



**NOTICE OF MEETING**

State Race Track Leasing Commission Meeting  
 March 20, 2024, at 11:00 a.m.

Del Mar Fairgrounds Board Room 2260 Jimmy Durante Boulevard Del Mar, CA 92014	Department of Finance Conference Room 1021 O Street, Suite 3110 Sacramento, CA 95814
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*While the State Race Track Leasing Commission meeting will be conducted in person per Government Code Section 11133, the Commission will also provide for remote participation by Commissioners and members of the public. If you prefer to participate remotely, please check the 22nd DAA's website ([Public Information](#)) for the ZOOM link and/or ZOOM dial-in instructions on how to participate and/or view this meeting.*

**STATE RACE TRACK LEASING COMMISSIONERS**

Michele Perrault, Chair Department of Finance	Michael Flores, Commissioner Department of Food & Agriculture
Mark Arabo, Commissioner, 22 <sup>nd</sup> DAA	Jennifer Osborne, Commissioner Department of General Services
Lisa Barkett, Commissioner, 22 <sup>nd</sup> DAA	Kathlyn Mead, Commissioner, 22 <sup>nd</sup> DAA

Joshua Caplan, Office of the California Attorney General, Counsel
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Persons wishing to attend the meeting and who may require special accommodations pursuant to the provisions of the Americans with Disabilities Act are requested to contact the office of the Chief Executive Officer, (858) 755-1161, at least five working days prior to the meeting to insure proper arrangements can be made.

Items listed on this Agenda may be considered in any order, at the discretion of the chairperson. This Agenda, and all notices required by the California Bagley-Keene Open Meeting Act, are available at [www.delmarfairgrounds.com](http://www.delmarfairgrounds.com). Public comments on agenda items will be accepted during the meeting as items are addressed.

**STATE RACE TRACK LEASING COMMISSION (SRTLCL)**  
**AGENDA**

**Wednesday, March 20, 2024**  
**11:00 A.M.**

Items listed on this Agenda may be considered in any order, at the discretion of the chairperson.

1. **Roll Call**
2. **Approval of Minutes**
  - A. August 14, 2023 (Action) 3-5
3. **Reports** (Informational)
  - 22<sup>nd</sup> District Agricultural Association Report Verbal
  - Del Mar Thoroughbred Club (DMTC) Report 6-20
4. **Public Comment on Matters Not Appearing on the Agenda**

This item is for Public comment on issues **NOT** on the current Agenda. However, no debate by the Board shall be permitted on such public comments and no action will be taken on such public comment items at this time, as law requires formal public notice prior to any action on a docket item. Speaker's time is limited to **two** minutes and may be modified based on the number of public speakers. No speaker may cede their time to another speaker.
5. **Recess to convene and hold the Del Mar Race Track Authority meeting**
6. **Reconvene back into open session**
7. **New Business**
  - A. Consideration and vote to exercise the final remaining option of the Del Mar Race Track Operating Agreement under Paragraph 4.1 of that agreement. (Action) 21-65
  - B. Consideration and vote to approve the Breeders' Cup agreement between the Del Mar Thoroughbred Club and the Breeders' Cup (for the 2025 Breeders' Cup event), as required by Paragraph 5.8 of the Operating Agreement (added to the Operating Agreement with adoption of the Second Amendment to the Operating Agreement.) (Action) 66-123
  - C. Consideration and vote for approval of amending the Del Mar Race Track Authority's Joint Exercise of Powers Agreement for the Del Mar Race Track Authority to (1) correct typographical errors in the first and fifth whereas clauses, and (2) replace "employ" with "retain temporary" at Section 3€(5) (Action) 124-140
8. **Adjournment**

**STATE RACE TRACK LEASING COMMISSION MEETING**  
**Minutes – Monday, August 14, 2023**

The State Race Track Leasing Commission met on Monday, August 14, 2023, in the Board Room hosted by the 22<sup>nd</sup> District Agricultural Association (22<sup>nd</sup> DAA) 2260 Jimmy Durante Blvd., Del Mar, CA.

**ROLL CALL**

Commission Chair Gayle Miller called the meeting to order at 11:11 a.m. with a quorum present.

**Department of Finance (DOF) (via ZOOM)**

Gayle Miller, Chief Deputy Director, Policy; Delegate for Joe Stephenshaw, Director; Commission Chair

**Department of General Services (DGS)**

Jennifer Osborn, Chief Deputy Director, Delegate for Ana M. Lasso, Director; Commissioner

**Department of Food and Agriculture (CDFA)**

Michael Flores, Deputy Secretary Administration and Finance, Delegate for Karen Ross, Secretary; Commissioner

**22<sup>nd</sup> District Agricultural Association Representatives (22<sup>nd</sup> DAA)**

Richard Valdez, Commissioner  
Lisa Barkett, Commissioner  
Kathlyn Mead, Commissioner

**Office of the Attorney General California**

Joshua Caplan, Deputy Attorney General

**OTHERS PRESENT**

Carlene Moore, 22<sup>nd</sup> DAA CEO  
Melinda Carmichael, 22<sup>nd</sup> DAA Chief Administrative Officer  
Michael Sadegh, 22<sup>nd</sup> DAA Finance Director  
Donna O’Leary, 22<sup>nd</sup> DAA Executive Assistant  
Josh Rubinstein, President and Chief Operating Officer, Del Mar Thoroughbred Club

**APPROVAL OF MINUTES**

March 30, 2022

Chair Miller moved to approve the meeting minutes from March 30, 2022. Commissioner Mead seconded. Chair Miller, Commissioners Osborn, Flores, Valdez, Barkett, and Mead were all in favor and the motion carried 6-0.

## **REPORTS**

### Informational

#### 22nd DAA Update

22<sup>nd</sup> DAA CEO Carlene Moore described the economic recovery of the District since the start of the COVID-19 pandemic in 2020. The loss of revenue after canceling the 2020 San Diego County Fair that year led to mass layoffs, and the 22<sup>nd</sup> DAA would have been forced to cease operations without financial support from Assembly Bills 1499 and 75, a Paycheck Protection Program loan, and other grants. The District implemented strategic operational improvements to save money and increase net earnings, including third-party operators for the Del Mar Horsepark and The Sound entertainment venue. The San Diego County Fair returned at full strength in 2023, with paid attendance near pre-pandemic levels. The 22<sup>nd</sup> DAA has also commissioned a facilities condition assessment to determine infrastructure needs and is conducting a feasibility study to explore land use opportunities for a new master site plan.

#### Del Mar Capital Improvement Account

22<sup>nd</sup> DAA CEO Moore reported that the Capital Improvement Account does not contain any funds, as the bond money was depleted in 2021. The 22<sup>nd</sup> DAA expects funds to come back through the account later in 2023.

#### DMTC Operating Results for 2022

Del Mar Thoroughbred Club (DMTC) President and Chief Operating Officer Josh Rubinstein reported a safe and successful 2022 racing season, with wagering averaging a record-high \$18.7 million per day during the summer race meet. Attendance and revenue from food and beverage sales increased in 2022. No race-day horse fatalities were recorded in the 2022 season, but four non-racing equine fatalities occurred. Horseracing revenue provided \$11.26 million gross revenue for the 22<sup>nd</sup> DAA and the Race Track Authority in 2022.

#### Public Comment on DMTC Operating Results (see pages 24-32 of transcript)

Lori Saldaña

Martha Sullivan

Oscar de la Torre

Maria Luisa

Jim Coleman

#### Racing Industry Update

DMTC President and Chief Operating Officer Rubinstein addressed the announcement of the upcoming closure of Golden Gate Fields in Northern California, which could potentially result in relocating horses and jobs to DMTC.

#### 2023 Summer Race Meet Dates and 2023 Fall Race Meet Dates

DMTC announced its 2023 race meet schedules, with the summer race meet running from July 21 through September 10, and the fall race meet from November 10 to December 3.

#### Public Comment on Racing Industry Update and Race Meet Dates (see pages 33-38 of transcript)

Lori Saldaña, Lynn Fredenberg, Oscar de la Torre

**PUBLIC COMMENT ON MATTERS NOT APPEARING ON THE AGENDA**

(see pages 40-46 of the transcript)

Lynn Fredenberg  
Lori Saldaña

Oscar de la Torre  
Martha Sullivan

**RECESS TO CONVENE AND HOLD THE RACE TRACK AUTHORITY MEETING**

The Commission recessed to the Del Mar Race Track Authority meeting at 12:07 p.m.  
The Commission resumed at 1:04 p.m.

**NEW BUSINESS**

Item 6.1: Consideration and vote on the Breeders' Cup agreement between the Del Mar Thoroughbred Club and the Breeders' Cup, as required by Paragraph 5.8 of the Operating Agreement, added to the Operating Agreement with adoption of the Second Amendment to the Operating Agreement (Action Item)

DMTC will host the Breeders' Cup World Championships in November 2024. The District will receive a \$600,000 facility rental fee (an increase of 50% from the previous Breeders' Cup in 2021) and 50% of net revenue from walk-up food and beverage concessions up to \$200,000.

PUBLIC COMMENT on Item 6 (see pages 95-101 of transcript)

Lori Saldaña  
Oscar de la Torre

Jim Coleman  
Martha Sullivan

Commissioner Valdez moved to approve the agreement between the Breeders' Cup and DMTC. Chair Miller, Commissioners Osborn, Flores, Valdez, Barkett, and Mead were all in favor and the motion carried 6-0.

**ADJOURNMENT**

Commission Chair Miller adjourned the meeting at 1:18 p.m.

## **DEL MAR THOROUGHBRED CLUB**

### **MANAGEMENT'S DISCUSSION AND ANALYSIS OF OPERATING RESULTS**

#### **FOR THE TWELVE-MONTH PERIODS ENDING DECEMBER 31, 2023 and 2022**

The management of Del Mar Thoroughbred Club (“DMTC”) provides the following discussion and analysis of our operating results through the period ending December 31, 2023. The following analysis reflects our review of industry and economic events that factored into our operating results as well as our comparison of our budgeted projections and prior-year operating results. The following discussion reflects the results of our weather-shorten 30-day summer race meet and our 13-day fall race meet. We prepared our analysis based on our unaudited financial statements and it accompanies our fourth quarter financial report filed at the end of January 2024. Our final 2023 results will be finalized following the completion of our 2023 audited financial statements in April 2024.

The 2023 race meets enjoyed high-quality racing, record average daily purses, strong race field sizes and, most importantly, was again one of the safest meets in the nation and Del Mar’s history. Our horse recruitment efforts, along with record summer purses of \$886,000 per day, attracted 288 out-of-state horses that raced this summer and contributed to not only our second-highest-ever field size of 8.9 horses per race, but also the highest in the nation of all the major race meets. Our marketing efforts, which focus on Del Mar’s iconic brand, helped produce gains in average daily on-track attendance and wagering, as well as growth in total admissions-related, sponsorship and food and beverage (“F&B”) revenues, all despite the cancelation of racing on August 20 due to Tropical Storm Hilary.

Wagering on horse racing declined nationally in eleven of the twelve months of 2023 and Del Mar experienced a similar decline in total wagering during our recent summer race meet. Our wagering reached record levels in 2022 after benefitting from a significant growth in online wagering that started in 2020 as many people, including Del Mar’s customers, were driven into an online and digital environment by the pandemic and began wagering on horse racing. Our ADW internet wagering providers were able to retain many of these new online horse racing customers in 2021 and 2022 and our wagering levels set records in 2022 with the return of on-track patrons and the reopening of brick-and-mortar locations. The expansion of sports wagering markets accelerated in 2023 and, together with the impact of higher interest rates and a slowing economy, contributed to the decline in wagering levels nationally as well as at Del Mar. While our average daily wagering declined 6.4% in 2023 from record levels in 2022, total wagering was still 18% above pre-pandemic levels of 2019. Similarly, ADW wagering experienced modest declines in 2023, but remained 57% higher than in 2019.

The 2023 summer and fall meets are projected to generate combined DMTC rent and race-meet related F&B net revenues (as defined in the Del Mar Race Track Operating Agreement) of \$9.18 million for the year. This amount is \$2.83 million under the budgeted return from racing.

Racing net revenues are projected to total \$3.70 million in 2023, and are projected to be \$2.76 million under budgeted net racing revenues, primarily due to lower wagering revenues and the loss of \$630,000 of net revenues resulting from the cancelation of a day of live racing due to Tropical Storm Hilary. Racing net revenues consist of \$1.225 million of Direct Payments, as well as the \$2.48 million payments to the Race Track Authority (“RTA”). The \$2.48 million RTA payments consists of \$2.43 million paid on November 15, 2023 and an expected additional payment of approximately \$50,000. This additional payment, which will include the results of our fall race meet, will be finalized and paid in late April 2024 following the completion of our 2023 audited financial statements.

Race meet F&B revenues in 2023 totaled \$13.03 million, which consisted of \$11.55 million during the summer race meet and \$1.48 million during the fall race meet. Summer race meet F&B revenues rose \$540,000, or 5.0%, over the prior year despite the loss of nearly \$300,000 of F&B revenues due to one less day of live racing. Average daily F&B revenues increased 8.4% during the summer race meet due to higher average daily on-track attendance and strong F&B sales in our high-margin premium seated and Group sales areas. Fall race meet F&B revenues matched the prior year’s revenues. F&B net revenues, all of which flowed directly to the District, totaled \$5.47 million, an increase of \$220,000 over 2022 F&B net revenues, but were \$70,000 lower than budgeted due to the loss of \$130,000 of F&B net revenues from the loss of one day of racing.

### **Overview**

Del Mar is viewed as a world-class venue for Thoroughbred racing. DMTC enjoys a reputation for operations considered to be among the very best in the industry, both in terms of our ability to attract the highest quality Thoroughbred racing and our success in generating a highly diversified revenue stream. DMTC is an industry leader in developing innovative programs, adopting new technologies and creating dynamic marketing campaigns designed to attract top Thoroughbred racing to Del Mar as well as new fans to racing. DMTC leads the industry in developing practices and procedures to protect and enhance equine, rider and patron safety.

DMTC has long been at the forefront of enacting industry-leading safety protocols and procedures and those efforts have resulted in Del Mar consistently being ranked among the safest racing venues in the country. DMTC has implemented extensive safety measures, including adopting the industry’s most stringent medication rules, increasing veterinary oversight and medication testing of horses, enhancing stable security and establishing a safety advisory committee consisting of trainers, veterinarians, jockeys, track maintenance personnel and management which meet regularly to review safety practices, operations and racing surfaces. DMTC’s efforts to provide the safest possible environment for the sport’s equine and human athletes never cease and safety remains our top priority. We continue to work with industry stakeholders, including the Horseracing Integrity & Safety Authority (“HISA”), to ensure Del Mar’s equine safety and welfare protocols are the industry’s gold standard.

Overall horse population and the inventory of racehorses available to run in Southern California are key factors impacting our industry. The number of horses that run in each race (known as field size) directly correlates to the amount wagered on a race, or the wagering handle. The more horses that run in a race, the larger the wagering pool and a larger wagering pool means greater wagering commissions are paid to track operators along with higher purses paid to the horsemen and women. While other racetracks across California and the country have struggled to maintain field sizes, DMTC is considered an industry leader in developing innovative programs to address the challenges of horse population in Southern California and bolster field sizes.

DMTC created the innovative and highly successful Ship & Win program. The program provides an incentive for owners of out-of-state horses to relocate them to California and race at Del Mar. In 2023, DMTC and the Thoroughbred Owners of California (“TOC”) jointly funded the program and provided record incentive payments. Another horse recruitment program designed to attract out-of-state horses that do not qualify for Ship & Win incentives is the Co-Op marketing program. The Co-Op program is funded through a deduction from ADW wagering and it is discussed in greater detail later in this report. Since DMTC introduced the Ship & Win program in 2011, Del Mar’s horse recruitment efforts have brought 2,465 horses to race at Del Mar, with many of them staying to race at other California racetracks.

The Ship & Win program, along with our other horse recruitment efforts, not only helped Del Mar’s average field size levels at our summer and fall meets but also contributed to increased field sizes at the other tracks in California. For example, following our two race meets this year through the date of this report, horses from our Ship & Win program made 194 starts at the race meets at Los Alamitos and Santa Anita.

Wagering revenue represents our primary revenue source. However, we strive to diversify our revenue stream through a multi-pronged strategy to generate significant non-wagering revenues. Our non-wagering revenues consist of admissions-related revenues (e.g., daily admissions, seating and parking, programs, novelty concessions, season luxury suites and trackside boxes, Turf Club memberships and luxury suites, and a robust Group sales program), sponsorships revenues as well as various fee-based management services we provide to other constituents in the racing industry. Del Mar historically has enjoyed the highest ratio of non-wagering revenues-to-total-revenues of all tracks in California and among the highest of any racetrack in the United States. Although F&B revenues are not reflected in DMTC’s financial statements, our marketing efforts also are designed to produce significant race meet-related F&B net revenues, all of which flow directly to the District.

Our industry leading sponsorship revenue program represents another important component of our diversified non-wagering revenues. DMTC has been successful in maintaining and growing corporate partnerships by creating and implementing robust marketing and co-branded initiatives for our sponsors. Even with the recently changed landscape which resulted in DMTC forgoing its popular large-scale general admission concerts, Del Mar continues to provide substantial value to



our corporate partners, including online and social media opportunities. These digital opportunities, combined with traditional on-site engagement of patrons, offer sponsorship opportunities not seen by many other racetracks. In addition, Del Mar's dedicated and robust fan base is rich with Millennial and Gen Z demographics and our corporate partners enjoy unparalleled access to this highly coveted audience. DMTC leverages its in-demand, high-end race day hospitality to increase sponsorship revenues. Lastly, DMTC works in tandem with District staff on facility-wide corporate partnerships that maximize year-long sponsorships for the Fairgrounds and will continue to collaborate on these opportunities to ensure that venue sales goals are achieved.

### **2023 Results**

The summer meet offered an impressive calendar of stakes races, with Del Mar's competitive stakes program attracting many world-class stars of the sport of Thoroughbred racing that competed in 39 summer stakes races having a combined value of \$8.275 million. The summer meet's \$1-million FanDuel Racing Pacific Classic was won by Arabian Knight, an impressive 3-year-old-colt who edged a field of top older horses. The quality of our racing product was further exhibited at the recently-concluded Breeders' Cup World Championships, which were held at Santa Anita Racetrack on November 3 and 4. A record total of 32 horses that raced at Del Mar this past summer went to Santa Anita to compete against the world's top Thoroughbreds in the 2023 Breeders' Cup World Championship races, with eight of them winning purse money, including runner-up honors for National Treasure in the Breeders' Cup Dirt Mile and Muth in the Breeders' Cup Juvenile.

The eight-week 2023 summer race meet opened on Friday, July 21st and enjoyed high quality, competitive racing, the largest field sizes of all major United States racetracks in 2023, and most importantly, continued to be one of the safest race meets in the nation and Del Mar's history. The meet, scheduled over 31 days, enjoyed pleasant weather, with the exception of Sunday, August 20 when Tropical Storm Hilary forced the cancelation of live racing for the first time in the summer meet's 84-year history. Our marketing efforts included an expanded events calendar highlighted by our popular lifestyle promotions. The race meet's weekend-focused promotions aimed at driving attendance and generating high-margin F&B revenues. The meet's promotional schedule kicked off with The Party on Opening Day, which offered ticketed patrons exclusive access to the trackside Cabana. The event featured Red Bull's popular DJs, craft beer and cocktail bars, numerous local food vendors, private wagering windows and more. Summer promotions included a variety of F&B focused events, such as the Del Mar Beer Fest, Uncorked Wine Fest, along with regional food events such as the Taste of New Orleans, Tacos & Tequila, and our Turf & Surf BBQ Festival. Our promotional events concluded with College Day on Closing Weekend. Additionally, marketing efforts utilized our valuable customer loyalty program (Diamond Club) database to offer our core customers enticing value-added promotions to drive visits on the lesser-attended race days, Thursdays and Sundays. These efforts contributed to a gain

in average daily on-track attendance of 2.5% for the 30-day summer race meet, which included one less highly attended weekend race day due to the cancelation of racing on Sunday August 20th. The increased summer attendance also contributed to gains in average daily on-track wagering and growth in total attendance-related revenues.

The recently completed four-week fall race meet – the Bing Crosby Season – concluded its 10th session on December 3rd and once again showcased the nation’s premier late-season racing product. Because of the quality of our racing the fall meet’s wagering levels again ranked as the nation’s best during the fall calendar. Turf racing is the highlight of our fall meet, with eight major grass races offered during the final two weeks of the season. Due to inclement weather and generally poor conditions of turf race courses in the East and Midwest during this time of year, Del Mar’s grass racing attracts top-tier runners from around the country. Once again, the very best out-of-state trainers, including Chad Brown, Graham Motion, Mark Casse and Bill Mott, brought their horses to Del Mar and several of them earned notable prizes. A total of 18 out-of-state horses shipped to Del Mar to take part in the track’s Turf Festival, most of them ridden by top riders from the east, including Irad Ortiz, Jr., Joel Rosario, Tyler Gaffalione and Luis Saez. California stables were also successful during the fall season with top local trainers, Phil D’Amato winning three stakes races and Richard Mandella capturing two stakes races.

The foundation of our operations is built on a strong live racing program and wagering commissions and purses generated on our races. Our horse recruitment efforts, including the Ship & Win and Co-Op marketing programs, continued as a key focus of our 2023 operations. We offered record Ship & Win program incentives for the summer race meet. This year, the program provided a \$5,000 starter bonus and a 50% purse bonus for any out-of-state main track runner as well as a \$4,000 starter fee and a 40% purse bonus for out-of-state runners in the more popular turf races. The purse bonus was awarded for additional starts at the summer meet and was also expanded to provide a purse bonus on winnings for first-through-fifth place finishers. Our racing department started early in 2023 to actively promote Del Mar’s record purse levels and the enhanced Ship & Win program incentives.

These recruitment efforts and programs proved very successful, attracting 318 out-of-state horses that made 532 starts during the 2023 summer and fall race meets. The horses recruited to race last summer helped produce an extremely strong average field size of 8.9 horses per race, just shy of the all-time high of 9.1 horses per race in 2022, and well ahead of the 8.45 horses in 2021 and 8.36 horses in 2020. Our summer race meet’s field sizes were again the highest in the nation for all major race meets, including the popular Saratoga race meet in upstate New York, which had an average field size of 7.73 horses per race. It also bears mention that during the 2021 summer meet we saw a number of horses ship in from the east coast as trainers chose to race their horses here to get them familiar with Del Mar in advance of that year’s Breeders’ Cup World Championships. Because we are hosting the 2024 Breeders’ Cup during the first week of next year’s fall race meet, we anticipate attracting additional high-end horses and out-of-state stables to race at our summer meet.

## **Revenues**

Revenues for the year ending December 31, 2023 totaled \$39.02 million and were \$2.58 million, or 6.2%, under budget. Current year revenues declined \$1.30 million, or 3.2%, below prior year revenues of \$40.30 million

Summer race meet revenues declined \$790,000, or 2.40%, and were \$1.94 million, or 5.64%, under budget due to the loss of an estimated \$540,000 in wagering revenues when live racing was canceled on August 20 and as average daily wagering declined 6.1% from the record levels of 2022. Non-wagering revenues rose \$690,000, or 5.4%, as the growth in average daily on-track attendance along with increased Opening Day pricing drove growth in attendance-related revenues, which increased \$330,000, or 3.8%. Other operating revenues rose \$360,000, or 8.8%, due to growth in sponsorship revenues and higher interest income.

Fall race meet revenues totaled \$6.51 million and were \$640,000 under budget as fall race meet wagering revenues were \$500,000 under budget due to lower-than-expected ADW and out-of-state wagering. Fall race meet non-wagering revenues were \$140,000 under budget due to lower-than expected attendance-related revenues and interest income.

Wagering Revenues: Wagering represents DMTC's primary source of revenues and accounted for 62.5% of total revenues. DMTC receives wagering commissions and purses from wagering by patrons in California whether the wagers are made on-track at Del Mar, off-track at Southern California satellite ("ITW") locations, or from Southern California residents wagering through Advanced Deposit Wagering ("ADW") providers that are licensed by the California Horse Racing Board ("CHRB"). Del Mar also receives commissions and purses when patrons who are outside of California wager on Del Mar races at brick-and-mortar locations (e.g., racetracks, casinos, ITW locations and sports bars) and through ADW providers that contract with Del Mar to take wagers on our races. California patrons are able to wager on three types of races: 1) those run at Del Mar ("live races"); 2) those run in Northern California, and 3) races imported from racetracks outside California ("imported races").

Live wagering totaled \$403.0 million for the 2023 summer meet, which was \$44.2 million, or 9.9%, lower than live wagering during the 2022 summer meet. The 2023 summer race meet offered 286 live races run over 30 days of live racing compared to 294 races run over the 31-day 2022 summer meet. Approximately one-third of the live wagering decline was attributable to the cancelation of live racing on Sunday, August 20 due to Tropical Storm Hilary. Wagering on live races by out-of-state bettors totaled \$273.6 million and declined \$34.3 million, or 11.1%, from 2022's record out-of-state wagering levels. The decline was primarily due to lower wagering by certain out-of-state customers employing sophisticated computer algorithms to handicap races. These players are often referred to as Computer Assisted Wagering ("CAW") players and they are attracted to wagering on Del Mar races due to our large field sizes and the liquidity of our large pari-mutuel wagering pools. Our large wagering pools also allow CAW players to place significant

bets without significantly impacting the pari-mutuel odds on their wagers. Wagering by CAW players declined \$27.8 million in 2023 due to two factors. First, pricing was increased in 2023 for some CAW players, which led to a \$20.9 million, or 66.3%, decline in their wagering levels. Wagering by the other CAW players declined \$6.9 million, or 8.1%. This reduction was consistent with the overall decline in live wagering because, as noted above, wagering by CAW players generally corresponds to total wagering levels. The one less day of live racing due to Tropical Storm Hilary contributed to the remaining decline in out-of-state wagering on live races. On-track wagering on live races declined \$1.9 million, or 4.4%, primarily due to one less day of live racing this past summer. Wagering on live races at California satellites declined \$1.26 million, or 5.7%, due to the one less day of racing and the closure of the satellite location in San Clemente in 2023. Wagering on live races by California ADW patrons declined \$4.27 million, or 7.7%, due to the one less day of live racing and also because wagering by ADW patrons softened in 2023 as discussed above. Live wagering during the 2023 fall race meet totaled \$108.74 million, which was \$9.73 million, or 8.2%, lower than live wagering during the 2022 fall season. The decline in live wagering was primarily due to lower wagering by certain CAW players for which their rate was increased in 2023 as discussed above.

Wagering on imported races by on-track and Southern California satellite and ADW patrons totaled \$158.39 million during the 2023 summer and fall race meets and was \$8.64 million, or 5.2%, lower than 2022 total import wagering. The 2023 and 2022 Del Mar summer and fall race meets were nine-week and four-week race meets, respectively. In addition to eight weeks of live racing, there was no live racing (“dark days”) in Southern California the week prior to the start of live racing for both the 2023 and 2022 summer race meets. Wagering by California ADW patrons on imported races totaled \$111.18 million and was \$6.26 million, or 5.3%, lower than ADW wagering in 2022 largely due to competition for online customers from expanding sports providers in 2023. The cancelation of live racing on August 20 had minimal impact of California ADW imported wagering because patrons were able to wager on Saratoga and other out-of-state race meets that raced that day. Imported wagering at Southern California satellite locations totaled \$42.1 million and was \$2.86 million, or 6.4%, lower than 2022 because of the closure of the OC Tavern ITW satellite in San Clemente during 2023. Additionally, many satellite locations in the state were closed on August 20 due to Tropical Storm Hilary.

Wagering on Northern California races declined \$1.24 million, or 10.2%, to a total of \$10.89 million during the recent summer and fall race meets. This decline was primarily due to the lower field sizes on races run in Northern California (5.8 horses during the summer meet and 6.8 horses during the fall meet) compared to the field sizes of 8.9 horses on Del Mar’s races.

Wagering revenues in 2023 were impacted by various changes to required statutory and contractually-mandated wagering deductions that are used to fund stabling and vanning as well as the operations of the SCOTWINC satellite network and the California Horse Racing Board (“CHRB”). These deductions from wagering effectively reduce wagering revenues and purses equally during the year.

Stabling and vanning (“S&V”) operations are funded through a statutory deduction on wagering at satellite facilities and on-track wagering on imported and Northern California races as well as a contractual deduction from California ADW wagering. The S&V fund operated at a deficit during the pandemic due the significant decline in wagering at California satellites and on-track locations. This operating deficit was eliminated at the end of 2022 with the growth on ADW wagering and the reopening of satellite operations. Accordingly, both the statutory deduction on Southern California satellite wagering and the deduction from ADW wagering that fund stabling and vanning operations was lowered by 18 basis points in 2023. The benefit on 2023 wagering revenues and purses from these lower statutory and ADW deductions resulted in an increase of track commissions and purse generation by \$240,000 each compared to 2022.

Racing law provides that the operations of the CHRB and California’s equine drug testing program are to be funded by California racing associations and purses by a deduction from on-track, ITW and out-of-state wagering at all California racetracks and racing fairs as well as a contractual deduction from California ADW wagering. The CHRB funding deduction from wagering is established on July 1 each year and is based on the projected on-track, ITW, California ADW and out-of-state wagering compared to the CHRB’s annual operating budget for the upcoming fiscal year ending June 30. This deduction from wagering effectively reduces wagering revenues and purses equally during the fiscal year. Any surplus or deficit between the funds generated from the funding deduction and the cost of CHRB operations at the end of the fiscal year is either refunded to, or further deducted from, the following year’s commissions and purses.

The CHRB funding deduction increased slightly in 2023 because the current year CHRB budget exceeded projected statewide wagering levels when the funding deduction was set on July 1, 2023. This increased funding deduction resulted in lowered wagering commissions and purses of \$40,000 each for 2023.

As noted previously, wagering nationally and in California declined during the second half of the fiscal year ending June 30, 2023, and this decline resulted in a state-wide CHRB funding deficit of \$320,000 for the fiscal year ending June 30, 2023. This deficit negatively impacted current year purses and commissions. In contrast, for the CHRB’s fiscal year ending June 30, 2022, there existed a funding surplus of \$910,000 and the surplus benefited prior-year purses and commissions. This significant CHRB funding surplus was generated when Del Mar last hosted the Breeders’ Cup and state-wide wagering reached record levels. Del Mar’s share of the combined state-wide difference of prior year CHRB funding surplus benefit and the current CHRB funding deficit payment was \$330,000, which effectively reduced 2023 summer race purses and commissions by \$165,000 each compared to 2022.

The Horseracing Integrity and Safety Authority (“HISA”) was established when the federal Horseracing Integrity and Safety Act was signed into law in 2020. Overseen by the Federal Trade Commission, HISA is responsible for developing and enforcing uniform safety and integrity rules in Thoroughbred racing in the United States and was created to implement the nation’s first

uniform set of rules applicable to every Thoroughbred racing participant and racetrack facility in the country. HISA is comprised of two programs: the Racetrack Safety Program, which became effective July 1, 2022; and the Anti-Doping and Medication Control (ADMC) Program, which became effective in March 2023. Funding for HISA started on July 1, 2022 and the organization's first-year funding included various startup and one-time charges. California's share of HISA's initial-year funding totaled \$1,450,000 in 2022. The State's proportionate share of HISA's annual budget increased to \$6.73 million in 2023 with the implementation of the ADMC Program. However, because of California's industry leading laboratory testing, research and analysis as well as its out-of-competition testing, the CHRB and HISA agreed to provide testing credits of \$5.15 million against the State's allocated share of HISA's budget, which lowered California's share of the 2023 HISA budget to \$1.58 million. Del Mar's proportionate share of the HISA budget, which is shared equally against purses and commissions, was \$390,000 in 2023 compared to \$350,000 in 2022.

On-track wagering: On-track wagering commissions totaled \$4.15 million in 2023 and were \$220,000, or 5.1%, lower than 2022 on-track recurring revenues and on-track wagering commissions were \$320,000, or 7.2%, under budgeted revenues.

Summer race meet on-track wagering revenues declined \$170,000, or 4.5%, and these revenues were \$270,000, or 7.1%, under budget. This decline in on-track commissions was largely due to one less day of live racing in 2023 resulting from Tropical Storm Hilary. Also, our expanded lifestyle promotional events and other marketing programs helped drive attendance of casual fans and contributed to the 2.5% increase in average daily on-track attendance this summer. On-track per capita wagering declined 2.2% to \$165 in 2023 from \$169 the prior summer as these casual race fans typically wager less than our core race fans. Our casual fans did, however, contribute to an 8.4% increase in average daily F&B per capita spending this past summer. The benefit to on-track commissions from the lower S&V deduction on imported and Northern California wagering was less than \$4,000, as there is no stabling and vanning deduction for on-track live wagers. Wagering on live racing accounted for 89.6% of all on-track wagers, while wagering on imported and Northern California races combined to account for 10.4% of on-track wagering. The yield for on-track wagering declined 13 basis points to 7.68% in 2023 compared to 7.81% in 2022. This decline in the yield was primarily due to the impact of funding the June 2023 fiscal year CHRB board support deficit compared to benefit of the previous fiscal year's CHRB board support surplus.

Fall race meet on-track wagering revenues totaled \$570,000 during the 2023 autumn race meet. These revenues were \$40,000, or 7.2%, under budget as on-track per capita wagering declined 4.3% in 2023 primarily due to lower fall race meet fields, which were 7.4 horses per race in 2023 compared to 7.9 horses in 2022. Fall race meet on-track commission were also impacted from the funding of the prior year CHRB board support deficit.

Off-track wagering: ITW wagering commission totaled \$3.67 million in 2023 and were \$240,000 lower than 2022 revenues and ITW commissions were \$320,000, or 8.0%, under budgeted revenues.

Summer race meet ITW wagering revenues declined \$200,000, or 6.9%, in 2023 and were \$260,000, or 8.9%, under budget. Wagering at ITW locations for the 2023 summer race meet totaled \$54.95 million, a decline of \$4.61 million, or 7.7%. The decline in wagering was due to one less day of racing in 2023 as well as the closure of the OC Tavern ITW satellite in San Clemente. No new ITW locations opened this year. The yield on ITW wagering increased 3 basis points to 4.61% as the benefit from the lower S&V deduction on ITW wagering was \$50,000 in 2023 and the impact of funding the CHRB deficit versus the prior-year surplus was \$30,000. ITW wagering revenues for the fall race meet totaled \$1.04 million which were \$40,000 lower than 2022 wagering revenues and were \$60,000, or 5.8%, under budgeted revenues. The decline in ITW revenues was due to the closure of the OC Tavern ITW satellite location and a decline in live wagering related to the lower fall race meet race field sizes.

DMTC is a partner in SCOTWINC, the entity that administers the satellite network in Southern California. SCOTWINC receives simulcast revenues consisting of a 2.5% fee on all wagers placed at satellite locations and a negotiated fee of 2.4% that is taken from California ADW wagers. These simulcast revenues fund mutuel and administrative staff costs and other SCOTWINC simulcast-related expenses. As a partner in SCOTWINC, DMTC and the horsemen participate in 50% of the excess, or shortfall, of SCOTWINC simulcast revenues and expenses. The SCOTWINC operating surplus totaled \$960,000 in 2023, a decline of \$220,000 from the prior year revenues of \$1.18 million, and \$20,000 below budgeted net revenues. The decline in the 2023 operating surplus was due to lower simulcast revenues related to the decline in ITW and California ADW wagering and higher mutuel staff costs under the terms of a new three-year collective bargaining agreement effective January 2023.

ADW wagering: Wagering commissions from California ADW patrons totaled \$4.50 million in 2023 were \$720,000, or 13.8%, under budget. ADW wagering commissions declined \$560,000, or 11.1%, from 2022 ADW commissions.

Wagering commissions from California ADW patrons during the summer race meet totaled \$3.37 million during the 2023 summer race meet, a decline of \$400,000, or 10.6%, from the prior summer race and were \$530,000, or 13.7%, under budget. As discussed above, Del Mar benefitted from significant growth in online wagering starting in 2020 as our customers were driven into an online environment by the pandemic. Our ADW providers were able to retain many of these new online horse racing patrons in 2021 and 2022 and our wagering reached record levels in 2022 with the return of on-track patrons and the reopening of brick-and-mortar locations. The expansion of sports wagering markets accelerated in 2023 and, together with a slowing economy and one less live race day, contributed to a decline in California ADW wagering. Total ADW wagering declined 6.4% and average daily ADW wagering declined 3.3% from 2022 wagering levels. The yield on

California ADW wagering declined 7 basis points in 2023 as the impact of funding the prior CHRB shortfall and higher CHRB and HISA funding deductions offset the benefit of the lower S&V deduction on ADW wagering. ADW wagering revenues for the fall race meet totaled \$1.13 million which were \$160,000, or 12.5%, lower than 2022 wagering revenues and these revenues were \$190,000, or 14.2%, under budgeted revenues. The decline in fall race meet ADW revenues were primarily related to the impact of funding the prior CHRB shortfall and higher CHRB and HISA funding deductions offset the benefit of the lower S&V deduction on ADW wagering. While California ADW wagering declined in 2023, California ADW wagering was 58% higher than pre-pandemic levels.

Out-of-state wagering: The export of Del Mar's live racing product leads to significant non-California wagering revenues because Del Mar races are distributed through numerous Internet wagering platforms and broadcast to over 1,100 brick-and-mortar wagering locations throughout North, Central and South America, Europe and South Africa. Wagering revenues from these out-of-state patrons totaled a \$10.93 million in 2023 and these revenues were \$960,000, or 8.1% under budget and were \$680,000, or 5.8%, lower than prior year's record wagering revenues.

Wagering commissions from out-of-state customers totaled \$8.57 million during the 2023 summer race meet, a decline of \$540,000, or 5.9%, from the prior summer race meet and were \$720,000, or 7.8%, under budget. Wagering on live races by out-of-state bettors totaled \$273.6 million and declined \$34.3 million, or 11.1%, from 2022 record out-of-state wagering levels. The decline was primarily due to lower wagering by out-of-state CAW players who employ sophisticated computer algorithms to handicap races. These experienced players are attracted to wagering on Del Mar races due to our large field sizes and the liquidity of our large pari-mutuel wagering pools. Our large wagering pools allow these players to place significant bets without significantly impacting the pari-mutuel odds on their wagers. Wagering by these players declined \$27.8 million in 2023 due to two factors. First, pricing was increased in 2023 for some CAW players, which led to a \$20.9 million, or 66.3%, decline in their wagering levels. Second, wagering by the other CAW players declined \$6.9 million, or 8.1%. This reduction was in line with the overall decline in live wagering and, as noted above, wagering by CAW players generally corresponds to total wagering levels. The one less day of live racing due to Tropical Storm Hilary contributed to the remaining decline in out-of-state wagering on live races. The yield on out-of-state wagering increased 21 basis points for the 2023 summer race meet. This increase was due to a higher negotiated fee on certain large out-of-state customers which offset the impact of funding the prior CHRB shortfall and higher CHRB and HISA funding deductions. Fall race meet out-of-state wagering revenues declined \$140,000, or 5.6%, due to lower wagering by CAW players, as discussed above, and because of the decline in fall race meet field sizes.

Breakage revenue is generated because California law requires that posted mutuel payoffs must be rounded down from calculated payoffs, and the rounding difference (i.e., "breakage") is divided between the horsemen, the State of California and the track operator. For example, a



calculated payoff of \$2.19 is paid at a rate of \$2.10 and the additional \$.09 per winning ticket creates breakage revenue. Minus pools occur when the track must contribute funds to a mutuel pool when a prohibitive betting favorite wins and the required minimum mutuel payments exceed the gross mutuel pool less the statutory takeout. Minus pools almost always occur with show, or third-place, bets. Minus pool contributions are netted against breakage revenue. DMTC carefully reviews live-race programs and those races imported from Northern California to identify when a prohibitive favorite is scheduled to run in a race with a small field making it probable that a minus pool is likely to occur. For any races conducted in California that are not of national significance, DMTC has petitioned the CHRB for its approval to eliminate show wagering to eliminate the minus pool losses. DMTC and other California racetracks do not have the ability to eliminate show wagering on races imported from out-of-state racetracks. Net breakage revenue in 2023 totaled \$180,000 and was at prior year and budgeted levels.

Non-wagering revenues: Non-wagering revenues consist of admission and seat revenues, program sales, parking receipts, advertising and sponsorship revenues, management services and interest income. Non-wagering revenue totaled \$14.63 million in 2023 and increased \$620,000, or 4.5%, above prior year non-wagering revenues but these revenues were \$240,000, or 1.6%, below budgeted revenues.

Admissions-related revenues for the summer totaled \$9.04 million, and despite the loss of \$130,000 in revenue resulting from the cancelation of racing on Sunday, August 20, admissions-related revenues increased \$330,000, or 3.8%, over 2022 revenues. Admissions-related revenues were at budgeted levels. The two additional lifestyle events, price increases for selected high-demand areas on Opening Day and premium weekend seating, along with increased pricing for season Turf Club luxury suites all contributed to the increased admissions-related revenues. Season boxes and Turf Club membership revenues were close to budget and prior year revenues due to continued demand from our core customers. Pricing for general admissions, seating, season boxes and Turf Club memberships were unchanged from 2022 as these modest price-points areas drive attendance-related F&B revenues.

Parking and program revenues for the 2023 summer race meet totaled \$1.06 million and increased \$60,000, or 5.8%, over prior-year revenues due to increased pricing on Opening Day as well as higher preferred and valet parking rates. Parking revenues were \$70,000 under budget due to one less race day and a modest decline in the number of patrons that used premium-priced valet parking. Merchandise and gift shop sales totaled \$310,000 and were slightly above prior-year and budgeted revenues as increased merchandise prices offset the loss of sales from the one less race day.

Fall race meet admissions-related, parking and concessions revenues totaled \$1.12 million in 2023, a decline of \$40,000, or 3.3%, from 2022 fall race meet revenues and these revenues were \$80,000, or 6.3% below budgeted revenues. On-track attendance totaled 47,906 during the 13-day 2023 fall race meet, 0.8% above the prior fall race meet, and daily admissions, seating and program

revenues were close to budgeted levels. Turf Club, season boxes, Groups and parking revenues were modestly below projected levels.

Sponsorship revenues totaled \$3.79 million and increased \$200,000, or 5.7%, over 2022 revenues and were \$60,000, or 1.7%, below budget. The revenue growth was primarily due to increases in the casino gaming and soft drink categories through expanded inventory in digital and social media platforms. DMTC corporate sponsorship revenues are among the strongest in the horse racing industry based on delivering high-value marketing and hospitality assets for top-tier corporate partners.

### **Expenses**

Total expenses for the year ending December 31, 2023 totaled \$35.20 million and were \$180,000, or 0.5%, over budget. The higher costs were primarily due to increased staff costs related to the tight job market, increased utility and seasonal services costs which were partially offset by lower costs related to the settlement of a multi-year legal proceeding.

Staff costs: Staff costs consist of salaries and wages, benefits, workers' compensation insurance and payroll taxes and collectively comprise the largest single expense category and accounted for 55.3% of total expenses in 2023. Employment peaked at 1,087 staff members during the summer race meet with 66% of the work force covered under eight collective bargaining agreements. Staff costs in 2023 totaled \$19.45 million, and were \$70,000, or 0.4%, over budget. Seasonal salaries for the summer race meet were \$160,000, or 2.2%, over budget as veterinary oversight and monitoring staff costs exceeded budget due to challenges filling seasonal veterinary positions because many racing vets are based in the Los Angeles region. Additionally, summer race union seasonal wages exceeded budget due to higher than anticipated pay rates under our largest collective bargaining agreement that was renegotiated in early 2023. Tropical Storm Hilary had minimal impact on summer race meet seasonal salaries because the savings in patron-related staffing resulting from one less live race day was largely offset by increased backside and track maintenance staffing required to prepare for and clean-up from the storm. Fall race meet seasonal salaries were \$110,000 under budget as staffing levels were lowered in several non-essential areas. Year-round administrative and maintenance salaries were \$20,000, or 0.4%, under budget due to the close monitoring of fall race meet overtime and because no new staff were added in 2023. Payroll taxes expense was \$130,000 over budget due to the higher seasonal salaries and due to an increase in the federal unemployment ("FUTA") tax rate in 2023. Payroll tax expense was \$170,000 higher than 2022 as prior year payroll tax expense benefited from Employee Retention Credits for on-track mutuel clerks for their employment in 2021 and as the credit was received and recognized in 2022. Employee benefit costs were slightly under budget and benefit costs negotiated under various union contracts. Non-union health insurance costs were at budgeted levels and premiums renewal rates at expected levels. Workers Compensation costs were \$80,000 under budgeted levels primarily due to a dividend payment received in 2023 related to favorable prior year claims experience.

Marketing expenses: Advertising and Marketing expenses totaled \$1.94 million in 2023, an increase of \$150,000 over 2022 marketing costs and these expenses were \$100,000, or 4.8%, under budget. The increase in expenses was the result of the additional lifestyle promotions and enhanced digital and social media campaigns. As noted previously, the 2023 events calendar was highlighted by our popular lifestyle promotions, such as craft beer events, local artisan food festivals, wine tastings and college days. These events are designed to increase attendance by non-core racing fans and generate high-margin F&B revenues which flow directly to the District. We continued to realize marketing expense savings and efficiencies through co-presented events with outside promoters. Building on the success achieved in 2022, the 2023 marketing plan again focused on a highly targeted digital and social media campaign, as opposed to traditional media (e.g., television, radio and print). This extremely cost-efficient advertising program provides for direct access to the desirable demographics of Gen Z, Gen Y and Millennials, and event spending traits these groups often display. For low-cost, proven track record communications to our core customers, we utilized Del Mar's robust 450,000-person database, the Diamond Club. This opt-in only loyalty program allows us to provide specialty offers and exciting promotions to our most fervent audience. Examples of database offers includes a "day on us," which provides free admission/seating on lesser attended days, and packaged-pricing of table/box accommodations with F&B items and racing and wagering related updates. Lastly, our communications efforts again focused on DMTC's industry-leading equine safety and welfare initiatives, including Del Mar's standing as among the safest race tracks in North America for the fifth consecutive year. In addition to such efforts, we utilized social and digital media platforms to educate the public about our safety protocols and injury prevention efforts as well as our research and aftercare resources.

Seasonal services: Seasonal services and contract costs totaled \$6.97 million, an increase of \$380,000, or 5.8%, and were \$70,000, or 1.0%, over budget. Trailer and living quarter rentals and other stable area related costs increased \$120,000 due to the recent demolition of the backside living quarters adjacent to the main parking lot which had been used to house summer race meet backstretch staff. Equipment rental and contract security costs increased \$160,000 as for the first time we used metal detectors to screen race fans during the recent summer race meet. DMTC implemented the industry's first complimentary meals program for backstretch workers during the summer and fall race meets. This initiative, which provided all of our backstretch workers with complimentary dinners in a family-style setting designed to promote socialization, is a much needed and bold step in the improvement of the lives of those in our backstretch community. The California Thoroughbred Horsemen's Foundation and Oak Tree Racing Charities co-funded this new program through a grant. DMTC's share of the cost for the program for the summer and fall race meets totaled \$120,000. The costs of the bus service used for transporting patrons to and from the Solana Beach train station was \$50,000 over budget as the provider increased the contract rates due to higher labor and fuel costs. Seasonal costs also reflect that horse recruitment costs were partially offset by funding provided by the ADW purse supplement fund.

Various other expense categories: Utilities expense was \$340,000 over budget due to higher Internet connection costs, an increase in allocated District telecommunications staff costs and higher per unit natural gas and electric kwh charges in 2023. Insurance expense was \$360,000 under budget because a multi-year litigation matter was settled at less than the reserved amount. Depreciation expense was \$150,000 over budget due to the replacement of the east infield video/tote boards and the acquisition of heavy equipment used for track maintenance. Facility capital improvements and large equipment acquisitions were funded in prior years by the RTA from DMTC's annual rent payments to the RTA and from race meet F&B net revenues that exceeded the annual RTA bond debt service. This capital acquisition program by the RTA was discontinued in 2020. Repairs and maintenance expense was \$20,000 over budget due to additional sand required for the dirt race track and the stable area due to the impact of Tropical Storm Hilary. Professional services were \$30,000 over budget due to fourth quarter legal costs related certain industry matters. Bank service charges and fees, which are included in professional services, were under budget because the ongoing increase in short-term interest rates in 2023 generated higher earnings credits on compensating bank balances which, in turn, offset the cost of bank service charges and fees.

The foregoing represents our Management's Discussion and Analysis of DMTC's operations, revenues and expenses for the year ending December 31, 2023. This analysis was prepared based on our unaudited financial statements and it accompanies our fourth quarter financial report filed at the end of January 2024. The Additional Payment, currently projected to be \$50,000, will be finalized and paid following the completion of our 2023 audited financial statements in April 2024.

## **State Race Track Leasing Commission (SRTLCL)**

### **Item 7-A, Exercise Final Option of the Del Mar Race Track Operating Agreement**

On January 1, 2011, and following completion of a competitive bidding process, the State Race Track Leasing Commission (Commission), acting on behalf of the 22<sup>nd</sup> District Agricultural Association (District), entered into the Del Mar Race Track Operating Agreement (Operating Agreement) with the Del Mar Thoroughbred Club (DMTC). As a reminder, the Commission was created by the State Legislature in 1968 with the responsibility and authority to lease the Del Mar Race Track (Race Track) and to oversee the expenditure of the rents received from leasing the track for the purpose of implementing a long-range, comprehensive improvement of District's property.

The initial Operating Agreement was a five-year term, 2011-2015, with three, five-year options. Under the Operating Agreement, the Commission granted to DMTC the exclusive right to operate a portion of the Del Mar Fairgrounds for the purpose of providing thoroughbred horse racing at the Del Mar Fairgrounds.

The Commission has executed five amendments to the Operating Agreement.

- First Amendment: 2012, to clarify the intentions of the parties.
- Second Amendment: 2014, due to the California Horse Racing Board granting DMTC the right to conduct an additional live horse race meet in November of 2014 and 2015, increasing the annual Direct Payment to the District for consideration of the added Fall Race Meet and Section 5.8 was added pertaining to Breeders' Cup Ltd.
- Third Amendment: 2015, to provide clarification of Direct Payment dates and budget submission to District.
- Fourth Amendment: 2015, to facilitate issuance of the Del Mar Race Track Authority Revenue Bonds, Series 2015 (RTA Bonds), which are financed through 2038.
- Fifth Amendment: 2015, with the addition of Breeders' Cup in 2017, to further clarify definitions in the Operating Agreement.

The Commission has exercised two of the three, five-year options. The first was exercised in 2015, extending the Operating Agreement through December 31, 2020. The second was exercised in 2019, extending the Operating Agreement through December 31, 2025. A single, five-year option remains, which, if exercised, would extend the Operating Agreement through December 31, 2030.

The District Board of Directors requests that Commission consider the final five-year option of the Operating Agreement and potential impact to the RTA Bonds in 2024 because, in the event Commission were to not exercise the option, proper notice would need to be given to DMTC, a competitive bidding package developed, and ample time provided to complete the competitive bidding process.

Per Section 4.1 of the Operating Agreement, “The Commission, in its sole and exclusive discretion, may, on behalf of the District, elect to extend the term of this Agreement for three 5-year option periods upon the expiration of the initial term of this Agreement” and “has the sole and exclusive discretion to require renegotiation of all or part of this Agreement if the Commission elects to exercise one or more of the option periods.”

## DEL MAR RACE TRACK OPERATING AGREEMENT

This DEL MAR RACE TRACK OPERATING AGREEMENT ("Agreement") is entered into effective January 1, 2011, between the STATE RACE TRACK LEASING COMMISSION, ("Commission"), acting on behalf of the 22ND DISTRICT AGRICULTURAL ASSOCIATION, ("District"), and the Del Mar Thoroughbred Club, a California corporation ("Operator").

### RECITALS

A. The District owns and maintains property that is the site of the annual San Diego County Fair which was inaugurated in 1935, satellite wagering, and a variety of other annual and interim events authorized by the District; and

B. The District's property is also the site of the annual Del Mar thoroughbred horse race meet, which was initially run in 1937; and

C. The annual Del Mar thoroughbred horse race meet has generated significant revenues for the development and capital improvement of the District's property; and

D. It is in the best interests of the people of the State of California that all of the authorized events conducted on the District's property, including the Del Mar thoroughbred horse race meet, continue as successful operations through cooperative use of the District's property; and

E. The Commission and the Operator have agreed to enter into this Agreement under the authority of, and for the purposes set forth in, Food and Agricultural Code section 4351, *et seq.*; and

F. Under the authority of Food and Agricultural Code section 4353, the District continues in control of its property subject to the terms and conditions of this Agreement or any other agreement entered into by the Commission on behalf of the District.

NOW, THEREFORE, in consideration of, and in reliance on, the covenants and conditions contained in this Agreement, and for other valuable consideration, the parties agree as follows:

#### 1. Relationship of the Parties.

This Agreement shall govern the relationship of the Parties to this Agreement relating to the operation of the Premises and the Premise's associated facilities. The Premises are more fully described in Paragraphs 2 and 3, and Exhibits A-2 and A-3 of this Agreement.

1.1. The Commission. The Commission enters into this Agreement on behalf of the District and retains the authority to renegotiate, amend or terminate the Agreement in accordance with the terms and provisions of this Agreement.

1.2. The District. The District will continue in control of its property, including, but not limited to, the Del Mar Fairgrounds identified on Exhibit "A-1", subject to the terms and

conditions of this Agreement and subject to the authority conferred upon the Commission by law.

1.3. Operator. In performing its obligations under this Agreement, the Operator is engaged solely in the capacity of an independent contractor. It is expressly understood that no relationship between the District, the Commission or the State of California and the Operator, other than that of independent contractor, has been or is intended to be created by this Agreement. This Agreement does not constitute, and the parties to it do not intend it to create, a partnership or a joint venture, or the relationship of master and servant or principal and agent.

1.4 Elimination of Duplication of Efforts. Many of the functions of operating the Race Meet and operating the Fairgrounds on a year-round basis are currently being duplicated. This Agreement is intended to eliminate or minimize all duplication of functions, duties, and/or responsibilities between the District and the Operator where practical in order to maximize efficiency and generate the greatest net revenue. The Operator will work closely with the District to continually improve all aspects of the operation. The parties agree, throughout the term of this Agreement and all extensions to identify and eliminate any unnecessary duplication of duties, functions and processes between the racing Operator and the District in order to minimize costs, maximize efficiencies and maximize net revenue. The District and the Operator agree to make every good faith effort to avoid spending funds or wasting resources on any products, internal services or outside services that can be provided by either party to this Agreement.

## 2. Definitions.

"Additional Payment" shall mean Final Net Earnings less the sum of (i) an amount in excess of funds then available to the Operator which, subject to the approval of the District, is sufficient to pay or provide for projected Operating Capital for the period from January 1 through the commencement of the next succeeding Race Meet, (ii) an amount equal to Direct Payment and (iii) an amount equal to Basic Payment. Additional Payment shall also include any amount paid by the Operator to the District pursuant to Section 6.6 upon expiration or earlier termination of this Agreement.

"Audited Financial Statements" shall mean the balance sheet relating to operations of the Operator pursuant to this Agreement as of December 31 of each year during the Term and the related statements of earnings and cash flows for the year then ended, prepared in accordance with generally accepted accounting principles and accompanied by a report thereon issued by an independent certified public accountant or accounting firm selected by the Operator and approved by the District in accordance with Section 8.3.

"Basic Payment" shall mean an amount equal to 100% of Estimated Net Earnings, less an amount equal to the Direct Payment paid pursuant to Section 6.1.

"Budget" shall mean income and expense projections for the Budget Year set forth on the form attached as Exhibit B.

"Budget Year" shall mean the calendar year.

"CHRB" shall mean the California Horse Racing Board.

"Commission" shall mean the State Race Track Leasing Commission established by Food and Agricultural Code section 4351.



"Del Mar Capital Improvement Account" shall mean a separate account maintained by the District and for which separate records, designated by the Commission, are maintained and into which Basic Payments and Additional Payments shall be made.

"Del Mar Fairgrounds" shall mean the entire property owned by the District, including, but not limited to, the property outlined on Exhibit A-1.

"Del Mar Race Track Authority" shall mean the Joint Powers Authority, established by the Joint Exercise of Powers Agreement dated as of August 1, 1990 and authorized by Food and Agricultural Code section 4362.

"Direct Payment" shall mean, subject to the limitations set forth in Section 4155 of the California Food and Agricultural Code, an amount currently set at \$750,000. Subject to applicable bond indenture covenants this payment is anticipated to increase to \$800,000 for year 2011 and then again to \$825,000 for years 2012, 2013, and 2014. The Direct Payment is used by the District for the Fair or any other authorized purposes.

"District" shall mean the 22nd District Agricultural Association, a California institution. (Food & Agr. Code, §§ 3873 and 3953.)

"Estimated Net Earnings" shall mean total revenue derived from the conduct of the Race Meet(s) and received or projected to be received and accrued by the Operator during the period from January 1 through December 31 of each year, less the sum of (i) expenses (which expenses shall include payments made pursuant to this Agreement), paid or incurred with respect to such period, and (ii) an amount in excess of funds then available to the Operator which, subject to the approval of the District, is sufficient to pay or provide for projected Operating Capital for the period from October 31 through the commencement date of the next succeeding Race Meet.

"Fair" shall mean the annual San Diego County Fair.

"Final Net Earnings" shall mean total accrued revenues as set forth in the December 31 Financial Statements for the immediately prior calendar year, less total accrued expenses, (which expenses shall include payments made pursuant to this Agreement).

"Gross Revenues" shall mean total revenues as set forth in the Audited Financial Statements.

"Hazardous Material" shall have the meaning set forth in Section 20.3.

"Hazardous Materials List" shall have the meaning set forth in Section 20.2.

"Master Plan" shall mean the master plan for the long range comprehensive development and improvements of, and construction upon, the property of the District. (Food & Agr. Code, § 4156.)

"Net to Gross Ratio" shall mean the ratio of Final Net Earnings to Gross Revenues.

"Operating Capital" shall mean the amount required to meet cash flow requirements relating to operations of the Operator under this Agreement until the commencement date of the next succeeding Race Meet, including expenses to be incurred prior to and relating to such Race Meet.

"Operation Period" shall have the meaning set forth in Section 5.3.2.

"Premises" shall mean the property described and outlined on Exhibits A-2 and A-3.

"Race Meet" shall have the meaning set forth in Section 5.3.1.

"Records" shall have the meaning set forth in Section 8.1.

"Option Periods" shall have the meaning set forth in Section 4.1.

"Term" shall have the meaning set forth in Section 4.

"Operator" shall mean and refer to Del Mar Thoroughbred Club, a California corporation.

### 3. The Premises.

The Commission, on behalf of the District, under the authority of Food and Agricultural Code section 4353, incorporated by this reference, and in reliance upon and in consideration of the representations, warranties, covenants and conditions contained in this Agreement, grants to the Operator, and the Operator, in reliance upon and in consideration of the representations, warranties, covenants and conditions contained in this Agreement, accepts from the Commission, subject to the restrictions stated in this Agreement, the exclusive right to operate that portion of the Del Mar Fairgrounds described in this Agreement as "the Premises" and identified on Exhibits A-2 and A-3 to this Agreement for the purpose of providing thoroughbred horse racing at the Del Mar Fairgrounds. The Operator's operation of those portions of the Del Mar Fairgrounds identified on Exhibit A-3 to this Agreement shall be shared with the District, subject to the restrictions stated in this Agreement. The District shall provide advance notice to the Operator of its intention to conduct activities on any portions of the Del Mar Fairgrounds outlined on Exhibit A-2 during the Operation Period, and such activities shall not unreasonably interfere with the Operator's operation of the Premises for the purpose of conducting the annual thoroughbred race meet.

### 4. Term of Agreement.

The term of this Agreement shall be five years, commencing January 1, 2011 and terminating December 31, 2015, subject to the option periods and termination provisions set forth below ("Term").

4.1. Option Periods. The Commission, in its sole and exclusive discretion, may, on behalf of the District, elect to extend the term of this Agreement for three 5-year option periods upon the expiration of the initial term of this Agreement ("option periods"). Each option period may be exercised by giving the Operator written notice of extension on or before the 180th day prior to expiration of the original term or any operation period. Any and all option periods of this Agreement are subject to all of the provisions of this Agreement; provided, however, that the Commission has the sole and exclusive discretion to require renegotiation of all or part of this Agreement if the Commission elects to exercise one or more of the option periods. The Commission's failure to provide written notice to renew, or the parties' failure to mutually agree upon the terms and conditions of the Option Period of this Agreement will result in automatic termination of this agreement on December 31, 2015, or at the expiration of any extended term. In the event that the Commission gives notice of its desire to extend the term of this Agreement, it will deliver its proposed changes in writing to the other party, with simultaneous notice to the District, within ten (10) business days following delivery of the notice of the Commission's intent to extend the term of this Agreement. The parties shall begin any necessary face-to-face bargaining sessions no later than fifteen (15) business days following the date on which the

proposed changes are provided.

If, after good faith negotiations, the parties cannot reach agreement on the proposed changes either party may terminate this Agreement effective on December 31 of the year following the year in which notice of the Commission's intent to exercise its right to extend the term of this Agreement by giving notice in accordance with Section 22.9, not later than September 30 of the year in which notice was given.

4.2. Renegotiation on Financing. The parties recognize that it may be necessary and desirable to acquire funds for the purpose of reconstructing or renovating all or any portion of the works of improvement located on the Premises, or to accomplish other projects under the Master Plan, and that it may become necessary or desirable to issue bonds or utilize funding mechanisms not specifically mentioned in this Agreement in order to acquire those funds. The parties agree to negotiate amendments to this Agreement to include customary and reasonable provisions as necessary to accommodate the successful issuance and repayment of those bonds or necessary to accommodate other appropriate funding mechanisms, for the purpose of reconstructing or renovating all or any portion of the works of improvement located on the Premises, or for the purpose of accomplishing other Master Plan projects. The Operator also agrees to participate in any and all discussions on funding options for a permanent seasonal rail platform.

4.3. Other Renegotiation. In the event that any of the terms and conditions of this Agreement are deemed by the CHRB to be inconsistent with the grant of a license to the Operator for the conduct of a horseracing meet(s) or the allocation to the Operator of racing days, the parties agree to negotiate any and all amendments to this Agreement necessary to accommodate the grant of such a license or the allocation of such racing days.

4.4. Action by Government Agencies. If at any time during the term of this Agreement the United States Government or the State of California, or any of their political subdivisions, shall pass any law or take any action that makes it illegal to conduct thoroughbred horse race meets with parimutuel wagering on the Premises for more than two calendar years then either the Commission or the Operator shall have the option of canceling this Agreement by giving notice of its election to the other party during the time that such prohibition is in force. Cancellation of this Agreement under these conditions shall not change the obligation to make any unpaid payments as they become due for any period[s] before cancellation of the Agreement under this Paragraph 4.4; or, to fulfill any other obligations arising under this Agreement.

4.5 Termination On Site. In the event of legislation duly enacted by the California Legislature authorizing a sale of the Premises, the Commission shall have the option to terminate this Agreement by giving not less than 180 days written notice of an election to terminate this Agreement. Such a termination shall be effective on December 31 of the year in which such notice is given unless the notice is given less than 180 days before December 31 of the year in which notice of termination under this Paragraph 4.5 is given, in which case the termination shall be effective December 31 of the following calendar year. The Operator shall have the right, in the event of any termination under this Paragraph 4.5, to liquidate its liabilities in an orderly manner, to make provision for accrued but unpaid liabilities, and to establish reasonable severance agreements for employees.

## 5. Operation of the Premises.

The operation of the Premises by the Operator shall be governed by the provisions of this Section.

5.1. Operation of the Premises. The Premises shall be operated by the Operator for the purpose of conducting thoroughbred horse races as well as wagering on the outcome thereof as approved by and subject to the jurisdiction of the CHRB, and for the transmission of television simulcasts of those races to other facilities within the State of California, or elsewhere, in accordance with then applicable law. During the Race Meet, and at such other times as may be mutually agreed upon with the District, the Operator may also conduct those activities which at that time are commonly associated with thoroughbred horse racing and the operation of a thoroughbred race meet in California. The final determination as to which activities the Operator is allowed to conduct will be made at the sole discretion of the District. The Operator shall not use or permit the Premises, or any portion thereof, to be used for any purposes other than that set forth above, except as otherwise mutually agreed upon with the District.

5.2. Application for Racing Days. In accordance with the time frame established by the regulations of the CHRB, the Operator shall apply to the CHRB for its annual allocation of racing days which shall be the traditional dates for thoroughbred horse racing at the Del Mar Fairgrounds. If additional racing days become available, the Operator shall consult with the District and shall apply for such additional days as may be agreed to in advance of such application by the District and the Operator. In such event, the Operator's application shall be diligently pursued in order to obtain the optimum number of racing days requested. Upon receipt of the decision of the CHRB and an allocation of racing dates for the year, the Operator shall immediately notify the District of those dates. The Operator will conduct thoroughbred horse racing on the Premises on all the racing days allocated, subject only to force majeure or other factors over which it has no direct control and to the rules and regulations of the CHRB. It is understood and agreed that any racing days allocated to the Operator are allocated to the Operator as an independent entity pursuant to this Agreement and Section 4353 of the California Food and Agricultural code and that the Commission and the District shall have no right, claim or interest with respect to such racing days. The Operator shall not conduct racing outside of its traditional dates for Thoroughbred racing without the advance written consent of the District.

5.3. Periods of Operation.

5.3.1. During the term of this Agreement, the Operator shall operate the Premises during the traditional dates for racing at the Del Mar Fairgrounds and any additional dates approved by the District and allocated to the Operator for thoroughbred horse racing by the CHRB ("Race Meet"), and for the additional periods described below.

5.3.2. The Operator shall operate the Premises (i) for a period of ten days prior to the opening of the Race Meet to the extent that the Operator's operation does not unreasonably interfere with satellite wagering operations or clean-up operations from the Fair and (ii) for a period of 15 days following the Race Meet to the extent that such operation does not unreasonably interfere with the activities of the District on the Del Mar Fairgrounds (such periods and the Race Meet being referred to herein as the "Operation Period"). The Operator and the District will use their best efforts to cooperate so that the grandstand and other buildings and backstretch and stable areas can be opened as needed prior to the commencement of the Operation Period of all areas and returned to the District as soon as reasonably possible after the conclusion of the Race Meet.

5.3.3. Subject to the provisions of Section 9.6, the Operator shall have access to and shall be permitted to conduct activities on the Premises during other periods in the year to the extent necessary in order to permit the Operator to carry out its permitted activities and obligations under this Agreement with respect to thoroughbred horse racing. Such activities shall be coordinated in advance with the District and shall not interfere with the District's

activities or events.

5.4. Full Time Use Areas. In addition to the operation described above, the Operator shall have the right to use and possess the office space and equipment maintenance areas described on Exhibit A-4 at all times during this Agreement. The Operator shall also be entitled to the year-round use and possession of reasonably adequate storage space in locations mutually agreed upon with the District.

5.5. Off-Track Wagering and Simulcast Transmissions. During the Race Meet, the Operator shall conduct, as the host track, all forms of authorized wagering within California as authorized by the California Horse Racing Law, the rules and regulations of the CHRB, and Operator's license as issued by the CHRB and may conduct interstate and international simulcast wagering at locations in other jurisdictions to the extent permitted by law. In addition the Operator shall not conduct off-track wagering activities on the premises at times other than during the Race Meet unless, in its sole discretion, the District chooses to initiate the negotiation and execution of a separate agreement which prescribes the terms and conditions of any such involvement by the Operator.

5.6. Operator's Right of Entry. The Operator shall have the right, at reasonable times during the term of this Agreement, to enter upon the Premises to the extent necessary to conduct tours, inspect the Premises and perform maintenance and repair required of the Operator. Such functions shall be conducted by the Operator in a manner which does not unreasonably interfere with the use of the Premises by the District or by the District's lessees or licensees. The District and the Operator shall regularly advise each other of proposed activities on the Premises in order to permit scheduling of their respective activities.

5.7. State of California's Right of Inspection. The Commission and the District and their respective officers and employees, and the officers of the Department of Food and Agriculture charged with the duty of administering the provisions of the Food and Agricultural Code relating to Fairs and Expositions shall, subject only to such restrictions as are imposed by the California Horse Racing Law, have access at all times in, to and upon the Premises for the purpose of examining and inspecting it, or for the purpose of observing any activities conducted thereon, or for the purpose of exercising any right, power or privilege of the District or Commission pursuant to law or this Agreement, or for any purpose connected with the repair, improvement and management of the Premises. The Operator shall, upon request of the District or the Commission, provide suitable badges and credentials authorizing admittance of such persons to the Premises, subject only to the restrictions imposed under the California Horse Racing Law and the rules and regulations of the CHRB.

## 6. Payment.

As consideration for the right to operate the Premises pursuant to this Agreement, during each year of the Term, the Operator shall make the following payments to the District, at the time and in the manner specified in this Agreement.

6.1. Direct Payment. \$500,000 of the Direct Payment shall be paid annually to the District on September 15, 2011, and September 15 of each succeeding year during the Term of this Agreement. The Direct Payment balance of \$300,000 shall be paid to the District by December 31 of years 2011 and 2012. The increased Direct Payment balance of \$325,000 shall be paid to the District by December 31 of years 2013, 2014 and 2015.

6.2. Basic Payment. The Operator shall pay the Basic Payment on or before November 15 of each year during the Term of this Agreement, beginning November 15, 2011 at

which time the Operator shall furnish to the District a written statement certified by the Chief Financial Officer of the Operator, setting forth the computation of Estimated Net Earnings and the Basic Payment. The Basic Payment shall be deposited by the District in the Del Mar Capital Improvement Account.

6.3. Additional Payment. On or before May 1st of each year commencing in 2012, the Operator shall pay the District the Additional Payment.

6.4. Right to Review Payment Computation. Acceptance of any statement or any monies paid as Basic Payments or Additional Payments or of the Audited Financial Statements shall not be an admission by the District of the accuracy of any such statement or the Audited Financial Statements or of the sufficiency of the amount of the Basic Payment or the Additional Payment.

6.5. Payment Upon Termination. Upon the expiration or earlier termination of this Agreement, any remaining assets of the Operator, after payment of or provision for any liabilities of the Operator, shall be paid to the District as an Additional Payment. Such payment shall be made within a reasonable period of time following such expiration or termination sufficient to enable the Operator to wind up its affairs in an orderly manner.

6.6. Best Efforts. The Operator is required to, and will, use its best efforts in the operation of the horse race meets and any and all related activities to maximize all payments to the District and Commission for improvements to the Fairgrounds. The Operator, the District and the food service operator contracted by the District will meet on a regular basis, but in no event less than once every six months commencing 30 days after the inception of this Operating Agreement, to identify and analyze both revenue generating opportunities and cost savings or efficiencies for the purpose of enhancing the overall return from all operations conducted on the Premises.

## 7. Budget Approval and Expenditure Limitations.

7.1. Annual Budget Approval. The Operator shall submit a preliminary itemized Budget, in the form attached as Exhibit "B", to the Commission, the District's Board of Directors, the District's Chief Executive Office and Chief Financial Officer not later than December 1 of each year and prior to the beginning of the Budget year, together with any proposed increases or decreases in the annual salaries and bonuses of Operator's executive and management personnel as required by Paragraph 7.2.2 ("Personnel Budget"). Within forty-five (45) days of the receipt of the preliminary Budget and Personnel Budget, the District may submit comments or questions concerning the Budget and/or Personnel Budget, to which the Operator shall respond in writing within fifteen (15) days of receipt. Within thirty (30) days of the receipt of such response, the final Budget and Personnel Budget shall be considered and approved by the District and transmitted to the Commission. Preceding the date of such approval, representatives of the Operator shall meet with the District's Chief Executive Officer and staff, or their respective representative(s) as necessary in order to clarify Budget and/or Personnel Budget items and/or discuss questions raised by the District. In the event that the Operator disagrees with any action of the District, it may appeal in writing to the full Commission, which shall meet and resolve any Budget and/or Personnel Budget disputes within forty five (45) days after receipt of the Operator's appeal. Nothing in this paragraph shall preclude the Commission from exercising final budgetary approval. All parties shall endeavor to complete the approval process no later than March 1 of the Budget Year. During the period of time between January 1 and final Budget approval, the Operator shall conduct its operations in accordance with its approved Budget for the preceding fiscal year subject to the approval of the District.

It is understood and agreed that the Budget review and approval process is intended to permit input from the parties to this Agreement while recognizing the expertise of the Operator and its management in operating a thoroughbred race meet. Accordingly, the review process shall be conducted with the objective of developing a Budget which will facilitate the conduct of a first class Race Meet while maximizing the implementation of the Master Plan and the economic return to the District and the Commission.

7.2. Expenditure Limitations. The Operator agrees that the following limitations will apply to its activities as they relate to financial matters:

7.2.1. No member of the Operator's Board of Directors shall be entitled to receive any compensation for service in that capacity.

7.2.2. The Operator's annual expenditures for salaries and bonuses for the year-round executive and management personnel will be subject to the approval of the District and the Commission as described in Paragraph 7.1. Executive and management compensation including benefits and bonuses must not be excessive but reasonable in amount. Salaries and bonuses shall be based on the level of responsibility, experience; qualifications; the duties performed; the number of operation days; the scope and magnitude of the race meet(s); economic conditions; the level of risk and or investment; and the revenues generated. Any bonus programs established should be structured in a manner that rewards increased profitability and reductions in costs and expenses. Compensation must be based on performance that rewards increased profitability and reductions in cost. Concurrently with the submission of the preliminary itemized Budget required by Paragraph 7.1, the Operator shall make available for inspection an itemized list detailing the proposed annual salaries and bonuses for each member of Operator's year-around executive and management personnel. The information provided pursuant to this Paragraph 7.2.2 shall be treated by the Commission as personal and private information exempt from disclosure as provided under California law, including under the provisions of the California Public Records Act (Govt. Code, § 6250, et seq.); provided, however, that the Commission and/or the District will not be liable for any negligent, inadvertent, or accident disclosure of this information. Additionally, the information provided pursuant to this Paragraph 7.2.2 will be disclosed by the Commission and/or the District if required by any order issued by a Court of competent jurisdiction.

7.2.3. Subject to the budget approval process set forth in Section 7.1, Operator's Board of Directors shall be responsible for the evaluation of personnel performance and for decisions relating to compensation, hiring, termination, discipline and related personnel policies. Neither the District or Commission shall have any liability with respect to personnel decisions by Operator. Operator may obtain employment practices insurance coverage if obtainable on commercially reasonable terms.

7.2.4. Prior to the payment of bonus compensation attributable to any year during the term of this Agreement, the Board of Directors of Operator shall develop and approve a written bonus policy establishing criteria for the size of any bonus pool, eligibility for participation therein and the determination of actual bonus amounts, if any. The bonus policy, including amounts or percentages payable to each individual employee, shall be presented as part of the budget process outlined in Section 7.1 and any subsequent changes thereto shall be approved by the District prior to implementation thereof. . The information provided pursuant to this Paragraph 7.2.4 shall be treated by the Commission as personal and private information exempt from disclosure as provided under California law, including under the provisions of the California Public Records Act (Govt. Code, § 6250, et seq.); provided, however, that the Commission and/or the District will not be liable for any negligent, inadvertent, or accident disclosure of this information. Additionally, the information provided pursuant to this Paragraph

7.2.2 will be disclosed by the Commission and/or the District if required by any order issued by a Court of competent jurisdiction.

7.2.5. Following approval of the Budget pursuant to Section 7.1, the Operator shall not make any expenditure[s] in excess of the greater of \$25,000 or 10% of any line item shown on the Budget without the advance written approval of the District, pursuant to delegation of authority by the Commission. Cumulative expenditures, other than those based on income, shall not exceed the approved Budget without the advance written approval of the District, pursuant to delegation of authority by the Commission.

7.2.6. The Operator will neither budget nor make any expenditure which is inconsistent with the usual good practices in the thoroughbred industry in Southern California. All expenditures by the Operator shall, in the best business judgment of the Operator and its management, be made for the benefit of the Premises and/or the Del Mar Fairgrounds or to support and promote thoroughbred racing at the Del Mar Fairgrounds and in California.

7.3 Quarterly Financial Reports and Business Plans. Within thirty (30) days following the last day of each quarter, the Operator shall prepare and deliver to the Commission and the District a report, in substantially the form attached as Exhibit B, comparing actual expenditures to budgeted figures, by line item, to permit periodic review of the Operator's adherence to the Budget.

## 8. Records, Reports and Audits.

The books and records of the Operator shall be maintained by its internal accounting staff on a calendar year accrual basis and shall be audited annually by a firm of certified public accountants approved by the District. The firm currently retained by the Operator for the year ended December 31, 2010 is deemed approved for Calendar Year 2011.

8.1. Maintenance of Records. The Operator shall maintain at its offices during the Term of this Agreement, its papers, contracts, books, ledgers, journals, accounts, and other data (collectively referred to as "Records") which (i) reflect the identity and interest of all persons having any beneficial interest, whether direct or indirect, in the Operator, (ii) reflect the identity, salary, bonus, and capacity of all officers, directors and other persons having managerial responsibility of and for the Operator and (iii) reflect all of the business activities of the Operator. These Records shall include, but not be limited to the financial and other Records which reflect all of the Operator's revenues and expenses of whatever nature from, on and after execution of the Operating Agreement.

8.2. Examination of Records. The Operator shall permit the District, the Commission and appropriate State officers authorized by law, to examine and, at their expense, to have copies made of all Records required to be maintained pursuant to this Section. Any such examination and copying shall be during reasonable business hours and upon the giving of reasonable notice to the Operator.

8.3. Operator Annual Audit. At least once during each calendar year of the term of this Agreement, the Operator, at its own expense, shall cause an audit to be made of its Records which reflect all of its business activities. That audit shall be made by a certified public accountant or accounting firm selected by the Operator, subject to the prior written approval of the District, such approval not to be unreasonably withheld. On or before May 1 of each year, the Operator shall provide the District and the Commission with a signed copy of its Audited Financial Statements. The parties agree that the certified public accountant or auditing firm engaged by the Operator for the year ended December 31, 2010 shall be deemed approved for



Calendar Year 2011 without further action by the parties.

8.4 Other Audits. The Operator shall cause the annual engagement of a certified public accountant or accounting firm to perform procedures, agreed to by the CHRB, on the parimutuel operations as required by the rules and regulations of the CHRB.

8.5. District Audit. The Operator shall permit the District, at the District's option, to cause an audit to be made of the business of the Operator by such auditor or auditors as the District may, in its sole discretion, select. All such audits shall be at the expense of the District and shall be conducted during reasonable business hours so as not to interfere unduly with the business operations of the Operator.

8.6. Location of Records. The Records shall be kept and maintained in such a manner as is usual and customary for businesses of the same type conducted in the State of California at the time. In no event, however, shall those Records be less detailed and complete than is customary or required by law for privately held businesses of the same type in the State of California at the time of the execution of this Agreement. The Operator may destroy or dispose of any Records which are five years or of age or more after such Records have been offered to the District and Commission for their retention and/or copying.

## 9. Maintenance, Alterations and Construction.

9.1 Facilities. During the Agreement, the District shall be responsible for all facility or infrastructure maintenance, repairs, new construction, or alterations including painting, landscaping and repair work necessary to keep the facilities and infrastructure in a safe, operational, and presentable condition. This includes the structural and operational integrity of all buildings, structures and infrastructure equipment on the property used by the Operator in the conduct of thoroughbred horse racing. Notwithstanding the foregoing, the District and the Operator may agree from time to time or as part of the annual budget process that the Operator may perform the activities contemplated by this Paragraph 9.1 or contract with a third party for such activities on the Premises.

9.1.1 Facility Cleaning The Operator shall provide all labor and supplies to properly clean all facilities, buildings, stalls, offices and grounds used by the Operator to conduct thoroughbred horse racing on a daily basis during the race meet(s).

In the event fire, earthquake, or other casualty renders the facilities unsuitable for the conduct of thoroughbred horse race meets of substantially similar quality to those previously held, it shall be the responsibility of the District, the Commission and/or the State of California to make such repairs and rebuild such portions of the facilities, including the grandstand, horse barns, paddock area, racing strips and all other buildings or structures used for or in connection with the conduct of thoroughbred horse racing, as are necessary to put the facilities in condition for thoroughbred horse racing; provided, however, that in that circumstance the Commission may choose not to repair or rebuild the Premises, but rather to terminate this Agreement pursuant to Section 13 below.

9.2. Property and Equipment. The Operator shall provide and maintain in good repair all property and equipment owned by the District and/or the Del Mar Race Track Authority which may be necessary to enable the Operator to operate the Premises for the purposes authorized by this Agreement and to fulfill its obligations under this Agreement. Certain equipment owned by either the District, the Del Mar Race Track Authority, or the Operator may be shared by the District and the Operator. All property and equipment purchased by the Del Mar Race Track Authority during the course of this agreement and used to enable the Operator to operate the

Premises for the purposes authorized by this Agreement and to fulfill its obligations under this Agreement is property and equipment owned by the Del Mar Race Track Authority.

The District and the Operator shall both provide and maintain in good repair all property and equipment which may be owned by the Operator, the District or the Del Mar Race Track Authority and shared with the Operator to operate the facilities. Both parties shall be responsible for the repair of any damage to such equipment and for the replacement of lost or destroyed equipment. The District and the Operator shall within a reasonable period of time following the execution of this Agreement jointly develop a five-year equipment replacement schedule pursuant to which such equipment will be replaced and or continued in service.

9.2.1. All significant items of property and equipment owned by the District and shared with the Operator as of October 31, 2010 have been inventoried and described in Exhibit C. As of December 31, 2011 and December 31 of each succeeding year of this Agreement, an inventory will be taken and Exhibit C will be revised as follows:

- (a) Any property or equipment taken out of service will be deleted.
- (b) Any property or equipment purchased during the calendar year will be added.

9.2.2. It is the intention of the parties that these items of property and equipment are available for use by both the Operator and the District for maintenance and repair and for related activities on the Del Mar Fairgrounds. The District and the Operator shall within a reasonable period of time following the execution of this Agreement develop written protocols for the use, tracking, and repair and maintenance of any shared equipment. Such protocols shall, to the extent practicable, evaluate insurance coverages with respect to such equipment in order to minimize any potential third-party liability.

9.2.3. Upon the expiration or earlier termination of this Agreement, any other property subsequently purchased by the Operator will be transferred and delivered to the District. Such transfer and delivery shall be conducted in an orderly manner to enable the Operator to wind up its affairs following such expiration or termination.

9.3. Racing Strips. During the Term of this Agreement, the racing strip shall be maintained by the Operator in condition for training thoroughbreds, harness horses, quarter horses or other horses. The Operator shall have the sole responsibility for, and authority to do, the maintenance on the racing strips and on the training track when used for horses. The responsibility of the Operator as to the maintenance of the racing strips shall include the chute, the racing turf, the dirt and synthetic track, the inner and outer rails and the hedges lining the racing strips. If the District permits third parties to use the racing strips or the training track during the interim between the Race Meet(s), the Operator shall be reimbursed by the District for the cost of preparation and maintenance of the racing strips for and during such use. The District may authorize or permit the use of the racing strips or training track for other events outside of horse racing with the consultation of the Operator provided such use will not adversely impact thoroughbred racing. The District shall not permit any use of the racing strips for a reasonable period prior to the commencement of the Race Meet(s). The District recognizes the importance of maintaining the integrity of racing strips and will consult with the Operator whenever the strips are utilized for any interim events outside of the race meet(s); e.g., the: San Diego County Fair Grandstand Staging and the Holiday of Lights.

9.4. Infield and Grandstand Landscaping and Backside Maintenance. The District shall be responsible for all landscape installation and maintenance in the infield area and

landscaped areas immediately adjacent to the Grandstand. All landscape activities shall be coordinated with the Operator to prevent unreasonable interference with events scheduled by the Operator. The District shall also be responsible for maintenance of backside areas of the Premises as indicated on Exhibit A-5. Notwithstanding the foregoing, the District and the Operator may agree from time to time or as part of the annual budget process that the Operator may perform the landscape design, maintenance, and enhancement of the Premises contemplated by this Paragraph 9.4 or contract with a third party for such activities on the Premises. The Operator and the District shall establish inspection procedures before and after the Fair, any interim events utilizing these backside areas, and the annual Race Meet to identify any need for repair and the District shall make the necessary repairs.

9.5. Reimbursable Maintenance Costs. Insofar as the District permits third parties to lease or use the Premises during the interim between Race Meets, or permits third parties to lease or use those portions of the Premises not being operated by the Operator during Race Meets, the District shall be responsible for any painting, decorating, maintenance or repair work not performed by the Operator and directly resulting from the use by that third party, and reasonably necessary to place the Premises in condition for the Race Meet. During the interim between Race Meets, day-to-day maintenance of all areas other than the racing strips and areas occupied by the Operator shall be the responsibility of the District.

9.6. Procedures for Alterations. The Operator is prohibited from temporarily or permanently demolishing, altering, modifying, rebuilding, all or any portion of the Premises, or allow or permit any demolition, alteration, modification, or rebuilding of all or any portion of the Premises, without the advance written consent of the District, which the District may grant or withhold in its sole and exclusive discretion. The Operator must submit proposed projects, other than normal maintenance and repair, to the District in connection with the submission of its preliminary Budget on December 1. The District may, at its option and at no cost or expense to the Operator, improve the Premises for purposes of the District by alteration or substitution or addition thereto, provided that such alterations, substitutions or additions shall not impair the use of the Premises for thoroughbred racing nor substantially interfere with the use of the Premises for related activities. The District will consult with the Operator concerning any potential impact of such activities on the use of the Premises for thoroughbred racing. In the event that the Operator makes temporary alterations or modifications to the Premises with the written consent of the District, the Operator shall cause the Premises to be returned to the condition prevailing prior to the Operator's Operation Period unless otherwise agreed by the District in writing.

9.7. Mechanics Liens. During the term of this Agreement, the Operator will not in any way encumber or cloud the title to the Premises, or any part thereof, and will promptly pay and discharge any and all debts contracted by it in reference thereto for labor, material, or services, or anything connected with or used by it upon the District's property to the end that no liens shall attach thereto.

The District shall have the right to post and keep posted such notices as it may desire in order to protect the District's property and any portions thereof against liens. If, nevertheless, any such lien shall be recorded and the Operator shall, within 60 days after notice from the District fail to pay, settle, or otherwise release such lien, or deposit in escrow with a reputable bank or trust company a sufficient sum to satisfy such lien in full in the event of the unsuccessful termination of any litigation in connection with the lien and under the terms of which it shall be obligated to pay such lien upon the unsuccessful termination of such litigation, then, upon the failure of the Operator to comply with these requirements, the District may pay or otherwise dispose of the lien, or defend, settle or compromise any suit brought to foreclose it, in its sole discretion. All amounts paid by the District or any loss sustained by it on that account, including

a reasonable amount for its attorneys' fees, shall be repaid to the District and shall be in addition to any other payments otherwise required under the terms of this Agreement. A failure to repay any such sum within 30 days after giving notice thereof, including the delivery of a copy of a bill thereof, to the Operator shall constitute a breach of this Agreement.

#### 10. Capital Improvements.

All parties to this Agreement recognize the potential of constructing and making improvements to the Premises and to other areas of the District's property. To this end, and subject to the provisions of Section 9 of this Agreement, the Commission and the District have prepared and updated a Master Plan for the development of the District's property.

10.1. Capital Improvement Account. All funds paid into the Del Mar Capital Improvement Account as Race Track Net Revenues are transferred to the Race Track Authority and pledged for the payment of the Series 2005 Revenue Bonds. If sufficient net revenues are available to satisfy the annual debt service, the remainder may be used to finance improvements to the Premises in furtherance of the Master Plan. The Operator shall submit to the District its proposals for these improvements annually. District management will submit the proposals for capital expenditures to the Del Mar Race Track Authority Board of Directors for its approval at the first meet of each calendar year.

10.2. Dedication of Concession Income. The District shall pledge not less than \$2,000,000 per year of its income from food and beverage concession operations to the Del Mar Race Track Authority for the repayment of bonds or to such other projects as are in furtherance of the Master Plan and mutually agreed to by the Operator and the District.

10.3 Sponsorships. It is the intent of the District to develop and maximize sponsorship opportunities to the fullest extent while achieving maximum revenue, trade, in kind services, and marketing opportunities for the overall benefit of the fairgrounds, race meet(s), the annual fair and interim events. The strategy, solicitation, sales and coordination of sponsorships will be developed and coordinated by the District in consultation with the Operator as to the best strategic plan and its implementation. The District recognizes the importance of a successful and comprehensive sponsorship program as a key element to the financial success of a first-class thoroughbred race meet as well as the financial success of the District and agrees to work diligently with the Operator to optimize both revenue and marketing opportunities in a cooperative and professional manner; however, the parties agree the District will have final approval of all sponsors. It is the intent of the District to target those sponsors who will participate in all the District and Operator events throughout the year although the parties acknowledge that various potential sponsors may have interests limited to particular events. The Operator and District will meet monthly to review strategies and potential sponsors and the Operator will provide to the District a quarterly report of its sponsorship efforts.

The District intends to pursue a long-term naming rights sponsorship relating to the Premises as well as other on site facility naming rights. The District shall consult with the Operator with respect to [i] any potential conflicts, [ii] the appropriateness of any potential sponsor [race meet],[iii] the equitable distribution of sponsorship revenues, and [iv] any financial, sponsorship fulfillment or other obligations expected of operator; however, the parties agree the District will have final approval of all issues referenced in this Paragraph.

The Operator has no express or implied authority to obligate the District's food service operator to sell or distribute products that are involved in a sponsorship agreement without the express written permission by the District, which the District may grant or withhold in its sole and exclusive discretion. If any sponsorship agreement does involve the District's food service

operator, the District will be compensated from said sponsorship subject to any pledge or debt service coverage requirements of outstanding bond indebtedness. The amount will be negotiated between the District's sponsorship Contractor and the Operator. In the event an agreement cannot be reached, the District's Chief Executive Officer will be the final arbiter.

Neither the District nor Operator shall have the authority to enter into any sponsorship arrangement, including but not limited to sponsorships for all or any portion of the Premises (including private or exclusive seating areas and/or private or exclusive skyboxes) or make any similar commitment on behalf of the other party without the advance written consent of the other party, and, where the District's consent is required. The District, in its sole discretion, has the right to seek and obtain the opinion of nationally-recognized bond counsel that the exclusion from gross income of interest on the bonds will not be adversely affected by any action or actions (including, but not limited to, actions requiring the District's consent) taken pursuant to this paragraph, and this determination will be final, conclusive, and binding on the Operator.

#### 11. Concessions and Subcontractors.

Nothing in this Agreement shall be construed to prohibit the Operator from granting concessions or contracts for the operation of one or more of the business activities permitted under this Agreement, other than concessions for food and beverage. During the Race Meet, thoroughbred horse racing on the Premises with parimutuel wagering on the results thereof, shall be conducted only under the direct supervision and management of the Operator.

11.1. Authority to Subcontract. The Operator shall not enter into any concession or subcontract, including, but not limited to private or exclusive seating areas and/or private or exclusive skyboxes, without the advance written consent of the District, and then only upon such terms and conditions as may be prescribed by the District. The District, in its sole discretion, has the right to seek and obtain the opinion of nationally-recognized bond counsel that the exclusion from gross income of interest on the bonds will not be adversely affected by any action or actions (including, but not limited to, actions requiring the District's consent) taken pursuant to this paragraph. Any person granted a concession or subcontract by the Operator shall, as a part of that concession or subcontract agreement, agree in writing (1) to be bound by all the terms and provisions of this Agreement, insofar as applicable, and (2) to permit the District to examine and, at the District's expense, have copies made of all financial records relating to the operation of the concession or subcontract and furnish the District with signed copies of all audit reports obtained in connection with the operation of the concession or subcontract. The Operator shall be responsible for the acts of its concessionaires and subcontractors and a violation of any of the terms or provisions of this Agreement by any such concessionaire or subcontractor shall have the same effect as if such violation had been committed or suffered by the Operator as well as by the concessionaire or subcontractor and shall be actionable by the District against the Operator and/or the concessionaire and/or the subcontractor, at the option of the District.

11.2. Food and Beverage Concessions. The food and beverage concession agreement for the Race Meet shall be between the concessionaire and the District with revenues paid directly to the District. It is recognized, however, by all parties to this Agreement that the performance of the concessionaire during the Race Meet is a key factor to the success of the Operator's operations. The Operator and the District shall set standards that require the concessionaire to furnish and dispense foods and beverages of the highest quality and maintain a level of service satisfactory to the Operator and the District that is at least equal to that of other racing establishments in Southern California.

11.3. Approval of Prices. The District shall have access to and the right to set, the

schedule of prices and rates for all food and beverage products sold on the Premises. In making such determinations, the District shall consult with Operator and shall take into account the potential impact of food and beverage prices on customer satisfaction and overall business. If the District shall determine, after reasonable consultation with the Operator and/or the concessionaire, that any price or prices are unreasonable or inappropriate, they shall be modified as directed by the District. Rates and prices for such products shall be displayed on signs as appropriate. The District reserves the right to prohibit the sale or rental of any item which it deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public at a thoroughbred horse race meet.

11.4 Other Revenue Generation Opportunities. The Operator agrees to comply with the District on any revenue generating project or opportunity that will benefit both parties. The District will make all reasonable efforts to insure that such project or opportunity will not interfere with race track operations but the District will have final decision or approval on any project or opportunity contemplated by this Paragraph 11.4.

11.5 Parking and Traffic Control – The District will, in coordination with the Operator, manage parking and traffic control services during the race meets, with the understanding that revenues generated from parking and traffic control will be included in the Operator's operating income statement. The District and the Operator agree to review parking and traffic control services during the race meets on a regular basis in order to insure appropriate customer service levels are met as they pertain to parking and traffic control and to insure the continuation of reasonable and customary past practices and procedures. The District agrees the services provided under this Paragraph 11.5 will be conducted in compliance with all existing labor agreements.

## 12. Utility Services.

The Operator will assume and pay when due all charges for natural gas, electricity, heat, power, telephone, water, light, sewer, and any other utility services accruing or payable in connection with its operation of the Premises, or any part thereof, including deposits, connection fees or charges in meter rentals required by the supplier of any such utility service. The Operator is obligated to use and employment best available management practices to minimize its use of water, sewer, energy, electricity, natural gas, energy, and other utility services. The Operator agrees to monthly monitoring of the Operator's use of water, sewer, energy, electricity, natural gas, energy, and other utility services by the District and the District shall, to the extent practicable, provide metering or other equipment sufficient to effectively monitor usage on a timely basis. If the Operator's use of water, sewer, energy, electricity, natural gas, energy, and/or other utility services exceeds 110% of the previous year's monthly usage, the Operator will investigate the usage to determine the cause of the excess and, if applicable, apply corrective measures. Additionally, Operator agrees to recycle all "grey" water to the extent permitted by law. The District shall, to the extent practicable, take any necessary actions to ensure that the food and beverage concessionaire cooperates fully with the Operator to control utility consumption.

## 13. Destruction of Premises.

If all or any portion of the Premises is destroyed or damaged by any casualty such that the Premises are rendered unsuitable for the conduct of thoroughbred horse race meets of substantially similar quality to those previously held, the District, the Commission, the Del Mar Race Track Authority and/or the State of California may, at their sole cost and expense and at the earliest date reasonably possible, repair such damage, subject to the availability of funds. However, in the event of such casualty, the parties may agree to suspend thoroughbred racing

operations until such damage is repaired, or the Commission may choose to terminate this Agreement. The Operator acknowledges that it has no rights by virtue of the provisions of Section 1932 and the provisions of subsection(4) of Section 1933 of the Civil Code of the State of California, but assumes no responsibility to repair or replace portions of the Premises destroyed or damaged by casualty.

#### 14. Indemnification and Insurance.

14.1. Indemnification. To the fullest extent permitted by law, the Operator shall defend, indemnify, and hold harmless the State of California, the District, the Commission, the Del Mar Race Track Authority, the CHRB, and their respective agents, directors, and employees (collectively, "indemnitees") from and against all claims, damages, losses, and expenses, of every kind, nature and description (including, but not limited to, attorneys fees, expert fees, and costs of suit), directly or indirectly arising from, or in any way related to the performance or nonperformance of this Agreement, regardless of responsibility of negligence; by reason of death, injury, property damage, or any claim arising from the alleged violation of any state or federal accessibility law, statute or regulation, (including but not limited to, the Americans With Disabilities Act, and/or any state, local, successor, or comparable provision of law) however caused or alleged to have been caused, and even though claimed to be due to the negligence of the indemnitees, or any one or more of them. Provided, however, that in no event shall the Operator be obligated to defend or indemnify the indemnitees with respect to the sole negligence or willful misconduct of the indemnitees, their respective employees, or agents (excluding the Operator, or any of its employees or agents). However, the Operator shall have the right to contest the validity of any and all claims and demands and defend any and all such suits, causes of action, and claims for damages, of any kind or character and by whomsoever claimed, as the Operator may deem necessary or proper.

14.2. Insurance Coverage. The Operator, at its own cost and expense, shall maintain in full force and effect at all times during the term of this Agreement, public liability and property damage insurance protecting the legal liability of the Operator, the District, the Del Mar Race Track Authority, the Commission and the State of California and their officers, agents, servants and employees from occurrences as to bodily injury liability and property damage liability which arise from the activities and operations of the Operator, its agents, contractors, employees, concessionaires or assigns, conducted upon or in connection with the Premises or any portion thereof. The Operator shall maintain general liability on an occurrence form with limits not less than \$10,000,000 for bodily injury and property damage liability combined, automobile liability with limits not less than \$5,000,000 combined single limit per accident, and statutory workers compensation and employer's liability coverage for all its employees who will be engaged in the performance of the contract with limits of \$1,000,000, and any other insurance coverage required by the District under the terms of the Operating Agreement. With approval of the Commission, there may be a deductible feature in connection with such coverages and such coverages shall be on an occurrence basis.

14.3. Insurance Policy Format. All policies of insurance required by this Agreement shall be in standard form and written by such qualified insurance companies authorized to do business in the State of California and shall reasonably satisfy the District and the Department of General Services, State of California. Further, each policy of insurance shall set forth:

14.3.1. An endorsement that states the Operators' insurance is primary to any insurance maintained by the District, the Commission, the Del Mar Race Track Authority and the State Race Track Leasing Commission.

14.3.2. The policy must include an additional insured endorsement naming the

State of California, the 22<sup>nd</sup> District Agricultural Association, the Del Mar Race Track Authority, the State Race Track Leasing Commission, the California Department of Finance, the California Department of General Services, the California Department of Food and Agriculture, and their respective directors, officers, agents, servants and employees are named as additional insured, but only insofar as the operations under this contract are concerned.

14.3.3. Coverage Term – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the contract.

14.3.4. Policy Cancellation or Termination & Notice of Non-Renewal – Insurance policies shall contain a provision stating coverage will not be cancelled without 30 days prior written notice to the State and the District. In the event Operator fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.

14.3.5. Deductible – Operator is responsible for any deductible or self-insured retention contained within their insurance program.

14.3.6. Inadequate Insurance – Inadequate or lack of insurance does not negate the Operator's obligations under the contract.

14.3.7. Premium payment is the responsibility of the Operator. Neither the District, the Commission, the Del Mar Race Track Authority, nor the State of California is liable for the payment of any premiums or assessments on said policy.

14.4. Evidence of Insurance. Evidence of insurance shall be provided by the Operator to the District prior to the commencement of the term of this Agreement and otherwise at such times and in such manner as the District shall from time to time request. The Operator will also provide certified copies of the Additional Insured Endorsement[s] required by Paragraph 14.3.2 of this Agreement.

14.5. Failure to Provide Insurance. If the Operator fails to procure or maintain the required insurance, the District, at its option, may do so and charge the cost of that insurance to the Operator. That cost shall be repaid by the Operator to the District and shall be in addition to any other payments required under this Agreement. A failure to repay any such sum within 30 days after the date a bill for payment of the required insurance is mailed by the District to the Operator, shall constitute a material breach of this Agreement. If any insurance required by this Agreement cannot be procured or maintained as the direct or indirect result of any act or omission by the Operator, the inability to procure or maintain the insurance will constitute a material breach of this Agreement by the Operator.

14.6. Operator as Additional Insured. Unless otherwise agreed by the parties, to the extent that any party hereto shall enter into contracts with contractors, subcontractors, concessionaires or others performing services on the Premises in which that entity is required to provide insurance to such party, each other party to this Agreement, the District, the Commission, the Del Mar Race Track Authority and the State of California shall be named as an additional insured on such policy. In the case of the concessionaire providing food and beverage services during the Race Meet, insurance policies shall be required and shall be subject to the approval of the District, such approval not to be unreasonably withheld.



14.7 Safety Practices. The Operator shall conduct all its activities, as required or permitted by the terms and conditions of the Agreement, in compliance with all codes, statutes, ordinances, and regulations, and in compliance with all generally accepted applicable safety practices. The Operator agrees to retain a Safety Officer or utilize the District's Safety Officer to insure all of its operations are conducted in compliance with the best and highest safety practices.

15. Assignment.

15.1. Prohibition Against Assignment. Other than concession agreements or subcontracts entered into pursuant to Section 11, the Operator shall not assign, mortgage, pledge, hypothecate or otherwise dispose of this Agreement, or any of rights, privileges, or obligations under this Agreement, or the Premises or any portion of the Premises, nor shall the Operator suffer any other person to operate the Premises or any portion thereof, without the advance written consent of the District which the District may grant or withhold in its sole and exclusive discretion, and then only upon such terms and conditions as may be prescribed by the District. The District, in its sole discretion, has the right to seek and obtain the opinion of nationally-recognized bond counsel that the exclusion from gross income of interest on the bonds will not be adversely affected by any action or actions (including, but not limited to, actions requiring the District's consent) taken pursuant to this paragraph. It is expressly understood and agreed that the District and the Commission may assign or otherwise dispose of the interest of the State of California in this Agreement, or in any part of this Agreement, without obtaining the consent of the Operator. Any consent granted under this Section 15 shall not be deemed to confer any right upon the Operator to thereafter do or suffer any of these prohibited acts.

15.2. Changes in Stock Ownership. The current stock ownership of the Operator is set forth in Exhibit D to this Agreement. Any change in stock ownership, whether voluntary, involuntary or by operation of law or otherwise, shall be deemed an assignment prohibited by this Section 15 unless the advance written consent of the District, the Department of Food and Agriculture and the Department of General Services is obtained. The District, in its sole discretion, has the right to seek and obtain the opinion of nationally-recognized bond counsel that the exclusion from gross income of interest on the bonds will not be adversely affected by any action or actions (including, but not limited to, actions requiring the consent of the District, the Department of Food and Agriculture, and/or the Department of General Services) taken pursuant to this paragraph. Such written consent shall not be unreasonably withheld nor shall any unreasonable terms or conditions in connection with its granting be imposed. Due consideration shall be given, however, to the financial responsibility, character, business ability, morality and reputation of such stockholder transferring and/or receiving the stock interest in the corporation.

As a condition of obtaining the written consent of the agencies referred to in this Section 15.2, the Operator shall immediately supply those agencies with any and all written information requested by any one or more of those agencies.

15.3 Approval of Management. Any change in the top five senior executive officers is subject to approval by the District and the Commission during the entire Term of this Agreement and any extensions of the Term resulting from the exercise of Option Periods under Paragraph 4.1 of this Agreement.

16. Default and Remedies.

The performance of each of the Operator's obligations under this Agreement is a condition as well as a covenant. The Operator's right to continue its operation of the Premises is conditioned upon such performance.

16.1. Events of Default. The occurrence of any of the following shall constitute a default and breach of this Agreement by the Operator:

16.1.1. If the Operator is denied a license to conduct thoroughbred horse racing for reasons other than suitability of the facilities at the Del Mar Fairgrounds or reasons relating to the terms and provisions of this Agreement, or if the Operator ceases to operate the Premises.

16.1.2. If the Operator fails to pay Direct Payment, Basic Payment or Additional Payment, or any other charge required to be paid as and when due, where such failure continues for ten (10) days after written notice thereof by the Commission to the Operator.

16.1.3. If (i) a general assignment or general arrangement for the benefit of creditors made by the Operator; (ii) a petition for adjudication of bankruptcy or reorganization or rearrangement is filed by or against the Operator and not dismissed within 120 days; (iii) there is appointed a trustee or receiver to take possession of substantially all of the Operator's assets located at the Premises; or (iv) substantially all of the Operator's assets located at the Premises are subjected to attachment, execution or other judicial seizure which is not discharged within 90 days.

16.1.4. If the Operator fails to perform any of its non-monetary obligations under this Agreement for a period of 30 days after written notice from the Commission specifying the non-monetary obligations remaining unperformed. If more time is required to complete such performance, the Operator shall not be in default if it commences such performance within the 30-day period and thereafter diligently pursues its completion.

16.1.5. If the Net to Gross Ratio for any two (2) consecutive years, does not equal at least fifteen percent (.15).

16.2. Rights and Remedies. Upon the occurrence of a material default by the Operator and its failure to correct or commence correction of that default upon notice thereof, and at any time thereafter, with or without further notice or demand and without limiting the Commission in the exercise of any right or remedy which it may have, the Commission shall be entitled to the following rights and remedies:

16.2.1. Terminate the Operator's right to operate the Premises by any lawful means, in which case this Agreement shall terminate and the Operator shall immediately surrender any and all use of the Premises to the District, as authorized by the Commission. In such event, the District, as authorized by the Commission shall have the immediate right to remove all persons and property and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, the Operator, all without service of notice or resort to legal process and without becoming liable for any loss or damage which might be occasioned thereby.

16.2.2. Enter the Premises, with or without terminating this Agreement, and remove all persons and property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of the Operator. If the Commission elects to take such action, the Commission shall not be liable for damages by reason of such action.

16.3. Procedure for Termination. The Commission shall not be deemed to have terminated this Agreement, the Operator's right to operate the Premises or the liability of the Operator to pay Direct Payment, Basic Payment or Additional Payment thereafter to accrue or its liability for damages under any of the provisions hereof, unless the Commission shall have notified the Operator in writing that it has so elected to terminate this Agreement.

16.4. Cumulative Nature of Remedies. All rights, options and remedies of the Commission contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and the Commission shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law whether or not stated in this Agreement. No waiver by the Commission of a breach of any of the terms, covenants or conditions of this Agreement by the Operator shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition.

16.5. No Waiver. No waiver of any default of the Operator hereunder shall be implied from any omission by the Commission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect default other than as specified in that waiver. The consent or approval by the Commission to or of any act by the Operator requiring the Commission's consent or approval shall not be deemed to waive or render unnecessary the Commission's consent to or approval of any subsequent similar acts by the Operator.

#### 17. Letter of Credit.

17.1. Letter of Credit. During the term of this Agreement, the Operator shall obtain and file with the District an irrevocable letter of credit issued by a bank or other financial institution approved by the District. Such letter of credit shall be in the amount of \$500,000 and shall be conditioned on the faithful performance by the Operator of all of the terms, covenants and conditions of this Agreement. Such letter of credit shall be approved as to sufficiency by the Commission and as to form by the Attorney General of the State of California. The Operator, at its option, may post a \$500,000 cash deposit with the District in lieu of the irrevocable letter of credit.

17.2. Costs and Expenses. Any interest cost or expense incurred by the Operator in connection with the letter of credit shall be deemed expenses of the Operator under this Agreement.

#### 18. Condemnation.

If any action or proceeding is commenced for the condemnation of the Premises, or any portion thereof, under the right of eminent domain, or if the Commission is advised in writing by any government, or any agency, instrumentality, department or bureau thereof, or by any person having the right or power of condemnation, of its intention to condemn the Premises, or any portion thereof, after the execution of this Agreement and prior to its termination, then and in any of said events:

18.1. Settlement by District. Subject to the approval of the Departments of Food and Agriculture and General Services, the District may, without any obligation or liability to the Operator, and without affecting the validity and existence of this Agreement other than as expressly provided, agree to sell or convey to the condemnor, without first requiring that any action or proceeding be instituted, or, if such action or proceeding shall have been instituted, without requiring any trial or hearing. The District is also expressly empowered to stipulate to a

judgment in any such action or proceeding or to the part or portion of the Premises sought by the condemnor, free from this Agreement and the rights of the Operator hereunder.

18.2. Rights to Proceeds. The Operator shall have no claim against the District or the Commission nor shall it be entitled to any part or portion of the amount that may be paid or awarded as a result of the sale or condemnation of the Premises, or any part or portion thereof. The Operator hereby assigns, transfers and sets over to the District any interest, if any, which the Operator would but for this provision have in, to, upon or against the Premises or any part or portion thereof, or the amount agreed to be paid or awarded and paid to the District.

18.3. Continuation of Agreement. If the condemnation is of a portion of the Premises only and the remainder is suitable for the conduct of thoroughbred horse race meets of substantially similar quality to those previously held, then this Agreement and all of its terms and provisions shall remain in full force and effect.

18.4. Termination. If the Premises, or such portion thereof as would render the remainder unsuitable for the conduct of thoroughbred horse race meets of substantially similar quality to those previously held, are condemned then this Agreement at the option of either the Commission or the Operator shall cease and come to an end at the time the District's ability to permit the Operator to operate the Premises ceases because of that condemnation.

## 19. Easements and Rights of Way.

This Agreement is subject to all existing easements and rights of way. The District may grant additional public utility easements as may be necessary during the term of this Agreement and the Operator hereby consents to the granting of any such easements. However, the public utility shall be required to reimburse the Operator for any impairment to its operation caused by any construction work on the easement area. No such easement will be granted during the Race Meet if, in the reasonable opinion of the Operator's and the District's management, the granting of the easement will unduly interfere with its operations or endanger personnel or horses during the course of its operations.

## 20. Hazardous Materials.

20.1. Prohibition of Storage. The Operator shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises, by the Operator, its agents, employees, contractors or invitees in a matter or for a purpose prohibited by any governmental agency or authority. If the presence of any Hazardous Material on the Premises caused or permitted by the Operator prior to or during the term of this Agreement results in any contamination of the Premises, the Operator shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises, provided that the District's consent to such action shall first be obtained.

20.2. Business. Notwithstanding the prohibitions of Section 20.1, the Operator may operate its business according to the customs of the thoroughbred racing industry so long as the use or presence of Hazardous Materials is strictly and properly monitored according to all applicable governmental requirements. The Operator agrees to deliver to the District a list identifying each type of Hazardous Material to be present on the Premises and setting forth any and all governmental approvals or permits required in connection with the presence of Hazardous Materials on the Premises ("Hazardous Materials List"). The Operator shall deliver to the District an updated Hazardous Materials List at least once a year.

20.3. Definition of "Hazardous Material". As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 2, Chapter 6.8 (Carpenter-Presly-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance" or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) listed under Article 9 and defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (viii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. Section 6903), or (x) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. (42 U.S.C. Section 9601).

21. Compliance with Law. The Commission represents and warrants to the Operator that this Agreement has been authorized and entered into in compliance with Section 4353 of the California Food and Agricultural Code and all other applicable laws.

22. Miscellaneous Provisions.

22.1. California Law Governs. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The reference in this Agreement to any legislation shall be read as though the words for any statutory modifications or reenactments thereof or any statutory provisions substituted therefore, were added to such reference. Venue of any action arising directly or indirectly out of this Agreement shall be in the County of San Diego, State of California.

22.2. Meaning of Headings. The section headings of this Agreement are only to assist the parties in reading the Agreement and shall have no effect upon its construction or interpretation.

22.3. Damage. The Operator shall not damage the Premises or any part thereof, or permit any acts to be done thereon in violation of any law or which create a nuisance and shall not operate the Premises or any part thereof for any immoral purpose.

22.4. Withholding Consent. Whenever under the provisions of this Agreement a party's consent or agreement is required for action, such party shall not unreasonably delay or withhold its consent or agreement. However, if that provision states that a party may grant or withhold its approval in its sole discretion, or contains words of similar import, that party may grant or withhold its consent for any reason or for no reason.

22.5. Assignability. Subject to the provisions of Section 15, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Notwithstanding any provision of this Agreement, this Agreement shall not be assigned or assignable by operation of law and in no event shall this Agreement be an asset of the Operator in any receivership, bankruptcy, insolvency or reorganization proceeding.

22.6. Partial Invalidity. If any term or provision of this Agreement shall be held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Agreement shall not be affected and each remaining term and provision shall be valid and enforceable to the fullest extent permitted by law. To the extent that the provisions of applicable law may be waived, they are hereby waived to the end that this Agreement be deemed to be a valid and binding agreement and enforceable in accordance with its terms.

22.7. Giving of Consent. Whenever the Commission or the District is required or authorized to give consent or approval to or authorization of, any act of the Operator, such consent, approval or authorization may be given by such committee or person as may be designated by the Commission or the District. The action of such committee or person shall be binding on the parties for whom such action is taken.

22.8. Entire Agreement. This Agreement, along with any schedules, exhibits, attachments or other documents referred to, constitutes the entire and exclusive agreement between the Commission, the District and the Operator relative to the operation of the Premises. This instrument and such exhibits, attachments and other documents may be amended or revoked only by an instrument in writing signed by both the Commission and the Operator or their respective successors in interest. The Commission and the Operator agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Agreement shall be effective for any purpose.

22.9. Notices. All notices required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by certified or registered mail, return receipt requested and postage prepaid. If any request, demand or notice is to be given by personal delivery it shall be given as follows: (i) In the case of the Operator, to the Chairman of the Board, the President or the General Manager; (ii) in the case of the Commission, to the Chairperson; (iii) in the case of the District, to the President of the Board of Directors and the Chief Executive Officer.

If any request, demand or notice is to be given by mail, it shall be delivered as follows:

If to the Commission:

Director of Finance  
Chairperson  
State Race Track Leasing Commission  
State Capitol, Room 1145  
Sacramento, CA 95814

With a copy to:

Deborah M. Fletcher  
Deputy Attorney General  
110 West A Street, Suite 1100  
San Diego, CA 92101

If to the District:

President of the Board of Directors  
22nd District Agricultural Association  
2260 Jimmy Durante Boulevard  
Del Mar, CA 92014

With a copy to:

Timothy J. Fennell, Chief Executive Officer  
22nd District Agricultural Association  
2260 Jimmy Durante Boulevard  
Del Mar, CA 92014

If to the Operator:

Craig R. Fravel  
President and General Manager  
Del Mar Thoroughbred Club  
PO Box 700, Del Mar, CA 92014

Any person or address set forth above may be changed, or other persons added, by giving notice in accordance with the provisions of this subsection.

22.10. Events Beyond Control of the Parties. If either party cannot perform any of its obligations due to events beyond that party's control, such failure to perform shall not constitute a breach of this Agreement and the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond the parties control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood, earthquake or other casualty, shortages of labor or material, government regulation or restriction and weather conditions. This Agreement shall not be terminated, nor shall its term be extended, by reason of any such suspension. Performance shall be resumed within a reasonable time after such cause has been removed. This Section shall not apply to destruction covered by Section 13 of this Agreement.

22.11. Non-discrimination. The Operator covenants by and for itself, its successors and assigns and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, sex, sexual orientation, age, physical handicap, disability, national origin, or ancestry in the operation of the Premises. Neither the Operator nor any person claiming under or through the Operator shall establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the concessionaires, subcontractors or others in or on the Premises.

22.12. Waiver. No waiver by the Commission of the breach of any covenant, condition or term of this Agreement shall be construed as a waiver of any preceding or succeeding breach nor shall the acceptance of any moneys from the Operator pursuant to this Agreement during any period in which the Operator is in default be deemed a waiver of such default.

22.13. California Horse Racing Board. No right, option or privilege contained in this Agreement or conferred upon the Operator by it shall be deemed to bind the CHRB or any other agency of the State of California to exercise any discretion granted upon it by law in any particular manner.

22.14. Amendments. This Agreement may be amended only by the mutual agreement of the Commission and the Operator, evidenced by a written amendment duly executed by the Commission and the Operator and approved by the Departments of Food and Agriculture and

22.14. Amendments. This Agreement may be amended only by the mutual agreement of the Commission and the Operator, evidenced by a written amendment duly executed by the Commission and the Operator and approved by the Departments of Food and Agriculture and General Services.

22.15. Execution and Binding Effect. This Agreement shall not be binding upon the Commission until it has been duly executed by the Commission and approved by the California Departments of Food and Agriculture and General Services.

22.17 Litigation Expenses. Should litigation be necessary to enforce any term or provision of this agreement, or to collect any portion of the amount payable under this agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

IN WITNESS WHEREOF, the Commission has caused this Agreement to be executed by its Chairperson, and the Operator has caused this Agreement to be executed by its President, all as of the date set forth above.

STATE RACE TRACK LEASING  
COMMISSION, on behalf of the  
22ND DISTRICT AGRICULTURAL  
ASSOCIATION

By:   
Cynthia Bryant  
Chairperson

DEL MAR THOROUGHBRED CLUB

By: \_\_\_\_\_  
Joseph W. Harper  
Chief Executive Officer

Approved pursuant to Food and Agricultural Code Section 4051:

DEPARTMENT OF FOOD AND  
AGRICULTURE

By: \_\_\_\_\_  
A.G. Kawamura  
Director

Approved pursuant to Food and Agricultural Code Section 4051 and pursuant to Government Code Section 11005.2:



22.14. Amendments. This Agreement may be amended only by the mutual agreement of the Commission and the Operator, evidenced by a written amendment duly executed by the Commission and the Operator and approved by the Departments of Food and Agriculture and General Services.

22.15. Execution and Binding Effect. This Agreement shall not be binding upon the Commission until it has been duly executed by the Commission and approved by the California Departments of Food and Agriculture and General Services.

22.17 Litigation Expenses. Should litigation be necessary to enforce any term or provision of this agreement, or to collect any portion of the amount payable under this agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

IN WITNESS WHEREOF, the Commission has caused this Agreement to be executed by its Chairperson, and the Operator has caused this Agreement to be executed by its President, all as of the date set forth above.

STATE RACE TRACK LEASING  
COMMISSION, on behalf of the  
22ND DISTRICT AGRICULTURAL  
ASSOCIATION


By: \_\_\_\_\_  
Ana Matosantos  
Chairperson

DEL MAR THOROUGHBRED CLUB

By: \_\_\_\_\_  
Joseph W. Harper  
Chief Executive Officer

Approved pursuant to Food and Agricultural Code Section 4051:

DEPARTMENT OF FOOD AND  
AGRICULTURE

By:   
A.G. Kawamura  
Director

Approved pursuant to Food and Agricultural Code Section 4051 and pursuant to Government Code Section 11005.2:

General Services.

22.15. Execution and Binding Effect. This Agreement shall not be binding upon the Commission until it has been duly executed by the Commission and approved by the California Departments of Food and Agriculture and General Services.

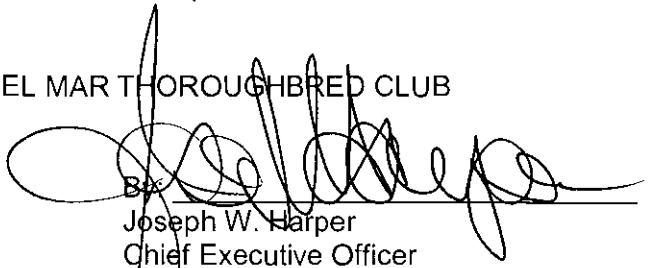
22.17 Litigation Expenses. Should litigation be necessary to enforce any term or provision of this agreement, or to collect any portion of the amount payable under this agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

IN WITNESS WHEREOF, the Commission has caused this Agreement to be executed by its Chairperson, and the Operator has caused this Agreement to be executed by its President, all as of the date set forth above.

STATE RACE TRACK LEASING  
COMMISSION, on behalf of the  
22ND DISTRICT AGRICULTURAL  
ASSOCIATION

By: \_\_\_\_\_  
Ana Matosantos  
Chairperson

DEL MAR THOROUGHBRED CLUB

By:   
Joseph W. Harper  
Chief Executive Officer

Approved pursuant to Food and Agricultural Code Section 4051:

DEPARTMENT OF FOOD AND  
AGRICULTURE


By: \_\_\_\_\_  
A.G. Kawamura  
Director

Approved pursuant to Food and Agricultural Code Section 4051 and pursuant to Government Code Section 11005.2:

DEPARTMENT OF GENERAL SERVICES

DEPARTMENT OF GENERAL SERVICES

By:

  
\_\_\_\_\_  
Ronald L. Diedrich  
Acting Director

Approved As to Form:

EDMUND G. BROWN JR.  
Attorney General of the State of California

By:

  
\_\_\_\_\_  
Deborah M. Fletcher  
Deputy Attorney General

DAA22-103.agt.44802.1

## **AMENDMENT TO DEL MAR RACE TRACK OPERATING AGREEMENT**

This Amendment ("Amendment") to the Del Mar Race Track Operating Agreement entered into effective January 1, 2011 ("Operating Agreement") between the STATE RACE TRACK LEASING COMMISSION ("Commission"), acting on behalf of the 22ND DISTRICT AGRICULTURAL ASSOCIATION ("District"), and the DEL MAR THOROUGHBRED CLUB, a California corporation ("Operator") is made and entered into on March 14, 2012.

### **RECITALS**

A. An ambiguity exists in the one of the definitions in Paragraph 2 of the Operating Agreement.

B. The Commission and the Operator agree the definitions in Paragraph 2 of the Operating Agreement should be amended to more accurately reflect the intention of the parties, and that the amended definitions will not alter or impair in any way the consideration paid under the terms and conditions of the Operating Agreement.

THEREFORE, in consideration of the above recitals, the mutual obligations and agreements in this Amendment, and for other good and valuable consideration, the Commission and the Operator agree as follows:

### **AGREEMENT**

1. The definition of the term "Net to Gross Ratio" set forth in Paragraph 2 on Page 3 of the Operating Agreement shall be revised in its entirety to read as follows:

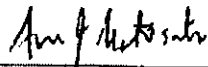
"Net to Gross Ratio" shall mean the ratio of total payments made pursuant to this Agreement to Gross Revenues.

2. Except as expressly provided in this Amendment, in all other respects the Operating Agreement is hereby republished in its entirety and remains in full force and effect.

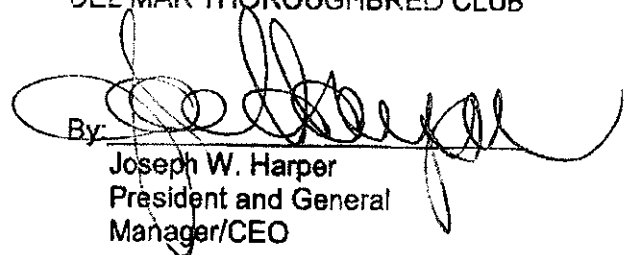
3. This Amendment may be signed in counterparts.

IN WITNESS WHEREOF, the Commission has caused this Amendment to be executed by its Chairperson, and the Operator has caused this Amendment to be executed by its President, as of the date set forth above.

STATE RACE TRACK LEASING  
COMMISSION, on behalf of the  
22ND DISTRICT AGRICULTURAL  
ASSOCIATION

By:   
\_\_\_\_\_  
Ana Matosantos  
Chairperson and Director of the  
California Department of Finance

DEL MAR THOROUGHBRED CLUB

By:   
\_\_\_\_\_  
Joseph W. Harper  
President and General  
Manager/CEO

## SECOND AMENDMENT TO DEL MAR RACE TRACK OPERATING AGREEMENT

This Second Amendment (Second Amendment) to the Del Mar Race Track Operating Agreement entered into effective January 1, 2011 ("Operating Agreement") between the STATE RACE TRACK LEASING COMMISSION ("Commission"), acting on behalf of the 22<sup>ND</sup> DISTRICT AGRICULTURAL ASSOCIATION ("District") and the DEL MAR THOROUGHBRED CLUB, a California corporation ("Operator") is made and entered into effective February 14, 2014.

### RECITALS

A. The Commission and the Operator entered into the Operating Agreement for operation of the Del Mar Race Track, located on the premises of the District, effective January 1, 2011.

B. The Commission and the Operator executed an Amendment to the Operating Agreement effective March 14, 2012 ("First Amendment").

C. In or about November 2013, the California Horse Racing Board granted to the Operator the right to conduct, in addition to its traditional dates for racing, a four-week live horse race meet in November of 2014 and a five-week live horse race meet in October and November of 2015 at the Del Mar Race Track located at the Del Mar Fairgrounds.

Therefore, in consideration of the above recitals, the mutual obligations and agreements in this Second Amendment, and for other good and valuable consideration, the Commission and the Operator agree as follows:

### AGREEMENT

1. The definition of "Direct Payment" in Paragraph 2 of the Operating Agreement is amended in full to read as follows:

"Direct Payment" shall mean, subject to the limitations set forth in Section 4155 of the California Food and Agricultural Code, the amount of \$1,225,000.00 for calendar years 2014 and 2015. The Direct Payment is used by the District for the Fair or any other authorized purposes.

2. Paragraph 6.1 of the Operating Agreement is amended in full to read as follows:

6.1. Direct Payment. \$500,000 of the Direct Payment shall be paid annually to the District on September 15 of each calendar year during the term of this Operating Agreement. \$400,000 of the Direct Payment shall be paid annually to the District on December 15 of each calendar year during the term of this Operating Agreement. The Direct Payment balance of \$325,000 shall be paid to the District by December 31 of each calendar year during the term of this Operating Agreement.

3. Paragraph 5.8 shall be added to the Operating Agreement to read as follows:

5.8. Breeders' Cup. If Operator enters into negotiations with Breeders' Cup Ltd., for conducting the Breeders' Cup at the Del Mar Race Track, Operator shall consult with and solicit the input of the District on a regular basis. Subject to the foregoing and the consent of the District, Operator shall negotiate with Breeders' Cup Ltd. for conducting the Breeders' Cup at the Del Mar Race Track located at the Del Mar Fairgrounds; *provided, however*, that any final agreement shall be subject to the prior approval of the Commission.

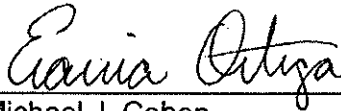
4. Except as expressly provided in this Second Amendment, in all other respects the Operating Agreement and the First Amendment are hereby republished in their entirety and remain in full force and effect.

5. This Second Amendment may be signed in counterparts.

IN WITNESS WHEREOF, the Commission has caused this Second Amendment to be executed by its Chairperson, and the Operator has caused this Amendment to be executed by its President, effective February 14, 2014.

STATE RACE TRACK LEASING COMMISSION  
on behalf of the  
22<sup>nd</sup> DISTRICT AGRICULTURAL ASSOCIATION

By:



Michael J. Cohen  
Chairperson of the State Race Track Leasing  
Commission and Director of the  
California Department of Finance

DEL MAR THOROUGHBRED CLUB

By:

Joseph W. Harper  
President and General Manager/CEO

3. Paragraph 5.8 shall be added to the Operating Agreement to read as follows:

5.8. Breeders' Cup. If Operator enters into negotiations with Breeders' Cup Ltd., for conducting the Breeders' Cup at the Del Mar Race Track, Operator shall consult with and solicit the input of the District on a regular basis. Subject to the foregoing and the consent of the District, Operator shall negotiate with Breeders' Cup Ltd. for conducting the Breeders' Cup at the Del Mar Race Track located at the Del Mar Fairgrounds; *provided, however*, that any final agreement shall be subject to the prior approval of the Commission.

4. Except as expressly provided in this Second Amendment, in all other respects the Operating Agreement and the First Amendment are hereby republished in their entirety and remain in full force and effect.

5. This Second Amendment may be signed in counterparts.

IN WITNESS WHEREOF, the Commission has caused this Second Amendment to be executed by its Chairperson, and the Operator has caused this Amendment to be executed by its President, effective February \_\_\_, 2014.

STATE RACE TRACK LEASING COMMISSION  
on behalf of the  
22<sup>nd</sup> DISTRICT AGRICULTURAL ASSOCIATION

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

Michael J. Cohen  
Chairperson of the State Race Track Leasing  
Commission and Director of the  
California Department of Finance

DEL MAR THOROUGHBRED CLUB

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

Joseph W. Harper  
President and General Manager/CEO



## **THIRD AMENDMENT TO THE DEL MAR RACE TRACK OPERATING AGREEMENT**

This Third Amendment ("Third Amendment") to the Del Mar Race Track Operating Agreement entered into effective January 1, 2011 ("Operating Agreement") between the STATE RACE TRACK LEASING COMMISSION ("Commission"), acting on behalf of the 22<sup>ND</sup> DISTRICT AGRICULTURAL ASSOCIATION ("District") and the DEL MAR THOROUGHBRED CLUB, a California corporation ("Operator") is made and entered into effective February 26, 2015.

### **RECITALS**

A. The Commission and the Operator entered into the Operating Agreement for operation of the Del Mar Race Track, located on the premises of the District, effective January 1, 2011.

B. The Commission and the Operator executed an Amendment to the Operating Agreement effective March 14, 2012 ("First Amendment").

C. The Commission and the Operator executed a Second Amendment to the Operating Agreement effective February 14, 2014 ("Second Amendment").

Therefore, in consideration of the above recitals, the mutual obligations and agreements in this Second Amendment, and for other good and valuable consideration, the Commission and the Operator agree as follows.

### **AGREEMENT**

1. Paragraph 6.1 of the Operating Agreement is amended in full to read as follows:

6.1. Direct Payment. \$500,000 of the Direct Payment shall be paid annually to the District on September 15 of each calendar year during the term of this Operating Agreement. \$400,000 of the Direct Payment shall be paid annually to the District on November 15 of each calendar year during the term of this Operating Agreement. The Direct Payment balance of \$325,000 shall be paid to the District by November 30 of each calendar year during the term of this Operating Agreement.

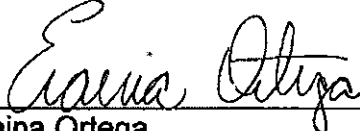
2. Paragraph 7.1 of the Operating Agreement is amended to provide that the Operator's submission of the preliminary itemized budget will be due on December 15 of each calendar year.

3. Except as expressly provided in this Third Amendment, in all other respects the Operating Agreement, the First Amendment, and the Second Amendment are hereby republished in their entirety and remain in full force and effect.

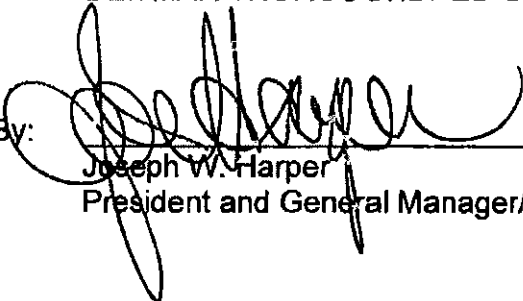
4. This Third Amendment may be signed in counterparts.

IN WITNESS WHEREOF, the Commission has caused this Third Amendment to be executed by its Chairperson, and the Operator has caused this Third Amendment to be executed by its President, effective February 26, 2015.

STATE RACE TRACK LEASING COMMISSION  
on behalf of the  
22<sup>nd</sup> DISTRICT AGRICULTURAL ASSOCIATION

By:   
Eraina Ortega  
Chief Deputy Director of the California Department of  
Finance on behalf of  
Michael J. Cohen  
Chairperson of the State Race Track Leasing  
Commission and Director of the  
California Department of Finance

DEL MAR THOROUGHBRED CLUB

By:   
Joseph W. Harper  
President and General Manager/CEO

**FOURTH AMENDMENT TO THE DEL MAR RACE TRACK OPERATING AGREEMENT**

This Fourth Amendment ("Fourth Amendment") to the Del Mar Race Track Operating Agreement entered into effective January 1, 2011 ("Operating Agreement") between the STATE RACE TRACK LEASING COMMISSION ("Commission"), acting on behalf of the 22ND DISTRICT AGRICULTURAL ASSOCIATION ("District") and the DEL MAR THOROUGHBRED CLUB, a California corporation ("Operator") is made and entered into effective as of August 1, 2015.

**RECITALS**

A. The Commission and the Operator entered into the Operating Agreement for operation of the Del Mar Race Track, located on the premises of the District, effective January 1, 2011, as amended.

B. In order to facilitate the issuance of the Del Mar Race Track Authority Revenue Bonds, Series 2015, to finance and refinance improvements on the District's property, the Commission and the Operator wish to amend the Operating Agreement as described in this Fourth Amendment

Therefore, in consideration of the above recitals, the mutual obligations and agreements in this Fourth Amendment, and for other good and valuable consideration, the Commission and the Operator agree as follows.

In Section 10.1 of the Operating Agreement, "Series 2005 Revenue Bonds" shall be deleted and replaced with "the Del Mar Race Track Authority's Series 2015 Bonds and any refunding bonds or additional bonds issued to finance capital improvements on the District's property."

IN WITNESS WHEREOF, the Commission has caused this Fourth Amendment to be executed by its Chairperson, and the Operator has caused this Fourth Amendment to be executed by its President, effective as of August 1, 2015.

STATE RACE TRACK LEASING COMMISSION  
on behalf of the  
22<sup>nd</sup> DISTRICT AGRICULTURAL ASSOCIATION

By: Eraina Ortega  
Eraina Ortega  
Chief Deputy Director of the California Department of  
Finance on behalf of  
Michael J. Cohen  
Chairperson of the State Race Track Leasing  
Commission and Director of the  
California Department of Finance

DELMAR THOROUGHBRED CLUB

By: \_\_\_\_\_  
Joseph W. Harper  
President and General Manager/CEO

**FOURTH AMENDMENT TO THE DEL MAR RACE TRACK OPERATING AGREEMENT**

This Fourth Amendment ("Fourth Amendment") to the Del Mar Race Track Operating Agreement entered into effective January 1, 2011 ("Operating Agreement") between the STATE RACE TRACK LEASING COMMISSION ("Commission"), acting on behalf of the 22ND DISTRICT AGRICULTURAL ASSOCIATION ("District") and the DEL MAR THOROUGHBRED CLUB, a California corporation ("Operator") is made and entered into effective as of August 1, 2015.

**RECITALS**

A. The Commission and the Operator entered into the Operating Agreement for operation of the Del Mar Race Track, located on the premises of the District, effective January 1, 2011, as amended.

B. In order to facilitate the issuance of the Del Mar Race Track Authority Revenue Bonds, Series 2015, to finance and refinance improvements on the District's property, the Commission and the Operator wish to amend the Operating Agreement as described in this Fourth Amendment

Therefore, in consideration of the above recitals, the mutual obligations and agreements in this Fourth Amendment, and for other good and valuable consideration, the Commission and the Operator agree as follows.


In Section 10.1 of the Operating Agreement, "Series 2005 Revenue Bonds" shall be deleted and replaced with "the Del Mar Race Track Authority's Series 2015 Bonds and any refunding bonds or additional bonds issued to finance capital improvements on the District's property."

IN WITNESS WHEREOF, the Commission has caused this Fourth Amendment to be executed by its Chairperson, and the Operator has caused this Fourth Amendment to be executed by its President, effective as of August 1, 2015.

STATE RACE TRACK LEASING COMMISSION  
on behalf of the  
22<sup>nd</sup> DISTRICT AGRICULTURAL ASSOCIATION

By: \_\_\_\_\_  
Eraina Ortega  
Chief Deputy Director of the California Department of  
Finance on behalf of  
Michael J. Cohen  
Chairperson of the State Race Track Leasing  
Commission and Director of the  
California Department of Finance

DELMAR THOROUGHBRED CLUB

By:   
Joseph W. Harper  
President and General Manager/CEO

Approved:

DEPARTMENT OF FOOD AND AGRICULTURE

By: Karen Ross  
Name: \_\_\_\_\_  
Title: Secretary

DEPARTMENT OF GENERAL SERVICES

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE – FOURTH AMENDMENT TO OPERATING AGREEMENT]

Approved:

DEPARTMENT OF FOOD AND AGRICULTURE

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

Name:

Title:

DEPARTMENT OF GENERAL SERVICES

By: 

Name: Esteban Almanza

Title: Chief Deputy Director

[SIGNATURE PAGE – FOURTH AMENDMENT TO OPERATING AGREEMENT]

**FIFTH AMENDMENT TO DEL MAR RACE TRACK OPERATING AGREEMENT**

This Fifth Amendment ("Fifth Amendment") to the Del Mar Race Track Operating Agreement entered into effective January 1, 2011 ("Operating Agreement") between the STATE RACE TRACK LEASING COMMISSION ("Commission"), acting on behalf of the 22<sup>ND</sup> DISTRICT AGRICULTURAL ASSOCIATION ("District"), and DEL MAR THOROUGHBRED CLUB, a California corporation ("Operator") is made and entered into on this 5<sup>th</sup> day of April 2017.

**RECITALS**

- A. The Commission and the Operator entered into the Operating Agreement for operation of the Del Mar Race Track, located on the premises of the District, effective January 1, 2011.
- B. The Commission and the Operator executed an Amendment to the Operating Agreement effective March 14, 2012 ("First Amendment").
- C. The Commission and the Operator executed a Second Amendment to the Operating Agreement effective February 14, 2014 ("Second Amendment"). The Second Amendment to the Operating Agreement was entered into by the Commission and Operator to permit the Operator to operate an annual live horse race meet during the fall in addition to the traditional summer race meet.
- D. The Commission and the Operator executed a Third Amendment to the Operating Agreement effective February 26, 2015 ("Third Amendment").
- E. The Commission and the Operator executed a Fourth Amendment to the Operating Agreement effective August 1, 2015 ("Fourth Amendment").
- F. Section 6.6 of the Operating Agreement provides, in part, that the "Operator is required to, and will, use its best efforts in the operation of the horse race meets and any and all related activities to maximize all payments to the District and Commission for improvements to the Fairgrounds."
- G. Section 16.1.5 of the Operating Agreement provides that an occurrence of a default and breach of the Operating Agreement occurs "[i]f the Net to Gross Ratio for any two (2) consecutive years does not equal at least fifteen percent (.15)."
- H. The addition of a second race meet to the annual calendar has generated additional payments to the District and Commission for improvements to the Fairgrounds, but has had a negative effect on the Operator's Net to Gross Ratio as currently defined in the Operating Agreement.
- I. The award by Breeders' Cup Limited to conduct the Breeders' Cup World Championships at the Fairgrounds in 2017 will generate additional payments and revenues to the District and Commission for improvements to the Fairgrounds, but will also have a negative effect on the Operator's Net to Gross Ratio as currently defined in the Operating Agreement. Breeders' Cup

Limited has an option to conduct further Breeders' Cup World Championships in 2019 and 2020 on the same terms and conditions as 2017, subject to the approval of the Commission.

THEREFORE, in consideration of the above recitals, the mutual obligations and agreements in this Third Amendment, and for other good and valuable consideration, the Commission and Operator agree as follows:

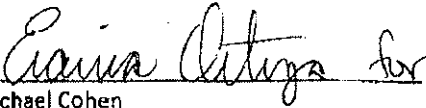
#### AGREEMENT

1. The following definitions shall be made a part of the Operating Agreement:
  - a. **"Racing Food and Beverage Gross Revenues"** shall mean the total revenues realized during the horse racing meets by the food service operator contracted by the District."
  - b. **"Racing Food and Beverage Net Revenues"** shall mean an amount equal to Racing Food and Beverage Gross Revenues multiplied by forty-two percent (.42).
  - c. **"Gross Combined Revenues from Racing"** shall mean the combination of Gross Revenues and Racing Food and Beverage Gross Revenues.
  - d. **"Combined Racing Final Net Earnings"** shall mean Final Net Earnings plus Racing Food and Beverage Net Revenues.
2. The following definition contained in the Operating Agreement as amended shall be deleted and replaced in its entirety with the following definition:
  - a. **"Net to Gross Ratio"** shall mean the ratio of Combined Racing Final Net Earnings to Gross Combined Revenues from Racing."
3. Except as expressly provided in this Fifth Amendment, in all other respects the Operating Agreement, the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment are hereby republished in their entirety and remain in full force and effect.
4. All capitalized terms used, but not expressly defined, in this Fifth Amendment shall have the meanings given to them in the Operating Agreement, the First Amendment, the Second Amendment, the Third Amendment or Fourth Amendment.
5. This Fifth Amendment may be signed in counterparts.

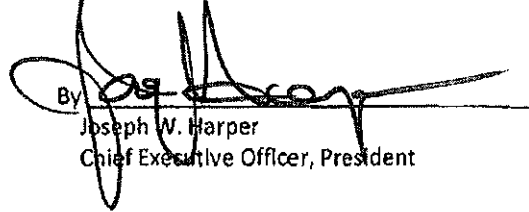


IN WITNESS WHEREOF, the Commission has caused this Fifth Amendment to be executed by its Chairperson, and the Operator has caused this Fifth Amendment to be executed by its Chief Executive Officer and President, as of the date set forth above.

STATE RACE TRACK LEASING COMMISSION,  
on behalf of the 22<sup>ND</sup> DISTRICT AGRICULTURAL  
ASSOCIATION

By:  for  
Michael Cohen  
Chairperson of the State Race Track Leasing  
Commission and Director of the California  
Department of Finance

DEL MAR THOROUGHBRED CLUB

By:  for  
Joseph W. Harper  
Chief Executive Officer, President

# State Race Track Leasing Commission (SRTLCL)

## Item 7-B, Approve Breeders' Cup Agreement

### Background:

The State Race Track Leasing Commission (Commission) was created through Food and Agriculture Code 4352 by the State Legislature in 1968 with the responsibility and authority to lease the Del Mar Race Track (Race Track) of the 22<sup>nd</sup> District Agricultural Association (District) and to oversee the expenditure of the rents received from leasing the track for the purpose of implementing a long-range, comprehensive improvement to District property.

On January 1, 2011, and following completion of a competitive bidding process, the Commission, acting on behalf of the District, entered into the Del Mar Race Track Operating Agreement (Operating Agreement) with the Del Mar Thoroughbred Club (DMTC). The initial Operating Agreement was a five-year term, with three, five-year options. Under the Operating Agreement, the Commission granted to DMTC the exclusive right to operate a portion of the Del Mar Fairgrounds for the purpose of providing thoroughbred horse racing at the Del Mar Fairgrounds.

In 2014, due to the California Horse Racing Board granting DMTC the right to conduct an additional live horse race meet in November of 2014 and 2015, the Commission executed a Second Amendment to the Operating Agreement which increased the annual Direct Payment to the District and added Section 5.8, which states:

“If Operator [DMTC] enters into negotiations with Breeders' Cup Ltd., for conducting the Breeders' Cup at the Del Mar Race Track, Operator shall consult with and solicit the input of the District on a regular basis. Subject to the foregoing and the consent of the District, Operator shall negotiate with Breeders' Cup Ltd. for conducting Breeders' Cup at the Del Mar Race Track located at the Del Mar Fairgrounds; *provided, however*, that any final agreement shall be subject to the prior approval of the [State Race Track Leasing] Commission.”

Through the DMTC's operations at the Del Mar Fairgrounds, the Race Track was selected as the host site for the Breeders' Cup World Championships in 2017, 2021, and 2024. This past November, plans were announced for the return of the Breeders' Cup World Championships to the Race Track in back-to-back years, 2024 and 2025.

The practice has been for DMTC to present the Breeders' Cup terms to the District for approval and the Breeders' Cup agreement to the Commission for approval. Consistent with that practice, the District Board of Directors approved the financial terms as outlined in the attached memo from DMTC, on November 14, 2023.



**Josh Rubinstein**  
*President & COO*

November 7, 2023

Sent via e-mail: [cmoore@sdfair.com](mailto:cmoore@sdfair.com)

Ms. Carlene Moore  
Chief Executive Officer  
22<sup>nd</sup> District Agricultural Association  
2260 Jimmy Durante Blvd  
Del Mar, CA 92014

**Re: 2025 Breeders' Cup World Championships**

Dear Ms. Moore,

As we have previously discussed, Breeders' Cup, Ltd. has had discussions with us about the possibility of Del Mar being selected as the host site for the 2025 Breeders' Cup World Championships ("BCWS"). As you know from your own personal experience when the BCWS was held at Del Mar in 2021, the BCWS represents one of the premiere sporting events in all the world, drawing participants and fans from all parts of the globe as well as showcasing Del Mar to a primetime television audience.

Del Mar is set to host the BCWS in November of 2024. It is a rare feat for an operator and host site to be selected by the Breeders' Cup for back-to-back BCWS. But because of the success of the events held here in 2017 and 2021, Breeders' Cup has presented us with the opportunity to host the BCWS again in 2025. The Breeders' Cup has made clear that its decision to bring the event to Del Mar in consecutive years is because of the high regard they have for our management team and staff, our working relationship with them and the relationship it has with the District as well. We are humbled that the Breeders' Cup holds all of us and the Del Mar Fairgrounds & Racetrack in such high regard.

DMTC hosting the 2025 BCWS would be the fourth time in the last nine years that the Del Mar Fairgrounds & Racetrack serves as the backdrop for this marquee event, and the benefits for the surrounding communities are substantial. Indeed, in those years where DMTC has hosted the BCWS the economic impact from horse racing for the local region has been over \$300 million annually.

At the District's Board meeting on April 11, 2023 the Board approved the terms for the 2024 BCWS, which will take place on November 1 and 2, 2024. The financial terms for the proposed 2025 BCWS are also subject to approval by the District and the State Race Track Leasing Commission ("SRTLCL"). Importantly, they are the same favorable terms that the District's Board already approved for the 2024 event. We are pleased to share the following material terms for the District's consideration of DMTC hosting the BCWS on October 31 and November 1, 2025:

- **Facility Rental Fee:** The District will receive a \$600,000 facility rental fee. This represents an increase of fifty percent (50%) over the \$400,000 facility rental fee the District received for the 2021 event.
- **Walk-Up Food & Beverage Concessions:** The District will receive fifty percent (50%) of the net revenue (defined as gross revenue less cost of goods sold and direct labor attributable to sales) generated from walk-up food and beverage concessions during the two-day event, subject to a cap of \$200,000. For your reference, the District received \$200,000 when DMTC hosted the BCWS in each of 2017 and 2021.
- **Event Expenses:** All expenses associated with operation of the 2025 BCWC are the responsibility of Breeders' Cup Limited. The District bears none.
- **Future Year Option:** The Breeders' Cup has the option – at the same favorable terms to the District as noted above – to conduct the BCWS at Del Mar in 2026, 2027, 2028 or 2029. To exercise the option the Breeders' Cup must provide written notice to DMTC on or before May 15 of the year that is two years prior to the year for which the event is to be held (e.g., notice must be given by May 15, 2025 in order to return to Del Mar in 2027). Further, both the award of the 2025 event and the option are contingent on DMTC continuing as the operator of Thoroughbred racing at Del Mar following the current term of the Del Mar Race Track Operating Agreement, which expires on December 31, 2025.

We believe these terms are very favorable to the District. Upon approval by the District's Board DMTC will similarly request approval by the SRTLC at its upcoming meeting.

Carlene, as we believe you, your staff, the District's Board and the STRLC already know, DMTC is recognized throughout the world as one of the very best operators of horse racing. And while there is steep competition from other racing associations to host the BCWC, because of DMTC's record and expert management team and staff, the Breeders' Cup has chosen DMTC to host its event for consecutive years in 2024 and 2025. As I noted above, this is an extremely rare situation and an honor not only for DMTC but Del Mar as well.

When DMTC was presented with the opportunity to host the BCWC in 2017 and again in 2021, the District and the STRLC exercised its options to extend the term of the Operating Agreement. In each instance, the option was exercised well in advance to do so. Those extensions were necessary because having DMTC remain as the operator was a condition Breeders' Cup imposed in order to bring those events to Del Mar. No such extension was necessary as part of the 2024 event. However, in order to have the 2025 BCWC here Breeders' Cup has made it clear to us that DMTC remaining as the operator of racing at Del Mar beyond the end of 2025 is a condition to coming here for consecutive years. The Breeders' Cup is therefore requesting that the District and STRLC exercise the final option to extend the term of the Operating Agreement to December 31, 2030 at this time. We understand that the Breeders' Cup is making its request to the District in a separate communication.

DMTC obviously is delighted and honored that Del Mar is considered such a phenomenal venue for the BCWC and that our reputation for excellence and record of success have led the Breeders' Cup to choose us to host our fourth Breeders' Cup in 2025. We hope the District and STRLC are also excited about this possibility and recognize the economic benefit that another BCWC global audience will bring to the District and local businesses.

Please do not hesitate to let me know if you have any questions or need additional information.

Respectfully,



Josh Rubinstein,  
President and COO



November 9, 2023

Sent via e-mail: [RValdez@SLLBV.com](mailto:RValdez@SLLBV.com)

Mr. Richard Valdez  
Director/DMTC Liaison Committee Chairman  
22<sup>nd</sup> District Agricultural Association  
2260 Jimmy Durante Blvd  
Del Mar, CA 92014

**Re: 2025 Breeders' Cup World Championships**

Dear Mr. Valdez:

On behalf of Breeders' Cup Ltd., I write to express our gratitude and excitement about the Breeders' Cup World Championships returning to the Del Mar Fairgrounds and Racetrack for our third time in November 2024. Our staff is already hard at work in preparing for another successful event.

As you are aware, the Breeders' Cup World Championships represent one of Thoroughbred horse racing's most prestigious events and we are proud of the fact that our event is considered one of the premiere sporting events in the world, with a network television audience and participants and patrons coming from all over the globe. Breeders' Cup has enjoyed an incredible partnership with the Del Mar Thoroughbred Club and the 22<sup>nd</sup> District Agricultural Association and our events at Del Mar in 2017 and 2021 were among our most successful ever. We are eager to put on another world-class event at Del Mar in 2024.

Apart from the 2024 event we have also discussed with management of the Del Mar Thoroughbred Club our desire to have them host our 2025 event at Del Mar. It is unusual for us to run Breeders' Cup World Championships at the same venue in consecutive years; however, we believe Del Mar and the Del Mar Thoroughbred Club provide a unique opportunity for us to do just that. Del Mar and the surrounding area not only provide our patrons and participants, who come from all over the world, with an incredible experience, but the Del Mar Fairgrounds and Racetrack also provide an unparalleled setting for our worldwide audience. Moreover, the management and staff of Del Mar Thoroughbred Club is unrivaled as an operator and has proven to have the expertise necessary to host a Breeders' Cup World Championship that is of the highest quality. Continuing our relationship with Del Mar Thoroughbred Club is not only important to us, but we consider their management team and staff to be fundamental to our ability to put on a world-class event at Del Mar.

We understand that the District has an operating agreement with Del Mar Thoroughbred Club that has a term ending on December 31, 2025, and that the District has an option to extend the

term of the agreement until December 31, 2030, provided that such option is exercised not later than 180 days prior to December 31, 2025. We request that rather than waiting until June of 2025 to exercise its option the District and the State Race Track Leasing Commission exercise the option at this time in order for us to award the 2025 Breeders' Cup World Championships to Del Mar. There are multiple reasons for us to make this request. First, financial commitments by the Breeders' Cup are required in contemplation of the event taking place. The Breeders' Cup staff operates on a strict timeline with many important decisions needing to be made and processes put into motion well before 2025. Even though the event would take place in November 2025, as with prior events, we will need to work closely with and be able to rely upon Del Mar Thoroughbred Club management and staff in finalizing and settling the terms of the 2025 event well into 2026. Our ability to fully and properly prepare for and successfully conduct the 2025 event will be jeopardized if we are not able to count on Del Mar Thoroughbred Club remaining as the operator of racing at Del Mar throughout 2025 and well into 2026. The assurance that Del Mar Thoroughbred Club continues as the operator is therefore a condition to our willingness to have the 2025 Breeders' Cup World Championships at Del Mar in 2025, just as it is with our option to come back in 2026, 2027, 2028 or 2029.

Again, we hope that the District and the Commission recognize how much we value our relationship and the support you have given to the Breeders' Cup. We are excited about the 2024 event at Del Mar and would love to be able to bring the Breeders' Cup World Championships to Del Mar in back-to-back years in 2024 and 2025. We strongly believe doing so will be mutually beneficial to both of us and hope you will consider our request.

If I can provide any additional information for your consideration, please do not hesitate to let me know.

Sincerely,



Drew Fleming  
Chief Executive Officer  
Breeders' Cup Limited

cc: Carlene Moore, 22<sup>nd</sup> DAA  
Josh Rubinstein, DMTC

*A Breed Apart*



SPORTS COLUMNISTS

## Del Mar to host second consecutive Breeders' Cup in 2025; officials 'ecstatic'



Jockey Joel Rosario, aboard Knicks Go, celebrates winning the Breeders' Cup Classic in 2021 at Del Mar. (Nelvin C. Cepeda/The San Diego Union-Tribune)

Iconic horse-racing destination already had landed the two-day, \$31 million event for 2024, marking first back-to-back hosts since 2014

BY BRYCE MILLER | COLUMNIST

NOV. 8, 2023 1:59 PM PT

There was a time when Del Mar salivated over a chance to host the Breeders' Cup, the money-soaked, two-day racing festival that lures horses and bettors from around the globe.

Then came 2017.

And 2021.

And soon, 2024.

Now, the place where Bing Crosby crooned about the turf meeting the surf has scored the big-event version of the daily double. Del Mar has been selected to cash in again in 2025, the first back-to-back host since Santa Anita polished off a three-year run in 2014.

The prospect of four times in nine years staggers.

"I would not be truthful if I didn't say, wow," Del Mar CEO Joe Harper said. "It was a surprise, obviously, the back-to-back thing. I remember when we gave a speech to the selection committee in New York (years ago), most had never been to Del Mar.

"When we had it in 2017, I think it opened a lot of eyes."

The 2025 Breeders' Cup is scheduled for Oct. 31-Nov. 1. The 2024 edition is set for Nov. 1-2.

The Breeders' Cup is racing's ultimate buffet, featuring 14 Grade I championships of varying distances, surfaces and genders with \$31 million on the line. It draws sheikhs and private jets, filling high-end hotels and restaurants.

A previous study commissioned by Del Mar through the Sports Management Research Institute claimed \$100 million worth of economic impact on the region.



Twice the sizzle. Twice the work. Twice the benefit.

“We’re ecstatic,” said Josh Rubinstein, Del Mar’s president and COO. “Any year is a real privilege. Back-to-back and four of nine is really special. It says a lot about the incredible support we get from the San Diego community.

“Yes, the weather is great. But it’s more than that. It’s the entire experience. It’s the restaurants, the hotels, the beach and the people.”

The 2017 visit to Del Mar still owns the on-track record for betting handle at \$25.18 million.

“Del Mar is such a special place for the Breeders’ Cup,” Breeders’ Cup President and CEO Drew Fleming said. “We’ve had such a resounding success the last two times we’ve been there. I think it’s an iconic venue. It’s so amazing. In addition to having world-class facilities, there’s definitely passion in the air for racing.

“When you go to restaurants and hotels, they’re talking about who the favorites are. It’s important to have buy in and support and San Diego certainly has that.”

The impact of consecutive events could be amplified across Del Mar’s racing program.

“Owners and trainerers not in California would think about Del Mar in the summer for stakes races (leading in),” Rubinstein said. “It’s like when Torrey Pines would host the U.S. Open. You would see the quality of the fields at the Farmers (Insurance Open stop on the PGA Tour) increase because players wanted to see and play the course.

“In the fall, as we saw in 2017, some trainers will bring extra horses and stay beyond the Breeders’ Cup.”

Bryce Miller

FINAL EXECUTION VERSION

**AGREEMENT**

**BY AND BETWEEN**

**BREEDERS' CUP LIMITED**

**AND**

**DEL MAR THOROUGHBRED CLUB**

**FOR**

**BREEDERS' CUP WORLD CHAMPIONSHIPS**

**2025**

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**AGREEMENT**

THIS AGREEMENT, made and entered into effective as of November 6, 2023, (the “Effective Date”) by and between BREEDERS’ CUP LIMITED, a New York not-for-profit corporation having its principal office and place of business at 215 West Main Street, Suite 250, Lexington, Kentucky 40507 (“BCL”) and DEL MAR THOROUGHBRED CLUB, a California corporation, having its principal office and place of business at 2260 Jimmy Durante Boulevard, Del Mar, California 92017 (“Host”).

**WITNESSETH:**

WHEREAS, BCL has been organized for the purpose of enhancing Thoroughbred racing through the development of public interest in the sport of Thoroughbred racing, thereby improving business conditions in the Thoroughbred industry;

WHEREAS, BCL sponsors a series of races known and designated as the Breeders’ Cup World Championships;

WHEREAS, pursuant to a written agreement with the State of California’s State Race Track Leasing Commission (acting on behalf of the 22<sup>nd</sup> District Agricultural Association) Host is the exclusive operator of Thoroughbred racing at the Del Mar Fairgrounds in Del Mar, California (“Del Mar”) with a current term ending December 31, 2025 and an option exercisable by the State Race Track Leasing Commission to extend the term thereof for another five-year term ending December 31, 2030 (the “Del Mar Race Track Operating Agreement”);

WHEREAS, Host conducts live pari-mutuel racing at Del Mar under a license granted to it under the laws of the State of California and has, or will obtain, the permits, licenses, authority and facilities to conduct Thoroughbred racing as herein contemplated;

WHEREAS, the parties have negotiated an agreement under the terms of which the Breeders’ Cup World Championships will be conducted by Host at Del Mar on October 31 and November 1, 2025, the terms and conditions of which agreement the parties now desire to reduce to writing as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties as herein contained, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which being hereby acknowledged, it is hereby agreed by and between the parties hereto as follows:

**ARTICLE 1**

**DEFINITIONS**

**1.1. Definitions**

Unless otherwise defined in the Agreement for purposes of a specific reference, capitalized terms appearing in the Agreement shall have the following meanings:

“Additional Races” shall mean the horse races, which Host will, with the approval of BCL, schedule on Championship Friday and Championship Saturday at the Facility in accordance with the provisions of Section 8.3 of the Agreement.

“Adverse Consequences” shall mean all proceedings, charges, complaints, claims, demands, injunctions, orders, damages, assessments, expenditures, outlays, awards, dues, penalties, fines, costs, interest, amounts paid in settlement, liabilities, obligations, payments, taxes, liens, losses, reduction in value, loss of use, injuries, expenses and fees of whatever nature, including without limitation court costs and reasonable attorneys’ fees and expenses.

“Affiliates” shall mean Breeders’ Cup Properties, LLC and Breeders’ Cup Charities, Inc.

“Agreement” shall collectively mean this Agreement and all exhibits hereto, as amended from time to time by a party hereto pursuant to the terms hereof or by agreement of the parties hereto.

“Authority” shall mean the Horseracing Integrity and Safety Authority, Inc.

“BCL Marks” shall mean the words “Breeders’ Cup” or “World Championships” and any logos, symbols or designs (i) referring to the Championship or (ii) referring to, relating to, owned by or licensed or sub-licensed by, BCL.

“Bankruptcy Event” shall mean, with respect to a Person, if such Person shall (i) discontinue business, or cease doing business for more than ten (10) days; (ii) make a general assignment for the benefit of creditors; (iii) apply for or consent to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (iv) be adjudicated bankrupt or insolvent; (v) file a voluntary petition in bankruptcy or file a petition or an answer seeking a composition, reorganization or an arrangement with creditors or seek to take advantage of any other law (whether federal or state) relating to relief for debtors, or admit (by answer, default or otherwise) the material allegations of any petition filed against it in any bankruptcy, reorganization, composition, insolvency or other Proceeding (whether federal or state) relating to relief for debtors; (vi) suffer the filing of any involuntary petition in any bankruptcy, reorganization, insolvency or other Proceeding (whether federal or state), if the same is not dismissed within thirty (30) days after the date of such filing; (vii) suffer or permit to continue any judgment, decree or order entered by a court which assumes control of its business or financial affairs or approves a petition seeking a reorganization, composition or arrangement of its business or financial affairs or any other judicial modification of the rights of any of its creditors, or appoints a receiver, trustee or liquidator for it, or for all or a substantial part of any of its businesses or assets or financial affairs; (viii) be enjoined or restrained from conducting all or a material part of any of its businesses as then conducted or as hereafter conducted and the same is not dismissed and dissolved within thirty (30) days after the entry thereof; (ix) not be paying its debts generally as they become due; or (x) admits in writing its inability, or is unable, to pay its debts generally as they become due.

“Challenge” shall mean the Breeder’s Cup Win and You’re In Challenge program, which are a series of select Thoroughbred horse races held at various tracks throughout the



world created to increase awareness of and interest in the Championships and create more high attendance days for host racing associations.

“Championship” shall mean a series of Thoroughbred races called the Breeders’ Cup World Championships and consisting of the Races to be presented by Host at the Facility on Championship Friday and Championship Saturday, and related activities contemplated in the Operating Budget.

“Championship Friday” shall mean October 31, 2025.

“Championship Saturday” shall mean November 1, 2025.

“Championship Week” shall mean the period October 26, 2025, through November 2, 2025.

“Change in Control” shall mean with respect to any Person one or more of the following: (i) any merger, share exchange or other reorganization to which such Person is a party or subject where there is greater than ten percent (10%) change in the ownership of such Person, (ii) the sale, lease or exchange following the date of the Agreement (either in one (1) transaction or a series of transactions) of greater than ten percent (10%) or more of the assets of such Person within a one (1) year period, (iii) the issuance of equity interests in such Person following the date of the Agreement (either in one (1) transaction or a series of transactions) which increases by greater than ten percent (10%) or more the equity of such person; (iv) the issuance of voting interests equal to greater than thirty-three percent (33%) or more of the voting interests of such Person prior to such issuance; or (v) any transfer of a controlling interest (a “Controlling Interest”) in such Person or in any entity which directly or indirectly owns a Controlling Interest in such Person.

“Contribution” shall mean the sum of the Facility Contribution and all Simulcasting Revenue.

“Dirt Dozen” shall mean the Breeders’ Cup Dirt Dozen program which is a series of designated dirt Thoroughbred horse races held at various tracks throughout the United States.

“Eligibility Requirements” shall mean the requirements to be satisfied for a horse to be eligible to compete in one of the Races as set forth in the Standards.

“Entry Fees” shall mean the fees paid with respect to horses competing in the Races as described in the section entitled “Entry Procedures and Fees: Entry Fee Requirements,” in the Standards.

“Facility” shall mean the Del Mar racetrack facility in Del Mar, California, which includes, without limitation, any stabling areas, exhibit halls, parking or other buildings and spaces.

“Facility Contribution” shall mean the amount of monies in United States dollars which Host agrees to pay to BCL for the privilege of presenting the Championship and consisting of the elements of the calculation of the Facility Contribution, all as set forth on Exhibit “A,” the

formula for the Facility Contribution being designed to provide Host with its average profits for a Friday and Saturday of high quality stakes racing, including on-track simulcasting that would occur on such days, reimbursement of Host's lost profits that occur during the weeks leading up to the Championship and following the Championship as compared to years when the Championship is not conducted at the Facility and to recognize extraordinary costs incurred by Host in connection with the Championship, including, without limitation, capital expenditures.

"Facility Gross Revenues" shall mean the aggregate Facility revenues for the Championship in all categories set forth in the Operating Budget and any additional operating revenues generated at the Facility on Championship Friday and Championship Saturday not specifically set forth in the Operating Budget but specifically excluding BCL only related revenue, which includes, without limitation, Simulcasting Revenues, merchandise revenues, and sponsorship revenues and also excluding any statutory purse distribution to Facility horseman with respect to on-track wagers in the Northern California simulcast signal.

"Facility Improvement Deposit" shall mean monies in United States Dollars equal to 50% of Host's share of Facility Net Revenue, which shall be deposited in a Facility Improvement Fund to be invested in the upgrade of the Facility on capital projects mutually agreeable to BCL and Host.

"Facility Net Revenue" shall mean the difference resulting from subtracting from Facility Gross Revenues the sum of the aggregate Facility expenses actually expended for the Championship in the categories set forth in the Operating Budget.

"Fees" shall include the Pre-Entry Fees, Entry Fees and other fees, except for BCL nomination fees, collected at Pre-entry and Entry.

"Field Selection Methodology" shall mean the methodology to be used in determining the horses which will compete in the Races as set forth in the section entitled "Breeders' Cup Field Selection Methodology" in the Standards.

"HISA" shall mean the Horseracing Integrity and Safety Act.

"Horseracing Act" shall mean the Interstate Horseracing Act of 1978 (15 U.S.C. §3001 et seq.).

"Host Marks" shall mean the words "Del Mar," and any logos, phrases, symbols, or designs referring to Host or the Facility.

"Host Racing Commission" shall mean the racing regulatory authority in the state where the Facility is located with jurisdiction over the racing and wagering activities of Host.

"Material Adverse Event" respecting BCL, Host or the Facility shall mean an event, change or occurrence which, individually or together with any other event, change or occurrence, has a material adverse impact on (i) the financial condition, business or results of operations of such party or Facility; (ii) the ability of such party or Facility to perform its obligations under this Agreement or to consummate other transactions contemplated by this

Agreement in accordance with applicable law or orders; or (iii) the ownership rights of horseowners participating in the Championship races.

“Off-Track Betting Facilities” shall mean any racetrack, off-track betting facility or gaming facility, advanced deposit wagering entity or any other entity, Person, or facility, including, without limitation, home wagering systems with the ability to wager on the Races and Additional Races, but excluding the Facility, Golden Gate Fields, the Southern California Off-Track Wagering Facilities and the Northern California Off-Track Wagering Facilities. “Operating Budget” shall mean the budget attached hereto as Exhibit “B.”

“Operating Agreement Option” shall mean the option exercisable by the California State Race Track Leasing Commission acting on behalf of the 22nd District Agricultural Association to extend the term of the Del Mar Race Track Operating Agreement with Host for a five (5) year term ending on December 31, 2030.

“Person” shall mean a natural person or any legal, commercial, or governmental entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, limited liability limited partnership, trust, business association, group acting in concert, or any person acting in a representative capacity which has a direct or indirect financial interest in Host.

“Pre-Entry Fees” shall mean the fees paid with respect to horses competing in the Races as described in the section entitled “Pre-Entry Fee Requirements” in the Standards.

“Properties” shall mean any and all property of whatever nature owned by or related to BCL, including, without limitation, the BCL Marks, the BCL name, logo, symbol, mascot, design or similar property, now known or hereafter developed.

“Property Rights” shall mean all rights in, related to or associated with the Properties, including, without limitation, all intellectual property rights, broadcast, television, cable, pay, satellite and other television, radio, streaming, digital, interactive, or immersive media, Internet, social media platforms (including, without limitation, any page, account, post, tweet notification or other application) and any media rights and privileges in and to the promotion, communication and commercial exploitation thereof.

“Purse Distribution Rules” shall mean the rules respecting the distribution of Purse Monies as set forth in the section entitled “Purse Distribution Rules” in the Standards.

“Purse Monies” shall mean the sum of the purses for the Races as prescribed by the Race Conditions, which sums shall derive from (i) sums paid by BCL to Host pursuant to Section 4.2 of the Agreement and (ii) such Fees and portion of the Contribution elected by BCL to offset monies otherwise payable by BCL to Host for Purse Monies, as set forth in Sections 3.2 and 5.2, respectively, of the Agreement.

“Races” shall mean the up to sixteen (16) Breeders’ Cup Championship races for Thoroughbred horses as set forth in the section entitled “Race Conditions” in the Standards.

“Race Conditions” shall mean the conditions prescribed for the Races as set forth in the section entitled “Race Conditions” in the Standards.

“Simulcasting” shall mean the authorized simulcasting of the Races and the Additional Races, and interstate and international off-track wagering on the Races and the Additional Races, including, without limitation, Pick 6 or other exotic wagering at locations other than the Facility as well as telephone wagering, advanced deposit wagering (including, but not limited to, advanced deposit wagering under the contracts described in Section 8.1(i) below), Internet or other computer wagering, home wagering or any other form of wagering besides on-track pari-mutuel wagering at the Facility; provided, however, that “Simulcasting” shall not include wagering at Southern California Off-Track Wagering Facilities, the Northern California Off-Track Wagering Facilities, and Golden Gate Fields.

“Simulcasting Revenue” shall mean all revenue which Host actually collects as a result of the Simulcasting of the Races and the Additional Races through Host’s good faith commercially reasonable efforts (which good faith commercially reasonable efforts shall not include the requirement to commence litigation), less any money room shift in Host’s favor resulting from Simulcasting which Host is unable to collect through the exercise of good faith commercially reasonable efforts (which good faith commercially reasonable efforts shall not include the requirement to commence litigation).

“Standards” shall mean the Race Conditions, the Eligibility Requirements and the Field Selection Methodology set forth in Exhibit “C” attached hereto, as the same may be revised by BCL in accordance with the Agreement.

“Term” shall mean, unless sooner terminated in accordance with Article 11 hereof, the period from the Effective Date, through December 31, 2025.

“Territory” shall mean Canada and all states, territories, and other property of the United States of America.

“TSC” shall mean The Safety Coalition formed in November 2019 by the BCL and leading racetrack organizations.

## ARTICLE 2

### PRESENTATION OF CHAMPIONSHIP

#### 2.1. The Championship

(a) Host agrees to present and conduct the Championship as set forth herein, which undertaking by Host includes, without limitation, an agreement by Host to present and conduct the Races at the Facility on Championship Friday and Championship Saturday in accordance with the Standards and the other terms of this Agreement.

(b) BCL and Host agree to hold a meeting of their respective department managers and key staff at the Facility no later than July 15, 2024, and thereafter at the request of BCL, to review plans for the Championship. The agenda for the meeting will include but not be

limited to staffing, ticketing, temporary seating, hospitality (including catering and food service which shall include detailed staffing plans), racing, wagering (including wireless or Wi-Fi wagering at the Facility), television, and marketing/promotion.

## **2.2. Revision of Races or Standards**

BCL reserves the right to revise the Races or the Standards, including, without limitation, the distance of each Race, the days on which the Races are run (but all Races must be run on either Championship Friday or Championship Saturday), the number of Races, the times of each race, and the order in which the Races are run, and any such revision shall be incorporated into and become a part of this Agreement as if the same had been adopted prior to the date hereof and included herein; provided, however, that apart from revisions to the purse structure of the Races by BCL pursuant to Section 4.1 hereof no such revision shall be effective if it would, in the reasonable and good faith opinion of Host, constitute a Material Adverse Event respecting the Facility; and provided further that any such revisions shall comply with at least the minimum requirements set forth in Host house rules on safety and integrity, California Horse Racing Board rules or rules promulgated by the Authority. Any such proposed revision shall be promptly submitted to Host and Host may, within fifteen (15) days of its receipt of such proposed revision, notify BCL in writing that such revision will, in the reasonable opinion of Host, constitute a Material Adverse Event respecting the Facility's operations, (provided, however, Host shall notify BCL within 24 hours if a proposed revision is submitted to Host during the week of the Championship) in which event BCL may, at its option (i) withdraw such proposed revision or (ii) terminate this Agreement with no liability to either party except that BCL shall reimburse Host for Host's reasonable, actual out-of-pocket expenses for the presentation of the Championship incurred prior to the date of termination. In the absence of such timely written notification by Host, such revision shall be deemed effective and binding on the parties hereto.

## **ARTICLE 3**

### **ELIGIBILITY AND FEES**

#### **3.1. Eligibility**

It is agreed by the parties that horses competing in the Races will be restricted to Thoroughbred horses, that BCL shall be the sole judge as to whether a horse is eligible to participate in the Races, and that BCL may refuse the pre-entry or subsequent entry of any horse if, in BCL's sole discretion, for any reason, including, without limitation, its association with any connection (e.g., owner, trainer, jockey) of such horse has engaged in any conduct that is unlawful, unethical or may otherwise compromise the integrity or reputation of the Breeders' Cup World Championships or Host; provided, that, (i) Host shall have the right to provide BCL with a list of any owners, trainers and jockeys who have been excluded from the Facility ("Host Exclusion List"). BCL, after considering in good faith such list, shall decide whether such persons are eligible to participate in the Races; (ii) BCL agrees to indemnify Host for any third-party claims in respect of any such refusals; and (iii) Host agrees to indemnify BCL for any third-party claims in respect of BCL's compliance with the Host Exclusion List. Notwithstanding the foregoing, BCL has the option to require the Host to run an Arabian horse

race on either Championship Friday or Championship Saturday in the Additional Races or BCL may elect to run an Arabian horse race in the Races; provided, however, that in either case Host shall have reasonable approval rights over such Arabian Race if the running of such race would be reasonably expected to negatively impact Host's economics under this Agreement.

### **3.2. Fees**

The Fees (except for Pre-Entry Fees paid directly to BCL or BCL's agents) shall be paid to and collected by Host in accordance with the Fees Collection Guidelines set forth in the Standards and for the account of BCL, and Host shall pay over and deliver the Fees (net of required refunds, if any) to BCL within five (5) business days after receipt thereof or, at the election of BCL, the Fees (net of required refunds, if any) may be deducted as an offset from the sums for Purse Monies which BCL is obligated to transfer to Host pursuant to Section 4.2 hereof.

## **ARTICLE 4**

### **PURSES**

#### **4.1. Purse Structure**

BCL shall provide the Purse Monies to be awarded in connection with the Races. The individual purse structure for the Races may be revised by BCL in its sole discretion at any time prior to October 1, 2025, and notice of any such revision shall be promptly furnished in writing to Host; provided, however, that BCL shall consult with Host before implementing any material decrease in the purse structure for the Races.

#### **4.2. Delivery of Purse Monies**

On or before the fourth business day following Championship Saturday, BCL shall wire transfer to Host, in United States Dollars, in trust for the purposes of this Agreement and to be held in the segregated Del Mar Race Meet Trust Purse Account, the Purse Monies, less (i) any Fees to be offset as provided in Section 3.2 hereof, and (ii) BCL's projection of the Facility Contribution.

Host further agrees to grant BCL a primary security interest in the funds in such trust account and to execute such reasonable and customary documents and make such reasonable and customary filings as are necessary to perfect the security interest. Host shall immediately notify BCL in writing if any secondary security interest occurs and Host shall be required to use good faith commercially reasonable efforts (which shall not include the payment of money) to obtain from the party seeking the secondary security interest an agreement which provides that BCL's security interest is a primary interest and that BCL is the first lien holder. Host, as trustee of BCL, shall disburse the 2025 Championship Purse Monies (less taxes and other sums required to be deducted pursuant to any applicable law) as expeditiously as possible but in no event earlier than the later of (i) November 15, 2025 if all drug testing on the purse earning horses has been completed and no positive test occurred, or (ii) the date upon which drug

testing on the purse earning horses has been completed (or otherwise as required by applicable law) in accordance with the Purse Distribution Rules and Section 8.2(d) hereof and upon the prior written consent of BCL. Notwithstanding the foregoing, BCL may direct the Host to withhold or delay disbursements of an owner's Purse Money at the sole discretion of BCL; provided, however, that BCL shall indemnify Host for any third-party claims in respect of any such withholding or delay direction. Notwithstanding the foregoing, BCL may direct Host to make such Purse Money payments earlier than November 15, 2025, on the condition that BCL has previously wired, and Host has received the balance of such Purse Money payments by providing written notice to Host. If requested by BCL, Host shall delay disbursement of an owner's Purse Monies beyond the foregoing date until such owner presents to Host documents relating to the exemption from or reduction of such owner's withholding taxes. Host shall use good faith commercially reasonable efforts to utilize wire transfer or ACH to disburse 2025 Championship Purse Monies to connections of horses entitled to such monies that are based outside the United States. It shall be the obligation of Host to transmit any withheld taxes to appropriate governmental bodies pursuant to any applicable law and Host shall indemnify, defend and hold harmless BCL for any failure to do so.

## **ARTICLE 5**

### **CONTRIBUTION**

#### **5.1. Contribution**

For the privilege of presenting the Championship (and to preclude, in accordance with Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, proscribed inurement of net income that is associated with the Championship) and in recognition of the benefits provided by the Championship and the entire BCL program to the Thoroughbred industry, Host agrees to pay BCL the Contribution.

#### **5.2. Delivery of Facility Contribution**

Host shall use its best efforts to provide BCL the Estimated Facility Contribution within six (6) weeks following Championship Saturday but no later than eight (8) weeks following Championship Saturday in sufficient detail to allow BCL to determine the accuracy of the calculation thereof. If BCL agrees with the Estimated Facility Contribution determination, it shall so advise Host and Host shall, within eight (8) weeks following Championship Saturday, deliver to BCL in United States Dollars ninety percent (90%) of the Estimated Facility Contribution (less any portion thereof elected by BCL to be deducted as an offset from the sums for Purse Monies which BCL is obligated to transfer to Host pursuant to Section 4.2 hereof) (the "Initial Facility Contribution"), with the balance of the Facility Contribution due BCL to be paid by Host on or before January 31, 2026, unless such date is extended in writing by BCL in its sole discretion. In the event information within the control of BCL is not provided by BCL to Host in a timely manner to permit Host to perform the calculations required by this Section 5.2 within the time periods required hereunder, then such time periods shall be delayed for a period of time sufficient to allow Host to perform such calculations after receiving the necessary information from BCL. If BCL in good faith disagrees with Host's determination of the Estimated Facility Contribution, the Initial Facility Contribution Payment shall still be paid to BCL within eight (8)

weeks following Championship Saturday, and upon the request of BCL, Host's accounts and records may be audited by BCL (or an independent accounting firm selected by BCL) at the expense of BCL. If as a result of such audit, BCL continues to disagree with Host's determination of the Estimated Facility Contribution, the parties shall negotiate in good faith a determination of the Facility Contribution or the actual Facility Contribution. If such good faith negotiations do not result in an agreed determination of such amount within sixty (60) days after completion of the BCL audit, the amount of such unpaid Facility Contribution due from Host to BCL shall be determined by binding arbitration pursuant to the expedited arbitration rules of the American Arbitration Association and paid to BCL immediately following such binding determination. The obligation of Host to deliver the Facility Contribution to BCL shall survive the termination of this Agreement provided Host presents and conducts the Championship. Regardless of whether there is a dispute over the amount of the Estimated Facility Contribution, Host agrees to grant BCL timely access to Host's books and records in respect of the Championship, including, without limitation, the reports set forth on Exhibit "D" hereto. Notwithstanding the foregoing, to the extent that good faith negotiations or the binding arbitration determines that the Host's Estimated Facility Contribution was lower than Five Percent (5%) of the Facility Contribution decided pursuant to negotiations or binding arbitration, then Host shall reimburse BCL for its related audit, legal and accounting fees.

**5.3. Facility Improvement Deposit**

Host agrees to make the Facility Improvement Deposit on or before January 15, 2026.

**ARTICLE 6**

**REPRESENTATIONS AND WARRANTIES OF BCL**

BCL hereby represents and warrants to Host, as of the date of this Agreement and at all times during the Term, as follows:

**6.1. Organization and Qualification**

BCL is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York and has full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

**6.2. Authorization; Absence of Violation or Default**

(a) All corporate action required to be taken by BCL to authorize the execution, delivery and performance of this Agreement has been properly taken.

(b) The execution, delivery and performance of this Agreement and any other agreements contemplated hereby by BCL and the consummation by it of the transactions contemplated hereby and thereby (i) will not violate or require any authorization, consent, approval, filing or notice under, any provision of any law or order applicable to BCL and (ii) will not conflict with the charter or bylaws of BCL.



**6.3. Disclosure**

No representation or warranty by BCL in this Agreement, and no written statement contained in any document, certificate or other writing, delivered by BCL to Host in connection with the transactions contemplated by this Agreement, contains any untrue statement of material fact or omits to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading.

**ARTICLE 7**

**REPRESENTATIONS AND WARRANTIES OF HOST**

Host hereby represents and warrants to BCL, as of the date of this Agreement and at all times during the Term, as follows:

**7.1. Organization and Qualification**

Host is a corporation duly organized, validly existing and in good standing under the laws of the state in which it is organized and has full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

**7.2. Authorization; Absence of Violation or Default**

(a) All corporate action required to be taken by Host to authorize the execution, delivery and performance of this Agreement has been properly taken.

(b) The execution, delivery and performance of this Agreement and any other agreements contemplated hereby by Host and the consummation by it of the transactions contemplated hereby and thereby (i) will not violate or require any authorization, consent, approval, filing or notice under any provision of any law or order applicable to Host (other than any necessary approvals of the Host Racing Commission) and (ii) will not conflict with the charter or bylaws of Host.

**7.3. Proceedings**

As of the execution of this Agreement, there is no proceeding instituted or pending or, to the knowledge of Host, threatened (or unasserted but probable of being asserted) against Host or the Facility that is reasonably likely to constitute a Material Adverse Event respecting the Facility. In the event Host becomes aware of any such proceeding after the execution of this Agreement, it shall give BCL prompt written notice of the existence of same.

**7.4. Compliance with Laws and Other Instruments**

Host conducts its business and operates the Facility so as to comply with all applicable laws, orders, governmental authorizations, licenses, or other proprietary and intellectual property rights of others, except for any instances of non-compliance that will not constitute a Material Adverse Event respecting Host or the Facility.

**7.5. Labor Relations**

As of the execution of this Agreement, Host's relations with its employees and its service providers are good and there are no labor difficulties or pending or threatened litigation respecting Host or the Facility that are reasonably expected to result in a Material Adverse Event with respect to the Championship or the Facility. As of the execution of this Agreement, Host is not the subject of any proceeding or is unaware of any such pending or threatened proceeding in which it is asserted that Host has committed an unfair labor practice (within the meaning of the National Labor Relations Act or comparable state law) or seeking to compel Host to bargain with any labor organization as to wages or conditions of employment, nor is there any strike or other labor dispute involving Host or the Facility that is reasonably expected to result in a Material Adverse Event with respect to the Championship or the Facility pending or, to the knowledge of Host, threatened, nor to the knowledge of Host, is there any activity involving employees of Host seeking to certify a collective bargaining unit or engaging in any other collective bargaining organizational activity that is reasonably expected to result in a Material Adverse Event with respect to the Championship or the Facility. In the event Host becomes aware after the execution of this Agreement of any such matters or proceedings regardless of whether Host believes such matters will have a Material Adverse Event, Host shall give BCL prompt written notice of the existence of same. Host and Host's material vendors, including, without limitation, caterers and concessionaries, have entered into all collective bargaining agreements applicable to labor at the Facility. Attached as Exhibit "E" hereto is a list of all collective bargaining agreements and the covered time period of each collective bargaining agreement with respect to Host and Host's material vendors. To the extent any terms, conditions or status of any of the collective bargaining agreements change, Host shall immediately notify in writing BCL of any such changes.

**7.6. Sale of Facility**

As of the Effective Date only, there are no current or pending significant discussions regarding the sale or Change in Control of the Host or any related party or Person, including, without limitation, any and all parent or affiliate companies or the sale of any or all of the Facility or any other material assets.

**7.7. Disclosure**

No representation or warranty by Host in this Agreement, and no written statement contained in any document, certificate or other writing, delivered by Host to BCL in connection with the transactions contemplated by this Agreement, contains any untrue statement of material fact or omits to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. To the extent any representation, warranty or covenant contained herein becomes untrue or materially changes, Host shall immediately notify BCL in writing.

**ARTICLE 8**

**COVENANTS OF HOST**

Host covenants to BCL as follows:

**8.1. Simulcasting and Off-Track Wagering; Delivery of Simulcasting Net Revenue**

(a) Host covenants that it shall use best efforts to obtain any and all governmental authorizations required from Host's jurisdiction by the Horseracing Act and all other laws, orders and governmental authorizations for the Simulcasting of the Races and the Additional Races and the wagering thereon within the Territory on or before December 31, 2024, and that all such governmental authorizations shall be in full force and effect during the Championship.

(b) Host covenants that it will request at execution of this Agreement and obtain, on or before December 31, 2024, the written consents of all necessary horsemen groups required by the Horseracing Act and all other laws, orders and governmental authorizations for the Simulcasting of the Races and the Additional Races and the wagering thereon to be contested in 2025, which consents (i) will be irrevocable; (ii) will make clear that no deductions other than statutory and the 2.5% horsemen's administrative fee payable to the TOC and CTT) will be made from: (i) the Simulcasting Revenue, (ii) revenues from (a) on-track wagering, (b) wagering at Southern California Off-Track Wagering Facilities on the Races and Additional Races, and (c) wagering in the Southern California Advanced Deposit Wagering zone on the Races and Additional Races for purses to Facility horsemen and (iii) will make clear that all source market fees and/or market access fees generated for Host on the Races and Additional Races will be paid to BCL as Simulcasting Revenue. BCL will use commercially reasonable efforts to assist Host to obtain such horsemen's consents. Host covenants that such written consents of the horsemen groups at the Facility shall be in full force and effect during the Championship.

(c) Host covenants to use best efforts to actively pursue the Simulcasting of the Races and the Additional Races and to generate the broadest possible Simulcasting of the Races and the Additional Races consistent with industry standards of wagering integrity and security at a commission rate to Host equal to or greater than fifty percent (50%) of the net commissions received by the Off-Track Betting Facilities accepting wagers on the Races and the Additional Races after payments to bettors and the subject state governmental bodies (except to the extent not permitted by applicable law), including, without limitation, the entry into such contracts (as may be satisfactory in form and substance to BCL and its counsel) with Off-Track Betting Facilities as may be necessary to assure maximum participation by Off-Track Betting Facilities in wagering on the Races and the Additional Races. Host shall obtain the approval of BCL of the form and substance of said contracts with Off-Track Betting Facilities prior to submitting said contracts to said Off-Track Betting Facilities for their execution and shall not enter into any exclusive contracts for Simulcasting on the Races or Additional Races without the prior written consent of BCL. Host covenants that it has not entered into (and will not at or prior to the Championship enter into) any contract (including, without limitation, any contract granting exclusive rights with respect to Facility simulcasting) which would inhibit or in any way interfere with the Simulcasting and the broadest possible Simulcasting of the Races and the Additional Races. Host covenants to have in place by no later than October 24, 2025 internet capabilities with the bandwidth to reasonably accommodate most patrons at the Facility so that

most patrons may wager over the internet via their mobile devices while at the Facility. Host shall develop (in consultation with BCL) on or before May 1, 2025, a listing of all Off-Track Betting Facilities to be solicited by Host (and such list shall include all Off-Track Betting Facilities that Host has done business with in the last twenty-four (24) months) and shall, as reasonably requested by BCL, add to or delete from said listing of Off-Track Betting Facilities to be solicited for Simulcasting. Following the development of such listing, Host covenants to report the results of such solicitation to BCL every fourteen (14) days or, if any such reporting day is not a business day, the first business day thereafter. So long as Host complies with all of the requirements set forth in this Section 8.1(c), Host may have the Simulcasting contracts executed by Host's simulcast purchase and sales agent, Monarch Content Management LLC.

(d) Host covenants to use best efforts (which best efforts shall not include the requirement to commence litigation) to collect, within eight (8) weeks following the Championship, all Simulcasting Revenue and will submit weekly reports to BCL describing the efforts being taken and the results thereof beginning within one (1) week following the Championship, until such time as all Simulcasting Revenue has been collected or until BCL agrees in its reasonable judgment that collection efforts may be discontinued. Notwithstanding the provisions of Section 5.2 hereof, Host agrees to pay over and deliver to BCL all Simulcasting Revenue as a component of the Contribution within five (5) days after receipt by Host but in no event later than the date six (6) weeks after the Championship. Any amounts not paid to BCL on a timely basis as described in this Section 8.1(d) shall be subject to the lesser of (i) a per annum service charge of eighteen percent (18%) (compounded on a monthly basis) or the highest possible interest rate allowed by law. Following the Championships, Host agrees that it will not subsequently permit any Off-Track Betting Facility that has not paid to Host all unpaid Simulcasting Revenue to process wagers on horse races conducted at the Facility.

(e) Simulcast Revenue. Host shall pay to BCL one hundred percent (100%) of the Simulcasting Revenue received pursuant to such Simulcasting arrangements within and outside the Territory as part of the Contribution pursuant to the terms and conditions of this Agreement and in accordance with the provisions of Section 8.1(d) hereof. The obligation of Host to deliver the Simulcasting Revenue to BCL shall survive the termination of this Agreement.

(f) On-Track ADW. Notwithstanding anything contained herein, to the extent wagering occurs via Advanced Deposit Wagering by a resident of California on the Races, Additional Races, and imported simulcast signals while the resident of California is present at the Facility, one hundred percent (100%) of such revenue (at the increased Host Track takeout percentage) shall be treated as on-track pari-mutuel handle in the calculation of Facility Net Revenue. BCL and Host shall work in good faith with each other to determine a commercially reasonable strategy to try to require Advanced Deposit Wagering providers to geo-locate non-California residents at the Facility and include any such wagering by such non-California residents as on-track pari-mutuel handle in the calculation of Facility Net Revenue.

(g) California Off-Track Handle. Wagering on the Races and Additional Races occurring at Southern California Off-Track Wagering Facilities and any fees related to wagering on the Races and Additional Races occurring at Northern California Off-Track Wagering Facilities shall be treated as on-track pari-mutuel handle in the calculation of Facility

Net Revenue. To the extent any rules or regulations are amended with respect to (i) the Northern California Off-Track Wagering Facilities or (ii) Advanced Deposit Wagering in the Northern California Advanced Deposit Wagering zone which permit a portion of such wagers to be allocated to Host then: (i) such portions from Northern California Off-Track Wagering Facilities shall be treated as on-track pari-mutuel handle in the calculation of Facility Net Revenue; and (ii) such portions from Advanced Deposit Wagering in Northern California Advanced Deposit Wagering zone shall be treated as Simulcasting Revenue.

(h) Host covenants that on Championship Friday and on Championship Saturday, for the period beginning thirty (30) minutes prior to the first Race on each day and continuing through the conclusion of the last Race on each day, it will not conduct at the Facility simulcast presentations of, and will not accept wagers on, races from other race tracks unless written consent for such simulcast presentations and wagering thereon has been granted in writing by BCL (which consent may be withheld by BCL in its sole discretion) and if BCL consents to such simulcast presentation then wagering revenue on such simulcast presentations shall be treated as on-track pari-mutuel handle in the calculation of Facility Net Revenue. On Championship Friday and Championship Saturday, BCL agrees that Host may conduct at the Facility simulcast presentations of, and accept wagers on, races from other race tracks after the conclusion of the last race at the Facility on each day or as permitted by BCL in writing. The wagering on such simulcast presentations shall be treated as on-track pari-mutuel handle in the calculation of Facility Net Revenue.

(i) Host acknowledges and covenants that Host shall timely enter into non-exclusive contracts with advanced deposit wagering companies (and those companies shall include, without limitation, XpressBet, Betfair/TVG, NYRA Bets, TwinSpires and such other advanced deposit wagering companies reasonably necessary to maximize simulcast revenue) to permit such advanced deposit wagering companies to exercise the right to process wagers on the Races and Additional Races on Championship Friday and Championship Saturday. If requested by BCL, Host covenants to use its best efforts to enter into non-exclusive contracts permitting exchange wagering on the Races and Additional Races; provided, however, that such wagering is approved by the applicable horsemen's group and governmental authority.

(j) If requested, Host covenants to use its best efforts to obtain a waiver of any requirement to pay excise taxes relating to the Races and Additional Races as set forth on Exhibit "F".

**8.2. Permits and Agreements; Conduct of Championship in Accordance with Law**

(a) On or before November 30, 2024, Host covenants to use its good faith commercially reasonable efforts to obtain authorization for racing dates for the Championship to be held on October 31 and November 1, 2025. On or before August 31, 2025, Host covenants to use its good faith commercially reasonable efforts to receive any and all permits and other authorizations as may be necessary to present the Races and the Additional Races on Championship Friday and Championship Saturday at the Facility in accordance with the terms and conditions of this Agreement and any and all laws. If Host has not obtained any and all such

authorizations and such permits on or before August 31, 2025, BCL may terminate this Agreement by providing written notice to Host at any time thereafter until such time as those authorizations and permits are obtained. If BCL does not terminate this Agreement, Host shall provide BCL with updates at reasonable intervals informing BCL of the then current status of obtaining such authorizations.

(b) Host shall (i) promptly seek such additional approvals, rule variations, waivers, racing dates and any other governmental authorizations, including approval of the State Race Track Leasing Commission, as may be required to so present the Races and the Additional Races in accordance with the terms and conditions of this Agreement and (ii) obtain racing dates and all other such additional approvals, rule variations, waivers and any other governmental authorizations as may be so required, including, without limitation, those set forth on Exhibit "G" hereto. Host covenants to request any and all conditions of entry and seek any and all related consents, including, without limitation, the horsemen consent and the California Horse Racing Board consent with respect to any medication stipulations, including, without limitation, conditions of entry and all other house rules (so long as such conditions of entry or house rules do not otherwise violate applicable laws), and steroid prohibitions requested by BCL. Host shall notify BCL that it has so secured such racing dates and such other additional approvals, rule variations, waivers and any other governmental authorizations promptly after receipt thereof. Moreover, Host covenants to provide BCL a status update, by May 1, 2025, regarding racing and non-racing (e.g., temporary structure permits) permits and authorizations necessary to present the Championship as set forth herein, including any permits or authorizations that have been denied or are anticipated to be denied.

(c) Host covenants to use good faith commercially reasonable efforts to obtain, on or before August 31, 2025, any and all governmental authorizations permitting the specialized Championship wagering format for both on- and off-track wagering, including, without limitation, necessary waivers to permit Championship bet types, minimum runner standards, coupling/entry rules, takeout rates and other matters as requested by BCL, which governmental authorizations shall be acceptable in form and substance to BCL and its counsel and, once obtained, shall be in full force and effect during the Championship. If Host has not obtained any and all such authorizations on or before August 31, 2025, BCL may terminate this Agreement by providing written notice to Host at any time prior to Host receiving such authorizations. If BCL does not terminate this Agreement, Host shall provide BCL with updates at reasonable intervals informing BCL of the then current status of obtaining such authorizations.

(d) Host further covenants to use good faith commercially reasonable efforts to have in effect prior to January 1, 2025 (other than Local 280), such contracts with applicable representatives of employees or contractors of Host and the Facility including, without limitation, any and all collective bargaining agreements as may be necessary to ensure the presentation of the Championship without interruption or disturbance of the racing program by any and all labor/management disputes. If Host has not obtained any and all such authorizations on or before January 1, 2025 (other than Local 280), BCL may terminate this Agreement by providing written notice to Host at any time prior to Host receiving such authorizations. If BCL does not terminate this Agreement, Host shall provide BCL with updates at reasonable intervals informing BCL of the then current status of obtaining such authorizations.

(e) Apart from determinations respecting satisfaction of the Standards (which determinations shall be within the sole authority of BCL), Host covenants that it shall be solely responsible for conducting the Championship in compliance with any and all applicable laws and orders, including, without limitation, determinations respecting the issuance and validity of credentials, including, without limitation, licenses to owners, trainers and other participants in the Races and the Additional Races, the entry of horses, the running of the Races and the Additional Races, the determination of winners and the placing of finishers in the Races and the Additional Races, compliance with any withholding or other obligations respecting taxes and the Simulcasting of the Races and the Additional Races. Purse distribution with respect to the Races, as determined by BCL in accordance with the terms of this Agreement, shall be made on the official order of finish as determined exclusively under the laws of the jurisdiction in which the Facility is located.

(f) Host covenants that the Facility shall be accredited by the Authority and such accreditation shall be in place on the dates of the Championship.

(g) Notwithstanding the deadlines set forth in Section 8.2, Host shall use commercially reasonable efforts to secure all necessary approvals, consents and permits as soon as reasonably possible.

### **8.3. Additional Races**

(a) Host covenants that it shall schedule the Additional Races in 2025 on both Championship Friday and Championship Saturday, the purses for which are included in the Operating Budget. Host and BCL covenant to work in good faith to establish Additional Races which shall maximize wagering and improve the quality of Championship Friday and Saturday. The number, distance, type, purses, starting position, fees and conditions for the Additional Races shall be established by Host and submitted to BCL for its approval no later than July 1, 2025; provided, however, that Host shall schedule five (5) Additional Races on Championship Friday and three (3) Additional Races on Championship Saturday which are approved by BCL. The purses for the Additional Races shall be provided by Host, but shall be considered an expense of the Championship for purposes of calculating Facility Net Revenue (i.e., such purses shall be included in Facility expenses in the Operating Budget) so long as such purses are not funded from the horsemen's purse account. The Additional Races shall be arranged and scheduled by Host and approved by BCL and shall be compatible with the Championship racing program, and none of such races shall be scheduled within the time frame of the television coverage to be provided by the licensee of BCL without the prior written consent of BCL (which consent may be withheld by BCL in its sole discretion). Host covenants to use its commercially reasonable efforts to recruit horses for the Additional Races, including, without limitation, coordinating recruiting with BCL representatives, provided that Host shall not be responsible for payment of any financial or other recruitment incentives. From the Effective Date through the end of 2025, Host shall consult with BCL (including by providing copies of its condition books) and exercise good faith efforts to not conduct races that would directly conflict with the Additional Races.

(b) Host covenants that BCL shall retain all commercial sponsorship rights to the Additional Races (in addition to the Races) and Host shall not sell any commercial

sponsorships to the Additional Races without the prior written consent of BCL (which consent may be withheld by BCL in its sole discretion).

#### **8.4. Condition and Preparation of the Race Courses**

(a) Host covenants to use its best efforts to see that the turf course and main track at the Facility shall be fresh and in excellent repair and condition for the racing to be conducted thereon on Championship Friday and Championship Saturday. Host further covenants that for the Championship (i) the Facility turf course and the main track shall be prepared in such a fashion to make the racing surface safe, consistent and unbiased, (ii) the Facility turf course shall be prepared in such a fashion so that it is consistent with international turf championship racing conditions; and (iii) the composition of either the Facility turf course or main dirt track shall not be changed in any significant manner without the prior written consent of BCL. Host covenants that it will not schedule races at the Facility with conditions similar to those of any of the Races for the two (2) weeks prior to and for the two (2) weeks immediately following the Championship. BCL shall have the right to approve, in its sole and absolute discretion, the race cards each day during Championship Week to assure that no damage is done to the turf course or the main track. Host covenants that it will conduct racing on its turf course during its Fall 2025 meet in such a manner as to preserve the condition of the turf course and specifically the portion of the turf course which begins at the zero-rail position and extends to the 24-foot mark. Specifically, Host will run all turf races, including turf stakes, with the temporary rail at twenty-four (24) feet (or the Facility's normal distance) rather than on the inside zero-rail position during the two (2) week period prior to the Championship. Additionally, Host will restrict the number of starters in such turf races to twelve (12) or less. Host covenants that it shall not conduct nor permit any entertainment or other activities within one hundred twenty (120) days prior to the Championship which could damage the turf course or main track. None of the races scheduled to be run on the turf on Championship Friday or Championship Saturday shall be rescheduled for any other surface without the prior written consent of BCL (which consent may be withheld by BCL in its sole discretion), unless the California Horse Racing Board stewards deem it unsafe for horses to run on the turf course. Unless otherwise approved by BCL, Host covenants to provide a single finish line for both the main track and the turf course at the Facility. Host covenants that the main track, turf course and stable area at the Facility will be available from the date three (3) weeks prior to Championship Friday through the date ten (10) days following Championship Saturday for training and stabling of any and all horses intended to be entered in the Races and Additional Races, and Host covenants to use best efforts to accommodate any horses which cannot feasibly be shipped from the Facility on or before the date ten (10) days following Championship Saturday; provided, however, that BCL acknowledges and agrees that (i) Host cannot guarantee the availability of the Facility prior to Sunday, October 19, 2025 (with the exception of the Quarantine Facility being sealed for a month prior to the Championships and international horses being permitted to ship in on Saturday, October 18, 2025) and (ii) for any incremental costs incurred by Host in the event that Host is required to take possession and open the Facility prior to the Normal Opening Date of its Fall Meet in order to satisfy its obligations hereunder shall be included in the Facility Net Revenue calculation. Host will permit turf training during specified dates and times as mutually agreed.



(b) BCL shall be solely responsible for any incremental costs incurred by Host in the event Host is required to take possession and open the Facility prior to the start of its fall meeting in order to satisfy its obligations hereunder.

(c) Host covenants to make the main track and turf course at the Facility available for inspection(s) by an independent third party designated mutually by BCL and Host, to assure the condition and safety of the main track and turf course, upon reasonable notice by BCL, and that the condition of the main track and turf course shall be acceptable to the satisfaction of BCL's third party designee. Host agrees to negotiate in good faith with BCL to implement reasonable changes at the sole cost and expense of Host to its main track and/or turf course recommended by such third-party designee to assure the condition and safety of such racing surfaces such that the condition of the main track and turf course are similar to the conditions occurring at the 2021 and 2024 Breeders' Cup World Championships.

(d) Host agrees to provide BCL access to the InCompass Jockey Injury Database and the InCompass Equine Injury Database for the Facility during the Term and BCL shall use the information contained therein for its internal purposes only.

#### **8.5. Equine Facilities; Equine Drug Testing**

(a) Host covenants to cause to be located at the Facility or at a location approved by BCL, not later than thirty (30) days prior to Championship Friday, and to be operated as necessary thereafter through the date ten (10) days following Championship Saturday, fully approved and accredited quarantine and isolation facilities in which horses arriving from other countries may be accommodated. The quarantine facilities shall be suitable to accommodate such horses until duly released by the appropriate governmental bodies of the United States and the state in which the Facility is located for racing at the Facility, without the necessity of such horses remaining in quarantine subsequent to importation at some other location. Host shall provide the quarantine and isolation facilities in the areas at the Facility identified on Exhibit "H." The quarantine and isolation facilities in such areas shall meet all requirements of applicable law (including, without limitation, the requirements of the state in which the Facility is located and the United States Department of Agriculture). Host agrees to accommodate the shipping and training schedules of such horses. Further, in the event the horses are prevented by applicable state or federal rules and regulations from training within the quarantine facilities, Host shall timely provide quarantine facilities which contain a walking area satisfactory for horses to utilize prior to being released from the quarantine facilities. The quarantine facilities must be capable of accommodating the segregation of at least six (6) separate shipments of horses without delaying the training schedule of the earlier arriving horses. Facility expenses for the quarantine facilities reflected in the Operating Budget shall not include the portion of Facility quarantine expenses incurred with respect to horses running in races other than the Races. If required, Host will prepare additional stalls as Isolation stalls in an additional barn to house international horses which have already arrived in the United States and have cleared quarantine.

(b) Host covenants to make available for the presentation of the Races and the satisfaction of its obligations hereunder the entire premises of the Facility with the sole exception of such areas (e.g., a portion of the Facility stable areas) as may be required for Thoroughbred

racing at the Facility prior to and following the Championship. In that regard, Host covenants to make available at the Facility a minimum of 175 stalls (in addition to the stalls in the above-referenced quarantine and isolation facilities) in sprinklered, full security BCL barns (with high-definition cameras) for use by horses which are shipped to the Facility for the purpose of competing in the Races and the Additional Races. Such stalls in the barn shall be in close proximity to one another. All such stalls shall be available to such Thoroughbred horses for three (3) weeks prior to Championship Friday and for ten (10) days after Championship Saturday, with ready access to media representatives approved by BCL and other personnel approved by BCL; provided, however, that BCL acknowledges and agrees that (i) Host cannot guarantee the availability of the Facility prior to Normal Opening Date (with the exception of the Quarantine Facility being sealed for a month prior to the Championships and horses be permitted to ship in on Saturday October 18, 2025) with track open for training on Monday, October 20, 2025, and (ii) any incremental costs incurred by Host in the event that Host is required to take possession and open the Facility prior to the Normal Opening Date of its Fall Meet in order to satisfy its obligations hereunder shall be included in the Facility Net Revenue calculation. Host covenants to provide twenty-four (24) hour security beginning on Tuesday, October 28, 2025 at 11:00AM (Pacific Time) for each horse competing in the Races, at least equal to the highest race track industry standard, including services by the agency or agencies designated by BCL, for all such barns designated as BCL barns at the Facility during Championship Week, and, with respect to any quarantine facilities referred to in Section 8.5(a) hereof, for so long as any such facility is occupied by a horse entered for a Race. Host also covenants to provide twenty-four (24) hour security beginning forty-eight (48) hours prior to first post for each horse competing in the Additional Races as per requirements for horses competing in the Races. Host covenants to provide a twenty (20) stall race day assembly barn in close proximity to the racetrack at the Facility for the exclusive use of entrants in the Races on Championship Friday and Championship Saturday. In addition, Host agrees to provide a test barn capable of accommodating ten (10) horses walking at the same time with no less than six (6) stalls for post-race drug testing.

(c) Host covenants to provide, if and to the extent that room is available in existing dormitories on the Facility backside, accommodations at the Facility during Championship Week, mutually agreeable in condition and number, for grooms and other backstretch personnel caring for horses pre-entered or entered in the Races.

(d) Host covenants that the quarantine and isolation facilities, barns and backside accommodations for grooms and other backside personnel shall be in good repair and, to the extent that work is required to bring such buildings into good repair, such work shall be completed and reasonably satisfactory to BCL no later than September 30, 2025.

(e) Host agrees to implement house rules, if requested by BCL, requiring trainers of horses pre-entered in the Races and Additional Races to utilize official Breeders' Cup saddle towels each and every time a pre-entered horse goes to the Facility racetrack during Championship Week.

(f) In order to provide for emergency medical treatment for the horses competing in, and training for, the Races and Additional Races, Host covenants to provide at least three (3) equine ambulances, which must have technological features at least as

sophisticated as those of the equine ambulance manufactured by Kimzey Welding Works, Inc. of Woodland, California. During morning workouts of Championship Week, Host shall have an equine ambulance pulled by a truck and continually staffed by a driver in close proximity to the track and have veterinarians on hand. In addition, Host agrees to secure access to an equine trauma facility acceptable to BCL within a reasonable distance from the grounds of the Facility.

(g) Host covenants that it will use available drug testing tools and methods which can best assure that the Races and the Additional Races are conducted in compliance with applicable law and race conditions and will have available split blood and split urine samples in connection with such testing, the cost of such testing not funded by the Host Racing Commission or other sources to be included in the calculation of Facility Net Revenue. Drug testing in accordance with this Section 8.5(g) shall be conducted on a minimum of the first four (4) finishing horses and at least one (1) extra, as determined by the Stewards, in each Race. In addition to the foregoing, Host covenants to cooperate with racing regulatory authorities in pre-race testing for total carbon dioxide to be conducted on all horses participating in the Races. Host covenants to cooperate with racing regulatory authorities so that all blood and urine samples collected from horses competing in the Races shall be collected in sufficient volumes so that samples may be preserved for future analysis. Further, Host covenants to cooperate with racing regulatory authorities in pre-race, out-of-competition testing to be conducted on up to one hundred (100) percent of potential Breeders' Cup participating horses or horses that have been pre-entered.

(h) BCL and Host may by mutual agreement implement race conditions or other rules respecting the use of medications in the Races and/or the Additional Races, subject to approval of regulatory authorities.

#### **8.6. Media Access and Coverage**

(a) Host covenants to work in good faith with BCL to develop plans (subject to final approval of BCL) designed to present the Championships in a fashion which will create maximum publicity and media exposure for the entire BCL program, and the Thoroughbred industry in general, in order to increase interest in and attendance at Thoroughbred racing events throughout the world.

(b) BCL is a party to an agreement with NBC Universal under the terms of which NBC Sports Network and/or NBC Network has agreed to telecast Breeders' Cup World Championships races, which expires following the 2025 Breeders' Cup World Championships. Both BCL and Host agree to use their best efforts to work together in good faith with NBC Universal or its successor-in-interest (including, without limitation, any BCL broadcast partner) with respect to the production and telecast of the Breeders' Cup World Championship.

(c) Host covenants to cooperate in good faith with BCL, its agents and employees, in the negotiation for and provision of television, radio, digital, interactive or immersive media and any other media or entertainment coverage of the Championship, now known or hereafter developed, and to do each and every thing reasonably required to assure the successful promotion and broadest coverage of the Races, the Additional Races, and the Championship itself. In addition, to the extent such rights are the property of Host, Host grants

to BCL a perpetual, royalty-free, transferable, sub-licensable, worldwide, exclusive license to use, modify, distribute and sell any and all commercial broadcast, television, cable, pay, satellite, and other television, radio, digital, interactive or immersive media, Internet and any other media and entertainment rights and privileges, now known or hereafter developed (subject to the receipt of any approval required by law which Host shall use best efforts to obtain) in and to the promotion, communication and commercial or entertainment exploitation of the Races, and the Additional Races and the Championship itself. Host covenants to cooperate in good faith with such marketing, entertainment, and promotional persons and agencies as BCL may designate in its efforts to market and promote BCL, the Championship, the Property Rights and the Thoroughbred industry in general, and to secure the widest possible media and entertainment coverage thereof. Host covenants to cooperate with and to assist media or entertainment licensee(s) or BCL's designee(s) in the provision of media and entertainment coverage of the Races, the Championship, and the Additional Races. Host covenants to grant non-exclusive access to BCL's selected industry television network or entertainment licensee(s) to film and/or produce television or entertainment works including without limitation a simulcast show and a pre-event "works" show and to cooperate and assist such industry television network in connection with the provision of television or entertainment coverage relating to the Races, the Additional Races, or the Championship itself. Host further covenants that, except as authorized or permitted under the terms of this Agreement, it will not permit the presentation of depictions or recordings of the Races or the Additional Races for viewing of whatever nature (including, without limitation, any local television programming featuring Facility races) without the prior express written consent of BCL or its primary television licensee (which consent may be withheld by BCL or its television licensee in their sole discretion); provided, however, that the foregoing shall not restrict the Simulcast of the Races and the Additional Races to Off-Track Betting Facilities. Host covenants to make available to BCL and its licensees and to assist as requested by BCL during Championship Week in the use of any of the Facility's video rooms and related facilities. Host covenants to provide such facilities and accommodations at the Facility during the period from October 22, 2025, through November 2, 2025, as BCL may in its discretion require for BCL's television licensees or such other times as BCL may, in its reasonable discretion, request. Host covenants that the starting times of the Races, and the presentation of the Races, shall be consistent with the goals set forth in Section 8.6(a) above, and consistent with any television schedule required by any national network, cable or other entity designated by BCL to televise the Races. Host covenants that it shall adjust the starting times for the Races as may be directed by BCL to accommodate any such television schedule, and covenants that the time schedule for the Races shall be strictly followed.

(d) Host covenants to provide ready access to BCL staff members, BCL television licensee(s) and all other media representatives to areas of the Facility in accordance with the Championship Credentials Guidelines set forth in Exhibit "T" hereto. BCL has the right to credential or exclude all media representatives in its sole discretion and BCL shall decide specific areas of the Facility that media representatives are entitled to visit or are prohibited from visiting. Host further grants BCL the right to designate the positioning of any temporary electronic message boards (e.g., Jumbotron) at the Facility in order to remove any obstruction or impediment to BCL's desired media coverage of the Championship.

(e) Host covenants that BCL shall have final approval regarding the selection of a race caller for both the on-track and broadcast call of the Races. Host further covenants to

have an announcer acceptable to BCL in its sole discretion other than the aforesaid race caller available for on-track comments between the Races and/or to call the Additional Races.

(f) Host covenants to provide appropriate facilities in good condition for members of the media on Championship Friday and Championship Saturday as directed by BCL. Host shall provide a minimum of 200 work stations in its press boxes for the local, national and international media covering the Championship and provide a press facility for photographers containing no less than 75 work stations. In addition, Host agrees to provide a media facility for post-Races interviews on Championship Friday and Championship Saturday with a minimum seating capacity of 35 persons and will also provide a backstretch/morning workout media area. Host agrees that all of the facilities described in this section shall be fully operational beginning Sunday, October 26, 2025, and remain operational and in good condition throughout Championship Week. Host covenants that BCL will have final approval of all press area designs and on the accreditation of, and the assigned seating locations for press members.

### **8.7. Trophy Presentations**

Host covenants to provide within its trackside winner's circle at the Facility space and circumstances, suitable in the reasonable judgment of BCL, for the awarding of trophies or other prizes by BCL and its sponsors following each of the Races and Additional Races. Host covenants to provide an adequate number of qualified personnel approved by BCL necessary to assist in the conduct and staging of the awards presentation in conjunction with BCL's television licensee(s), so as to provide unimpeded television coverage of such presentations.

### **8.8. Marketing and Sponsorship**

(a) Host covenants to cooperate in good faith and consult in good faith with BCL and its designee(s) which shall conduct marketing programs specifically designed to promote the Championship, BCL and BCL's other events in the Facility market area. Such marketing program shall be developed in consultation with Host and shall include, without limitation, daily Championship marketing (making use of the Championship logo designed pursuant to Section 9.3 of this Agreement) in the programs at the Facility during the years preceding the Championship, it being understood that all of such promotions shall refer to the Championship sponsors if such promotion does not result in a conflict with a Host sponsor. BCL and Host acknowledge the importance of continually promoting BCL, the BCL Challenge Series, the BCL Dirt Dozen, the 2023 World Championships, the 2024 World Championships, and the 2025 World Championships significantly in the years before and after Championship Week, and Host covenants to promote such events through such marketing efforts as set forth on Exhibit "J" hereto with the approval of BCL as set forth herein with respect to each individual promotion. Host shall permit BCL to temporarily install video cameras in consultation with Host throughout the Facility, subject to the reasonable consent of Host, for purposes of producing and distributing ancillary content, including, without limitation, virtual reality, augmented reality, 360 degree cameras, and social media cameras.

(b) Host covenants that BCL shall have final approval of, and the right to designate placement of, (i) all advertising, publicity, promotional and other marketing or digital materials relating to BCL, the Championship, including, without limitation, any and all handicapping publications (distributed for free or sold), and all related official BCL programs, (ii) locations, programming and scripting for the post-position draw for the Races, press conferences and other media or promotional events and (iii) programming and scripting for electronic message boards to be used at the Facility on Championship Friday and Championship Saturday. Host covenants that it will not sell or place advertising or promotional material in official BCL programs, any official BCL publications or locations, including media information books, horsemen's information guides, press center materials, ticket folders, any simulcast signal distributing the Races or the like.

(c) Host agrees that BCL shall retain all sponsorship rights to the Championship and that the Facility will be a clean venue on Friday, October 31, 2025 and Saturday, November 1, 2025, free of all marks and advertising, including, without limitation, alcohol displays and branding, except as directed by BCL in its sole discretion. Notwithstanding the foregoing, Host shall work in good faith with BCL, including, hiring a third party to remove

existing signage throughout Championship Week with all existing signage to be removed before Championship Friday in order to accommodate sponsor signage of BCL to be in place by no later than Championship Friday through efforts of Host. Host and BCL acknowledge that Host or a third-party designee will put up signage as directed by BCL throughout Championship Week so that all BCL sponsor signage will be in place on Championship Friday and Championship Saturday. BCL shall work in good faith to put up all competing sponsorship signage late in Championship Week but Host acknowledges and agrees that certain signage will be in place prior to Championship Friday. The actual costs associated with making the Facility a clean venue, free of all marks and advertising, shall constitute expenses of the Operating Budget.

(d) Host recognizes that BCL has granted, and may hereafter grant, license sponsorship rights to one or more firms in connection with the Championship and understands that these sponsors of BCL will have certain promotional rights during Championship Week, including, without limitation, Championship Friday and Championship Saturday under their agreements with BCL. Host covenants to reasonably assist BCL in its Championship sponsorship activities, including placement of sponsors' promotional signage and displays in accordance with the Commercial Signage Specifications set forth in Exhibit "K" hereto. Host agrees that BCL or its representatives may erect signage at any time during Championship Week in all areas of the Facility, including the stable area, so long as such activity does not materially interfere with racing at the Facility. Host further covenants that it will not permit the display of signage at the Facility other than signage approved by BCL from Sunday, October 19, 2025, through Championship Saturday. Both BCL and Host may display their sponsors' signage at the Facility on Sunday, November 2, 2025 and so long thereafter as commercially reasonable in order to remove the BCL sponsor signage. Host shall announce all names of each Race as directed by BCL which name may include the name of a sponsor.

(e) If BCL enters into a sponsorship agreement with a local sponsor whose principal business is in California through an introduction from Host, then any sponsorship revenue attributable to the 2025 year shall be allocated towards the Operating Budget and any expenses associated with such sponsorship agreement for the 2025 year shall be an expense of the Operating Budget. Should BCL at the request of Host provide an introduction to an existing BCL sponsor during the Term of this Agreement and Host subsequently enters into a sponsorship or promotional agreement with such BCL sponsor, Host agrees to pay BCL a commission equal to fifteen percent (15%) of the net dollar amount of the fee paid to Host by such BCL sponsor during the Term. Notwithstanding the foregoing, the net dollar amount shall not be less than seventy-five percent (75%) of the gross amount paid. Should Host at the request of BCL provide an introduction to an existing Host sponsor during the Term of this Agreement and BCL subsequently enters into a sponsorship or promotional agreement with such Host sponsor, BCL agrees to pay Host a commission equal to fifteen percent (15%) of the net dollar amount of the fee paid to BCL by such Host sponsor during the Term. Notwithstanding the foregoing, the net dollar amount shall not be less than seventy-five percent (75%) of the gross amount paid. It is understood that this Section 8.8(e) shall not be construed to diminish Host's obligation to provide a clean venue for the Championship as set forth in Section 8.8(c) above.

(f) Host agrees that BCL's Affiliate, Breeders' Cup Charities, Inc., and any charity beneficiaries of BCL that are approved by Host in writing and in advance, which approval shall not be unreasonably withheld, may have access to Facility public areas during

Championship Week for the purpose of erecting and operating a reasonable number of booths (the number and location of which shall be subject to Host's advance written approval) in pursuit of their charitable purposes.

(g) Host agrees that designated representatives of BCL's sponsors may have access to the Facility during normal business hours (or otherwise as requested by BCL) during Championship Week for the purpose of erecting sponsor areas for use during the Championship and the like; provided, however, that such activities do not materially disrupt the conduct of the fall racing meet at the Facility during such week.

### **8.9. Hospitality**

(a) Host covenants that BCL shall have final approval of the schedule of official Championship events and Host agrees to coordinate official events and functions with BCL so as to provide the best possible first-class atmosphere for the Championship for the period beginning on the date two (2) weeks prior to Championship Friday and continuing through the date one (1) week following Championship Saturday; provided, however, that the official BCL events occurring at the Facility after Championship Saturday shall be scheduled by mutual agreement of the parties in good faith. In addition, during such time periods, Host, including 22nd District Agricultural Association/Del Mar Fairgrounds, agree to not to schedule events at the Facility that may conflict with the setup or execution of the Championship Week. Host covenants that BCL may hang paintings or racing photographs during Championship Week throughout the Facility, including, without limitation, in suites, reserved seats and dining areas, stable area, training track, infield, parking lots, and all exhibit halls.

(b) Host acknowledges and agrees that the ability to deliver a first class, premier international event (as represented by the venue, hospitality, and service in the 2017, 2021 and 2024 Breeders' Cup World Championships), including, without limitation, first class hospitality and service is valuable to the BCL brand, including, without limitation, the ability of BCL to sell tickets to future BCL events. Host covenants to use best efforts to deliver a first class, premier international event. Host covenants to provide to BCL status updates as set forth in Exhibit "L" hereto in order to ensure BCL that Host is on schedule to deliver a first class, premier international event, and such updates shall include, without limitation, the following: (i) VIP and horsemen hospitality, (ii) food and beverage quality and delivery, and (iii) parking and traffic management. Host covenants to immediately notify BCL of any changes or delays which would affect the required progress as set forth in Exhibit "L" or would affect Host's covenant to deliver a first class, premier international event.

(c) Host, working in cooperation with elected officials and leaders of the state and region where the Facility is located, agrees to establish a local host committee, whose primary purpose will be to conduct, financially support and promote a series of events leading up to the Championship to create an exemplary experience for attendees of and participants in the Championship. Membership, financial support, duties and responsibilities of the local host committee shall be jointly determined by BCL and Host. Host shall use best efforts to ensure that such local host committee supports and promotes the Championships.



(d) Host covenants to provide hospitality areas free of charge at the Facility for BCL's use, including, without limitation, space and dining facilities of first-class type and quality as shall be acceptable to BCL. Such hospitality areas, which includes, without limitation, the Enclosure and Champion's Terrace, shall be for the exclusive use of BCL, its sponsors, guests and designees. It is understood that BCL may design, decorate and upgrade such areas set aside for BCL's exclusive use in its sole discretion. The cost of (i) decorating/upgrading/constructing these areas and returning them to their original configuration shall be included as an expense in the calculation of Facility Net Revenue. BCL shall also be permitted to construct a chalet to use as the "Trophy Lounge" and BCL may host sponsors, potential sponsors, and other guests of BCL at no charge. The cost of the chalet and the food and beverage (without markup if by the track caterer) shall be included as an expense in the calculation of Facility Net Revenue. Host covenants to provide a toasting area for the connections of the horses winning each of the Races which will accommodate up to fifty (50) guests at a location designated by BCL and the costs of any build out and food and beverage shall be included in the Operating Budget. The hospitality areas for BCL and Host shall consist of the seats, space and dining facilities listed on Exhibit "M." Admission and reserved seats ticket prices and bundling and the like are set forth in Exhibit "N" to this Agreement and may be changed at the request of BCL, but may not be changed by Host without the prior written approval of BCL (which approval may be withheld by BCL in its sole discretion).

(e) Host agrees to assist BCL in providing ample space for a handicapping tournament during the Championships by which players will pay an entry fee set by BCL (entry fee has historically been \$10,000) and make live wagers on the Championships with the chance of winning a prize pool (the prize pool is a portion of the entry fee set aside by the decision of BCL) known as the Breeders' Cup Betting Challenge (the "BCBC") during the Championships as directed by BCL. Host shall host, conduct and operate the BCBC based on the good faith direction and rules from BCL and BCL shall indemnify, defend and save harmless Host pursuant to Section 12.2 hereof. Host is required to create a registration webpage (which registration page shall include the various Advanced Deposit Wagering Companies that BCBC participants may wager through) for the BCBC. All costs associated with developing the aforementioned webpage for the BCBC, including the registration webpage, shall be included in the Facility Net Revenue calculation.

(f) To the extent that Host utilizes temporary seating or hospitality areas that are also utilized during Host's race meet immediately preceding or following the Championships, the cost of such temporary facilities shall be allocated between Host and BCL on a pro rata basis and the portion attributable to the Championship shall be included in the calculation of Facility Net Revenue.

(g) Host covenants that credential assignment and distribution shall be subject to the prior approval of BCL in its sole discretion. Host covenants that it will not issue complimentary tickets or passes of any type for Championship Friday or Championship Saturday without the prior written consent of BCL, which consent may be withheld by BCL in its sole discretion. BCL will reimburse Host the value of all complimentary tickets or passes that it uses except for complimentary tickets and passes provided to (i) owners, trainers, breeders and jockeys of starters in the Races and the Additional Races and (ii) up to fifty (50) tickets for broadcast partners, including, without limitation, NBC and other companies

involved in distributing and broadcasting coverages of the Races (the "Media Partners"). Payments from BCL for complimentary tickets shall be included in the calculation of Facility Net Revenue. Notwithstanding the foregoing, unsold ticket inventory for grandstand reserved seating may be distributed by BCL after October 12, 2025, on a complimentary basis for promotional purposes without reimbursement. Unsold tickets may be used for charitable and promotional purposes as determined by mutual agreement of the parties.

(h) Host covenants that prices to be charged by Host or Facility caterers, vendors, and agents for concessions and food and beverages sold directly to consumers on Championship Friday and Championship Saturday shall be determined by BCL. The 22<sup>nd</sup> District Agricultural Association shall be entitled to retain an amount equal to fifty percent (50%) of the net revenue (defined as gross revenue less cost of goods and direct labor attributable to sales) generated from walk-up food and beverage concessions during the Championship, subject to a cap on such retention of Two Hundred Thousand Dollars (\$200,000). To the extent that food and beverages provided by Host's proprietary catering entity are included in Championship ticket prices or served in the media hospitality area, the View, Champions Terrace, or via meal passes to backside workers as consistent with the 2021 and 2024 Breeders' Cup World Championships or such other activations agreed to between Host and BCL, such food and beverages shall be included in the calculation of Facility Net Revenue at the actual cost of goods sold plus direct labor and taxes without any additional markup or profit margin. To the extent BCL utilizes Host's proprietary catering entity for training and orientation event, the draw or other race related events and meals for BCL staff or consultants, such meals shall be at the actual cost of goods sold plus direct labor and taxes without any additional markup or profit margin. All profit on any food and beverages sales, including, without limitation, general concessions, shall be accounted for in the calculation of Facility Net Revenue. Host agrees to facilitate a meeting or meetings between BCL and Facility caterer(s) to discuss the provision of services and products by the caterer(s). Host agrees to cause its and Facility caterer(s)'s proposed menus and pricing schedule for the Championship to be submitted to BCL no later than October 14, 2025. Host and Facility caterer(s) agree to host a menu tasting event for BCL and its designees no later than March 1, 2025. Host agrees that BCL shall have the right to approve menus to be offered to patrons during the Championships. Host agrees to cause Facility caterer(s) to (i) serve brands designated by BCL, including brands produced or promoted by BCL's sponsors and (ii) to not serve brands specifically designated by BCL. BCL may, at its option, in consultation with Host, designate an "Official Chef or Chefs of the Championships" during the Championship for the purpose of creating menus and supervising catering in designated areas. BCL may cause an independent chef or food service provider, selected by BCL and approved by Host in good faith, to provide food and beverage service in the breakfast marquee and any and all other areas designated on Exhibit "O" at the Facility on Championship Friday and Championship Saturday. BCL shall be permitted to cause an independent chef or food service provider, selected by BCL to provide food and beverage services in all temporary structure areas, including, without limitation, the breakfast marquee. BCL may also designate celebrity chefs to assist Host or its designated caterer for all other food and beverage services at the Facility. Host covenants that it currently is not a party to any contracts (except for contracts reached by collective bargaining) that would limit the ability of BCL to utilize a guest chef or food service provider to provide food and beverage service as set forth in this section of the Agreement. Host further covenants that it will not enter into such a contract without the prior consent of BCL. By no later than December 14,

2025, Host shall use best efforts to have Facility caterer provide to BCL a detailed analysis of food and beverage sales which analysis shall include, without limitation, the following: (i) gross sales per location; (ii) net sales per location; (iii) amounts and types of specific items sold or consumed per location; (iv) specific brands purchased or consumed (for example, Host sold 600 bottles of Veuve Cliquot champagne in Turf Club) per location; and (v) labor and additional equipment costs.

(i) Tickets to be given for free or sold to owners, breeders, trainers and jockeys of starters in the Races and the Additional Races (the "Horsemen") and Media Partners ("Hold Tickets") will be identified by BCL and shall be placed in a hold status until seats are assigned after entries close and will not be available for sale during the sales periods described in Exhibit "P". Should either BCL or Host assign a hold status to tickets, other than Hold Tickets and not release them for sale prior to the Advanced Sales Period, the party placing such tickets on hold will be responsible for paying for these seats if they are not sold to a third-party. Such payments for these held tickets shall be included in the calculation of Facility Net Revenues. If requested by BCL, Host covenants to expedite advance ticket sales and distribution of tickets for the Championship. Tickets for Championship Friday and Championship Saturday must be shipped to ticket purchasers not earlier than ninety (90) days nor later than thirty (30) days prior to Championship Friday via the shipping service selected by BCL in its sole discretion. Host covenants to provide adequate facilities, including, without limitation, internet access for all ticket booths and will call areas and staff for ticketing as may be requested by BCL. Host agrees to provide the services and staff necessary to make sales proactively to group purchasers. Host agrees, if requested by BCL, to make all sales through BCL's preferred selection for an electronic ticketing application and to enter into agreements with vendor(s) for the provision of services related to online/back-office sales and/or customer call center support. In the event that BCL requires the use of an online and back-office ticket sales system other than the ticketing system utilized by the Facility on a day-to-day basis, BCL agrees that, except for hardware or infrastructure items, any incremental costs incurred by Host in connection with the adoption of the BCL application (e.g., creation of seat maps) shall be included in the Operating Budget. Host shall send any unused tickets for the Championship to BCL no later than ten (10) days after the Championship.

(j) If requested by BCL, Host agrees to implement security procedures identified by BCL that will provide for efficient and secure ingress and egress by patrons to the Facility.

(k) Host covenants to provide such seating and admission as BCL may request for BCL sponsors and network representatives on Championship Friday and Championship Saturday, but BCL shall pay the cost of these tickets in accordance with Section 8.9(d) hereinabove to the extent such costs are not excluded pursuant to the terms and conditions contained herein.

(l) Host shall submit to BCL for its approval no later than May 1, 2025, a traffic control plan and shall negotiate in good faith any changes to such plan suggested by BCL. Host shall allocate no less than One Thousand Four Hundred (1,400) parking spaces at the

Facility for BCL's exclusive use. The BCL Parking Requirements are set forth in Exhibit "Q" to this Agreement.

(m) If requested by BCL, Host covenants to prepare, print and distribute, in cooperation with BCL, for Championship Friday and Championship Saturday special Championship racing programs and shall provide BCL and each sponsor of BCL, as determined by BCL, sponsored race page identification and one free page within such programs; provided that BCL and such BCL sponsors shall deliver camera-ready artwork to Host for production of such program acknowledgements not later than the date four (4) weeks prior to Championship Friday. Host covenants to procure the written approval of BCL for all details of such Championship programs. If requested by BCL, Host will distribute programs to patrons on Championship Friday and Championship Saturday free of charge, with the cost of the programs being included in the Operating Budget.

(n) Host covenants to provide ample pari-mutuel capacity, trained personnel, and self-service mutuel devices in order to assure the comfort, efficiency and convenience of Facility patrons on Championship Friday and on Championship Saturday with the specific understanding that the ratio of mutuel devices to patrons shall be at least one mutuel device (either operated by a clerk or self-service) per forty (40) patrons and that such mutuel devices shall be strategically placed to minimize wait times, if any, and to maximize the on-track pari-mutuel handle at the Facility on both days. Host covenants that its pari-mutuel system and totalisator board on Championship Friday and Championship Saturday will be able to accommodate fourteen (14) uncoupled wagering entries in each of the Races and Additional Races and vertical, horizontal and multi-day exotic wagers on Championship Friday and Championship Saturday. Host covenants that BCL shall be a third party beneficiary, or otherwise have the benefit of any Host recovery, under Host's contract with its tote company to the extent BCL suffers any damage as a result of the failure or malfunction of Host's tote system (in addition to the insurance coverage pursuant to Section 14.2); provided, however, that any such recovery related to on-track pari-mutuel wagering shall be accounted for as Facility Gross Revenues and shared by Host and BCL accordingly. Host agrees that all wagering through self-service mutuel devices at the Facility shall be on-track wagers and shall not be placed through any advanced deposit wagering entities.

(o) Host will use best efforts to work with District to provide ample automated teller machines ("ATM") at the Facility in order to assure the comfort, efficiency and convenience of Facility patrons to withdraw cash from bank accounts during the Championships. Any and all fees, royalties and other revenue attributable to the ATMs shall be included in the Facility Gross Revenues for purposes of calculating the Facility Contribution. Host shall use best efforts to provide BCL a detailed analysis of wagering activity, including, without limitation, (i) wagering revenue per terminal per area within the Facility and (ii) labor costs.

(p) Host covenants that Facility's caterer(s) will provide sufficient trained personnel, supplies and equipment to assure that Facility concessionaires meet the needs of Facility patrons on Championship Friday and Championship Saturday in accordance with the highest standards of customer service. BCL and Host agree to cooperate in good faith to resolve any customer service issues related to food and beverage service. Host and the Facility caterer(s)

agree that a staffing and service location plan shall be submitted to and approved by BCL no later than July 31, 2025.

(q) Host covenants that no construction or plant renovation will occur at the Facility that will in any way impair the aesthetic presentation, operational efficiency or customer service of the Championship and/or during Championship Week. Host acknowledges that BCL may request that the 22<sup>nd</sup> District Agricultural Association either (i) not have Scream Zone at the Facility or (ii) work quickly to takedown Scream Zone prior to October 18, 2025 and the incremental costs related to taking down Scream Zone shall be included in the Facility Net Revenue calculation.

(r) Host covenants to provide such facilities and accommodations at the Facility during the period from October 3, 2025, through November 4, 2025, as BCL may in its reasonable discretion require for BCL staff. Such facilities and accommodations shall include (i) previously used workspace known as Mission Tower or space for a minimum of two (2) triple-wide trailers, one (1) double-wide trailer and six (6) single-wide trailers in the stable area or other location designated by BCL at the Facility, together with a minimum of twenty (20) reserved parking spaces in close proximity to such trailers; (ii) space for three (3) double-wide trailer in the television compound at the Facility, (iii) space for two (2) single-wide trailers and a separate rest room facility within the fenced areas of the quarantine facility at the Facility; and (iv) electric, telephone and high speed Internet service at all trailers.

(s) Host covenants to provide space at the Facility acceptable to BCL for the placement and operation of a "Trackside Breakfast Marquee" during Championship Week. To the extent certain temporary structures and chalets, including, without limitation, the Breakfast Marquee require buildout and construction times longer than the three (3) weeks set forth in Section 8.9(a), Host shall provide such space required for such buildouts free and clear of any other events or obstacles for a period of up to five (5) weeks prior to Championship Friday for the construction and buildout of such chalets and temporary structures consistent with the practices at the 2017, 2021 and 2024 Breeders' Cup World Championships.

(t) Host agrees to conduct a minimum of six (6) handicapping tournaments during 2025 by which contestants will qualify to participate in the 2025 Breeders' Cup Betting Challenge and will make best efforts to conduct such tournaments on the days of Breeders' Cup Challenge Races being conducted at the Facility.

#### **8.10. Operating Budget**

The parties acknowledge that the Operating Budget set forth in Exhibit "B" is a preliminary operating budget that reflects the categories for revenues and expenses in the operating budget for the Championship. The parties shall, by mutual agreement and in good faith, revise the Operating Budget prior to September 15, 2025 to reflect refined budget estimates, including, without limitation, the establishment of specific revenue and expense amounts and a staffing plan with detailed backup support for the plan. Host shall also provide a complete detailed general ledger report to BCL on a monthly basis beginning November 1, 2025 and at additional intervals at the request of BCL and both parties shall review and sign off on such ledger to the extent both parties are in agreement. If both parties are not in agreement,

both parties shall work in good faith to timely resolve any discrepancies and if both parties cannot reach such agreement then both parties will engage in the arbitration process set forth in Section 5.2 hereof. Host and BCL shall provide sufficient detailed back-up support to substantiate any expenditure set forth in the general ledger report that is requested by BCL. No expenditures will be made which would result in negative variances in actual expenses for the Championships without the prior written consent of (i) the Chief Executive Officer or Chief Operating Officer of BCL, and (ii) Chief Operating Officer or Chief Financial Officer of Host. The parties covenant that, without both prior written consents set forth above (which consents may be withheld by each respective party in their reasonable discretion), no expenditures will be made which would result in actual expenses for the Championship exceeding the projected expenses in the Operating Budget. In the event any such expenditures are made without obtaining both prior written consents, the party responsible for the expenditure shall be solely liable for such expenditure. In the event any such expenditures are made and both consents are obtained, the expenditure will be included as an expense in the calculation of Facility Net Revenue. Notwithstanding the foregoing, if BCL elects to make additional expenditures that are not approved by Host as set forth herein, then BCL shall be entitled to any and all revenue resulting from such additional expenditures.

The prior written consents of (i) the Chief Executive Officer or Senior Vice President of Operations of BCL and (ii) Chief Operating Officer or Chief Financial Officer of Host shall be in the form of an "Expense Approval Worksheet," a copy of which is attached hereto as Exhibit "R." It is expressly understood that Host's full-time labor costs, except for over time related to the Championship, shall not be included in the Operating Budget and only hourly, incremental labor costs may be included in the Operating Budget to the extent such incremental labor costs are above and beyond ordinary labor costs and are directly related to the Championships and such incremental labor costs are detailed in writing, including, without limitation, the scope, type and time of work and such work and costs are approved by BCL. It is further understood that Host covenants to cooperate in good faith with BCL in the planning and execution of the expenditures contemplated by the Operating Budget, including reasonable revisions to the allocations of expenses set forth in Exhibit "B." Host and BCL covenants that they will pay all expenses identified in the Operating Budget in accordance with the terms of the expense invoice or, if the expense is invoiced by BCL, within thirty (30) days of receipt of the BCL invoices unless otherwise agreed in writing by BCL. For any Championship expenses initially paid by BCL for which BCL requests reimbursement from Host, BCL will provide copies of third party vendor invoices, or in the case of allocated costs from BCL, explanation of the allocation accompanied by a reasonably sufficient level of backup to support the charges. For any Championships expenses paid by Host, Host shall maintain a copy of all invoices and provide such invoices to BCL upon request. Any expense included in the Operating Budget and incurred by Host in carrying out its obligations pursuant to this Agreement shall be considered an expense of the Championship for purposes of calculating Facility Net Revenue.

#### **8.11. Totalisator Security**

Host covenants to have in place, at least one (1) month prior to Championship Saturday, security measures at least equal to the race track industry standard in order to protect wagering information and the integrity of the wagering process with respect to all the races to be presented at the Facility on Championship Friday and Championship Saturday. In addition, Host covenants

to use its best efforts to cause (i) its totalisator provider and (ii) each Off-Track Betting Facility with whom Host has a Simulcasting contract, to have in place, at least one (1) week prior to Championship Friday, security measures at least equal to the industry standard totalisator security measures in order to protect wagering information and the integrity of the wagering process with respect to all the races to be presented at the Facility on Championship Friday and Championship Saturday.

#### **8.12. Treatment of Funds**

Host covenants that it will maintain separate interest-bearing trust accounts into which funds resulting from ticket sales, simulcasting and the like will be maintained until the Contribution is remitted in full to BCL and Host shall provide BCL evidence thereof no later than October 31, 2025. Funds in these accounts may be used to make expenditures that are set forth in the Operating Budget or that are approved pursuant to Section 8.10. The funds in such accounts shall be invested in a manner that is mutually agreeable to the parties. Interest earned on the funds in such accounts shall be included in the Operating Budget. Host further agrees to grant BCL a primary security interest in the funds in such accounts to secure payment of the Contribution and to execute such documents and make such filings necessary to perfect the security interests.

#### **8.13. Takeout on Pari-mutuel Wagers**

Host covenants to have in place for the Championships takeout rates on pari-mutuel wagers on Championship Friday and Championship Saturday at the Facility that are mutually agreeable to the parties and consistent with applicable law.

### **ARTICLE 9**

#### **PROPERTY RIGHTS AND LICENSE**

##### **9.1. Ownership of Properties**

BCL now owns and controls, and shall continue to own and control, and Host shall not, by virtue of this Agreement or the relationship between the parties created hereunder, acquire any interest in, or rights in or to, the Championship, the Races, the Properties or the Property Rights (except to the limited extent expressly provided in Section 9.4 below). BCL shall have, and hereby retains the sole and exclusive right in and to all the Properties and the Property Rights. BCL shall, with respect to the Championship, retain and shall have the sole and exclusive right to exercise all the Property Rights.

##### **9.2. Merchandise Licensing and Sales**

Host acknowledges that BCL has the exclusive merchandising rights for BCL-trademarked merchandise and the exclusive right to license certain Persons to produce special BCL-trademarked merchandise. During Championship Week, BCL and its licensees shall have the exclusive right to sell (directly or indirectly) BCL trademarked merchandise at the Facility at designated locations which are acceptable to BCL in its sole discretion. BCL shall receive all revenue from the sales of BCL trademarked merchandise. Host covenants to

provide adequate storage areas at the Facility for the BCL-trademarked merchandise during Championship Week. Both Host and BCL merchandise may be on display at the Facility during Championship Week, during which time Host agrees to provide BCL a minimum of fifty percent (50%) of the shelving and display space within the Clubhouse gift shop and a portion of Mission Tower for the sale of BCL-trademarked merchandise which space(s) are consistent with the space assigned to BCL during the 2025 Breeders' Cup World Championships. BCL shall receive all revenue from the sales of BCL trademarked merchandise in the Facility gift shop. The Facility gift shop shall remain open at a minimum from 8 AM to 5 PM for business each day during Championship Week.



### **9.3. Creation of Championship Logo**

BCL will use commercially reasonable efforts to create, by June 1, 2025, a logo, symbol, or design in connection with the Championship utilizing the Property Rights in conjunction with the name and the likeness of the Facility. Host grants to BCL a non-exclusive, royalty-free license to use the Host Marks for the sole purpose of promoting the Championship and the BCL program, which use shall include, without limitation, use of the Host Marks on promotional items. Any material developed by BCL which utilizes the Host Marks shall be submitted for Host's prior approval of such material and the intended use thereof, which approval shall not be unreasonably conditioned, delayed or withheld. If Host does not respond within fourteen (14) days, such submission shall be deemed approved. BCL shall, however, retain sole and exclusive ownership of any logo, symbol or design so created (and which shall be used solely for the purpose of marketing and promoting the Championship and the BCL program), and hereby grants to Host a limited license to utilize any such logo, symbol or design for the sole purpose of marketing and promoting the Championship such limited license to be granted from the Effective Date through Championship Week in 2025. Except as provided herein, any commercial use of said logo, symbol, or design by Host without the express prior written approval of BCL is prohibited. Nothing in this Agreement shall be construed as granting a license to Host to produce, purchase or otherwise obtain merchandise to be sold to the public or as granting to Host the right to develop or create any logo, symbol or design utilizing the Properties or the Property Rights.

### **9.4. License of BCL Marks**

BCL grants to Host for the period beginning from the Effective Date through Championship Week in 2025, a non-exclusive, royalty-free license to use the BCL Marks, with no right to sub-license the BCL Marks, for the sole purpose of promoting the Championship and the BCL program. Any material developed by Host which utilizes the BCL Marks shall be submitted to BCL for its prior written approval of such material and the intended use thereof (which approval may be withheld by BCL in its absolute discretion). Nothing herein shall be construed as granting a license to produce merchandise.

## **ARTICLE 10**

### **RELATIONSHIP BETWEEN PARTIES**

#### **10.1. Relationship Between Parties**

The relationship between Host, on the one hand, and BCL on the other, is that of independent contractors. This Agreement does not establish a joint venture, agency, or partnership between the parties. Subject to the terms and conditions of this Agreement, each party shall choose the means to be employed and the manner of carrying out its obligations. Each party shall have the sole responsibility for the supervision and payment of its personnel and, except as agreed to in writing, all other costs and expenses required to perform its obligations. Notwithstanding anything in this Agreement to the contrary, neither party shall have the authority or the ability to bind the other (whether contractually or otherwise).

**ARTICLE 11**  
**TERMINATION**

**11.1. Termination**

Notwithstanding any other provision of this Agreement, this Agreement may be terminated:

- (a) By the mutual written agreement of BCL and Host;
- (b) By BCL or Host if the Operating Agreement Option is not exercised by the California State Race Track Leasing Commission by March 31, 2024;
- (c) By BCL or Host if any covenant or agreement set forth in this Agreement shall not be kept or performed by the other party in any material respect and such material failure or breach is not reasonably capable of being remedied or, if capable of being remedied, such failure or breach shall not be remedied within thirty (30) days after such party shall have received written notice thereof from BCL or Host;
- (d) By BCL or Host if any representation or warranty or other statement of fact by the other party contained herein or heretofore or hereinafter given by such other party in connection with this Agreement shall at any time be materially inaccurate or materially misleading or shall at any time omit a material fact necessary to make such representation, warranty, or statement not misleading;
- (e) By BCL if Host shall suffer a Bankruptcy Event, Material Adverse Event or a Change in Control, or if the Facility shall suffer a Material Adverse Event;
- (f) By BCL in the event of a change in the personnel occupying the positions set forth on Exhibit "T" such that it may reasonably be perceived by BCL to cause Host to be unable to present and conduct the Championships in the manner contemplated by this Agreement;
- (g) By BCL in the event any action is taken by any governmental body that results in the occurrence of a Material Adverse Event with respect to Host's ability to present the Races and Additional Races on Championship Friday and Championship Saturday at the Facility in accordance with the terms and conditions of this Agreement or to perform all the covenants of Host set forth in this Agreement;
- (h) By BCL any time, if the Facility main track and/or turf course are not in the condition required by BCL in its sole but reasonable discretion pursuant to Section 8.4;
- (i) By BCL on or before July 1, 2025, if the updates provided by Host as set forth in Exhibit "L" do not support that Host will deliver a first class, premier international event in the reasonable discretion of BCL pursuant to Section 8.9(a) hereof;

(j) By Host if BCL shall suffer a Bankruptcy Event or a Material Adverse Event;

(k) By BCL or Host in the event of the repeal or material amendment of any law or order applicable to the presentation and/or Simulcasting of races at the Facility or the transactions contemplated by this Agreement;

(l) By BCL, if the Host's state government modifies California Business & Professional Code Section 19605.74 ("Section 19605.74"), or otherwise modifies BCL rights granted pursuant to Section 19605.74;

(m) By BCL, if the Host's state government requires any transfer of ownership rights for owners of horses participating in the Championship:

(n) By Host if BCL elects to run three or more Races over two separate weekends;

(o) By BCL by no later than August 15, 2025, if BCL has not secured (i) an adequate number of hotel rooms in North San Diego County at the appropriate facilities and at price points satisfactory to BCL; or

(p) By either Host or BCL if the State Race Track Leasing Commission has not approved this Agreement on or before May 1, 2024.

## ARTICLE 12

### INDEMNIFICATION

#### 12.1. BCL Indemnification

Host agrees to indemnify, defend and save harmless BCL and its Affiliates and the members, directors, officers, employees and agents of BCL and its Affiliates (collectively, the "BCL Indemnified Persons"), from all Adverse Consequences which may be imposed upon, incurred or suffered by or asserted against BCL and which arise, in whole or in part, directly or indirectly from: (i) any misrepresentation, breach of warranty or non-fulfillment or nonperformance of any agreement, covenant or condition on the part of Host to be performed, complied with or fulfilled under this Agreement; (ii) any acts of employees, agents, servants or officers of Host in connection with the operations conducted by Host during or in connection with the Championship; (iii) any claims relating to the Facility, any equipment utilized in connection with the Facility or facilities provided for the use of patrons, invitees or employees of Host or the Facility; (iv) any proper exercise by BCL of any rights granted to BCL by Host under this Agreement, including, without limitation, in Article 9 hereof; and (v) any proceedings or orders incident to any of the foregoing.

#### 12.2. Host Indemnification

BCL agrees to indemnify, defend and save harmless Host and its affiliates, and the members, directors, officers, employees and agents of Host and its affiliates (collectively, the "Host Indemnified Persons"), from all Adverse Consequences which may be imposed upon, incurred or suffered by or asserted against Host and which arise, in whole or in part, directly or indirectly from: (i) actions taken by Host in strict accordance with the Eligibility Requirements and the Field Selection Methodology; (ii) any misrepresentation, breach of warranty or non-fulfillment or nonperformance of any agreement, covenant or condition on the part of BCL to be performed, complied with or fulfilled under this Agreement; (iii) any acts of the employees, agents, servants, or officers of BCL or its Affiliates in connection with the Championship, including the operations conducted at the Facility in connection with the Championship; (iv) any proper exercise by Host of any rights granted to it by BCL under this Agreement, including, without limitation, in Article 9 hereof; and (v) any proceedings or orders incident to any of the foregoing.

### **12.3. Indemnification Procedure**

(a) If any claim or action is threatened, asserted or commenced against a BCL Indemnified Person or a Host Indemnified Person (each, a "Claim"), BCL or Host, as applicable, shall give written notice to the other party promptly after receipt of such Claim. If such party receiving notice is obligated under Sections 12.1 or 12.2 to defend the party against such Claim, then the indemnifying party shall take control of the defense and investigation of the Claim, in consultation with the other party (provided that the indemnifying party may make all final decisions, subject to the other terms of this Section 12.3), using such attorneys and other assistance as it selects in its reasonable discretion. The indemnified party shall cooperate in all reasonable respects in such investigation and defense, including trial and any appeals. The indemnified party shall be entitled to prompt reimbursement for all out-of-pocket expenses reasonably incurred by it in connection with such cooperation. No settlement of a Claim that imposes any obligation or liability on the indemnified party shall be agreed to and entered without the consent of the indemnified party, which consent shall not be unreasonably withheld.

(b) It is not a condition precedent to recovery under this Article 12 for any party to first seek a contractual, statutory, or common law remedy against the other party in order to give notice of a Claim. No party is under any obligation to pursue any claims against the other party.

## **ARTICLE 13**

### **FORCE MAJEURE**

#### **13.1. Force Majeure**

In case any party to this Agreement fails to perform any of its obligations hereunder and such failure is for reasons beyond the control of that party, including without limitation, because of an act of God (such as, but not limited to, fires, explosions, earthquakes, lightning, cyclones, floods, or other extreme or inclement weather or environmental conditions, unanticipated geological or ground conditions, epidemic, pandemic, famine, plague or other national calamities and acts of God), inevitable accident, boycott, loss of power, or an act of a

public enemy, riot, war, hostilities (whether war be declared or not), acts or threats of terrorism, public disorder, violent demonstrations, insurrection or civil unrest, commotion or sabotage, equine disease or any condition that presents an immediate danger to the health, safety, or welfare of equine or human athletes participating at the Championship (including the undercard races), injunctions or other interference through legal proceedings or to any causes beyond the control of such party, such failure shall not be deemed to be a violation by such party of its obligations hereunder, but such party shall use its best efforts to put itself in position to carry out all of its obligations hereunder. If an event of force majeure causes Host to be unable to present any of the Races or Additional Races on Championship Friday or Championship Saturday, Host agrees that, if directed by BCL, it will present such of the Races and Additional Races as were unable to be presented on Sunday, November 2, 2025, or such other date(s) as BCL may deem appropriate, acting reasonably. Notwithstanding the foregoing, this Section 13.1 cannot be relied upon to excuse any failure to perform any act required by Section 8.1 or 8.2 hereof.

## **ARTICLE 14**

### **INSURANCE**

#### **14.1. Host Insurance**

Host agrees to cause BCL, its officers, agents, employees and licensees, to be included as additional insured parties under Host's commercial general liability and business interruption insurance policies as their interests may appear for the Championship and any activities relating thereto for the Term. Host shall provide BCL with a certificate of insurance demonstrating compliance with this section by February 1, 2025.

#### **14.2. Event Insurance**

Upon a request from BCL, Host has the right to and agrees to purchase event cancellation insurance with mutually agreeable coverages and policy limits after good faith consultation with BCL relating to the Championship to be in effect no later than July 31, 2025. BCL shall be named an additional insured on the policy and shall be entitled to receive an amount equal to the Contribution pursuant to the Operating Budget. The cost of such insurance shall be included in the Operating Budget and will be considered a Facility expense for purposes of calculating Facility Net Revenue. The proceeds of such insurance, if any, shall be included in the Operating Budget and will be considered Facility Gross Revenue for purposes of calculating Facility Net Revenue. In addition, Host agrees to purchase tote failure insurance with a policy limit of no less than Ten Million Dollars (\$10,000,000) with BCL and Host as the named insured to be in effect no later than July 31, 2025. The cost of such insurance shall be included in the Operating Budget and will be considered a Facility expense for purposes of calculating Facility Net Revenue. The entire proceeds of such insurance, if any, shall be allocated to BCL and Host consistent with other provisions of this Agreement. If requested by BCL, Host agrees to purchase insurance policies in lesser amounts.

## **ARTICLE 15**

### **MISCELLANEOUS**

**15.1. Deliveries and Notices**

Any deliveries, notices or other communications required or permitted hereunder shall be deemed to have been duly made or given (i) if delivered in person, (ii) if sent by certified or registered mail, return receipt requested, postage prepaid, (iii) if sent by a nationally recognized overnight courier or (iv) if sent by facsimile transmission, to the addresses or facsimile numbers of the parties as follows:

BCL: Breeders' Cup Limited  
Attn: Drew Fleming  
215 West Main Street, Suite 250  
Lexington, Kentucky 40507  
Email: Drew@Breederscup.com

With a copy to: Sarah Reeves  
Stoll Keenon Ogden PLLC  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507  
Email: Sarah.Reeves@skofirm.com

Host: Del Mar Thoroughbred Club  
Attn: Josh Rubinstein  
2260 Jimmy Durante Boulevard  
Del Mar, California 92014  
Email: josh@dmtc.com

With a copy to: Chris Jaczko  
Procopio, Cory, Hargreaves & Savitch LLP  
12544 High Bluff Drive, Suite 400  
San Diego, CA 92130  
Email: chris.jaczko@procopio.com

or to each party, at such other address or facsimile number as may hereafter be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall be deemed to have been given (i) on the date received if personally delivered, (ii) two business days following the date deposited in the mail if delivered by mail, (iii) on the next business day following the date sent by overnight courier if delivered by overnight courier or (iv) the date sent by email if delivered by email before 5:00 ET on a business day (otherwise on the next succeeding business day).

**15.2. Waivers**

No waivers or failure to insist upon strict compliance with any obligation, covenant, agreement or condition of this Agreement, or delay in exercising any right, power or privilege, shall operate as a waiver of, or an estoppel with respect to, any subsequent or other failure.

**15.3. Expenses**

Each party shall assume as incurred and pay its own legal, accounting and other expenses incurred in connection with the transactions contemplated by this Agreement except as otherwise provided in Article 12 hereof.

**15.4. Headings and Counterparts**

The headings in this Agreement have been included solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event one or more of said counterparts are executed by facsimile transmission the parties agree to provide non-facsimile counterparts of this Agreement immediately thereafter.

**15.5. Exhibits**

The Exhibits to this Agreement are incorporated by reference and expressly made a part of this Agreement.

**15.6. Entire Agreement; Modification**

This Agreement (including all Exhibits) contains a final, complete and exclusive Agreement of the parties pertaining to its subject matter and supersedes all prior written and oral agreements pertaining hereto. Except as expressly provided in Sections 2.2 and 4.1 hereof (giving BCL the unilateral right to make certain modifications hereto), no modification or waiver of any provision of this Agreement and no consent by any party to any departure therefrom shall be effective unless such modification or waiver shall be in writing and signed by all parties, and the same shall then be effective only for the period and upon the conditions and for the specific instances and purposes specified in such writing. The rights and remedies provided are cumulative and not exclusive of any rights or remedies otherwise provided by law.

**15.7. Governing Law; Consent to Jurisdiction and Venue**

This Agreement and any disputes hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without reference to its principles of conflicts of law or choice of law. The parties hereby irrevocably and unconditionally agree that the Circuit Courts of Fayette County, Kentucky and/or United States District Court for the Eastern District of Kentucky sitting in Lexington, Kentucky shall be the sole proper venue for the resolution of any disputes, claims or proceedings regarding the obligations and liabilities of any party under this Agreement and the parties hereby irrevocably and unconditionally waive any right to a determination of any such proceedings by a court in any other venue and agree not to plead or claim that any such proceedings brought in the Circuit Courts of Fayette County, Kentucky and/or the United States District Court for the Eastern District of Kentucky sitting in Lexington, Kentucky have been brought in an inconvenient forum. The parties hereto further agree that service of process by any judicial officer or by registered or certified U.S. mail in accordance with the provisions of Section 15.1 hereof, shall establish personal jurisdiction over

such parties and such parties waive any rights under the laws of any state to object to jurisdiction within the Commonwealth of Kentucky.

**15.8. Binding Effect**

This Agreement shall be binding upon the parties and their respective successors, assigns, and any other transferee; provided, however, that this Agreement shall be deemed strictly personal to Host and that accordingly Host may in no fashion mortgage, encumber or assign this Agreement or any part hereof.

**15.9. Severability**

In case any section or provision of this Agreement, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Agreement or any other covenant, agreement, stipulation, obligation, act or action, or a part thereof, made, assumed, entered into or taken under this Agreement, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

**15.10. Confidentiality**

The parties hereto covenant to keep the terms of this Agreement in the strictest confidence except to the extent that either may be reasonably required to disclose certain information pursuant to any law or order. The parties further agree to honor and maintain the confidentiality of any confidential, secret or proprietary information as may be so designated and disclosed by any party hereto.

**15.11. Survival of Covenants**

Any provision hereof which by its terms has or may have application after the expiration, terminations cancellation or forfeiture of this Agreement (including, without limitation, all of Host's and BCL's indemnity obligations as set forth herein as well as the option set forth in Section 15.12) shall be deemed to survive such expiration, termination and cancellation or forfeiture.

**15.12. Option for 2029 Breeders' Cup World Championships**

Notwithstanding the expiration of the Term of this Agreement. Host hereby grants to BCL an option to cause Host to present the 2029 Breeders' Cup World Championships on and subject to the same terms and conditions as contained in this Agreement; *provided, however, that* this option shall only be exercisable by BCL to the extent this Agreement has not been terminated pursuant to Section 11.1(b) herein. Subject to the foregoing, BCL may exercise this option by delivering written notice of the exercise of the option to Host on or before March 15, 2027. For purposes of clarity, the foregoing option for 2029 is in addition to the option Host previously granted to BCL for 2026, 2027 or 2028 under the terms of that certain Agreement by



and between Breeders' Cup Limited and Del Mar Thoroughbred Club for Breeders' Cup World Championships 2024, and Breeders' Cup retains all rights with respect thereto.

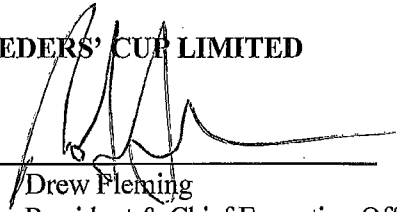
**15.13. Key Personnel**

Host agrees to timely inform BCL of any personnel changes in the positions with Host and/or the Facility set forth on Exhibit "S."

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers, all as of the day and year first above written.

**BREEDERS' CUP LIMITED**

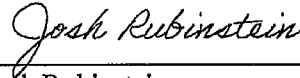
By: \_\_\_\_\_



Drew Fleming  
President & Chief Executive Officer

**DEL MAR THOROUGHBRED CLUB**

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



Josh Rubinstein  
President & Chief Operating Officer

**EXHIBIT "A"**

**FACILITY CONTRIBUTION FORMULA**

For the privilege of presenting the BCWC, Del Mar Thoroughbred Club ("Del Mar") will pay to Breeders' Cup Limited ("BCL") a contribution consisting of the following elements:

(a) The first \$600,000 of Facility Net Revenues is to be paid to the 22<sup>nd</sup> District Agricultural Association as a facility lease.

(b) The next \$6,000,000 of Facility Net Revenues will be paid to BCL

(c) If Facility Net Revenues exceed the payments made in (a) through (b) above, the remaining Facility Net Revenues in excess of \$6,600,000 shall be divided as follows:

(i) BCL shall receive 75% and

(ii) Del Mar shall receive 25%

(d) 50% of Del Mar's share of Facility Net Revenues shall be deposited in a Facility Improvement Fund to be invested in the upgrade of facility capital projects mutually agreeable to BCL and Del Mar.

**State Race Track Leasing Commission (SRTLCL)**  
**Item 7-C, Amending the Del Mar Race Track Authority’s**  
**Joint Powers Agreement**

The Del Mar Race Track Authority (Authority) was formed in 1990 through the Joint Exercise of Powers Agreement (JPA) between the 22<sup>nd</sup> District Agricultural Association (District) and the State Race Track Leasing Commission (Commission) and was subsequently amended in 1996, 2013, and 2015, for the “purpose of financing the capital improvements, renewals, and replacements at the District’s fairgrounds.”

In 2023, during the course of reviewing the formation documents of the Authority, inconsistencies were discovered between the Authority Bylaws and the JPA document that led to the Authority Board authorizing Authority Secretary Carlene Moore to coordinate with Counsel to the Authority, Deputy Attorney General Joshua Caplan, on the review of the Authority Bylaws and JPA and to bring forward any recommended amendments at a future meeting. Section 4 of the JPA confirms that “nothing in the By-Laws” adopted by the Authority “shall be inconsistent with” the JPA.

Through this review process, typographical errors were noted in the first and fifth whereas clauses of the JPA, and, for consistency with the recommended amendments to the Authority Bylaws, as was the use of “employ” instead of “retain temporary” at Section 3(E)(5) of the JPA document.

JOINT EXERCISE OF POWERS AGREEMENT  
FOR THE  
DEL MAR RACE TRACK  
AUTHORITY

---

BY AND BETWEEN  
THE STATE RACE TRACK LEASING COMMISSION  
AND  
THE 22ND DISTRICT AGRICULTURAL ASSOCIATION  
OF THE STATE OF CALIFORNIA

---

DATED AS OF AUGUST 1, 1990

JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT, dated as of August 1, 1990 (hereinafter referred to as the "Agreement"), by and between the State Race Track Leasing Commission (the "Commission"), and the 22nd District Agricultural Association (the "District") acting by and through its Board of Directors,

WITNESSETH:

WHEREAS, there is at the racing inclosure on the fairgrounds owned by the District a grandstand used for the District's annual fair and for an annual thoroughbred horse race meeting, and for other events, exhibitions, concerts, race meetings and other purposes authorized by the District or by the Commission acting on behalf of the District; and

WHEREAS, the Commission and the District agree that said grandstand is approaching the end of its useful life and should be replaced by a new grandstand and has so provided in the Master Plan for Del Mar Fairgrounds (the "Master Plan"); and

WHEREAS, the Commission and the District are empowered by Part 3 of Division 3 of the California Food and Agricultural Code (the "Law"), including but not limited to Section 4156 of the Law to expend funds for the long-range comprehensive development and improvement of, and construction upon the property of the District in accordance with the Master Plan; and

WHEREAS, the District is empowered by the Law with the approval of both the Department of Food and Agriculture and the Department of General Services, to improve its real property; and

WHEREAS, the Commission and the District agree that a new grandstand should be constructed at the District's racetrack inclosure and paid for by the proceeds of revenue bonds and funds available to the Commission and District; and

WHEREAS, Chapter 5 of Division 7 of Title 1 of the Government Code, codified at Sections 6500 and following (the "Act") permits two or more public agencies by agreement to exercise jointly held powers common to the contracting parties; and

WHEREAS, the parties hereto desire to enter into a joint powers agreement pursuant to the Act to create an entity to finance the construction and equipping of a grandstand and related facilities at the District's fairgrounds and for other purposes authorized under the Act;

NOW, THEREFORE, THE COMMISSION AND THE DISTRICT, IN CONSIDERATION OF THE MUTUAL PROVISIONS AND AGREEMENTS HEREIN CONTAINED, DO AGREE AS FOLLOWS:

Section 1. Purpose

This Agreement is made pursuant to the provisions of the Act to provide for the joint exercise of powers common to the Commission and the District for the purpose of financing the construction and equipping of a grandstand and related facilities, improvements and betterments at the District's fairgrounds. Such purposes will be accomplished, and said powers exercised, in accordance with the Act, the Law and in the manner hereinafter set forth.

Section 2. Term

This Agreement shall be effective as of August 24, 1990, and shall continue in full force and effect until August 24, 2025, unless extended or earlier terminated by a supplemental written agreement between the Commission and the District; provided, however, that in no event shall this Agreement terminate until such time as all revenue bonds, certificates of participation, notes, loans or other obligations (collectively the "Bonds") of the Authority established pursuant to this Agreement shall have been paid in full or adequate provision for such payment in full shall have been made, as set forth in the proceedings for the issuance thereof.

Section 3. Authority

A. Creation of Authority. Pursuant to the Act and the Law, there is hereby created a public entity separate from the parties hereto, to be known as the Del Mar Race Track Authority (the "Authority"). The Authority shall be a public entity separate and apart from the Commission, the District, and the State of California (the "State").

Pursuant to Section 6508.1 of the Act, the debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities or obligations of the Commission, the District, or the State of California.

Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State in the manner set forth in Section 6503.5 of the Law.

B. Indemnification. The Authority shall, to the extent permitted by law, defend, indemnify and hold harmless the Commission, the District, the State of California, and their officers, agents, and employees from all claims, losses, damages, costs, injury and liability of every kind, nature and description arising from the activities of the Authority, or the activities undertaken pursuant to this Agreement; provided, however, that any obligations under this Section 3.B. are expressly made subordinate and junior to the obligations of the Authority under, or otherwise relating to, the Bonds.

C. Governing Board. The Authority shall be administered by a governing board called the Del Mar Race Track Authority Board (the "Board"). The Board shall consist of the members of the Commission, each of whose members shall serve, ex officio, as a member of the Board. Members of the Board shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

D. Meetings of the Board

(1) Regular meetings. The Board shall provide for its regular, adjourned regular, and special meetings. The dates upon which, and the hour and place at which, any regular meeting shall be held shall be fixed by resolution of the Board and a copy of such resolution shall be filed with each party to this Agreement.

(2) Bagley-Keene Open Meeting Act. All meetings of the Board, including without limitation regular, closed, adjourned regular and special meetings shall be called upon notice, held, and conducted in accordance with the provisions of the Bagley-Keene Open Meeting Act (commencing with Section 11120 of the Government Code).

(3) Minutes. The Secretary of the Authority shall cause to be kept minutes of all meetings and shall, after each meeting, cause a copy of the minutes to be sent to each regular member of the Board, and to each party to this Agreement.

(4) Records. The Board shall cause all records regarding this Agreement and activities undertaken pursuant to this Agreement, including all activities undertaken by the Board including the Bonds, to be retained



for at least six years following termination of the Authority, or final payment of the Bonds, whichever is later.

(5) Quorum. A majority of Board members shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings from time to time.

E. Officers: Duties

(1) The Board shall elect a President and a Vice-President of the Board from among its members. The Board shall also appoint a Secretary who may, but need not, be a member of the board.

(2) The chief financial officer of the District is designated as the Treasurer of the Authority. The Treasurer shall have the powers, duties, and responsibilities specified in Section 6505.5 of the Government Code. The Treasurer of the State shall be the sole agent for offering and selling any Bonds to be issued by the Authority. The Treasurer's duties as agent for sale shall include, but not be limited to, selection of the underwriters who will purchase the bonds, the pricing of bonds, the determination of the underwriter compensation and reimbursement of expenses, and signing any purchase agreement for the bonds on behalf of the Authority.

(3) The Controller of the Authority shall be designated by the Board in its By-Laws referred to in Section 4 hereof.

(4) The Authority's Treasurer and Controller are designated as the public officers or persons who have charge of, handle or have access to property of the Authority; and such officers shall file an official bond as required by Section 6505.1 of the Act in an amount to be determined by the Board.

(5) The Authority may request from the State Department of Finance, the State Department of General Services, the State Department of Food and Agriculture, the State Department of Justice, the Commission, and the District the services of such personnel as may be needed to carry out this Agreement, and the Authority shall have the power to employ professional and technical assistance for the performance of this Agreement, provided that adequate funds are available to pay for such services.

(6) Upon presentation, the Board or its designee shall approve proper charges made against the Authority for the services of the Treasurer of the State, the

Controller of the State, and any other department of the State, Commission, or District employee performing services for the Authority. Such charges shall be consistent with similar charges of such agency, as applicable, for similar services. No department, Commission, or District employee shall be deemed to be an employee of the Authority, except when acting as Treasurer or Controller of the Authority.

#### Section 4. By-Laws

The Board shall have the power to adopt By-Laws that the Board, in its sole discretion, may deem necessary or desirable for the conduct of the business of the Authority. Nothing in the By-Laws shall be inconsistent with this Agreement.

#### Section 5. Powers of the Authority

The Authority shall have all of the powers set forth in the Act and the Law and any other applicable laws for the purpose of exercising its powers and raising funds necessary to carry out its obligations, including all acts necessary to finance, plan for, design, construct and equip a new grandstand and related facilities at the District's fairgrounds, and issuing Bonds for such purposes. The Authority shall have the power to acquire, hold, lease, or dispose of property in connection with the financing, construction and equipping of the new grandstand, to demolish the existing grandstand and other structures necessary for the construction of the new grandstand, and to carry out other site preparation or other activities necessary or deemed desirable by the Board to fulfill its responsibilities. The Authority shall have the power to construct, equip, lease, manage and maintain the grandstand and other facilities. The Authority shall have the power to incur debts, liabilities or obligations required by the exercise of its powers, provided that no debt, liability, or obligation of the Authority shall be deemed to be a debt, liability, or obligation of the Commission, the District, or the State of California. The Authority shall have the power to sue or be sued in its own name. Notwithstanding any other provision of this Section 5, the Authority shall have any and all additional powers conferred by the Act and the Law or by any other provision of law, insofar as such additional powers may be necessary to accomplish the purposes of this Agreement. All such powers shall be exercised in the manner provided for in the Act and this Agreement, subject only to such restrictions upon the manner of exercising such powers as are imposed upon the District in the exercise of similar powers. Notwithstanding any other provisions of this Agreement, the Authority shall

not issue Bonds or otherwise incur debt without the prior written approval of the Director of Finance of the State of California.

#### Section 6. Fiscal Year

Unless and until changed by resolution of the Board, the fiscal year of the Authority shall be the period between January 1st of each year to and including the following December 31, except for the first fiscal year, which shall be the period from the effective date of this Agreement to the following December 31.

#### Section 7. Financing

The Authority may issue one or more issues of Bonds, in a sufficient total amount to cover all the costs of the Authority in carrying out this Agreement, including, without limitation, the costs of the Commission and the District that are subject to reimbursement, and the costs of financial consultants, bond counsel and other costs and expenses incurred in connection with the issuance of such bonds and the construction of the grandstand, and all related improvements and betterments, as set forth in the Master Plan. The expenses of the Authority including costs of financing may be paid for from funds available to the Commission and the District.

#### Section 8. Construction

Construction of the grandstand and all related improvements and betterments as set forth in the Master Plan, and activities related to such construction, shall be performed pursuant to a contract or contracts let by the Authority, consistent with contracting procedures followed by the District.

#### Section 9. Disposition of Assets

Upon termination of this Agreement pursuant to Section 2, or otherwise, and upon payment of all charges and obligations of the Authority, including charges pursuant to Section 3.E.(6) and all obligations incurred in connection with the financing for the grandstand and all related improvements and betterments, as set forth in the Master Plan, title to the grandstand shall vest in the District and any remaining funds and such improvements shall be paid to the funds of origin in proportion to which those funds were contributed, as set forth in the financial records of the Authority.

## Section 10. Accounts and Reports

(1) To the extent not covered by the duties assigned to any trustee for the Bonds, the Authority shall establish and maintain such funds and accounts as may be required by standard accounting practices. The books and records of the Authority shall be open to inspection at all reasonable times by representatives of the State Department of Finance, the State Department of General Services, the State Department of Food and Agriculture, the Commission, and the District. The Authority, within 120 days after the end of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to each of the above named agencies to the extent such activities are not covered by a report of the trustee for the Bonds.

(2) The Authority shall contract with a certified public accountant to make an annual audit of the accounts and records of the Authority as required by Section 6505 of the Act. In each case, the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code, and shall conform to generally accepted auditing standards. A report of the audit shall be filed within three months of the end of the fiscal year under examination.

(3) Any costs, including contracts with or employment of certified public accountants, in making an audit pursuant to this Section 10 shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for this purpose.

(4) All the books, records, accounts and files referred to in this Section 10 shall be open to the inspection of the holders of Bonds, to the extent and in the manner provided in the resolution, indenture, trust agreement or other documents providing for the issuance or execution, sale, and delivery thereof.

## Section 11. Conflict of Interest Code

The Board shall adopt a Conflict of Interest Code as required by law.

## Section 12. Enforcement

The Commission and District declare that this Agreement is entered into for the benefit of the Authority created hereby, and the Commission and District grant to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of each of

the parties hereunder. Each and all of the remedies given to the Authority hereunder, or by any law now or hereafter enacted, are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

### Section 13. Funds

Subject to the applicable provisions of any resolution, indenture, or trust agreement relating to any Bonds, which may provide for a trustee to receive, have custody of, and disburse Authority funds, the Treasurer shall receive, have custody of, and disburse Authority funds and, as nearly as possible, in accordance with normal procedures of the Treasurer, shall make the disbursements required by this Agreement to carry out any of the provisions or purposes of this Agreement. The District and the Commission may provide contributions to the Authority for the purposes set forth in this Agreement, and the Authority may expend such funds for the purposes for which they were contributed.

### Section 14. Notices

Notices hereunder shall be sufficient if delivered to:

Commission: Chairperson  
State Race Track Leasing Commission  
c/o Department of Finance  
State Capitol, Room 1145  
Sacramento, California 95814

District: President, Board of Directors  
22nd District Agricultural Association  
Fairgrounds  
Del Mar, California 92014

Authority: Secretary  
Del Mar Race Track  
Authority  
(at such address as the Board  
shall designate for this purpose)

### Section 15. Miscellaneous

(1) The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

(2) Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably

withheld, and shall be made expeditiously. If approval is withheld, a statement of reasons shall accompany a written notice withholding approval.

(3) This Agreement is made in the State under the Constitution and laws of the State and is to be so construed.

Section 16. Severability

Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Section 17. Successors; Assignment

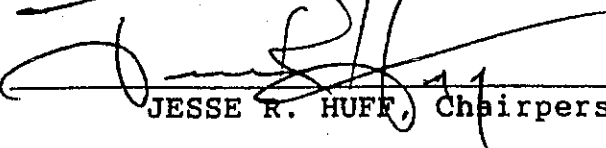
This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, no party hereto may assign any right or obligation hereunder without the consent of the other parties.

Section 18. Amendment of Agreement

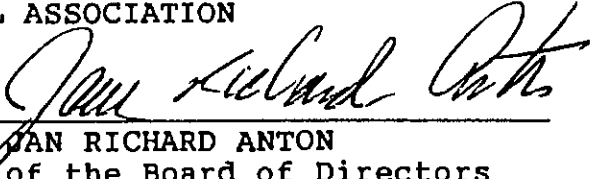
This Agreement may be amended or supplemented by the parties hereto by written agreement executed by the Commission and the District at any time, provided the written approval of all of the State agencies approving this Agreement is obtained, and provided further that in no event shall this Agreement terminate while any Bonds remain outstanding under the terms of the resolution, indenture, trust agreement, or other instrument pursuant to which the Bonds are issued.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

THE STATE RACE TRACK LEASING COMMISSION

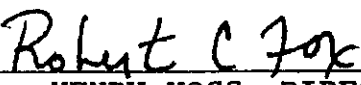
By   
JESSE R. HUFF, Chairperson

THE 22ND DISTRICT AGRICULTURAL ASSOCIATION

By   
JAN RICHARD ANTON  
President of the Board of Directors

APPROVED:

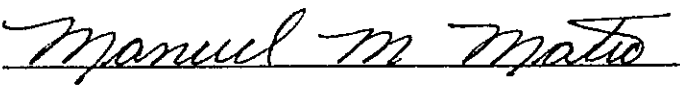
DEPARTMENT OF FOOD AND AGRICULTURE

By   
*for* HENRY VOSS, DIRECTOR

DEPARTMENT OF GENERAL SERVICES

By   
WILLIAM J. ANTHONY, DIRECTOR

STATE TREASURER

By 

## RESOLUTION

RESOLUTION OF THE STATE RACE TRACK LEASING COMMISSION APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PLEDGE AGREEMENT IN CONNECTION WITH THE ISSUANCE OF DEL MAR RACE TRACK AUTHORITY REVENUE REFUNDING BONDS, SERIES 1996; APPROVING AN AMENDMENT TO THE JOINT EXERCISE OF POWERS AGREEMENT FOR THE DEL MAR RACE TRACK AUTHORITY; AND AUTHORIZING THE TAKING OF ANY AND ALL NECESSARY ACTIONS IN CONNECTION THEREWITH

**WHEREAS**, the Del Mar Race Track Authority ("the Authority") is a joint exercise of powers agency duly organized and validly existing under the laws of the State of California, consisting of the 22nd District Agricultural Association (the "District") and the State Race Track Leasing Commission (the "Commission") and formed to provide financial assistance for the construction and equipping of a grandstand and other facilities, improvements and betterments at the fairgrounds of the District (the "Project");

**WHEREAS**, the Authority entered into an Agreement Providing for the Issuance of 1993 Tax-Exempt Commercial Paper Bond Anticipation Notes, dated as of April 1, 1993, as amended, pursuant to which the Authority has issued its 1993 Tax-Exempt Commercial Paper Bond Anticipation Notes (the "1993 Notes"), currently outstanding in the aggregate principal amount of \$42,425,000, for the purpose of paying the costs of the Project;

**WHEREAS**, the Authority, the District and the Commission have pledged certain moneys for the payment of the principal of and interest on the 1993 Notes pursuant to a pledge agreement dated as of July 1, 1991, and amended on April 1, 1993, July 1, 1994 and December 1, 1995;

**WHEREAS**, the Authority desires to provide funds for the refinancing of the 1993 Notes through the issuance of its Revenue Refunding Bonds, Series 1996 (the "1996 Bonds") in the aggregate principal amount of not to exceed Fifty Million Dollars (\$50,000,000);

**WHEREAS**, in order to provide for the authentication and delivery of the 1996 Bonds and any additional bonds (collectively, the "Bonds"), to establish and declare the terms and conditions upon which the Bonds are to be issued and secured, and to secure the payment of the principal thereof, premium, if any, and interest thereon, the Authority intends to enter into a trust indenture (the "Indenture") with the U.S. Trust Company of California, N.A., as trustee; and

**WHEREAS**, pursuant to a pledge agreement, dated as of August 1, 1996 (the "Pledge Agreement"), among the Authority, the Commission, the District and the Trustee,



the 1996 Bonds will be secured by and payable from certain revenues received by the District from its satellite wagering and concession operations and, under certain circumstances, revenues from its annual fair known as the "Del Mar Fair" and revenues received by the Commission pursuant to the Amended and Restated Race Track Agreement, effective as of December 19, 1989, between the Commission and the Del Mar Thoroughbred Club;

**NOW, THEREFORE, BE IT RESOLVED** by the members of the State Race Track Leasing Commission as follows:

**Section 1.** The form of Pledge Agreement by and among the Commission, the Authority, the District and the Trustee, on file with the Commission, is hereby approved. The President of the Commission or his designee is hereby authorized and directed to execute and deliver the Pledge Agreement in substantially the form on file with the Commission, with such changes, additions and deletions thereto as such officer may approve, such approval to be conclusively evidenced by the execution and delivery of the Pledge Agreement.

**Section 2.** Section 3(E)(2) of the Joint Exercise of Powers Agreement shall be amended to read in its entirety as follows:

(2) The chief financial officer of the District is designated as the Treasurer of the Authority. The Treasurer shall have the powers, duties, and responsibilities specified in Section 6505.5 of the Government Code. That person or entity designated in writing by the President or Vice-President of the Board shall be the sole agent for offering and selling any Bonds to be issued by the Authority. Such person's or entity's duties as agent for sale shall include, but not be limited to, selection of the underwriters who will purchase the bonds, the pricing of bonds, the determination of the underwriter compensation and reimbursement of expenses, and signing any purchase agreement for the bonds on behalf of the Authority.

**Section 3.** The members and staff of the Commission are hereby authorized and directed to do, or to cause to be done, such further acts, and to execute and deliver any and all documents, certificates and agreements as they may deem reasonably necessary or appropriate to carry out the intents and purposes of this Resolution.

**Section 4.** This Resolution shall take effect from and after its date of adoption.

SECOND AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT  
FOR THE DEL MAR RACE TRACK AUTHORITY

This Second Amendment ("Second Amendment") to the Joint Exercise of Powers Agreement for the Del Mar Race Track Authority is entered into this 14 day of July, 2015, by and between the State Race Track Leasing Commission (the "Commission") and the 22<sup>nd</sup> District Agricultural Association of the State of California (the "District"). Each capitalized term in this Second Amendment will have the meaning ascribed to it in the Joint Exercise of Powers Agreement between the Commission and the District, dated as of August 1, 1990 ("Agreement").

RECITAL

WHEREAS, the Commission and the District entered into the Agreement creating the Del Mar Race Track Authority (the "Authority") to finance the construction and equipping of a grandstand and related facilities at the District's fairgrounds and for other purposes authorized under the Act.

WHEREAS, Section 18 of the Agreement provides that the Agreement may be amended or supplemented by the District and the Commission by written agreement, with the written approval of the state agencies approving the Agreement.

WHEREAS, the District desires to finance and/or refinance capital improvements, renewals and replacements at the District's fairgrounds and to issue additional Bonds to finance and/or refinance such capital improvements, renewals and replacements through the issuance of the Authority's Bonds.

WHEREAS, the Commission and the District desire to amend the Agreement to extend the term of the Agreement for an issuance of Bonds and to provide for the financing and/or refinancing of such capital improvements, renewals and replacements at the District's fairgrounds.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

A. Amendment of Agreement. (1) Section 1 of the Agreement shall be amended in its entirety as follows:

"Section 1. Purpose

This Agreement is made pursuant to the provisions of the Act to provide for the joint exercise of powers common to the Commission and the District for the purpose of financing capital improvements, renewals and replacements at the District's fairgrounds. Such purposes shall be accomplished, and said powers exercised, in accordance with the Act, the Law, and in the manner hereinafter set forth."

(2) Section 2 of the Agreement shall be amended in its entirety as follows:

"Section 2. Term

This Agreement shall be effective as of August 24, 1990, and shall continue in full force and effect until December 31, 2040, unless extended or earlier terminated by a supplemental written agreement between the Commission and the District; provided, however, that in no event shall this Agreement terminate until such time as all revenue bonds, certificates of participation, notes, loans, or other obligations (collectively the

"Bonds") of the Authority established pursuant to this Agreement shall have been paid in full or adequate provision for such payment in full shall have been made, as set forth in the proceedings for the issuance thereof."

(3) Section 7 of the Agreement shall be amended in its entirety as follows:

"Section 7. Financing

The Authority may issue one or more issues of Bonds to finance or refinance the cost of capital improvements, renewals and replacements at the District's fairgrounds and costs related thereto, including, without limitation, the costs of the Commission and the District in connection therewith, and the costs of financial consultants, bond counsel and other costs and expenses incurred in connection with the issuance of such Bonds."

B. Effectiveness of Second Amendment. This Second Amendment shall become effective upon execution by the parties hereto, and the written approval of the California Department of Food and Agriculture, the California Department of General Services, and the Treasurer of the State of California.



State of California Secretary of State

FILE NO. 2033

FILED Secretary of State State of California MAR 21 2013

AMENDMENT OF A JOINT POWERS AGREEMENT (Government Code section 6503.5)

Instructions:

- 1. Complete and mail to: Secretary of State, P.O. Box 942877, Sacramento, CA 94277-0001.
2. Include filing fee of \$1.00.
3. Do not include attachments.
4. A copy of the full text of the joint powers agreement and amendments, if any, must be submitted to the State Controller's office.

Date of filing initial notice with the Secretary of State: September 4, 1990

File number of initial notice: 1091

Name of the agency or entity created under the agreement and responsible for the administration of the agreement: DEL MAR RACE TRACK AUTHORITY

Agency's or Entity's Mailing Address: c/o TIMOTHY FENNELL, Secretary, 2260 Jimmy Durante Boulevard Del Mar, CA 92014

Title of the agreement: JOINT EXERCISE OF POWERS AGREEMENT FOR THE DEL MAR RACE TRACK AUTHORITY

Complete one or more boxes below. The agreement has been amended to:

- [ ] Change the parties to the agreement as follows:
[ ] Change the name of the administering agency or entity as follows:
[ ] Change the purpose of the agreement or the powers to be exercised as follows:
[ ] Change the short title of the agreement as follows:
[ XX ] Make other changes to the agreement as follows: Section 3(E)(6) is amended to include the entity's secretary, in addition to its treasurer and/or controller, as an employee of the entity, when acting in such capacity.

RETURN ACKNOWLEDGMENT TO: (Type or Print)

NAME [ Deborah M. Fletcher Deputy Attorney General
ADDRESS 110 West A St., Suite 1100
CITY/STATE/ZIP [ San Diego, CA 92101

Date

3/15/13

Signature

[ Timothy J. Fennell

Timothy J. Fennell, Secretary

Typed Name and Title