided for in the Parkade Agreement;
- (vi) the Renewal Term Capital Improvements and the Renewal Term Minimum Capital Expenditures related thereto must be completed and expended, respectively, by the Operator regardless of whether any FDF funds estimated to be payable to the Operator by BCLC are actually paid or become payable by BCLC, based upon actual Net Win from the Slots during the Renewal Term, or for any other reason whatsoever;
- (i) the Operator's covenant to provide detailed drawings and specifications of the Renewal Term Capital Improvements prepared, at the Operator's sole cost and expense, by qualified architects or engineers and conforming to good architectural or engineering practices, all of which must be to the City's satisfaction and receive the City's written approval;
- (ii) the Operator's covenant to complete all Renewal Term Capital Improvements to the satisfaction of the City based upon drawings, plans, specifications and other details related to the Renewal Term Capital Improvements, as approved by the City;
- (iii) the Operator's covenant to release and indemnify the City and the City's Personnel and provide security in favour of the City against any and all Claims and liens with respect to the construction or installation of any of the Renewal Term Capital Improvements, on such terms as the City's Director of Legal Services deems necessary;
- (iv) the Operator's covenant to provide a warranty, in accordance with Section 32, with respect to the construction or installation of the

Renewal Term Capital Improvements and the materials used, as required by the City's Director of Legal Services and City Engineer, acting reasonably; and

- (v) all such other terms and conditions related to the construction or installation of the Renewal Term Capital Improvements, as determined necessary by the City's Director of Legal Services and the City Manager, including, without limitation, the covenant of the Operator to obtain and maintain all insurance coverage as required by the City related to the construction, removal, performance, existence and operation of the Renewal Term Capital Improvements; and
- (h) subject to the Operator satisfying all the other Renewal Conditions set forth herein, at least thirty (30) days prior to the Expiry Date, the Operator shall have entered into a renewal of this Agreement generally on the same terms and conditions as set out in this Agreement and otherwise to the satisfaction of the City Manager and the Director of Legal Services, except for the following amendments:
 - (i) there shall be no further right or option to renew the Term or any Renewal Term;
 - (ii) the amount of the Hastings Park Greening Fee shall be that amount equal to the Hastings Park Greening Fee as increased or adjusted by the CPI Inflation Adjustment compounded annually for each year of the Slots Term from the Base Year to the calendar year of the commencement date of the Renewal Term and shall be increased for each year thereafter during the Renewal Term by the CPI Inflation Adjustment with the base year for purposes of the CPI Inflation Adjustment calculation being the calendar year of the commencement of the Renewal Term, but shall not in any event be less than the amount of the Hastings Park Greening Fee payable during the Slots Term. The Hastings Park Greening Fee, as adjusted, shall be payable on the commencement date of any Renewal Term and on each anniversary of the commencement date of the Renewal Term thereafter;
 - (iii) the Operator shall not be obligated to pay, construct or complete the Initial Term Capital Improvements, except for the continuing obligations of the Operator to pay all costs and expenses related to the operation and maintenance of the Childcare Facility; Provided That the Operator has paid, completed or constructed all the Initial Term Capital Improvements, as required, during the Term to the satisfaction of the City;
 - (iv) the Minimum Operating Fee shall be increased annually by the CPI Inflation Adjustment for each Operating Year during the Renewal Term and shall be payable on the commencement date of the Renewal Term and thereafter on the first day of each Operating Year during the Renewal Term and otherwise as provided in this Agreement;
 - (v) the Operator must agree that the City can adjust the boundaries of the Site, including without limitation requiring that the Operator relinquish

its rights to use such portion of the Site, as deemed necessary by the City, to accommodate the construction and existence of the New Brighton Park Connection. The Operator acknowledges and agrees that the City shall have the right to determine, in its sole discretion, whether the New Brighton Park Connection is to be built during the Renewal Term by the City.

97. If any of the Renewal Conditions provided for in Section 96 are not satisfied, including the entering into of any of the agreements specified therein, then the Operator shall have no right to any renewal of this Agreement or any renewal or extension of the Slots Term and the City shall have no obligation to grant any renewal or extension of the Slots Term.

NAMING RIGHTS

98. The Operator covenants and agrees that it shall not name or rename the Site, the Grandstand Building, the Racetrack, or any portion thereof, including, without limitation selling the right to name or rename the Site, the Racino Operations, the Grandstand Building or the Racetrack, or any portion thereof, to a sponsor or for monetary or other compensation of any nature or kind without first having obtained the consent in writing of the City, which consent may be unreasonably or arbitrarily withheld. For greater certainty, such restrictions on naming or renaming any portion of the Site, the Grandstand Building or the Racetrack includes without limitation any room, restaurant, theatre or any area within the Site which the Operator is permitted to use pursuant to this Agreement; Provided That the Operator may, subject to the City's consent not to be unreasonably withheld, name or re-name any room, restaurant or an area inside the Grandstand Building only, if such naming or re-naming does not constitute the granting of naming rights to a sponsor or for monetary or other compensation of any nature or kind.

SIGNS AND ADVERTISING

99. The Operator shall not display or affix any signage, logos or other intellectual property on or within the Site without obtaining the prior written approval of the City, such approvals not to be unreasonably withheld. All such signage must comply with all Laws.

100. The Operator shall, at its sole cost and expense, (after first obtaining the approval of the City and the consent of any and all other Governmental Authorities as necessary) erect, operate, maintain, repair and replace any exterior identification, sign or advertising in any locations as specified in writing by the City and in accordance with the City's laws and any policies with respect to signage in the City of Vancouver generally or on the Site specifically. Any costs associated with illuminating any signs of the Operator shall be the sole responsibility of the Operator and electricity consumed in such regard shall be paid for by the Operator. If the electricity consumption for any of the Operator's signs is not separately metered, the Operator shall pay to the City as additional Operating Fees, on demand, such portion of the cost of such electricity for any such signs as is equitably apportioned to the Site by the City.

101. The parties covenant and agree that any glass or plastic panel or face of any exterior signs shall be a Trade Fixture and shall be removed by the Operator at the expiry or termination of this Agreement.

102. The Operator covenants and agrees to promptly indemnify and hold harmless the City and all City Personnel from and against any and all Claims with respect to the Operator's signs

or advertising on the Site, including without limitation, any loss or damage caused to any property or any injury caused to any Person as a result of the placing, use, removal, dislodgement or collapse of any signage or advertising. At the expiration or earlier termination of this Agreement, the Operator shall, at its sole expense, remove any signage or advertising from the Premises which the City at its option, upon notice to the Operator requires to be removed and the Operator shall immediately repair any damage caused by any such removal. The Operator's obligations to observe this covenant shall survive the expiration or earlier termination of this Agreement.

MISCELLANEOUS OBLIGATIONS AND GENERAL PROVISIONS

103. The Operator covenants and agrees, at its own expense, to promptly and faithfully observe and comply with all Laws of all Governmental Authorities which relate to and concern the Site, the Horse Racing Operations, the Slots Operations or any other obligations of the Operator pursuant to this Agreement and the BCLC Operating Agreement, including all applicable Laws related to the installation and use of any Surveillance Equipment on the Site or the Hastings Park Lands and the protection of privacy and personal information of the public. The Operator covenants and agrees that it shall apply for, obtain and pay for all necessary permits, licenses and registrations THAT THE Operator is required to have by the City or any Governmental Authority, with respect to the management, operation, conduct or condition of the Site and the carrying on of its Horse Racing Operations and Slots Operations and all other uses ancillary thereto as may be permitted by the City, and in particular, but not so as to limit the generality of the foregoing, the Operator shall comply with the requirements of the City's Building Inspector, Fire Department, Permits and Licenses Department and of any other Governmental Authority or police authority.

104. The Operator covenants and agrees that the City may, from time to time, resort to any or all of the rights and remedies available to it, in the event of any default hereunder by the Operator pursuant to any provision of this Agreement or which may be available by statute or at common law or in equity, all of which rights and remedies are intended to be cumulative and not alternative, and the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the City by other provisions in this Agreement or by statute or at common law or in equity.

105. The Operator covenants and agrees that all costs, expenses, and expenditures, including, without limitation, complete legal costs on a full indemnity basis, incurred by the City as a result of any default or breach by the Operator of any provision of this Agreement shall forthwith on demand be paid by the Operator to the City.

106. The Operator acknowledges and agrees that no condoning, excusing or overlooking by the City of any default, breach or non-observance by the Operator at any time or times in respect of any covenant, agreement, stipulation, obligation, condition or other provision of this Agreement shall operate as a waiver of the City's rights hereunder in respect of any continuing or subsequent default, breach, or non-observance, or so as to defeat or affect in any way the rights of the City herein in respect of any such continuing or subsequent default, breach or non-observance, and no waiver shall be inferred from or implied by anything done or omitted to be done by the City save only an express waiver in writing granted by the City. The acceptance by the City of a part payment of any sum required to be paid hereunder shall not constitute a waiver or release of its right to payment in full of such amounts due.

107. In the event the Operator continues to use the Site after the end of the Term and without the execution and delivery of a new operating agreement or any renewal hereof,

there shall be no tacit renewal of this Agreement or the Term hereby granted and the Operator shall be deemed to be using the Site, or any portions thereof, on a month to month basis, for the same Operating Fees and otherwise upon the same terms, conditions and provisos as set forth in this Agreement insofar as the same are applicable to a month to month use of the Site with the Minimum Operating Agreement Fees, Additional Percentage Fees and all other Operating Fees paid on a monthly basis as required by the City. The Operator acknowledges and agrees that it has no automatic right of renewal of this Agreement and any right of renewal is subject to the Operator satisfying all the Renewal Conditions herein provided.

108. The Operator covenants and agrees that all its obligations to pay to the City all Operating Fees, charges and any other amounts owing hereunder shall be absolute and unconditional in all circumstances without any right of setoff, abatement, reduction or any other right of claim whatsoever, except as otherwise specifically provided for herein.

109. If either party is delayed or prevented from performing any of the obligations on its part to be performed hereunder by reason of an act of God, strike, labour dispute, lock-out, fire, flood, interruption or delay in transportation or insurrection, failure of power, riots, war, unavoidable casualties, illness or plague to more than thirty percent (30%) of the horses at the Site or any other disabling cause (other than lack of funds) without regard to the foregoing enumeration, beyond the control of either party or which cannot be overcome by the means normally employed in the performance (a "Force Majeure"), then and in every such event, any such prevention or delay shall not be deemed a breach of this Agreement, but performance of any of the said obligations or requirements shall be suspended or excused during such period and the period of all such delays resulting from any such causes shall be excluded in computing the time within which anything required or permitted by either party to be done is to be done hereunder. It being understood and agreed that the time within which anything is to be done, or made pursuant hereto shall be extended by the total period of all such delays. The provisions of this section shall not operate to excuse the Operator from the payment of any Operating Fees required by the terms of this Agreement.

110. The parties hereby covenant and agree to execute any further and other documents and instruments and to do any further acts or things that may be necessary to implement and carry out the intent of this Agreement.

111. The Operator covenants and agrees that this Agreement creates no estate, right or legal demise of any interest in land other than a personal right in favour of the Operator to use the Site for the purposes of carrying on the Racino Operations. The Operator covenants and agrees that this Agreement shall not be registered in any Land Title Office, or in any manner on title to the Site or the Hastings Park Lands. The Operator acknowledges and agrees that nothing in this Agreement shall be interpreted as giving the Operator exclusive possession of the Site. The Operator covenants and agrees that it will not create any mortgage, conditional sale agreement or other encumbrance of any nature or kind whatsoever in respect of this Agreement or any of the Initial Term Capital Improvements, Renewal Term Capital Improvements, if applicable, of any Trade Fixtures, or otherwise against the Site or any Site Improvements or permit any such mortgage, conditional sales agreement or other encumbrance to attach to the Site, the Hastings Park Lands or any Site Improvements.

112. Notwithstanding anything to the contrary herein contained, all the indemnification and release provisions contained in this Agreement shall survive the termination of this Agreement. The covenants herein on the part of the City and the Operator which as of the termination of this Agreement, whether by effluxion of time or otherwise, remain unfulfilled,

undischarged or otherwise outstanding shall nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as there is any liability or indebtedness by either party to the other or so long as any such covenant remains unfulfilled, undischarged or otherwise outstanding, whether in whole or in part, notwithstanding anything herein to the contrary.

113. Whenever and so long as any Operating Fees or any other amounts payable hereunder by the Operator to the City shall be arrears, such amounts shall bear interest at the rate of THREE (3%) PER CENT per annum above the Prime Rate, per annum, calculated monthly, not in advance, from the date due until paid irrespective of whether or not the City has demanded payment. The City shall have all the remedies for the collection of such interest as in the case of Operating Fees in arrears, but this provision for interest shall not prejudice or affect any other remedy of the City under this Agreement.

114. The Operator covenants and agrees that the City has made no representations or warranties as to the state of repair of the Site or the Grandstand Building or any other structures or improvement, including the Site Improvements or their suitability for the purposes of conducting a Horse Racing Meet, any Horse Racing Operations or the Slots Operations as contemplated by the Operator. The Operator understands and agrees that development and building permits are required for any change to the structures, buildings or improvements existing on the Site, including without limitation to the Grandstand Building, and for any change to the use thereof. The Operator agrees that the City has made no representations or warranties or given any assurances that any required development or building permit will be granted.

115. The Operator covenants and agrees that nothing herein contained or implied shall prejudice or affect or be construed as a limitation on the City's rights, powers, duties and obligations bestowed upon it as a municipal corporation and the rights, powers, duties and obligations of the Council and the employees of the City under all public and private statutes, by-laws and regulations may be as fully and effectually exercised in relation to the Operator and the Site and use thereof as if the City was not the owner of the Site and this Agreement had not been executed by it. The Operator covenants and agrees that it shall abide by any and all rules, regulations, bylaws, notices and directions which may from time to time be established by the City as a municipal corporation.

116. The Operator represents and warrants that it has the full power and capacity to execute this Agreement on the terms herein contained and has been duly authorized by their Board of Directors to execute this Agreement and, when executed, the Agreement shall be valid and binding on the Operator.

117. Any notice required to be given hereunder may be delivered or mailed and shall be deemed to be well and sufficiently given if mailed at any Government Post Office in British Columbia, by prepaid registered or certified mail addressed as follows:

(a) HASTINGS ENTERTAINMENT INC.
200 - 13775 Commerce Parkway
Richmond, British Columbia
V6V 2V4

Attention: President

with a copy to its legal counsel:

Lang Michener
Barristers and Solicitors
1500 Royal Centre
1055 West Georgia Street
PO Box 11117
Vancouver, British Columbia
V6E 4N7

Attention: Stacey Handley;

- (b) GREAT CANADIAN GAMING CORPORATION
200 - 13775 Commerce Parkway
Richmond, British Columbia
V6V 2V4

Attention: Chief Executive Officer; and

- (c) CITY OF VANCOUVER
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: City Manager and City Clerk

with a copy to Real Estate Services

or to such other address as the parties may from time to time advise the other in writing, and any such notice shall be deemed to have been received forty-eight (48) hours after the mailing thereof, or if delivered, when delivered, Provided That if mailed should there be between the time of mailing and the actual receipt of the notice a mail strike, slow-down or other labour dispute which might affect delivery of such notice then such notice shall only be effective if actually delivered.

118. This Agreement shall be binding upon and enure to the benefit of any permitted successors and assigns.

119. This Agreement may not be amended or modified until such amendment or modification is approved by the City Manager and the Director of Legal Services.

120. Each of the obligations and provisions of this Agreement, even though not expressed as a covenant, shall be considered a covenant for all purposes.

121. If any provision or provisions of this Agreement are determined by a court to be illegal or not enforceable, it or they shall be considered separate and severable from the rest of this Agreement and the remaining provisions of this Agreement shall remain in full force and be binding upon the parties as though the illegal or unenforceable provisions had never been included.

122. Nothing herein contained in this Agreement nor any acts of the City or the Operator shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship of principal and agent or of partnership or joint venture or of landlord and tenant between the City and the Operator.

123. Time shall be of the essence of this Agreement.

124. This Agreement shall be governed by and interpreted in accordance with the laws of British Columbia and the parties irrevocably attorn to the jurisdiction of the courts of British Columbia.

125. The schedules attached hereto are hereby incorporated into this Agreement and form a part thereof. All terms defined in the body of this Agreement will have the same meaning in the schedules attached hereto.

126. Any reference to a statute includes and is a reference to that statute and to the regulations made pursuant thereto and, unless otherwise expressly provided, includes a reference to all amendments made thereto and in force from time to time and to any statute or regulation that may be passed which has the effect of supplementing or superseding that statute or those regulations.

127. All references to any party, whether a party to this Agreement or not, will be read with such changes in number and gender as the context or reference requires. When the context hereof makes it possible, the word "person" appearing in this Agreement includes in its meaning any firm and any body corporate or politic.

128. This Agreement may be executed in several counterparts, each of which will be deemed to be an original and all of which will together constitute one and the same instrument.

129. Any covenant, agreement, condition or proviso made by two or more persons, including without limitation by HEI and GCGC, collectively as the Operator, shall be construed as being several as well as joint.

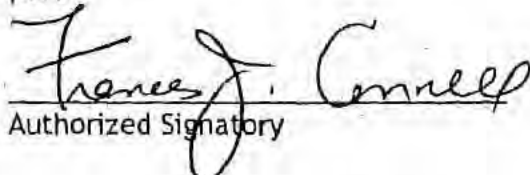
130. The headings to the paragraphs contained in this Agreement have been inserted as a matter of convenience and for reference and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.

131. All references to a currency in this Agreement shall mean a reference to lawful money of Canada.

IN WITNESS WHEREOF the parties have hereunto caused their respective seals to be affixed under the hands of their proper officers duly authorized in that behalf as of the day and year first above written.

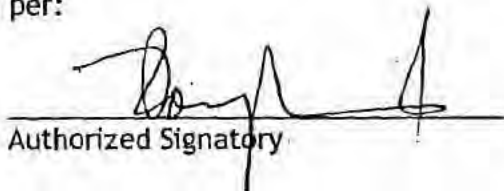
CITY OF VANCOUVER

per:


Authorized Signatory

HASTINGS ENTERTAINMENT INC.


per:


Authorized Signatory

Authorized Signatory

GREAT CANADIAN GAMING CORPORATION

per:


Authorized Signatory

Authorized Signatory

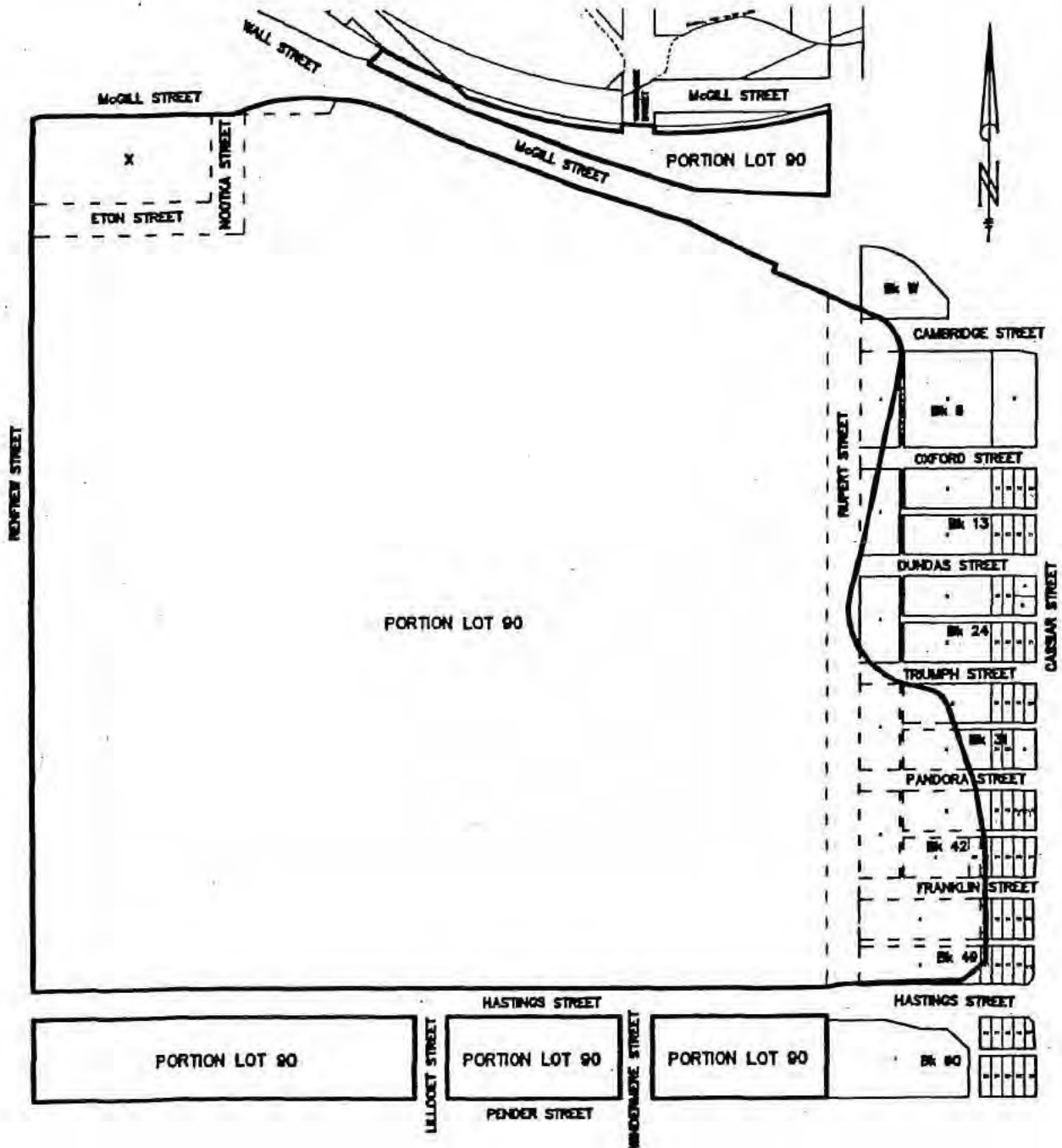
LIST OF SCHEDULES

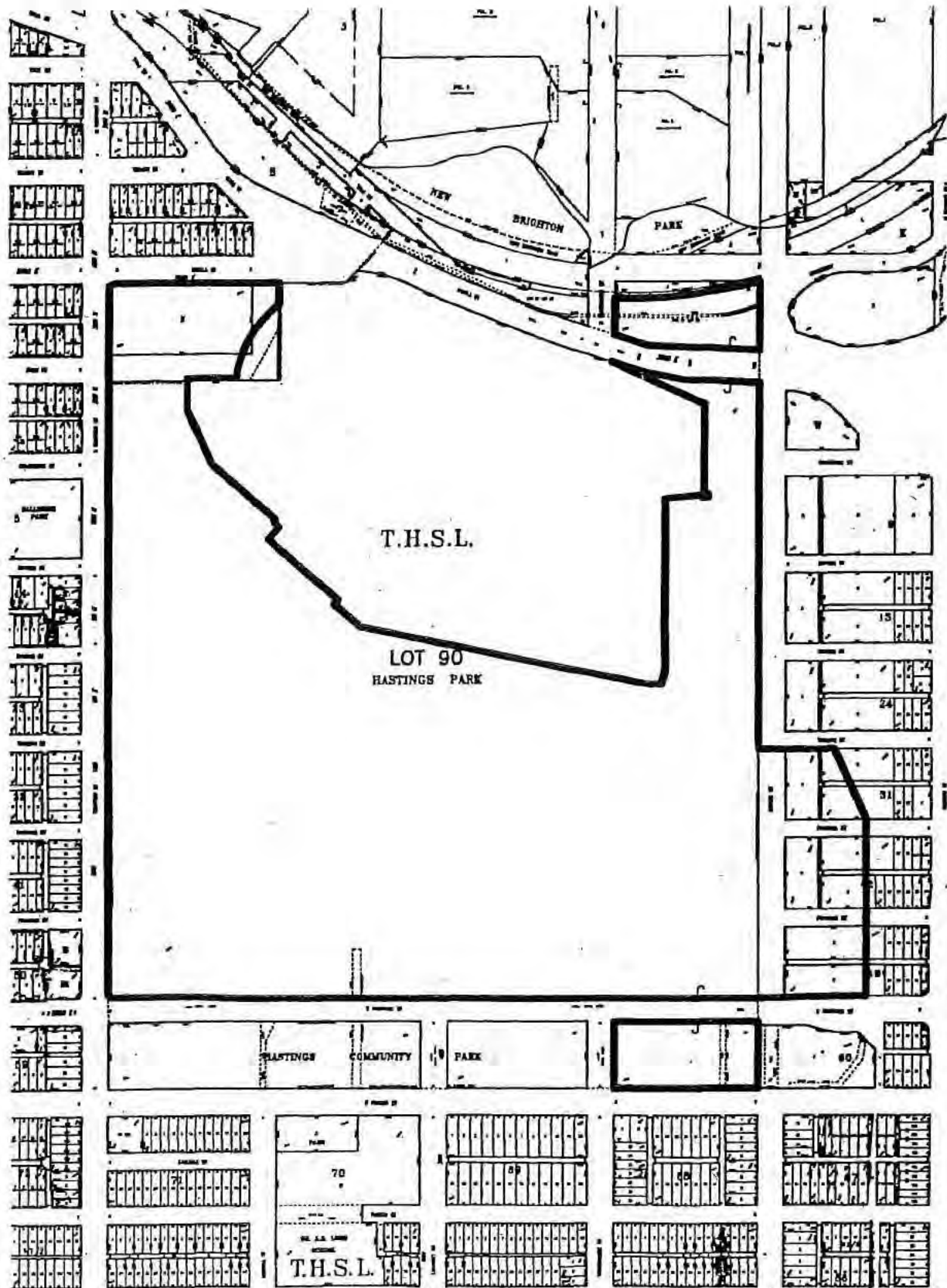
Schedule "A"	-	Plan of Hastings Park Lands
Schedule "B"	-	Plan of City Lands
Schedule "C"	-	Plan of the Site
Schedule "D"	-	Plan of Lot 9A
Schedule "E"	-	Plan of Grandstand Building
Schedule "F"	-	Plan of Garbage Compound
Schedule "G"	-	Plan of Slots Floor
Schedule "H"	-	Plan of Phase 1 Slots Floor
Schedule "I"	-	List of Food and Beverage Concessions
Schedule "J"	-	List of HEI's Trade Fixtures and Equipment
Schedule "K"	-	Parking Access and Management Plan
Schedule "L"	-	Plan Showing and Marking the Various Parking Lots

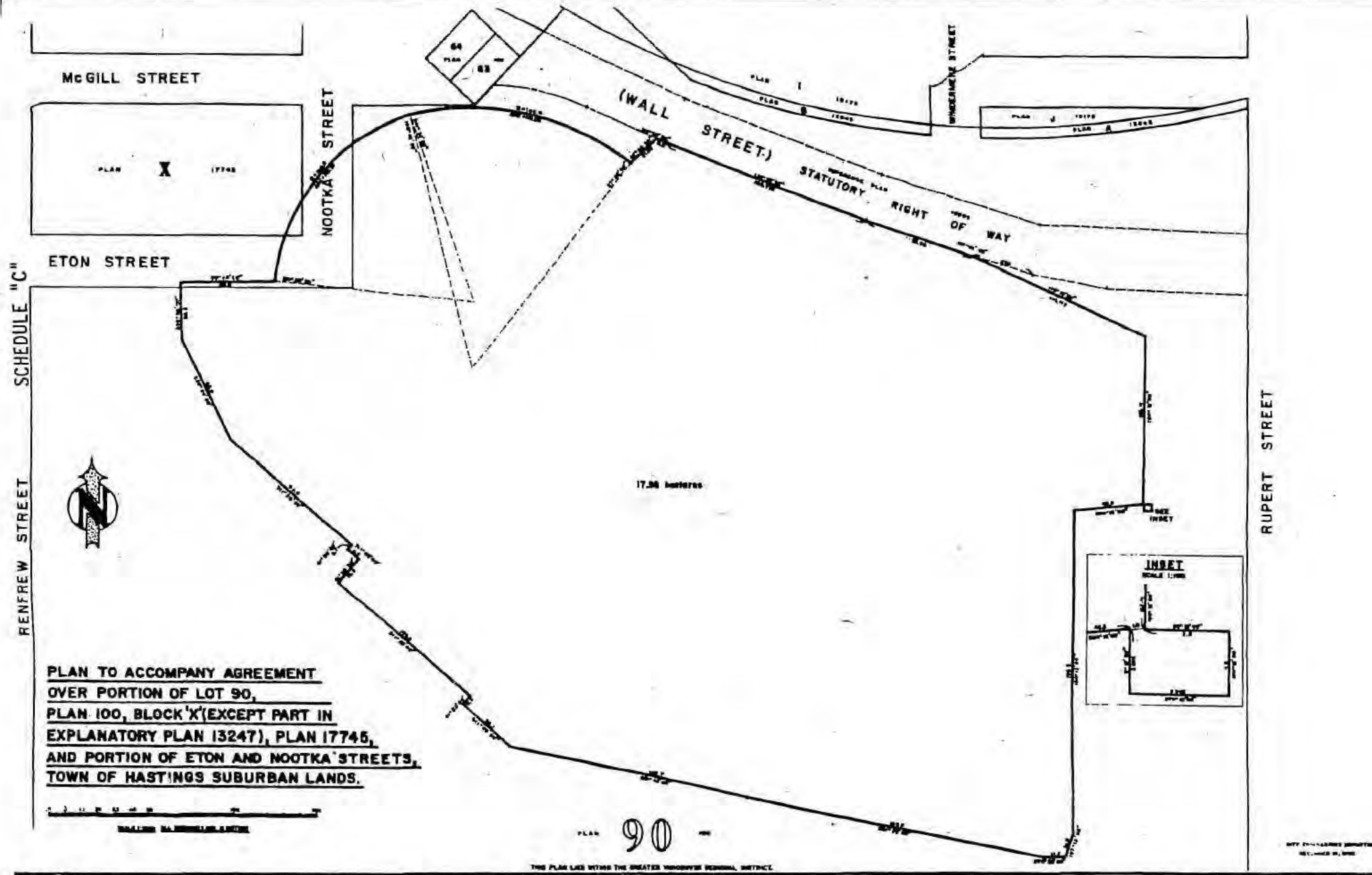
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SCHEDULE A



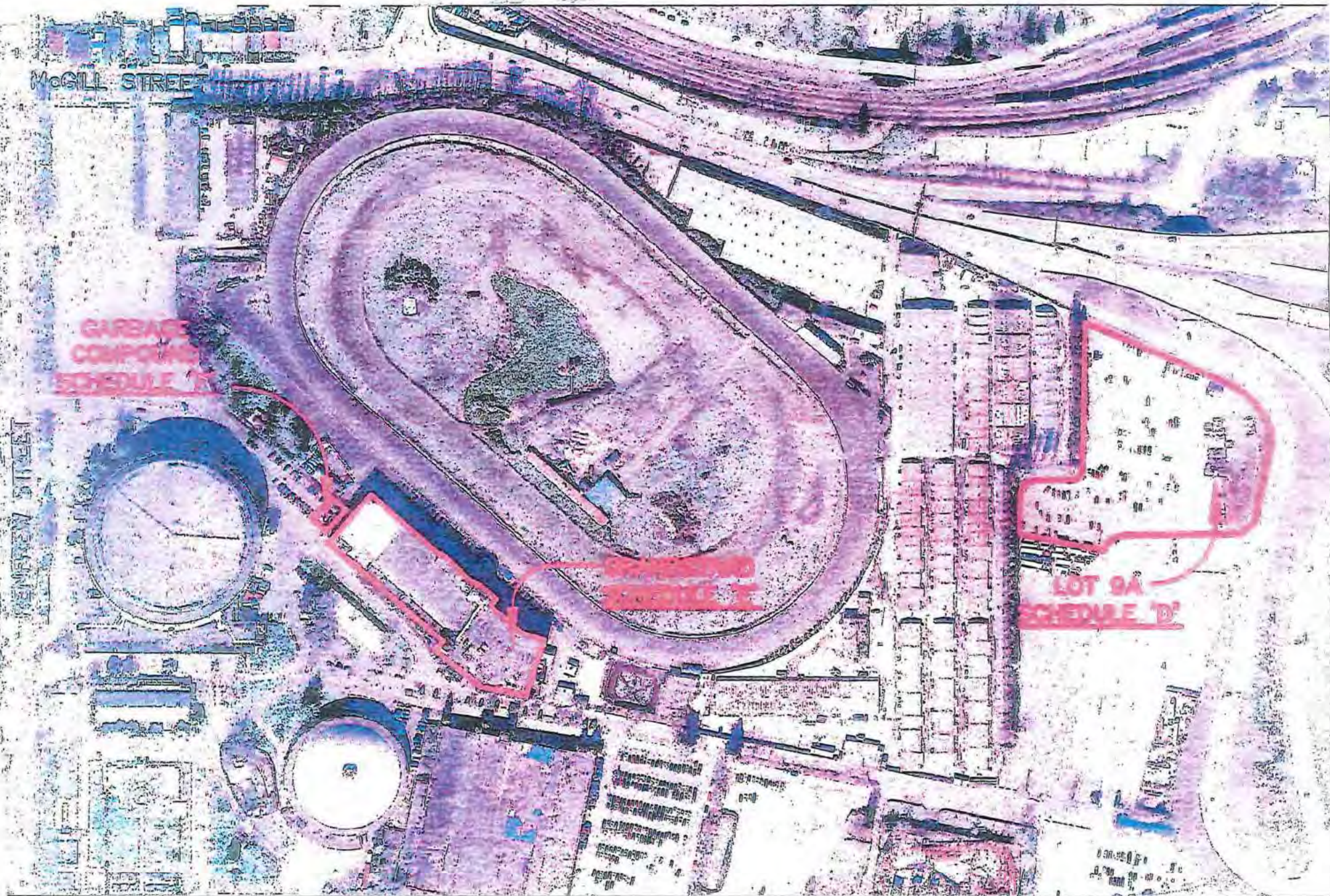




**PLAN TO ACCOMPANY AGREEMENT
OVER PORTION OF LOT 90,
PLAN 100, BLOCK 'X' (EXCEPT PART IN
EXPLANATORY PLAN 13247), PLAN 17745,
AND PORTION OF ETON AND NOOTKA STREETS,
TOWN OF HASTINGS SUBURBAN LANDS.**

PLAN 90

THIS PLAN LIES WITHIN THE GREATER VICTORIA REGIONAL DISTRICT.



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ENGINEERING SERVICES**

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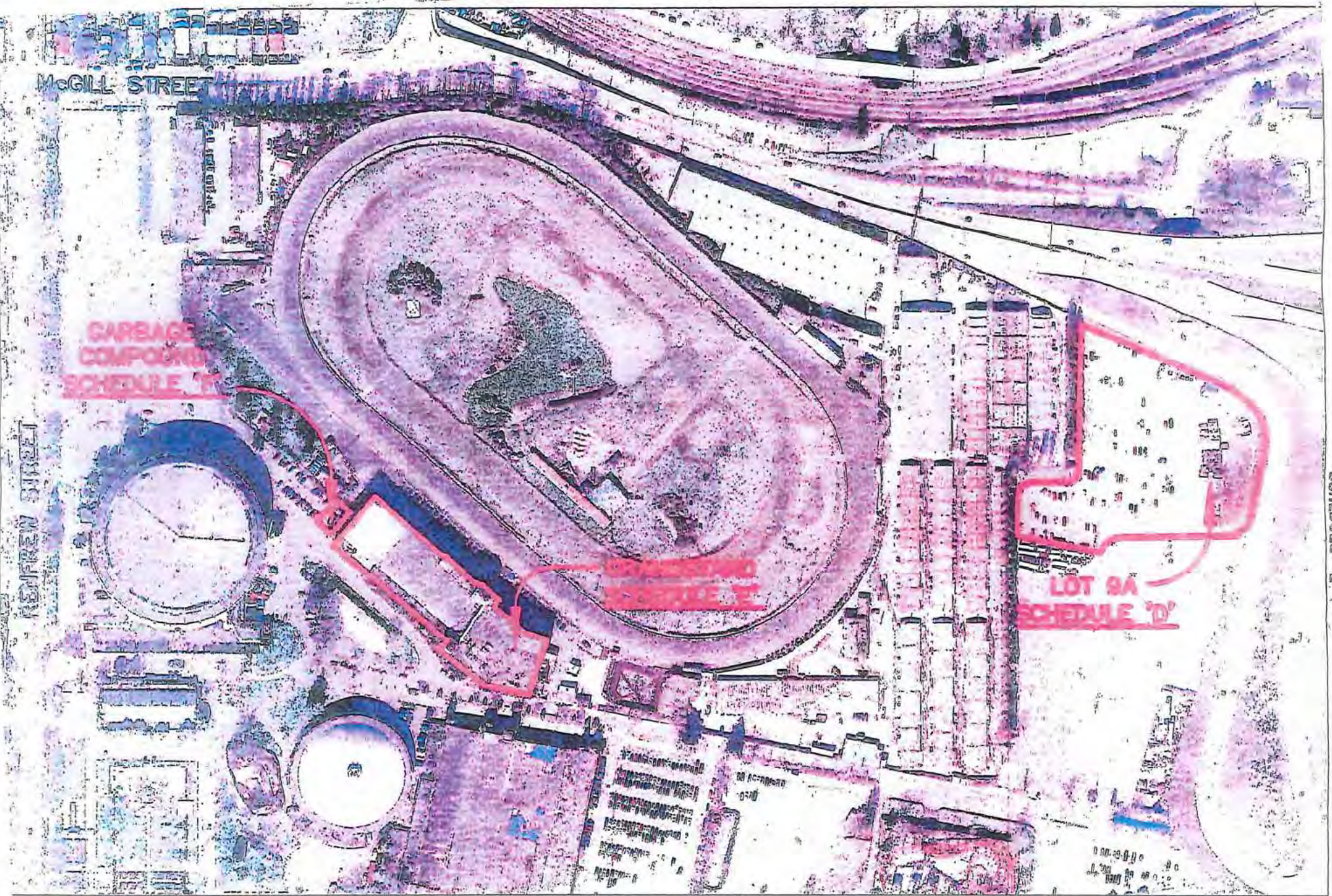


DATE

JULY 3, 2007

HASTINGS PARK

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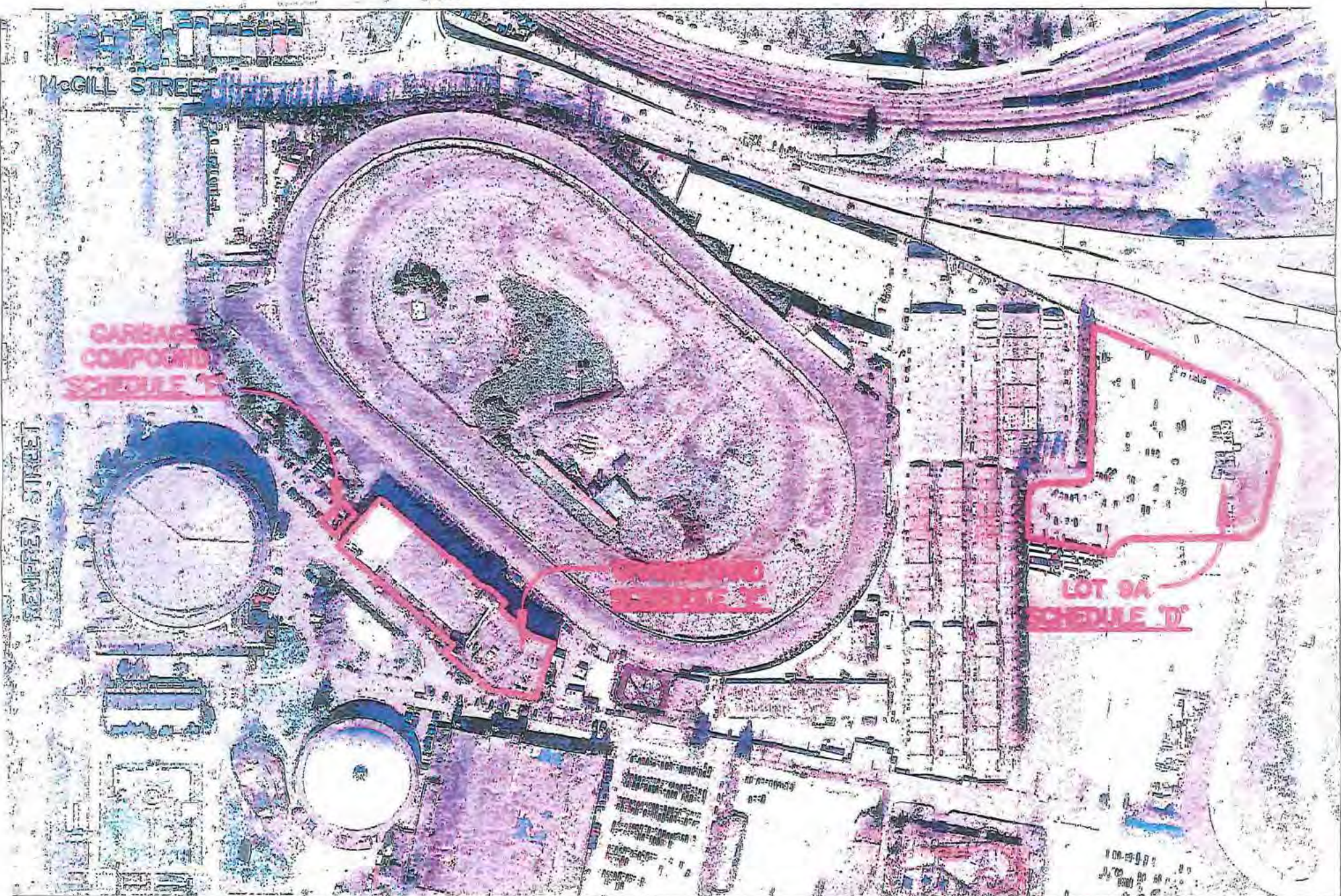


**SCALE
N.T.S.**



**DATE
JULY 3, 2007**

HASTINGS PARK



**CITY OF VANCOUVER
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SCALE

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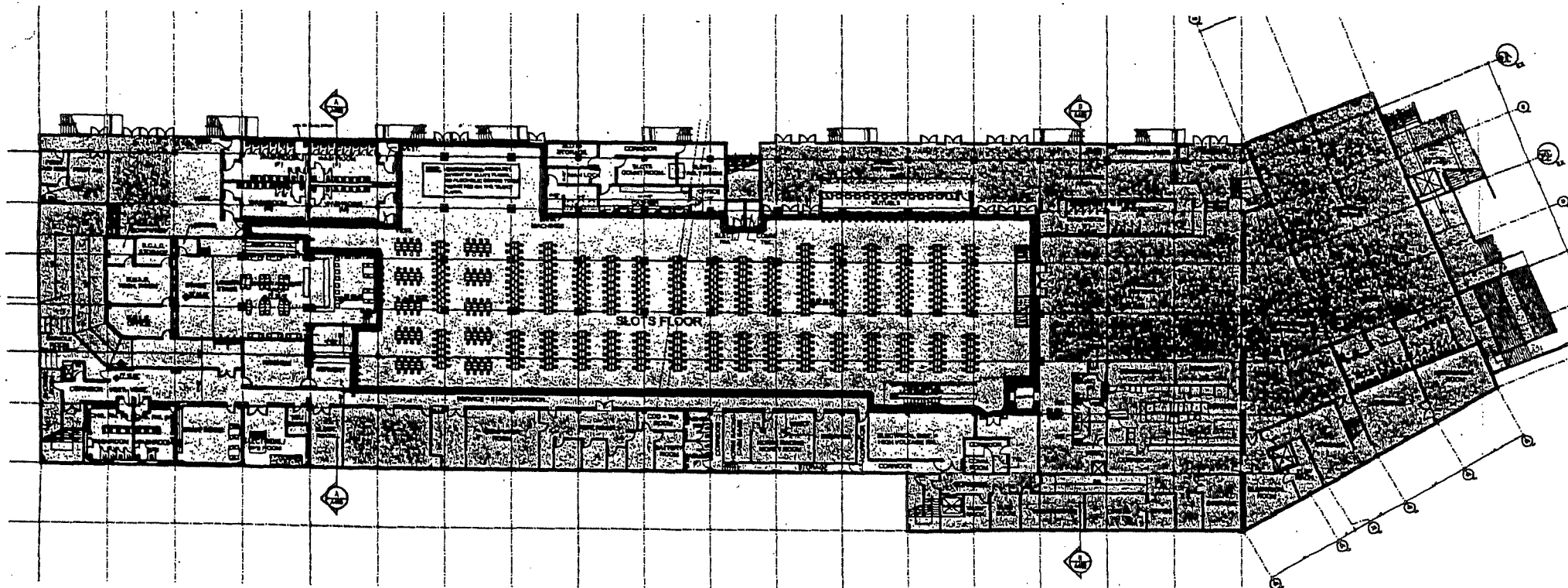


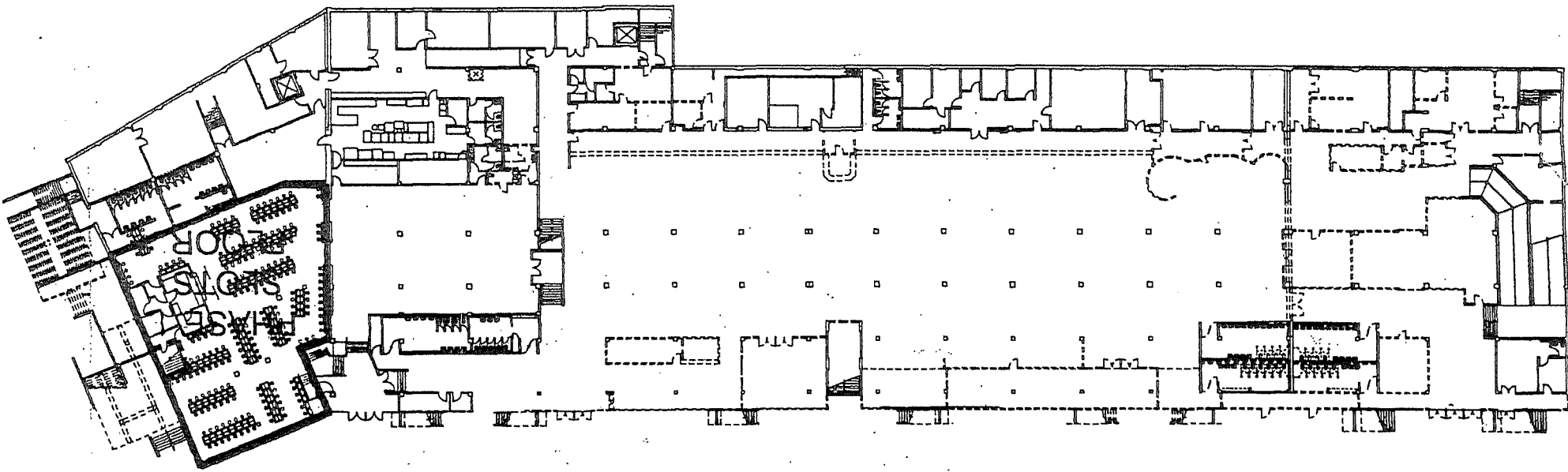
DATE

JULY 3, 2007

HASTINGS PARK

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SCHEDULE "H"

SCHEDULE "I"

Hastings Park Food & Beverage Outlets

(in existence and as contemplated as of July 11, 2007)

Ground level/ Tarmac:

Concessions:

The Carvery
The Hastings Grill
The Finish Line Bar
The Paddock Grill
The Marquee Tent
The Cappuccino Cart
The Draft Caddy (weather dependant)
Food & Beverage Concession (yet to be named) for the slots floor

Bar/Pub:

Jerome's

Second Floor/ Mezzanine Level:

Concessions:

The Wok
The Grandstand Bar
The Deli

Bar/Pub:

The George Royal Room

Group Area:

Patio #1
Patio #2

Third Floor:

Restaurant/ Bar:

Silks Restaurant
Silks Bar

Roof:

Group Area:

Skybox

Backstretch/ Barn Area:

Cafeteria:

Trackers

General Furniture

Chairs
Tables
Benches
Picnic Tables
Barrels
Stools
Bus Chairs
Desks
File Cabinets
Bookshelves

General Other

Internal Signage
Miscellaneous Office Equipment (calculators,
Portable Safes

Electronic Equipment

Televisions
Telephones, telephone switch
Sound system including amplifiers, mixers, speakers
Computer Systems (hardware, software, monitors, network equipment, etc.)
Tote System
Automated Betting Machines
DVR Camera Systems
Automated Banking Machines
Photocopiers
Fax Machines
Audio Visual Equipment

Maintenance Equipment

Auto Scrubbers
Mops, buckets, etc.
Vacuums
Ladders
Man Lift
Hand Tools
Fork Lifts
Tractors
Grader
Water Trucks
Work Trucks
Golf Cart
Gators
Roller Harrows
Wood Harrows (Floats)
Steel Float
Ambulance Horse
Rototiller
Paint Sprayer
Miscellaneous Power tools
Saws
Drill Press
Welding Equipment
Carpenter Shop Tools
Mechanic Shop
Gas Pump
Water Pumps
Power Snake
Pressure Washers
Air Compressors

Hastings Park - Food and Beverage Equipment and Trade Fixtures

Page 2

<u>Silks</u>	<u>Jeromes</u>	<u>Carvery</u>	<u>Main Kitchen</u>
Buffet for cold on casters Steam table not on casters Dessert hot & cold station seafood station & soup Heat lamp - 2 lights S. S. heat lamp - 4 Meat block - 2 lights Dishwash machine - Hobart S.S. Rack on casters Sandwich prep fridge - Silver King Salad fridge - Silver King Ice cream freezer - Silver King Ice machine Panini maker Convection toaster Silver king fridge Frymaster deep fryers Garland deep fryer S.S. sinks 3 well s.s. table 9 pot s.s. soup table Garland salamandz Wolf ovens Grill flat top 2 burner open flame Garland broiler Garland oven flat top burner Rapid steam steamer Alto sham Single s.s. sink 5 unit hot wells Garland hot box Panasonic hot box Meat slicer Bakers racks S.S. Fridge shelves Walk in fridge Meat slicer Pots & Pans Cutlery, glassware, dishes	Silver king freezer Electric Salamander Sandwich fridge prep table Hatco toaster S.S. table soup pot table Heat lamps electric Soup warmer electric Soup pot warmer Garland 2 burner Royal broiler Garland grill - flat top Deep fryers 4 drawer fridge unit S.S. canopy Ice machine S.S. prep table Stero dishwasher Hand sink S.S. sink 2 holes S.S. rack on casters Pots & Pans Cutlery, glassware, dishes <u>Stand 4</u> Soup pot warmer Slicer Silver king prep fridges Pizza warmer Hot dog steamer Sneeze guard display Pop corn machine Pretzel oven Pots & Pans Cutlery, glassware, dishes	S.S. prep table fridge Winston food warmer Pizza warmers Draft beer fridges Silver king fridge Meat slicer Pop corn machine Pots & Pans Cutlery, glassware, dishes <u>Grill</u> Raelone freezer Deep fryers Grill flat top Char broiler Fridge Bun warmer S.S. tables Soft ice-cream machine S.S. fry table Heat lamp Steamer unit - portable Pots & Pans Cutlery, glassware, dishes <u>Stand 6</u> Silver kind fridges Steam table units Pots & Pans Cutlery, glassware, dishes	3 Wok unit Deep fryer 100 Scale Baker's table S.S. pot & pan sink S.S. table Blodgett convection ovens - gas Garland stock pot burner - gas Garland s.s. soup pot model - KEL-25-T Hobart dishwashing machine & ss. Table Foster fridge Meat blocks Qwest bain marie Qwest char broiler Garland deep fryers Garland unit with 2 ovens - 4 burners and flat top Pronto steamers S.S. prep tables Garland hot cart Doyon 3 deck pizza and cart Alto sham Baker's track Brute hot cart Electric oven & s.s. table Silver king prep table & fridge Baker's work table with bins 3 drawers Heavy duty shelving units Alto sham Large hot box Pots & Pans Cutlery, glassware, dishes

Hastings Park - Planned Equipment and Trade Fixtures for Slot Floor**Planned for Slot Floor**

Slot Machines
Self Redemption Kiosks
Automated Banking Machines
Slot Stools
Slot Signage
Directional Signage
Responsible Gaming Booth/Equipment/Furniture
Safes
Bill Counting Machine
Bill Storage Units
Bill Sorter
Miscellaneous Office Equipment (Fax, calculators, etc.)
Lighting
Sound Equipment
Stage Lighting
Stage (TBD)

Planned for Slot Concession

Fridge(s)
Freezer(s)
Oven(s)
Stove(s)
Pots & Pans
Cutlery, glassware, dishes
Miscellaneous small appliances
Miscellaneous kitchen equipment
Signage

PARKING AND ACCESS MANAGEMENT PLAN

For Hastings Park Racetrack/Slot Machine Operations

1. Background

Covering some 162 acres, Hastings Park is Vancouver's second largest City-wide park. The City-owned site has a variety of users which use the several facilities located on the site. The Pacific National Exhibition (PNE) is currently responsible for operating a portion of the site including the on-site parking operations. There are approximately 3,290 on-site parking spaces associated with Hastings Park. Off site resident parking in the adjacent neighbourhood is managed by a permit parking program.

Hastings Park is comprised of green space as well as facilities that host sport and entertainment events. On average, there are 180 - 200 event days per year. On these event days, the PNE charges and collects variable parking fees at manned kiosks located on the periphery of the site. As most of the events have a set starting time, the kiosks are manned before, during and after an event, and can accommodate up to 2,000 vehicles in a 1 to 2 hour time span.

In addition to events, there are numerous ongoing daily park activities on site for which there is parking demand. These include park use (Sanctuary, Italian Gardens, etc.), sports activities at the Skateboard Bowl, Empire Field, and Agrodome as well as simulcast racing at the Racetrack. Daily users currently park freely throughout Hastings Park.

A residential parking program has been in place for over 30 years in the adjacent neighbourhoods. The program is designed to manage parking demand on residential streets due to special events at Hastings Park. There are a small number of streets west of Renfrew which have full-time Resident Permit Parking, and a much larger area beyond which has full time Resident Parking Only. There is a large area south of Hastings Street which has Temporary Resident Parking Only during the PNE. The Residential Permit Parking program will continue to be monitored and evaluated on an annual basis.

The 1997 Restoration Plan and the New Approach for the future of Hastings Park outlined the following principles for consideration in parking on the site in a report to Council:

- Concentrating parking at the edges of the Park;
- Minimize parking south of Miller Drive;
- Maximize the number of parking spaces that can be accommodated on immediately adjacent arterial streets;
- "Green" any surface parking;
- Not allow overflow parking to spill into the adjacent residential area; and
- Reduce the need for parking.

Hastings Entertainment Inc. (HEI), as part of Great Canadian Gaming Corporation operates the racetrack and has proposed the addition of slot machines within the current Grandstand building. The addition of 600 slot machines is expected to increase the peak parking demand for the racetrack complex by approximately 250 vehicles according to consultant reports (N D Lea study, Aug. 30, 2005).

2. Purpose

The Development Permit Board required as a condition of approval for Development Permit Application DE 409601 (Hastings Entertainment Inc.) that a Parking Management Plan be prepared by the applicant in conjunction with the City and it's designate the Pacific National Exhibition (PNE).

The purpose of this Parking and Access Management Plan is to describe the parking and access operations on the Hastings Park/PNE site related to slots patrons at the Racetrack. This Plan will not be in effect during the duration of the 2010 Olympic Games, and is superseded by all conditions set out in the Operating Agreement between the City of Vancouver and HEI.

This Parking and Access Management Plan does not take the place of or supersede the Operating Agreement between the City and Hastings Entertainment Inc. In the event of any dispute between this document and the Operating Agreement, the terms and conditions of the Operating Agreement shall prevail.

3. Demand Measures

The goal of this Parking and Access Management Plan is to minimize the impact of traffic and parking associated with slot operations at the racetrack on the neighbourhood and provide parking for the variety of on-site uses which occur individually and simultaneously at different times during the day and year. There are a number of measures to be implemented to reduce the demand for vehicular traffic and parking at Hastings Park associated with the slots operations. These are:

- **Parking management-** A parking management program (see section 5 below) will operate using a variable parking rate structure for event and non-event conditions.
- **Shuttle and bus-** The racetrack operators will be providing regular shuttle and bus service for patrons. Shuttles and buses will enter through gate 9, drop-off at the designated area immediately adjacent to the Grandstand, exit through Gate 8 and return to Lot 9 for staging.
- **Transit-** Translink provides bus service during weekday evening peak hours and during Saturday peak hours when major events begin. Transit routes operate along the major thoroughfares adjacent to Hastings Park

including Renfrew Street, Hastings Street, McGill, and the Trans Canada Highway. Future service improvements planned by Translink include linking the #16 Renfrew and #4 Powell bus routes at the Pacific Coliseum, extending service north of Hastings along Renfrew for improved transit access.

- **Bicycle-** The existing cycling network provides access to Hastings Park area via several designated routes. To encourage cycling use and access to Hastings Park directional signage will be added along four bicycle routes - Adanac, Cassiar, Portside, and Sunrise. Pedestrian signals at Hastings/Windemere and Renfrew/Dundas Streets will have bicycle activation buttons, and an additional pedestrian/cyclist signal on Renfrew Street will be added to support alternative modes after consultation with the neighbourhood on location and design features. Bicycle parking for the public will be provided at locations adjacent to the Grandstand building. Secured staff bicycle parking and associated clothing lockers and change facilities will be provided on Level 1 in the NW portion of the Grandstand building to encourage bicycle commuting.
- **Emergency Vehicle Access-** Gate 6 is currently the primary access for Fire and other emergency vehicles going to the Coliseum and the racetrack. With the slot operations all Gates along Renfrew Street (4, 6 and 7) will be closed to racetrack patrons except for on event days, but Gate 6 will be available at all times for emergency vehicle access only. Signage will be posted at Gate 6 to reinforce this, and will include the street address and direction of the racetrack (Grandstand Building).

4. Traffic Management

4.1 Transportation Manager:

The Transportation Manager will be responsible for communication with bus tour companies, taxi companies and tour operators, and will be the primary contact for community input. The Director of Public Safety and Parking for the PNE will act as the Transportation Manager and can be contacted by phone at (604) 253-2311 or by email at info@pne.ca. In addition, the Director of Operations for Hastings Racecourse will be the HEI liaison who will work with and report to the PNE Director of Public Safety and Parking on all transportation matters as related to the Hastings Racecourse operation, and will implement the procedures and protocols for the Hastings Racecourse operation in accordance with the plan as set out by the PNE.

4.2 Racetrack/slot machine traffic entering/exiting the site will be managed in the following ways:

- Gates 8 and 9 will serve as the primary access/egress points for slots/racetrack patrons and staff;
- Eastbound traffic on McGill will enter right into Gate 8, and westbound traffic from Bridgeway/Hastings/Cassiar Street will enter into Gate 9;
- Gate 8 exiting vehicles must turn right onto McGill;

- Gates 4, 6 and 7 will be closed to racetrack patrons except for on event days;
- All truck, bus, shuttle, and taxi traffic destined for the racetrack are required to access the site from Gate 9;
- Racetrack and associated staff (horsemen) are required to access from Gates 8 or 9.

4.3 Racetrack/slot machine patron drop-off and staging will operate under these conditions:

- Buses, taxis, limos, and valet parking will drop-off and pick-up passengers in the designated area immediately adjacent to the Grandstand;
- Buses, taxis, and limos are required to enter through Gate 9;
- Staging for buses, taxis, and limos will be accommodated in lot 9 as illustrated on Plan A100; and
- Valet parking will be operated from lot 9 and/or 12.

5. Parking Management - Operations & Measures

The City of Vancouver will operate the parking operations of Hastings Park through its designate, the PNE.

According to the PNE, there are 3,293 existing parking spots within the Hastings Park/PNE site.

With the introduction of slot machines at Hastings Racecourse there will be two different parking scenarios that will occur on the Hastings Park site. The PNE will determine periods for which event and non-event conditions are set.

HEI will initiate and maintain a program to ensure safe access to and from parking for its patrons.

Event Days: Where an event is held on site that coincides with the racetrack/casino operation(i.e.: Vancouver Giants Hockey).

Non-Event Days: Where the racetrack/casino is operating by itself with no other event held on site.

5.1 Event Day Parking Plan:

On event days, slot machine and racetrack patron parking will be provided in Lot 9, and if directed by PNE staff in Lot 12. All guests regardless of whether they are attending an event at the PNE, or going to the casino would pay the standard flat parking fee at the various parking gates. The number of parking gates that are open for the event day would depend upon on the expected attendance for the event held on the Hastings Park site. A pre-determined amount of parking staff would be scheduled to collect the parking fees as well as direct guests to the appropriate vacant parking areas. To ensure that guests

on site are directed to their proper destination and parking areas the following are some of measures that will be used:

- proper signage directing guests to the casino parking or to the event parking
- communication with the guests at the kiosks used to collect the parking fees
- portable radio communication between parking attendants controlling on street queuing ensuring speedy entry for all guests
- contracting Traffic Authority members from the Vancouver Police Department to control on street queuing to ensure efficient entry for all guests.
- As vehicular traffic begins to back up at a particular gate the parking attendant at that gate will temporarily shut the gate and direct guests to other gates that are not as busy.
- The self paid parking meters would be disabled during event times because guests would be paying the flat parking fee at the entry gate.
- At all times, the slots and racetrack patrons will use Gates 8 and 9 as access points onto the site. Event days would not be any different with the incorporation of proper signage directing the slots and racetrack patrons to Gates 8 and 9. The added bonus for the PNE could be to also use Gates 8 and 9 to alleviate some of the congestion of other gates.

5.2 Non-Event Day Parking Plan:

On non-event days, slot machine and racetrack patron parking will be provided on a non-exclusive basis in Lots 7, 8, 9 and if directed by PNE staff in Lot 12.

On non-event days there would be a self park metered scenario with certain gates closed and certain areas within the Hastings Park site closed to vehicular traffic. This will ensure that the racetrack patrons park in the appropriate parking lots.

The gates that would be used for this scenario would be the new Gate 8 off of McGill Street as well as Gate 9 off of Bridgeway Street. All other parking gates that border the Hastings Park site would be closed with proper signage directing all guests to Gates 8 & 9. As well the metered parking lots would vary in price in order to encourage guests to park in the Lot 9 area. Lot 9 would be the lower priced lot.

Pedestrian access from Lots 7 & 8 to the Grandstand building will be clearly delineated by way of landscaping and properly articulated pedestrian walkways. As the Grandstand building is not readily visible from Lots 7 & 8, clear way finding signage will also reinforce the pedestrian circulation routes. An individual parking in Lot 7 or 8 would take 1 of 3 east-west pedestrian walkways (in general alignment with Gates 6 and 7). These walkways would lead you to a primary pedestrian walkway along the east edge of Lots 7 & 8, past the east side of Pacific Coliseum, and then in front of the Grandstand building. As much of the main pedestrian spine along the east side of the parking lots as possible will be a raised concrete sidewalk. In areas where it is not practical to provide a raised sidewalk, painted lines on asphalt will be

utilized. Similarly, painted lines on asphalt will be used for the 3 pedestrian walkway links from Lots 7 & 8. All of the walkways will be reinforced with way finding signage. In addition, landscape elements will be used to further delineate the pedestrian realm and make it more pedestrian friendly.

5.3 Staff Parking:

- All Racetrack and associated staff are required to access from Gates 8 or 9 and park in Lot 9A.
- HEI will initiate and maintain a program to ensure safe access to parking for all workers at HEI.

5.4 Construction Staging:

During the construction period for renovation of the Grandstand, all construction related activities, vehicles and equipment should minimize impact by:

- Accessing the site only through Gate 9;
- Minimizing parking and staging from thoroughfares such as Miller Drive;
- Staging from within the Racetrack footprint, where possible.

All parking associated with construction will be located within the racetrack footprint or Lot 9 only.

6. Parking Demand & Price Management

- Parking rates will be set by the PNE as part of the parking demand management for lots 7, 8, 9, and 12. The pricing is adjustable depending on the type of event.
- A metered parking system will operate during non-event days at rates which vary depending on location. The pricing structure will aim to encourage the use of Lots 9.
- On event days, PNE staffed parking operations using kiosks and set rates will operate. Staff will direct all traffic to the appropriate Gate/Parking Lots to minimize on-street queuing. Rates will vary depending on event.
- On certain event days, primarily large events at the Coliseum, all racetrack/slot machine patron parking will be provided on a non-exclusive basis only in Lot 9 and if directed by PNE staff in Lot 12.
- The Racetrack may institute a rebate program in consultation with the PNE.

7. Loading Management Plan

HEI will modify all existing contracts to reflect the changes to the loading management plan that will only permit delivery vehicles access to the site via Gate 9. HEI will contact its multiple vendors that service the site currently and have their existing contracts revised to state that all deliveries that are made to the Grandstand building and the racetrack site are to be made through Gate 9. A map shown below that clearly indicates the delivery access route to the Grandstand building will form part of the contract for the vendors serving the Grandstand building.

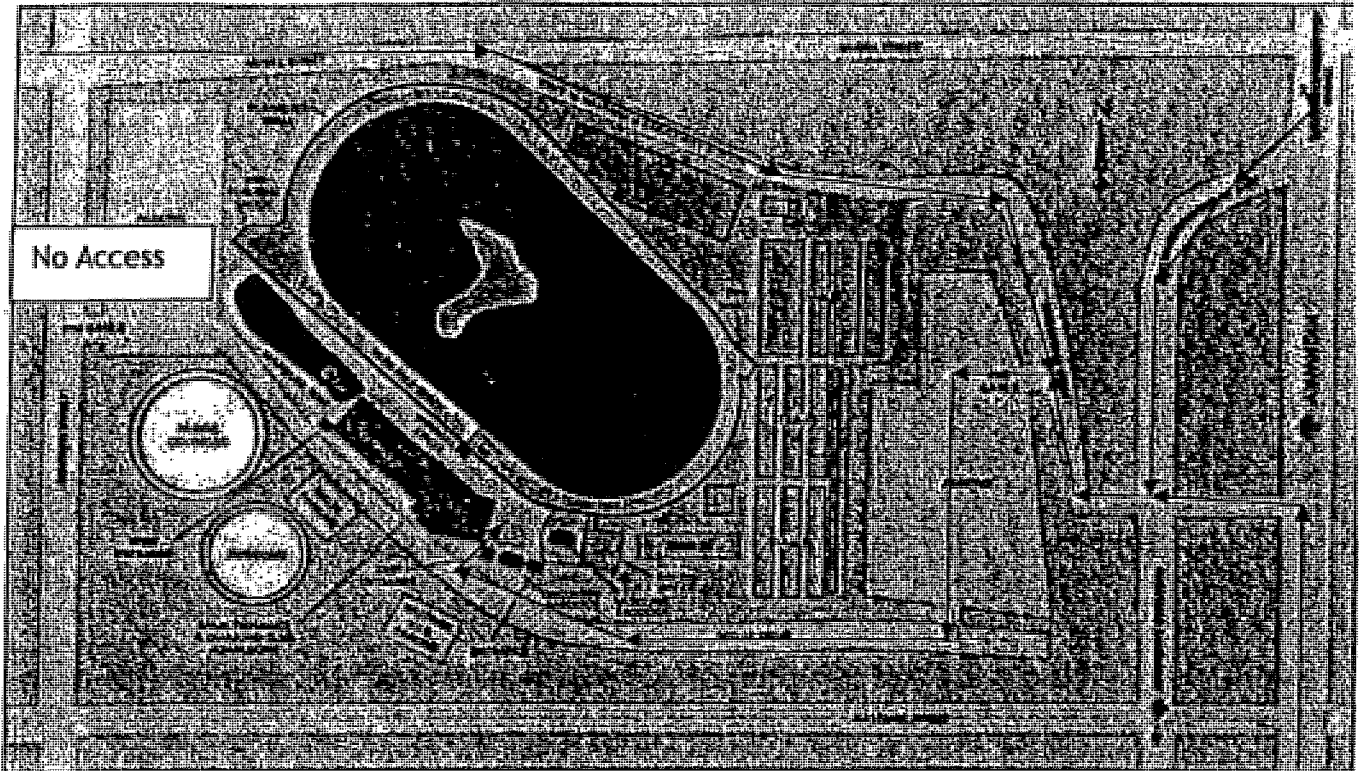
HEI is responsible for ensuring that all vendors comply with the Loading Management Plan routes for all access and deliveries.

Hours of delivery for all vendors will be generally made during normal business hours on weekdays, and at other times as required to serve the racetrack operations.

During the annual fair all deliveries for the racetrack will be made before the fair opens.

When the slot floor is opened, it is anticipated that the average number of deliveries will increase from approximately 24 per week to 30 deliveries per week. The overall volume of deliveries will not likely increase significantly, but there will likely be an increase of supplies contained within each delivery. The main increase in deliveries will be the Armoured Car Service which will go from approximately 3 deliveries per week up to approximately 7 per week.

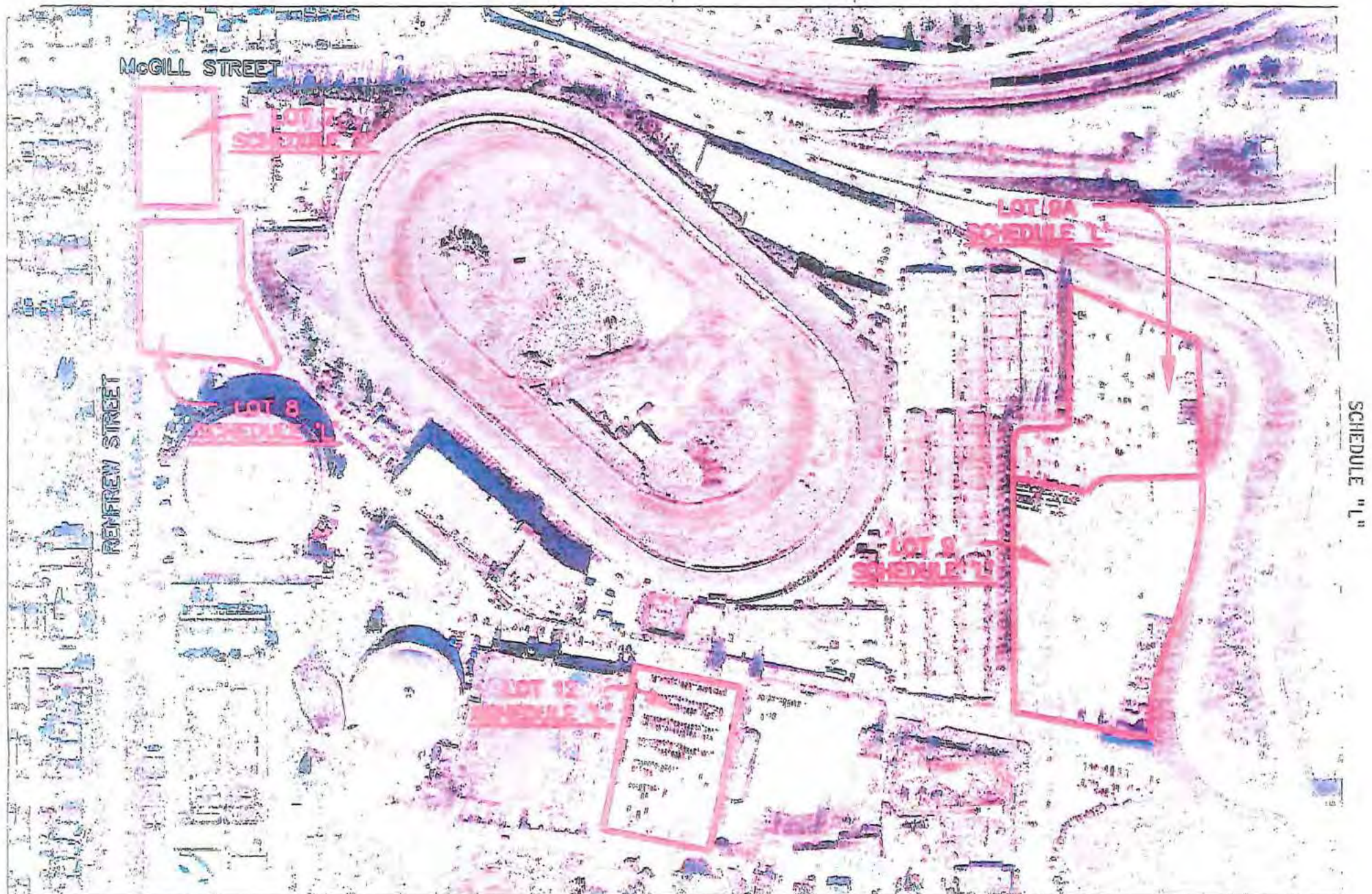
The following diagram demonstrates the loading management plan:



8. Community Input

The Transportation Manager (as described in Section 4.1) will be the primary contact for community input. The Transportation Manager will be available to meet with community representatives on a regular basis to deal with on-going traffic, parking and loading issues as part of monitoring the Parking Management Plan, and when adjustments to the Plan occur.

Through the Annual Consultation Protocol, HEI is committed to holding (at a minimum) an annual public meeting open to all residents in the area to establish regular and ongoing dialogue around impacts arising from the introduction of slot machines at the Hastings Racecourse. The Parking Management Plan- which addresses traffic, parking and loading issues related to the operation of the racetrack/casino as part of the Hastings Park site- will be included as a standing item on the annual public meeting agenda as an additional opportunity for community input. The Transportation Manager, in consultation with the Director of Operations for the Hastings Racecourse will submit an annual report on traffic, parking and loading issues to HEI for discussion at the annual public meeting.



**CITY OF VANCOUVER
ENGINEERING SERVICES**

THE CITY OF VANCOUVER ASSUMES NO RESPONSIBILITY
FOR THE CORRECTNESS OF INFORMATION SHOWN ON THIS MAP



**SCALE
N.T.S.**



**DATE
AUG 14, 2007**

HASTINGS PARK

THIS DIGITAL MAP WAS PRODUCED BY THE LAND SURVEY BRANCH
City of Vancouver - FOI 2022-446 - Page 126 of 157

THIS AMENDING AGREEMENT is dated the 23 day of October, 2012

AMONG:

CITY OF VANCOUVER, a municipal corporation with offices at 453
West 12th Avenue, Vancouver, British Columbia V5Y 1V4

(herein called the “**City**”)

AND:

HASTINGS ENTERTAINMENT INC., (Incorporation No. 626095), a
company having a registered office at 1500 Royal Centre, 1055 West
Georgia Street, Vancouver, British Columbia V6E 4N7, incorporated
pursuant to the laws of the Province of British Columbia

(herein called “**HEI**”)

AND:

GREAT CANADIAN GAMING CORPORATION (Incorporation No.
388982), a company having a registered office at 1500 Royal Centre, 1055
West Georgia Street, Vancouver, British Columbia V6E 4N7,
incorporated pursuant to the laws of the Province of British Columbia

(herein called “**GCGC**” and together with HEI, the “**Operator**”)

WHEREAS:

A. The City is the owner of all and singular those certain lands and premises situate in the City of Vancouver, Province of British Columbia, legally described as a portion of Lot 90 Except Part in Plan 13045 Town of Hastings Suburban Lands Plan 100; a portion of Block X, Except Part in Explanatory Plan 13247, Town of Hastings Plan 17745 and a portion of Eton Street and Nootka Street adjacent to the said Remainders of Lot 90 and Block X, upon a portion of which lands and premises are situate a horse racetrack, a grandstand building, stables, paddocks, jockey quarters and attendant facilities and various other facilities and improvements (the “**Racetrack Site**”);

B. On July 22, 2004, City Council approved, subject to a number of conditions, an application by the Operator to amend CD-1 By-law No. 3656 for 2901 East Hastings Street to permit the installation and operation of a maximum of 900 slot machines, which has subsequently been reduced to 600 slot machines as a prior-to condition to issuance of Development No. DE409601 (the “**Slot Operations**”) within specific areas of the Racetrack Site and on October 4, 2005, Council enacted the Rezoning By-law to permit the Slot Operations as a use on the Racetrack Site;

C. By way of an Operating Agreement dated November 1, 2007 among the City, GCGC and HEI (the "Operating Agreement"), the City granted to the Operator a non-exclusive right to use the Racetrack Site for the purpose of, among other things, conducting the Slots Operations for an initial term of five (5) years commencing on November 10, 2007 and expiring November 9, 2012 (the "Slots Term"), all in accordance with the terms and conditions of the Operating Agreement;

D. On July 25, 2012, City Council approved, subject to a number of conditions, the extension of the Term of the Operating Agreement for a further period of two (2) years commencing November 10, 2012 and expiring November 9, 2014; and

E. The parties hereto have agreed to amend the Operating Agreement on the terms and conditions contained herein.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the matters referred to in the foregoing recitals, the covenants and agreements herein contained, and other good and valuable consideration (receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the parties hereto hereby covenant and agree as follows:

ARTICLE 1 EXTENSION OF INITIAL TERM

1.1 Each of the Term and the Slots Term of the Operating Agreement shall be extended for a period of two (2) years commencing November 10, 2012 and expiring November 9, 2014 (the "Extended Term") subject to any earlier termination rights as contained in the Operating Agreement.

1.2 Except as otherwise expressly set out herein, all terms and conditions of the Operating Agreement shall apply during the Extended Term including but not being limited to the Operator's requirement to pay the Operating Fees, the Hastings Park Greening Fee and the annual Community Legacy Fund Fee, together with the Operator's requirement to provide the community benefits under the Operating Agreement such as the Permanent Childcare Facility, Access to the Infield, Movie Nights at the Track, Groom School and Learning Centre, Local Hiring Initiatives and Community Days, subject to any CPI Inflation Adjustment, as applicable, provided for under the Operating Agreement.

1.3 The Extended Term shall not be considered a renewal of the Operating Agreement and the Operator will not be subject to the renewal provisions of the Operating Agreement including, but not being limited to, the requirement to construct or provide Renewal Term Capital Improvements.

1.4 In the definition of Expiry Date contained in Section 1(nn) of the Operating Agreement, the reference to "five (5) years" shall be changed to "seven (7) years".

1.5 Section 107 of the Operating Agreement shall be deleted and replaced with the following:

"107. The City may, in its discretion and with prior written approval of the City, permit the Operator to continue to use the Site after the end of the Extended Term and without the execution and delivery of a new operating agreement or any renewal thereof, provided that there

shall be no tacit renewal of this Agreement or the Extended Term hereby granted and the Operator shall be deemed to be using the Site or any portions thereof on a month to month basis for the same Operating Fees and otherwise upon the same terms, conditions and provisos as set forth in this Agreement insofar as the same are applicable to a month to month use of the Site with the minimum Operating Agreement Fees, Additional Percentage Fees and all other Operating Fees paid on a monthly basis as required by the City and subject to the terms of the City's approval.”.

ARTICLE 2 MOVIE NIGHTS AT THE TRACK

2.1 During the Extended Term, the Operator, in its discretion, may elect to increase the annual Community Days provided under the Operating Agreement from eight (8) days to ten (10) days in lieu of providing Movie Nights at the Racetrack Site due to the under-utilization of this community benefit.

ARTICLE 3 INITIAL TERM CAPITAL EXPENDITURE OBLIGATIONS

3.1 The City acknowledges and agrees that the Initial Term Capital Expenditure Obligations required to be completed by the Operator during the Slots Term under the Operating Agreement have been completed to the satisfaction of the City and that no further capital improvements or expenditures are required by the Operator during the Extended Term.

ARTICLE 4 RENEWAL TERM

4.1 The renewal provisions contained in Section 96 of the Operating Agreement shall be deleted in their entirety and the Operator shall have no further right to renew the Operating Agreement.

ARTICLE 5 LIVE RACING REQUIREMENTS

5.1 The City Manager may, in her discretion, amend from time to time the number of Minimum Live Racing Days and the number of Minimum Live Races required to be conducted by the Operator under the Operating Agreement during the Extended Term, taking into consideration the recommendations of the B.C. Horse Racing Industry Management Committee and the authorizations provided by Governmental Authorities responsible for horse racing events in the Province of British Columbia, but otherwise the Minimum Live Racing Days and the Minimum Live Races requirements under the Operating Agreement will remain in force and effect, unamended.

ARTICLE 6 MISCELLANEOUS

6.1 This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and permitted assigns.

6.2 The City and the Operator hereby covenant and agree that they will perform and observe the covenants, provisos, terms and conditions contained in the Operating Agreement as fully as if such covenants, provisos, terms and conditions had been repeated herein in full with such modifications only as are necessary to make them applicable to this Agreement and the City and the Operator hereby ratify the Operating Agreement as amended herein.

6.3 Wherever the singular or masculine is used in this Agreement the same shall be deemed to include the plural or the feminine or the body corporate and the respective heirs, executors, administrators, successors and permitted assigns of the parties hereto and each of them, as the context so requires.

6.4 Words and phrases used in this Agreement shall have the same meanings ascribed to them in the Operating Agreement unless otherwise specifically defined herein.

6.5 This Agreement shall be read together and construed as one agreement with the Operating Agreement.

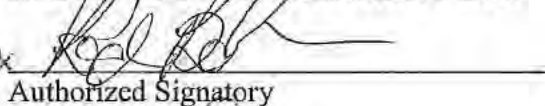
IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the day and year first above written.


CITY OF VANCOUVER


Authorized Signatory

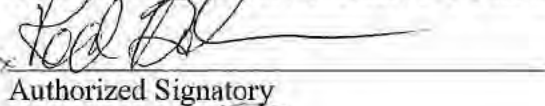
Authorized Signatory


HASTINGS ENTERTAINMENT INC.


Authorized Signatory


Authorized Signatory

GREAT CANADIAN GAMING CORPORATION


Authorized Signatory


Authorized Signatory

THIS AMENDING AGREEMENT is dated the 22 day of October, 2014

AMONG:

CITY OF VANCOUVER, a municipal corporation with offices at
453 West 12th Avenue, Vancouver, British Columbia V5Y 1V4

(herein called the "**City**")

AND:

HASTINGS ENTERTAINMENT INC., (Incorporation No.
626095), a company having a registered office at 1500 Royal
Centre, 1055 West Georgia Street, Vancouver, British Columbia
V6E 4N7, incorporated pursuant to the laws of the Province of
British Columbia

(herein called "**HEI**")

AND:

GREAT CANADIAN GAMING CORPORATION
(Incorporation No. 388982), a company having a registered office
at 1500 Royal Centre, 1055 West Georgia Street, Vancouver,
British Columbia V6E 4N7, incorporated pursuant to the laws of
the Province of British Columbia

(herein called "**GCGC**" and together with HEI, the "**Operator**")

WHEREAS:

A. The City is the owner of all and singular those certain lands and premises situate in the City of Vancouver, Province of British Columbia, legally described as a portion of Lot 90 Except Part in Plan 13045 Town of Hastings Suburban Lands Plan 100; a portion of Block X, Except Part in Explanatory Plan 13247, Town of Hastings Plan 17745 and a portion of Eton Street and Nootka Street adjacent to the said Remainders of Lot 90 and Block X, upon a portion of which lands and premises are situate a horse racetrack, a grandstand building, stables, paddocks, jockey quarters and attendant facilities and various other facilities and improvements (the "Racetrack Site");

B. On July 22, 2004, City Council approved, subject to a number of conditions, an application by the Operator to amend CD-1 By-law No. 3656 for 2901 East Hastings Street to permit the installation and operation of a maximum of 900 slot machines, which has subsequently been reduced to 600 slot machines as a prior-to condition to issuance of Development No. DE409601 (the "Slot Operations") within specific areas of the Racetrack Site and on October 4, 2005, Council enacted the Rezoning By-law to permit the Slot Operations as a use on the Racetrack Site;

C. By way of an Operating Agreement dated November 1, 2007 among the City, GCGC and HEI (the "Original Operating Agreement"), the City granted to the Operator a non-exclusive right to use the Racetrack Site for the purpose of, among other things, conducting the Slots Operations for an initial term of five (5) years commencing on November 10, 2007 and expiring November 9, 2012 (the "Slots Term"), all in accordance with the terms and conditions of the Operating Agreement;

D. On July 25, 2012, City Council approved, subject to a number of conditions, the extension of the Term of the Original Operating Agreement for a further period of two (2) years commencing November 10, 2012 and expiring November 9, 2014 (the "Extended Term") and the parties hereto entered into an Amending Agreement dated the 23rd day of October, 2012 (the "First Amending Agreement") which extended the Term and the Slots Term on the terms and conditions contained in the First Amending Agreement;

E. On October 15, 2014, City Council approved the further extension of the Term and the Slots Term under the Original Operating Agreement for a period of two (2) years commencing November 10, 2014 and expiring November 9, 2016;

F. In this Agreement, the Original Operating Agreement and the First Amending Agreement shall be collectively referred to herein as the "Operating Agreement";

G. The parties hereto have agreed to amend the Operating Agreement and extend the Term and the Slots Term on the terms and conditions contained herein.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the matters referred to in the foregoing recitals, the covenants and agreements herein contained, and other good and valuable consideration (receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the parties hereto hereby covenant and agree as follows:

ARTICLE 1 EXTENSION OF TERM

1.1 Each of the Term and the Slots Term under the Operating Agreement shall be extended for a further period of two (2) years commencing November 10, 2014 and expiring November 9, 2016 (the "Second Extended Term") subject to any earlier termination rights as contained in the Operating Agreement.

1.2 Except as otherwise expressly set out herein, all terms and conditions of the Operating Agreement shall apply during the Second Extended Term including but not being limited to the Operator's requirement to pay the Operating Fees, the Hastings Park Greening Fee and the annual Community Legacy Fund Fee, together with the Operator's requirement to provide the community benefits under the Operating Agreement such as the Permanent Childcare Facility, Access to the Infield, Movie Nights at the Track, Groom School and Learning Centre, Local Hiring Initiatives and Community Days, subject to any CPI Inflation Adjustment, as applicable, provided for under the Operating Agreement.

1.3 The Second Extended Term shall not be considered a renewal of the Operating Agreement and the Operator will not be subject to any of the renewal provisions of the Original

Operating Agreement including, but not being limited to, the requirement to construct or provide Renewal Term Capital Improvements, and the Operator shall have no right of renewal of the Operating Agreement.

1.4 The City acknowledges and agrees that the Initial Term Capital Expenditure Obligations required to be completed by the Operator during the initial Slots Term under the Operating Agreement have been completed to the satisfaction of the City and that no further capital improvements or expenditures are required by the Operator during the Second Extended Term.

1.5 The definition of Expiry Date contained in Section 1(nn) of the Operating Agreement shall be deleted and replaced with the following:

“Expiry Date” means the date that is nine (9) years after the Commencement Date;”

1.6 Section 107 of the Operating Agreement shall be deleted and replaced with the following:

“107. The City may, in its discretion and with prior written approval of the City, permit the Operator to continue to use the Site after the end of the Second Extended Term and without the execution and delivery of a new operating agreement or any renewal thereof, provided that there shall be no tacit renewal of this Agreement or the Second Extended Term hereby granted and the Operator shall be deemed to be using the Site or any portions thereof on a month to month basis for the same Operating Fees and otherwise upon the same terms, conditions and provisos as set forth in this Agreement insofar as the same are applicable to a month to month use of the Site with the minimum Operating Agreement Fees, Additional Percentage Fees and all other Operating Fees paid on a monthly basis as required by the City and subject to the terms of the City’s approval.”

ARTICLE 2 LIVE RACING REQUIREMENTS

2.1 The City Manager may, in her discretion, amend from time to time the number of Minimum Live Racing Days and the number of Minimum Live Races required to be conducted by the Operator under the Operating Agreement during the Second Extended Term, taking into consideration the recommendations of the B.C. Horse Racing Industry Management Committee and the authorizations provided by Governmental Authorities responsible for horse racing events in the Province of British Columbia, but otherwise the Minimum Live Racing Days and the Minimum Live Races requirements under the Operating Agreement will remain in force and effect, unamended.

ARTICLE 3 MISCELLANEOUS

3.1 This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and permitted assigns.

3.2 The City and the Operator hereby covenant and agree that they will perform and observe the covenants, provisos, terms and conditions contained in the Operating Agreement as fully as if such covenants, provisos, terms and conditions had been repeated herein in full with such modifications only as are necessary to make them applicable to this Agreement and the City and the Operator hereby ratify the Operating Agreement as amended herein.

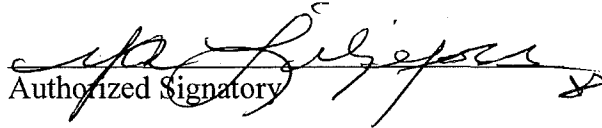
3.3 Wherever the singular or masculine is used in this Agreement the same shall be deemed to include the plural or the feminine or the body corporate and the respective heirs, executors, administrators, successors and permitted assigns of the parties hereto and each of them, as the context so requires.

3.4 Words and phrases used in this Agreement shall have the same meanings ascribed to them in the Operating Agreement unless otherwise specifically defined herein.

3.5 This Agreement shall be read together and construed as one agreement with the Operating Agreement.


IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the day and year first above written.

CITY OF VANCOUVER


Authorized Signatory


Authorized Signatory

HASTINGS ENTERTAINMENT INC.


Authorized Signatory

Authorized Signatory

GREAT CANADIAN GAMING CORPORATION


Authorized Signatory

Authorized Signatory

AMENDMENT TO HASTINGS PARK OPERATING AGREEMENT

THIS AMENDING AGREEMENT (this “Agreement”) dated for reference the 7th day of November, 2016,

AMONG:

CITY OF VANCOUVER, a municipal corporation with offices at
453 West 12th Avenue, Vancouver, British Columbia, V5Y 1V4

(the “City”)

AND:

HASTINGS ENTERTAINMENT INC., (Inc. No. 626095), a company
having a registered office at 1500 Royal Centre
1055 West Georgia Street, Vancouver, British Columbia, V6E 4N7,
incorporated pursuant to the laws of the Province of British
Columbia

(“HEI”)

AND:

GREAT CANADIAN GAMING CORPORATION (Inc. No. 388982), a
company having a registered office at 1500 Royal Centre, 1055
West Georgia Street, Vancouver, British Columbia, V6E 4N7,
incorporated pursuant to the laws of the Province of British
Columbia

(“GCGC”, and together with HEI, the “Operator”)

WITNESSES THAT WHEREAS:

A. The City is the owner of all and singular those certain lands and premises situate in the City of Vancouver, Province of British Columbia, legally described as a portion of Lot 90 Except Part in Plan 13045 Town of Hastings Suburban Lands Plan 100; a portion of Block X, Except Part in Explanatory Plan 13247, Town of Hastings Plan 17745; and portions of Eton Street and Nootka Street adjacent to the said Remainers of Lot 90 and Block X, upon a portion of which lands and premises are situate a horse racetrack, a grandstand building, stables, paddocks, jockey quarters and attendant facilities and various other facilities and improvements (collectively, the “Site”);

B. On July 22, 2004, City Council approved, subject to a number of conditions, an application by the Operator to amend CD-1 By-law No. 3656 for 2901 East Hastings Street to permit the installation and operation of a maximum of 900 slot machines, which has subsequently been reduced to 600 slot machines as a prior-to condition to issuance of Development No. DE409601 (the “Slot Operations”) within specific areas

of the Site and on October 4, 2005, Council enacted the Rezoning By-Law to permit the Slot Operations as a use on the Site;

C. By way of an Operating Agreement dated November 1, 2007 among the City and the Operator (the **"Original Operating Agreement"**), the City granted to the Operator a non-exclusive right to use the Site for the purpose of, among other things, conducting the Slots Operations for an initial term of five years commencing on November 10, 2007 and expiring November 9, 2012 (the **"Slots Term"**), all in accordance with the terms and conditions of the Original Operating Agreement;

D. On July 25, 2012, City Council approved, subject to a number of conditions, the extension of the Term of the Original Operating Agreement for a further period of two years commencing on November 10, 2012 and expiring November 9, 2014 (the **"First Extension Term"**), and the parties hereto entered into an Amending Agreement dated the 23rd day of October, 2012 (the **"First Amending Agreement"**), which extended the Term and the Slots Term on the terms and conditions contained in the First Amending Agreement;

E. On October 15, 2014, City Council approved the further extension of the Term and the Slots Term under the Original Operating Agreement (as amended by the First Amending Agreement) for a further period of two years commencing on November 10, 2014 and expiring November 9, 2016 (the **"Second Extension Term"**), and the parties hereto entered into an Amending Agreement dated the 22nd day of October, 2014 (the **"Second Amending Agreement"**), which extended the Term and the Slots Term on the terms and conditions contained in the Second Amending Agreement;

F. On November 1 and 2, 2016, City Council approved the further extension of the Term and the Slots Term under the Original Operating Agreement (as amended by the First Amending Agreement and the Second Amending Agreement) for a period of three years commencing on November 10, 2016 and expiring November 9, 2019;

G. In this Agreement, the Original Operating Agreement, as amended by the First Amending Agreement and the Second Amending Agreement, shall be collectively referred to herein as the **"Operating Agreement"**; and

H. The parties hereto have agreed to amend the Operating Agreement and extend the Term and the Slots Term, on the terms and conditions contained herein.

NOW THEREFORE THIS AGREEMENT WITNESSES that for consideration (the receipt and sufficiency of which is hereby acknowledged by the parties), the parties hereto covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalized terms used herein have the meanings ascribed to such terms in the Operating Agreement unless otherwise specifically defined herein.

1.2 Interpretation

Wherever the singular or masculine is used in this Agreement the same shall be deemed to include the plural or the feminine or the body corporate, and vice versa.

**ARTICLE 2
EXTENSION OF TERM**

2.1 Extension of Term

Each of the Term and the Slots Term under the Operating Agreement shall be extended for a further period of three years commencing November 10, 2016 and expiring November 9, 2019 (the **"Third Extension Term"**), subject to any early termination rights as contained in the Operating Agreement.

2.2 Operating Agreement Applies

Except as otherwise expressly set out herein, all terms and conditions of the Operating Agreement shall apply during the Third Extension Term, including but not limited to the Operator's requirement to pay the Operating Fees, the Hastings Park Greening Fee and the annual Community Legacy Fund Fee, together with the Operator's requirement to provide the community benefits under the Operating Agreement such as the Permanent Childcare Facility, Access to the Infield, Movie Nights at the Track, Groom School and Learning Centre, Local Hiring Initiatives and Community Days, subject to any CPI Inflation Adjustment, as applicable, provided for under the Operating Agreement.

2.3 Not Renewal

The Third Extension Term shall not be considered a renewal of the Operating Agreement and the Operator will not be subject to the renewal provisions of the Operating Agreement including, but not limited to, the requirement to construct or provide Renewal Term Capital Improvements, and the Operator shall have no right of renewal of the Operating Agreement.

2.4 Definition of Expiry Date

The definition of Expiry Date contained in Section 1(nn) of the Operating Agreement shall be deleted in its entirety and replaced with the following:

"(nn) **"Expiry Date"** means the date that is 12 years after the Commencement Date;"

2.5 Initial Term Capital Expenditure Obligations

The City acknowledges and agrees that the Initial Term Capital Expenditure Obligations required to be completed by the Operator during the initial Slots Term under the Operating Agreement have been completed to the satisfaction of the City and that no further capital improvements or expenditures are required by the Operator during the Third Extension Term.

2.6 Section 107 of the Operating Agreement

Section 107 of the Operating Agreement shall be deleted in its entirety and replaced with the following:

"107. The City may, in its discretion and with prior written approval of the City, permit the Operator to continue to use the Site after the end of the Third Extension Term and without the execution and delivery of a new operating agreement or any renewal thereof, provided that there shall be no tacit renewal of this Agreement or the Third Extension Term hereby granted and the Operator shall be deemed to be using the Site, or any portions thereof, on a month to month basis, for the same Operating Fees and otherwise upon the same terms, conditions and provisos as set forth in this Agreement insofar as the same are applicable to a month to month use of the Site with the Minimum Operating Agreement Fees, Additional Percentage Fees and all other Operating Fees paid on a monthly basis as required by the City and subject to the terms of the City's approval."

2.7 Childcare Facility Agreement

During the Third Extension Term, the Operator covenants and agrees that the Operator shall continue to perform and observe all of the Operator's obligations, liabilities and covenants contained in the Licence Agreement dated April 1, 2011 (as amended) between the Operator, the City and the Society regarding the operation of the Childcare Facility.

ARTICLE 3 LIVE RACING REQUIREMENTS

3.1 Live Racing Requirements

The City Manager may, in his discretion, amend from time to time the number of Minimum Live Racing Days and the number of Minimum Live Races required to be conducted by the Operator under the Operating Agreement during the Third Extension Term, taking into consideration the recommendations of the B.C. Horse Racing Industry Management Committee and the authorizations provided by Governmental Authorities responsible for horse racing events in the Province of British Columbia, but otherwise the Minimum Live Racing Days and the Minimum Live Races requirements under the Operating Agreement will remain in full force and effect, unamended.

ARTICLE 4 ALCOHOL ON SLOTS FLOOR

4.1 City's Acknowledgment

The City acknowledges that the Operator may make an application or applications to amend its current liquor licence or obtain a new liquor licence to permit the service of alcoholic beverages to patrons on the Slots Floor, and to seek all necessary amendments to the Operating Agreement, the Development Permit (as may be applicable) and Council's Resolution of July 22, 2004, which prohibits the sale or consumption of alcohol on the Slots Floor.

4.2 Consequential Amendments to Operating Agreement

Provided the Operator obtains all of the requisite permit or permits required to serve alcoholic beverages on the Slots Floor from all relevant Governmental Authorities and the City's approval of a change to the Development Permit and

Council's Resolution of July 22, 2004, the City shall permit the sale and consumption of alcoholic beverages on the Slots Floor, subject to and on such terms and conditions set by Council or in any amendment to the Development Permit, and the Operating Agreement shall be deemed to be amended from and after the date all such approvals are obtained by the Operator as follows:

- (a) Paragraph (ii) in the definition of **"Horse Racing Operations"** (Section 1(hhh) of the Operating Agreement) shall be deleted in its entirety and replaced with the following:
 - "(ii) the operation of those food and beverage concessions as approved by the City through its ordinary permitting, licensing and approval procedures and as permitted pursuant to all Laws of any Governmental Authorities, but in any event and notwithstanding the approval of any Governmental Authority other than the City, such uses shall be subject to the permitted uses pursuant to the Rezoning By-law and the Development Permit, including without limitation, any approvals or restrictions on the sale or consumption of alcoholic beverages on the Slots Floor;"
- (b) Paragraph (i) in the definition of **"Slots Operations"** (Section 1(kkkkk) of the Operating Agreement) shall be deleted in its entirety;
- (c) Section 45 shall be deleted in its entirety; and
- (d) Subsection 84(m) shall be deleted in its entirety.

4.3 Further Amendments to Operating Agreement

The Operator agrees that the Operating Agreement shall be further amended, as may be necessary, to reflect any Council approval or changes made to the Development Permit, as deemed necessary by the City.

ARTICLE 5 TAKE BACK AREA

5.1 Reduction of Site

Subject to the terms and conditions of this ARTICLE 5, the parties agree that the City shall have the right, at any time, and from time to time, during the Third Extension Term, to take back from the Operator on a permanent basis for the sole and exclusive use of the City or the City's Personnel those areas of the Site outlined in red and hatched on the plan attached as Schedule A hereto (the **"Take Back Area"**). For certainty, the City may take back that portion of the Take Back Area outlined in red and hatched on the plan or any portion thereof as may be required for civic uses from time to time, and the Site will thereafter be deemed to be reduced in size after each such taking and such areas that have been taken back by the City shall no longer be under the control of the Operator and removed from the definition of **"Site"** for the purposes of the Operating Agreement.

Without limiting the foregoing, at any time during the Third Extension Term, the City may wish to take back other portions of the Site. If the City communicates to the Operator its wishes to take back other portions of the Site, and if the City and the Operator are in mutual agreement at such time to give back such portions of the Site to the City, the parties may proceed and the provisions of this Article 5 will apply *mutatis mutandis*. For certainty, in the event any other portions of the Site are taken back by the City pursuant to this clause, any resulting demolition and removal of any buildings, structures or other improvements thereon shall be at the City's sole cost and expense.

5.2 Notice

The City agrees that the City will provide the Operator with a minimum of six months' prior written notice of its intention to take back all or any portion of the Take Back Area and advise the Operator of the effective date of such taking in any such written notice. For certainty, the City may provide more than one notice during the Third Extension Term and take back portions of the Take Back Area over time.

5.3 Minimum Operating Fees

The parties hereto covenant and agree that from and after the effective date of any reduction in size of the Site, the Minimum Operating Fees shall also be deemed to be reduced in a proportionate manner. For the purposes of this Section, the parties hereby agree that the Site as at the date of this Agreement is 17.95 hectares (the "**Total Area**"). Any reduction in the size of the Site and any corresponding pro rata reduction in Minimum Operating Fees shall be calculated on the basis of the size of the portion of the Take Back Area that has been taken back by the City as compared to the Total Area, which reduction in the Total Area shall be calculated by the City Surveyor.

5.4 Demolition of Existing Buildings

From and after the effective date of any notice provided in accordance with Section 5.2, the City shall have the right to reenter upon the Take Back Area and demolish and remove any buildings, structures or other improvements thereon, at the City's sole cost and expense. The City shall be solely responsible for any costs relating to redevelopment of those portions of the Take Back Area that have been taken back by the City. From and after any such effective date, the City shall be permitted to permit any invitees onto such lands, including the general public.

ARTICLE 6 ACKNOWLEDGMENTS

6.1 Operator's Acknowledgment

During the Third Extension Term, the Operator acknowledges that the City may commence a public engagement consultation process to provide visioning for the future operation and use of the Site.. This process may also include stakeholder consultation and engagement that could include the Operator, BC Horse Racing Industry Management Committee, PNE, BCLC, provincial government and other interested parties.

6.2 City's Acknowledgment

The City acknowledges that the Operator may apply for and pursue the approvals necessary for adding table gaming, including electronic table games, as a permitted use on the Site, which gaming is currently prohibited under the Operating Agreement and included in the definitions of Expanded Gaming and Prohibited Gaming in the Operating Agreement. Notwithstanding the City's acknowledgment set out herein, and notwithstanding any approvals the Operator may obtain from any Governmental Authority other than the City, any amendments to the definitions of Expanded Gaming and/or Prohibited Gaming and the addition of any new permitted uses on the Site will be subject to Section 4 of the Operating Agreement.

6.3 Operator's Acknowledgment

In the event that Council approves any changes to the permitted uses of the Site, including without limitation, any changes to the definitions of "Slots Operations" or "Prohibited Gaming", then the Operating Agreement shall be required to be further amended and the Operator shall have no rights to conduct any new uses, or Expanded Gaming or any expanded "Slots Operations" or "Horse Racing Operations" until such date that the Operating Agreement has been amended to the satisfaction of the City.

**ARTICLE 7
PNE PARKING**

7.1 Parking and Access Management Plan

The parties hereby agree to amend the Parking and Access Management Plan attached as Schedule "K" to the Operating Agreement to add the current informal parking arrangement between the PNE and the Operator during the Exhibition Period, which arrangement currently permits the PNE to use the infield area of the Site as outlined in red and hatched on the plan attached as Schedule B hereto (the "Infield Area") for parking purposes during the Exhibition Period. The Infield Area will be made available to the PNE for a fee payment payable to the Operator, based on a profit sharing arrangement between the Operator and the PNE, calculated as twenty percent (20%) of the net revenue. The parking arrangement will not be available on Live Racing Days. During the Third Extension Term, the Operator agrees to continue to permit such parking usage during the Exhibition Period and shall not deny the PNE access to the Infield Area for parking purposes during the Exhibition Period, except on Live Racing Days.

**ARTICLE 8
MISCELLANEOUS**

8.1 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

8.2 Operating Agreement Ratified and Confirmed

Except as hereby expressly modified, the Operating Agreement is hereby ratified and confirmed by the parties hereto to the effect and with the intent that the Operating Agreement and this Agreement shall be read and construed as one document and that references in the Operating Agreement to "this Agreement" shall be read and construed to mean the Operating Agreement as modified by this Agreement.

8.3 Counterparts and Electronic Transmission

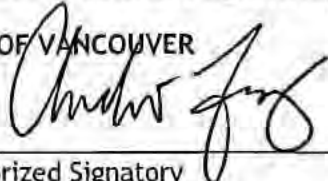
This Agreement may be executed in counterparts and each executed counterpart will be considered an original, and all executed counterparts together will constitute this Agreement. A signed copy of this Agreement may be delivered by e-mail, fax or other electronic transmission.

8.4 Severability

The invalidity of any paragraph of this Agreement will not affect any other paragraph of this Agreement, but this Agreement will be construed as if such invalid paragraph were omitted.

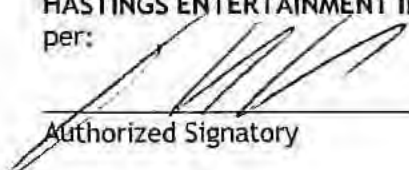
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized signatories as of the date first written above.

CITY OF VANCOUVER
per:



Authorized Signatory

HASTINGS ENTERTAINMENT INC.
per:



Authorized Signatory

Authorized Signatory

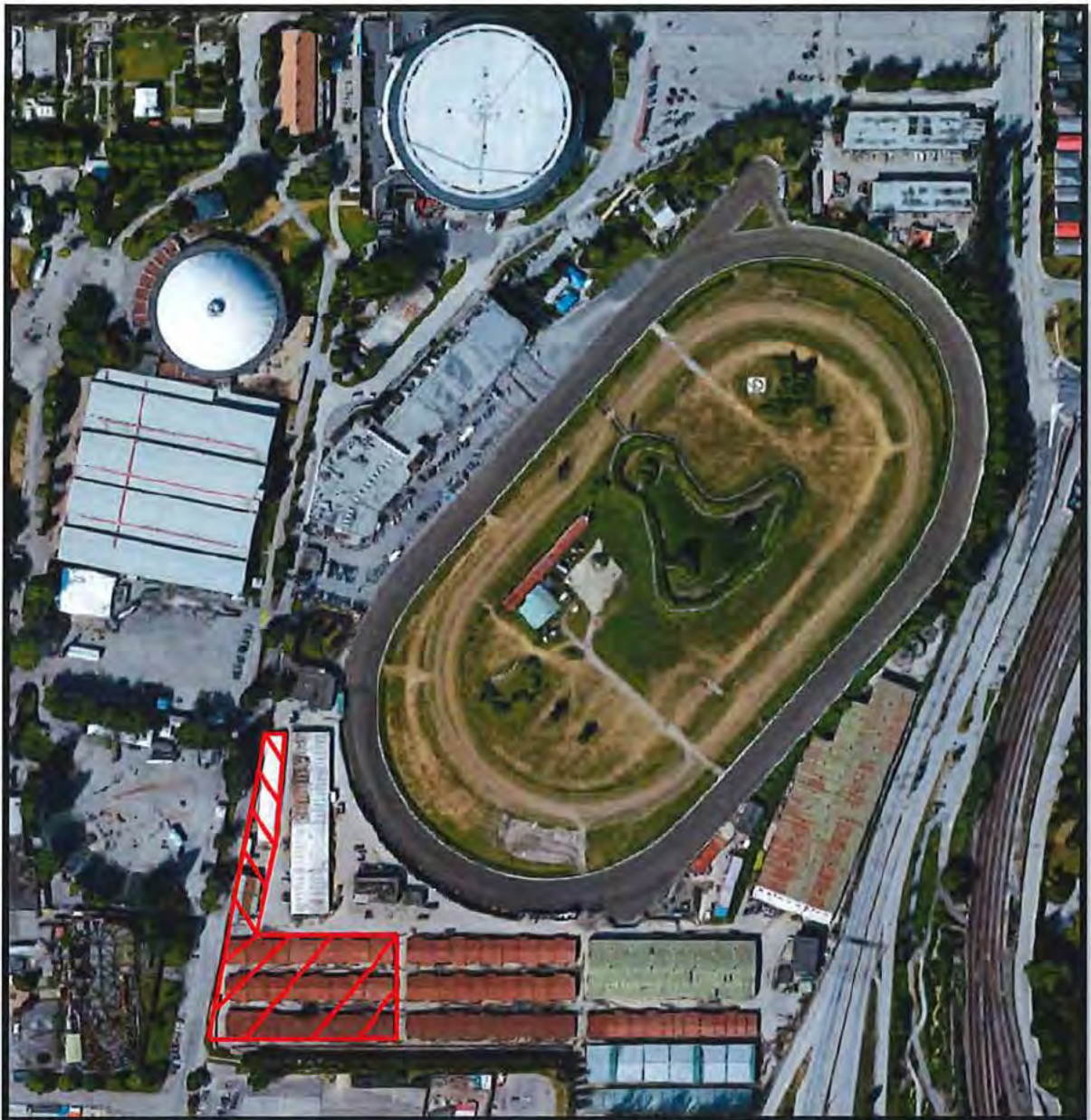
GREAT CANADIAN GAMING CORPORATION
per:



Authorized Signatory

Authorized Signatory

Schedule A
Take Back Area



Schedule B

Infield Area



AMENDMENT TO HASTINGS PARK OPERATING AGREEMENT

THIS AMENDING AGREEMENT (this “Agreement”) dated for reference the 4th day of November, 2019,

AMONG:

CITY OF VANCOUVER, a municipal corporation with offices at
453 West 12th Avenue, Vancouver, British Columbia, V5Y 1V4

(the “City”)

AND:

HASTINGS ENTERTAINMENT INC., (Inc. No. 626095), a company
having a registered office at 1500 Royal Centre
1055 West Georgia Street, Vancouver, British Columbia, V6E 4N7,
incorporated pursuant to the laws of the Province of British
Columbia

(“HEI”)

AND:

GREAT CANADIAN GAMING CORPORATION (Inc. No. 388982), a
company having a registered office at 1500 Royal Centre, 1055
West Georgia Street, Vancouver, British Columbia, V6E 4N7,
incorporated pursuant to the laws of the Province of British
Columbia

(“GCGC”, and together with HEI, the “Operator”)

WITNESSES THAT WHEREAS:

A. The City is the owner of all and singular those certain lands and premises situate in the City of Vancouver, Province of British Columbia, legally described as a portion of Lot 90 Except Part in Plan 13045 Town of Hastings Suburban Lands Plan 100; a portion of Block X, Except Part in Explanatory Plan 13247, Town of Hastings Plan 17745; and portions of Eton Street and Nootka Street adjacent to the said Remainders of Lot 90 and Block X, upon a portion of which lands and premises are situate a horse racetrack, a grandstand building, stables, paddocks, jockey quarters and attendant facilities and various other facilities and improvements (collectively, the “Site”);

B. On July 22, 2004, City Council approved, subject to a number of conditions, an application by the Operator to amend CD-1 By-law No. 3656 for 2901 East Hastings Street to permit the installation and operation of a maximum of 900 slot machines, which has subsequently been reduced to 600 slot machines as a prior-to condition to issuance of Development No. DE409601 (the “Slot Operations”) within specific areas

of the Site and on October 4, 2005, Council enacted the Rezoning By-Law to permit the Slot Operations as a use on the Site;

C. By way of an Operating Agreement dated November 1, 2007 among the City and the Operator (the **"Original Operating Agreement"**), the City granted to the Operator a non-exclusive right to use the Site for the purpose of, among other things, conducting the Slots Operations for an initial term of five years commencing on November 10, 2007 and expiring November 9, 2012 (the **"Slots Term"**), all in accordance with the terms and conditions of the Original Operating Agreement;

D. On July 25, 2012, City Council approved, subject to a number of conditions, the extension of the Term of the Original Operating Agreement for a further period of two years commencing on November 10, 2012 and expiring November 9, 2014 (the **"First Extension Term"**), and the parties hereto entered into an Amending Agreement dated the 23rd day of October, 2012 (the **"First Amending Agreement"**), which extended the Term and the Slots Term on the terms and conditions contained in the First Amending Agreement;

E. On October 15, 2014, City Council approved the further extension of the Term and the Slots Term under the Original Operating Agreement (as amended by the First Amending Agreement) for a further period of two years commencing on November 10, 2014 and expiring November 9, 2016 (the **"Second Extension Term"**), and the parties hereto entered into an Amending Agreement dated the 22nd day of October, 2014 (the **"Second Amending Agreement"**), which extended the Term and the Slots Term on the terms and conditions contained in the Second Amending Agreement;

F. On November 1 and 2, 2016, City Council approved the further extension of the Term and the Slots Term under the Original Operating Agreement (as amended by the First Amending Agreement and the Second Amending Agreement) for a period of three years commencing on November 10, 2016 and expiring November 9, 2019 (the **"Third Extension Term"**), and the parties hereto entered into an Amending Agreement dated for reference the 7th day of November, 2016 (the **"Third Amending Agreement"**), which extended the Term and the Slots Term on the terms and conditions contained in the Third Amending Agreement;

G. On July 23, 2019, City Council approved the further extension of the Term and the Slots Term under the Original Operating Agreement (as amended by the First Amending Agreement, the Second Amending Agreement and the Third Amending Agreement) for a period of five years commencing on November 10, 2019 and expiring November 9, 2024;

G. In this Agreement, the Original Operating Agreement, as amended by the First Amending Agreement, the Second Amending Agreement and the Third Amending Agreement, shall be collectively referred to herein as the **"Operating Agreement"**; and

H. The parties hereto have agreed to amend the Operating Agreement and extend the Term and the Slots Term, on the terms and conditions contained herein.

NOW THEREFORE THIS AGREEMENT WITNESSES that for consideration (the receipt and sufficiency of which is hereby acknowledged by the parties), the parties hereto covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalized terms used herein have the meanings ascribed to such terms in the Operating Agreement unless otherwise specifically defined herein.

1.2 Interpretation

Wherever the singular or masculine is used in this Agreement the same shall be deemed to include the plural or the feminine or the body corporate, and vice versa.

ARTICLE 2 EXTENSION OF TERM

2.1 Extension of Term

Each of the Term and the Slots Term under the Operating Agreement shall be extended for a further period of five years commencing November 10, 2019 and expiring November 9, 2024 (the “**Fourth Extension Term**”), subject to any early termination rights as contained in the Operating Agreement. Provided there is mutual agreement between the parties hereto, and subject to further Council approval, the parties may extend the Term and the Slots Term for a further period of five years upon the expiry of the Fourth Extension Term.

2.2 Operating Agreement Applies

Except as otherwise expressly set out herein, all terms and conditions of the Operating Agreement shall apply during the Fourth Extension Term, including but not limited to the Operator’s requirement to pay the Operating Fees, the Hastings Park Greening Fee and the annual Community Legacy Fund Fee, together with the Operator’s requirement to provide the community benefits under the Operating Agreement such as the Permanent Childcare Facility, Access to the Infield, Movie Nights at the Track, Groom School and Learning Centre, Local Hiring Initiatives and Community Days, subject to any CPI Inflation Adjustment, as applicable, provided for under the Operating Agreement.

2.3 Not Renewal

The Fourth Extension Term shall not be considered a renewal of the Operating Agreement and the Operator will not be subject to the renewal provisions of the Operating Agreement including, but not limited to, the requirement to construct or provide Renewal Term Capital Improvements, and the Operator shall have no right of renewal of the Operating Agreement.

2.4 Definition of Expiry Date

The definition of Expiry Date contained in Section 1(nn) of the Operating Agreement shall be deleted in its entirety and replaced with the following:

“(nn) **“Expiry Date”** means the date that is 17 years after the Commencement Date;”

2.5 Section 107 of the Operating Agreement

Section 107 of the Operating Agreement shall be deleted in its entirety and replaced with the following:

“107. The City may, in its discretion and with prior written approval of the City, permit the Operator to continue to use the Site after the end of the Fourth Extension Term and without the execution and delivery of a new operating agreement or any renewal thereof, provided that there shall be no tacit renewal of this Agreement or the Fourth Extension Term hereby granted and the Operator shall be deemed to be using the Site, or any portions thereof, on a month to month basis, for the same Operating Fees and otherwise upon the same terms, conditions and provisos as set forth in this Agreement insofar as the same are applicable to a month to month use of the Site with the Minimum Operating Agreement Fees, Additional Percentage Fees and all other Operating Fees paid on a monthly basis as required by the City and subject to the terms of the City’s approval.”

2.6 Childcare Facility Agreement

During the Fourth Extension Term, the Operator covenants and agrees that the Operator shall continue to perform and observe all of the Operator’s obligations, liabilities and covenants contained in the Licence Agreement dated April 1, 2011 (as amended) between the Operator, the City and the Society regarding the operation of the Childcare Facility.

2.7 Phased Backstretch Improvement Plan

During the course of the Fourth Extension Term, the Operator shall invest a minimum of \$1,500,000 on capital improvements and capital expenditures (collectively, the “Works”) in the “Backstretch Area” portion of the Site as shown in Schedule “C” (the “**Phased Backstretch Capital Investment**”), with the Works subject to the approval of the City’s General Manager of Real Estate and Facilities Management. The Operator will expeditiously submit for approval a detailed improvement plan of the Works (the “**Phased Backstretch Improvement Plan**”) generally in accordance with the Hastings Racecourse 5 year Capex Plan and Barn Rehabilitation and Paving Plan attached as Schedule “D”, including timing of commencement of installation of the Works and will provide the City with annual reports of the progress in completing the Works.

**ARTICLE 3
LIVE RACING REQUIREMENTS**

3.1 Live Racing Requirements

The City Manager may, in his discretion, amend from time to time the number of Minimum Live Racing Days and the number of Minimum Live Races required to be conducted by the Operator under the Operating Agreement during the

Fourth Extension Term, taking into consideration the recommendations of the B.C. Horse Racing Industry Management Committee and the authorizations provided by Governmental Authorities responsible for horse racing events in the Province of British Columbia, but otherwise the Minimum Live Racing Days and the Minimum Live Races requirements under the Operating Agreement will remain in full force and effect, unamended.

ARTICLE 4 SPECIAL EVENTS

4.1 Special Events

The Operator agrees to work collaboratively with the City to support special events and other potential shared uses of the Site, provided there will be no negative impacts to the Horse Racing Operations either financially or operationally. Any special event or other potential shared use of the Site shall be subject to prior mutual agreement between the parties hereto, each acting reasonably.

ARTICLE 5 TAKE BACK AREA

5.1 Reduction of Site

Subject to the terms and conditions of this ARTICLE 5, the parties agree that the City shall have the right, at any time, and from time to time, during the Fourth Extension Term, to take back from the Operator on a permanent basis for the sole and exclusive use of the City or the City's Personnel those areas of the Site outlined in red and hatched on the plan attached as Schedule A hereto (the "Take Back Area"). For certainty, the City may take back that portion of the Take Back Area outlined in red and hatched on the plan or any portion thereof as may be required for civic uses (including Temporary Modular Housing) from time to time, and the Site will thereafter be deemed to be reduced in size after each such taking and such areas that have been taken back by the City shall no longer be under the control of the Operator and removed from the definition of "Site" for the purposes of the Operating Agreement.

Without limiting the foregoing, at any time during the Fourth Extension Term, the City may wish to take back other portions of the Site. If the City communicates to the Operator its wishes to take back other portions of the Site, and if the City and the Operator are in mutual agreement at such time to give back such portions of the Site to the City, the parties may proceed and the provisions of this ARTICLE 5 will apply *mutatis mutandis*. For certainty, in the event any other portions of the Site are taken back by the City pursuant to this clause, any resulting demolition and removal of any buildings, structures or other improvements thereon shall be at the City's sole cost and expense.

5.2 Notice

The City agrees that the City will provide the Operator with a minimum of six months' prior written notice of its intention to take back all or any portion of the Take Back Area and advise the Operator of the effective date of such

taking in any such written notice. For certainty, the City may provide more than one notice during the Fourth Extension Term and take back portions of the Take Back Area over time.

5.3 Minimum Operating Fees

The parties hereto covenant and agree that from and after the effective date of any reduction in size of the Site, the Minimum Operating Fees shall also be deemed to be reduced in a proportionate manner. For the purposes of this Section, the parties hereby agree that the Site as at the date of this Agreement is 17.95 hectares (the “**Total Area**”). Any reduction in the size of the Site and any corresponding pro rata reduction in Minimum Operating Fees shall be calculated on the basis of the size of the portion of the Take Back Area that has been taken back by the City as compared to the Total Area, which reduction in the Total Area shall be calculated by the City Surveyor.

5.4 Additional Capital Investment

To the extent the Minimum Operating Fees payable by the Operator are reduced pursuant to Section 5.3, the Operator will make such additional capital improvements and capital expenditures in the Backstretch Area (the “**Additional Capital Investment**”) equivalent to the reduction in the total Minimum Operating Fees payable. If and when applicable, the Operator will expeditiously submit a detailed improvement plan for the Additional Capital Investment to the City for prior approval, which plan must be incorporated into the Phased Backstretch Improvement Plan as additional works (the “**Additional Works**”). For certainty, if and when applicable, this Additional Capital Investment will be in addition to the Phased Backstretch Capital Investment and the Additional Works will be supplemental and in addition to the Works contemplated in Section 2.7.

5.5 Demolition of Existing Buildings

From and after the effective date of any notice provided in accordance with Section 5.2, the City shall have the right to reenter upon the Take Back Area and demolish and remove any buildings, structures or other improvements thereon, at the City’s sole cost and expense. The City shall be solely responsible for any costs relating to redevelopment of those portions of the Take Back Area that have been taken back by the City. From and after any such effective date, the City shall be permitted to permit any invitees onto such lands, including the general public.

ARTICLE 6 ACKNOWLEDGMENTS

6.1 City’s Acknowledgment

The City acknowledges that the Operator may apply for and pursue the approvals necessary for adding table gaming, including electronic table games, as a permitted use on the Site, which gaming is currently prohibited under the Operating Agreement and included in the definitions of Expanded Gaming and Prohibited Gaming in the Operating Agreement. Notwithstanding the City’s acknowledgment set out herein, and notwithstanding any approvals the Operator may obtain from any Governmental Authority other than the City, any amendments to the definitions of Expanded Gaming and/or Prohibited Gaming

and the addition of any new permitted uses on the Site will be subject to Section 4 of the Operating Agreement.

6.2 Operator's Acknowledgment

In the event that Council approves any changes to the permitted uses of the Site, including without limitation, any changes to the definitions of "Slots Operations" or "Prohibited Gaming", then the Operating Agreement shall be required to be further amended and the Operator shall have no rights to conduct any new uses, or Expanded Gaming or any expanded "Slots Operations" or "Horse Racing Operations" until such date that the Operating Agreement has been amended to the satisfaction of the City.

ARTICLE 7 PNE PARKING

7.1 Parking and Access Management Plan

The parties hereby agree to amend the Parking and Access Management Plan attached as Schedule "K" to the Operating Agreement to add the current informal parking arrangement between the PNE and the Operator during the Exhibition Period, which arrangement currently permits the PNE to use the infield area of the Site as outlined in red and hatched on the plan attached as Schedule B hereto (the "Infield Area") for parking purposes during the Exhibition Period. The Infield Area will be made available to the PNE for a fee payment payable to the Operator, based on a profit sharing arrangement between the Operator and the PNE, calculated as twenty percent (20%) of the net revenue. The parking arrangement will not be available on Live Racing Days. During the Fourth Extension Term, the Operator agrees to continue to permit such parking usage during the Exhibition Period and shall not deny the PNE access to the Infield Area for parking purposes during the Exhibition Period, except on Live Racing Days.

ARTICLE 8 MISCELLANEOUS

8.1 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

8.2 Operating Agreement Ratified and Confirmed

Except as hereby expressly modified, the Operating Agreement is hereby ratified and confirmed by the parties hereto to the effect and with the intent that the Operating Agreement and this Agreement shall be read and construed as one document and that references in the Operating Agreement to "this Agreement" shall be read and construed to mean the Operating Agreement as modified by this Agreement.

8.3 Counterparts and Electronic Transmission

This Agreement may be executed in counterparts and each executed counterpart will be considered an original, and all executed counterparts

together will constitute this Agreement. A signed copy of this Agreement may be delivered by e-mail, fax or other electronic transmission.

8.4 Severability

The invalidity of any paragraph of this Agreement will not affect any other paragraph of this Agreement, but this Agreement will be construed as if such invalid paragraph were omitted.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized signatories as of the date first written above.

CITY OF VANCOUVER

per:


Authorized Signatory

HASTINGS ENTERTAINMENT INC.

per:


Authorized Signatory

Authorized Signatory

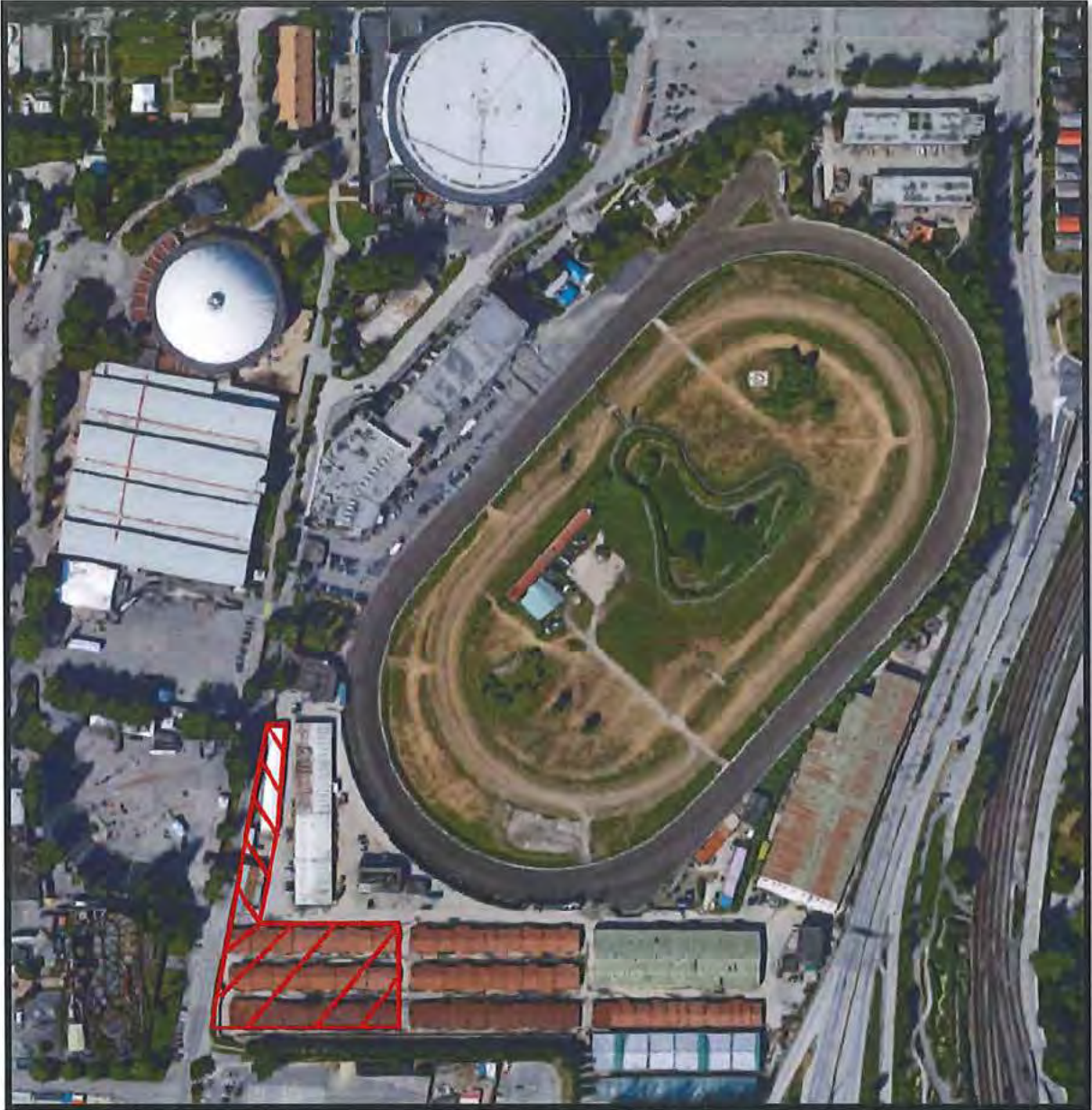
GREAT CANADIAN GAMING CORPORATION

per:


Authorized Signatory

Authorized Signatory

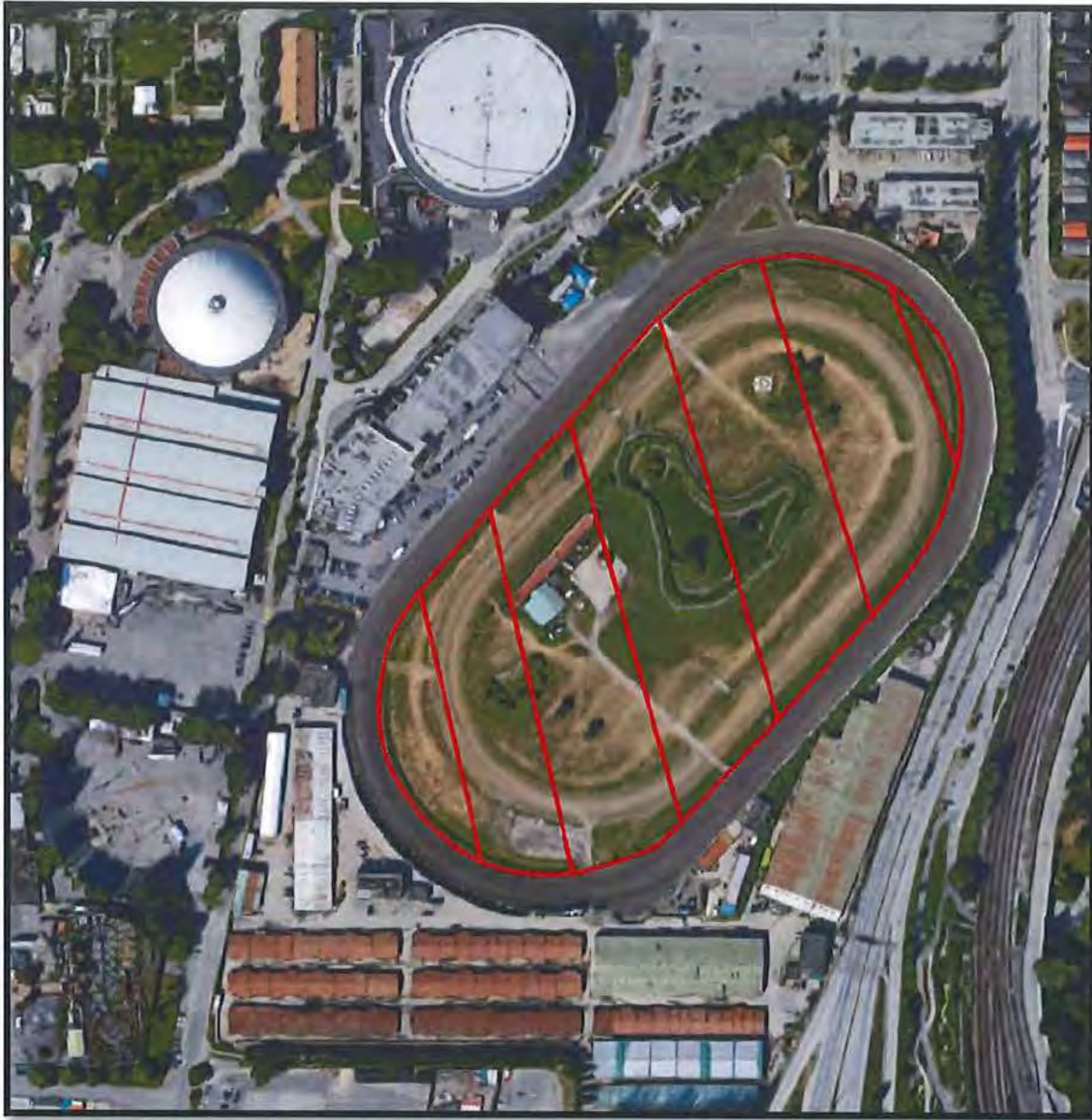
Schedule A
Take Back Area



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Schedule B



Infield Area



Schedule C
Backstretch Area

Hastings Racecourse



-  Hastings Racecourse Lease Area
-  Hastings Racecourse Back Stretch

Hastings Racecourse 5 year Capex Plan and Barn Rehabilitation and Paving Plan

