

RESOLUTION NO. 2005- 253

**CITY OF POMPANO BEACH
Broward County, Florida**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND PPI, INC. FOR OPERATION OF SLOT MACHINES IN A PARI-MUTUEL FACILITY; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement between the City of Pompano Beach and PPI, Inc. for Operation of Slot Machines in a Pari-Mutuel Facility, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and PPI, Inc..

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 14th day of June, 2005.



JOHN C. RAYSON, MAYOR

ATTEST:



MARY L. CHAMBERS, CITY CLERK

GBL/jrm
6/3/05
l:reso/2005-266

Return recorded copy to:

Document prepared by:

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants, made this 14th day of June, 2005, by PPI, INC., hereinafter referred to as "FACILITY", a Florida corporation whose address is 1800 SW 3rd Street, Pompano Beach, Florida, for the benefit of the City of Pompano Beach, a political subdivision of the State of Florida (the "CITY"), with a post office address at 100 W. Atlantic Boulevard, Pompano Beach, Florida 33360.

WHEREAS, FACILITY is the fee title owner of that certain real property, located in Broward County, Florida, and legally described in Exhibit "A" attached hereto and incorporated herein (the "Property"); and

WHEREAS, FACILITY hereby covenants that FACILITY is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Declaration; that FACILITY has good right and lawful authority to make this Declaration; and that FACILITY agrees to fully warrant and defend this Declaration against the claims of all persons whomsoever; and

WHEREAS, in the November 2004 general election, the residents of the State of Florida voted to adopt an amendment to the Florida Constitution so that the residents of the CITY could vote at a referendum election in order to decide whether to authorize the operation of slot machines exclusively at existing licensed parimutuel facilities located in Broward County; and

WHEREAS, CITY and FACILITY recognize that each entity is concerned with the health and general welfare of the residents of the CITY as it relates to addition of slot machines within the FACILITY; and

WHEREAS, CITY and FACILITY recognize that FACILITY impacts the health and general welfare of the residents of the CITY; and

WHEREAS, CITY and FACILITY recognize that the residents of the CITY have legitimate concerns over increased development, traffic, crime, congestion, and the quality of life in Pompano Beach; and

NOW, THEREFORE, the undersigned agree and covenant to the following:


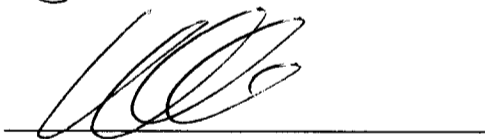
1. The recitals set forth above are true and correct and are incorporated into these restrictive covenants.
2. In order to assist CITY in offsetting and defraying governmental impacts including, but not limited to, the costs of local law enforcement, road improvements and maintenance, and mass transit operation, that CITY will incur as a result of FACILITY'S slot machine operations in CITY, FACILITY agrees to pay CITY in accordance with the Agreement (hereinafter referred to as "Agreement") entered into between CITY and FACILITY, attached hereto and made a part hereof as Exhibit "B".
3. CITY, through its Mayor and City Commissioners, its successors and assigns, is the beneficiary of these restrictive covenants and as such, the CITY OF POMPANO BEACH may enforce these covenants against the Property by action at law or in equity, including against any person or persons, entity or entities, violating or attempting to violate the terms of this Covenant.
4. Any failure of CITY to enforce these covenants shall not be deemed a waiver of the right to do so thereafter.
5. Invalidation of any one of these covenants by judgment or court order shall in no way affect any other conditions which remain in full force and effect.
6. This Declaration of Covenants shall be recorded in the Public Records of Broward County, Florida, and the provisions hereof shall run with the land and shall remain in full force an effect and be binding upon the undersigned, and their heirs, legal representatives, personal representatives, grantees, and assigns, including any person or entity taking title to the land.

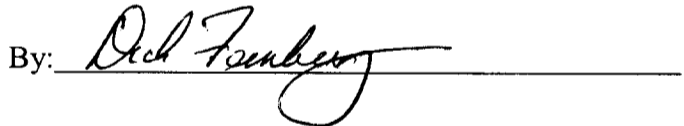
IN WITNESS WHEREOF, FACILITY has executed this Declaration of Restrictive Covenants on the 27 day of MAY, 2005.

"FACILITY":

Witnesses:

PPI, INC.,
a Florida corporation

Joseph W. Blas



By: Dick Feinberg

 Print Name: DICK FEINBERG
 Title: GM

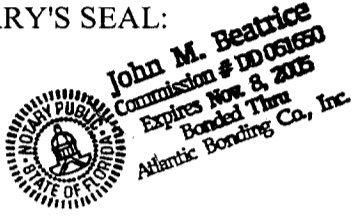
(SEAL)

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 27 day of May, 2005 by DICK FEINBERG as GM of PPI, INC. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Name of Acknowledger Typed, Printed or Stamped

Commission Number

GBL/jrm
5/26/05
l:agr/declaration of restrictive covenants
(2005-600)

EXHIBIT "A"

LEGAL DESCRIPTION

All of the following described lands lying in and being a part of Section 3, Township 49 South, Range 42 East, Broward County, Florida:

The South 1/2 of the Northwest 1/4, EXCEPT the West 33 feet thereof for road right-of-way;

AND that part of the South 1/2 of the Northeast 1/4 lying West of the Seaboard Coast Line Railroad;

AND Government Lot 5, EXCEPT the West 33 feet thereof for road right-of-way, and also EXCEPT ARVIDA POMPANO PARK, as recorded in Plat Book 137, Page 33, of the Public Records of Broward County, Florida;

AND that part of Government Lot 6 lying South of said Plat Book 137, Page 33;

AND that part of Government Lot 7 lying South of said Plat Book 137, Page 33 and West of the Seaboard Coast Line Railroad;

TOGETHER WITH a portion of Tract B, of the aforesaid ARVIDA POMPANO PARK;

SAID LANDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commence at the Northwest corner of the aforementioned Section 3; run

THENCE on an assumed bearing of South 00 degrees 00 minutes 26 seconds West along the West line of said Section 3, a distance of 1708.26 feet to the Northwest corner of the aforesaid Government Lot 5;

THENCE South 88 degrees 01 minutes 37 seconds East along the North line of said Government Lot 5 and along the westerly extension of the centerline of RACE TRACK ROAD and along said centerline, a distance of 1328.63 feet;

THENCE South 00 degrees 09 minutes 21 seconds East a distance of 53.03 feet to a point on the South right-of-way line of RACE TRACK ROAD as shown on the aforementioned Plat of ARVIDA POMPANO PARK;

THENCE South 88 degrees 01 minutes 37 seconds East along said South right-of-way, a distance of 571.42 feet to the Northeast corner of the lands described in Official Records Book 15678 at Page 145 of the aforesaid Public Records;

THENCE continue South 88 degrees 01 minutes 37 seconds East along said South right-of-way line, a distance of 689.71 feet to the POINT OF BEGINNING of the lands herein described;

THENCE continue along said right-of-way the following two courses and distances:

South 88 degrees 01 minutes 37 seconds East, a distance of 100.00 feet;

South 88 degrees 07 minutes 14 seconds East, a distance of 1087.87 feet to the point of the aforementioned westerly right-of-way line of the Seaboard Coast Line Railroad;

THENCE South 13 degrees 04 minutes 16 seconds West along said westerly right-of-way line, a distance of 2969.90 feet to a point of the South line of the aforesaid South 1/2 of the Northeast 1/4;

THENCE North 86 degrees 02 minutes 40 seconds West along said South line and the South line of the aforesaid South 1/2 of the Northwest 1/4, a distance of 3078.57 feet to a point on the East right-of-way line of POWERLINE ROAD said point being 33.00 feet by right angle measurement East of the West line of the aforesaid Northwest 1/4 of Section 3;

THENCE North 00 degrees 00 minutes 26 seconds East parallel with said West line of the Northwest 1/4 and along said East right-of-way line, a distance of 2039.93 feet to a point on the boundary on the aforesaid ARVIDA POMPANO PARK;

THENCE along said boundary the following thirteen courses and distances:

South 45 degrees 06 minutes 41 seconds East a distance of 94.55 feet;

North 89 degrees 46 minutes 38 seconds East, a distance of 1025.36 feet;

North 44 degrees 56 minutes 16 seconds East, a distance of 49.49 feet (North 44 degrees 48 minutes 39 seconds East, 49.47 feet per plat);

North 00 degrees 09 minutes 21 seconds West, a distance of 685.69 feet;

North 88 degrees 01 minutes 37 seconds West, a distance of 50.25 feet;

North 00 degrees 09 minutes 21 seconds West, a distance of 71.66 feet (71.60 feet per plat) to a point on the aforementioned South right-of-way line of RACETRACK ROAD;

South 88 degrees 01 minutes 37 seconds East along said South right-of-way line, a distance of 220.15 feet (220.20 feet per plat);

South 00 degrees 09 minutes 21 seconds East, a distance of 71.66 feet (71.60 feet per plat);

North 88 degrees 01 minutes 37 seconds West, a distance of 49.86 feet;

South 00 degrees 09 minutes 21 seconds East, a distance of 680.94 feet (680.99 feet per plat);

South 45 degrees 11 minutes 21 seconds East, a distance of 49.53 feet;

North 89 degrees 46 minutes 38 seconds East, a distance of 1241.18 feet;

North 51 degrees 23 minutes 55 seconds East, a distance of 43.24 feet;

THENCE North 00 degrees 09 minutes 21 seconds West, a distance of 710.57 feet to the POINT OF BEGINNING.

Containing 180.46 acres of land, more or less

AGREEMENT

Between

**CITY OF POMPANO BEACH,
A MUNICIPAL CORPORATION ORGANIZED AND EXISTING UNDER
THE LAWS OF THE STATE OF FLORIDA**

and

**PPI, INC.,
A CORPORATION ORGANIZED
UNDER THE LAWS OF THE STATE FLORIDA**

for

**OPERATION OF SLOT MACHINES
IN A PARI-MUTUEL FACILITY**

INTRODUCTION

This is an Agreement (the "Agreement"), made and entered into by and between: CITY OF POMPANO BEACH, a Florida municipal corporation organized and existing under the laws of the State of Florida (the "CITY"),

AND

PPI, INC., a corporation organized pursuant to the laws of the State of Florida, the owner of real property located at 1800 SW 3rd Street, Pompano Beach, Broward County, Florida (the "FACILITY"), at which such slot machines may be authorized, and the holder of the pari-mutuel permit issued by the Florida Department of Business & Professional Regulation pursuant to Chapter 550 of the Florida Statutes.

WHEREAS, in the November 2004 general election, the residents of the State of Florida voted to adopt an amendment to the Florida Constitution ("Amendment 4") that gave the governing body of Broward County the authority to hold a County-wide referendum on whether to authorize slot machines to be placed within existing, licensed pari-mutuel facilities located in the County, codified as Article X, Section 23 of the Florida Constitution; and

WHEREAS, pursuant to Resolution No. 2005-26, on January 18, 2005, the Board of County Commissioners approved and authorized a county-wide special election to be held on Tuesday, March 8, 2005 (the "Special Election") for the purpose of submitting to the qualified electors of Broward County the question of whether to authorize slot machines in existing, licensed pari-mutuel facilities as provided in Article X, Section 23 of the Florida Constitution (the "Referendum"); and

WHEREAS, the Special Election in Broward County did approve the question of whether to authorize slot machines in certain existing, licensed pari-mutuel facilities located within the County as provided in Article X, Section 23; and

WHEREAS, CITY agrees such modification or redevelopment of the Facility to include slot machines will further the public interest by providing economic stimulation and enabling redevelopment of the Facility and the geographic areas surrounding the Facility; and

WHEREAS, FACILITY may desire to modify or develop its facility in accordance with land development regulations as set forth in applicable federal, state and local law, as may be modified from time to time; and

WHEREAS, CITY and FACILITY recognize that each entity is concerned with the health and general welfare of the residents of the CITY; and

WHEREAS, CITY and FACILITY recognize that Facility impacts the health and general welfare of the residents of CITY; and

WHEREAS, CITY and FACILITY recognize that the residents of the CITY have legitimate concerns over any increased development, traffic, crime, congestion, and the quality of life in the CITY; and

WHEREAS, FACILITY is willing to enter into this Agreement as a responsible corporate citizen of the CITY and in recognition of the fact that FACILITY's long-term business interests are best served by accommodating the legitimate needs and concerns of residents of the CITY; and

WHEREAS, FACILITY desires to assist CITY in offsetting and defraying governmental impacts, including the costs of local law enforcement, road improvements and maintenance and mass transit operation that CITY will incur as a result of FACILITY's slot machine operations in the CITY; and

WHEREAS, this Agreement represents a good faith concerted and negotiated effort on the part of CITY and FACILITY to achieve a positive and constructive resolution of significant issues that could have otherwise negatively impacted the relationship between CITY and FACILITY to the detriment of both parties and the residents of the CITY generally. Instead, this Agreement reflects an enhancement of that relationship and a continuing desire by CITY and FACILITY to take a proactive approach to issues for the benefit of the residents of the CITY; NOW THEREFORE,

Each party hereto agrees that good and valuable consideration has been given and received by such party as consideration for entering into this Agreement, the adequacy and sufficiency of which the parties hereby acknowledge, and further in consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, CITY and FACILITY agrees as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

In addition to the terms defined in the Whereas clauses above or in the body of this Agreement, the following definitions shall apply herein:

- 1.1 **Agreement** - means this document, Articles 1 through 9, inclusive, along with any attachments, exhibits and documents that are expressly incorporated by reference.
- 1.2 **Contract Administrator** - The Pompano Beach City Manager or the designee of such City Manager. The primary responsibilities of the Contract Administrator are to coordinate and communicate with FACILITY and to manage and supervise execution and completion of the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the terms and conditions of this Agreement.
- 1.3 **City Manager** - The Chief Executive Officer of the CITY pursuant to Section 28 of the Charter of the City of Pompano Beach, Florida.
- 1.4 **City Attorney** - The chief legal counsel for CITY who directs and supervises the Office of the CITY Attorney pursuant to Section 62 of the Charter of the City of Pompano Beach, Florida.
- 1.5 **Gross Slot Revenues** - The term "Gross Slot Revenues" shall mean the total of wagers received by a slot machine less the sum of: (1) cash or cash equivalents paid out to patrons as a direct result of playing a slot machine which are paid to patrons either manually or paid out by the slot machine; and (2) cash paid to purchase annuities to fund prizes payable to patrons over a period of time as a direct result of playing a slot machine; and (3) the cost of any personal property distributed to a patron as the direct result of playing a slot machine, which does not include travel expenses, food, refreshments, lodging or services.
- 1.6 **Facility** - The term "FACILITY" shall mean the owner of the real property located at 1800 SW 3rd Street, Pompano Beach, Broward County, Florida, at which slot machines may be authorized pursuant to Article X, Section 23 of the Florida Constitution, the operator of the FACILITY at which such slot machines may be authorized, and the holder of the pari-mutuel permit issued by the Florida Department of Business & Professional Regulation pursuant to Chapter 550 of the Florida Statutes and shall also include any heirs, successors and assigns.

ARTICLE 2

CONDITIONS FOR GROSS SLOT REVENUES PAYMENT

Until such time that FACILITY commences to operate slot machines and during such time that FACILITY does not actually operate slot machines, FACILITY shall have no obligation to pay the Gross Slot Revenues payment set forth in Section 4.1 below.

ARTICLE 3

TERM

This Agreement shall be for a term of thirty (30) years, beginning on the date it is fully executed by both parties, and shall be automatically renewed for successive thirty (30) year terms unless the CITY sends to FACILITY written notice of its intent not to renew at least thirty (30) days prior to the expiration of any such term or renewal term.

ARTICLE 4

PAYMENT

4.1 To assist in defraying the cost of local government impacts, including the effects upon quality of life and community values, costs and expenses which CITY will incur as a result of FACILITY's development and operation of slot machines as authorized by Article X, Section 23 of the Florida Constitution, and for other good and valuable consideration, FACILITY shall make a monthly payment to CITY in the amount of one and seven-tenths percent (1.7%) of the Gross Slot Revenues generated from each and every slot machine operated by FACILITY or at the Facility authorized pursuant to Article X, Section 23 of the Florida Constitution until Gross Slot Revenues from said slot machines reach Two Hundred Fifty Million Dollars (\$250,000,000.00) on an annual basis. Said annual basis shall be FACILITY's fiscal year. A subsequent change of FACILITY's fiscal year shall not alter the annual basis unless agreed to by the parties. FACILITY shall pay two and five-tenths percent (2.5%) monthly on Gross Slot Revenues from said slot machines when said Gross Slot Revenues in any fiscal year exceed Two Hundred Fifty Million Dollars (\$250,000,000.00). In addition, FACILITY shall pay an additional sum up to a maximum of \$250,000 annually such that the amount of annual revenues to CITY shall not be less than 1.5% of the first \$100,000,000 in gross slot revenues plus 2.0% of gross slot revenues between \$100,000,000 and \$200,000,000 plus 2.5% of gross revenues between \$200,000,000 and \$300,000,000 plus 2.5% of gross revenues in excess of \$300,000,000. FACILITY shall notify CITY in writing of its fiscal year period within thirty (30) days of the effective date of this Agreement and such notification shall reference Section 4.1.

Payment shall be accompanied by a form to be promulgated by City Manager (or his appointee), which form will reconcile wagers received from slot machines to Gross Slot Revenues and any other payments required under this Agreement including any credits, prepayments, administrative fees or interest due, or other adjustments of said revenues and signed by an authorized representative of FACILITY. Said form shall be submitted

monthly to CITY regardless of whether any payment is owed. If the State of Florida or any agency thereof develops a form pertaining to revenues generated from slot machines and said form is acceptable to City Manager (CM), then FACILITY may utilize said form to fulfill its obligations under this paragraph. If CITY's CM requires additional information to verify accuracy of the percentage payments of Gross Slot Revenues contemplated by this Agreement not otherwise set forth on the state form, CM may require that the FACILITY submit a supplemental form containing such additional information.

- 4.1.1 The monthly payments required by Section 4.1 of this Agreement shall be due to CITY on the fifteenth (15th) day of each month succeeding the first month of operations of slot machines and be delinquent on the last day of each month payment is due. Any monthly payment when delinquent will result the imposition of in an administrative fee of ten percent (10%) of the unpaid delinquent balance; however, it shall never be less than Fifty Dollars (\$50.00). In addition to the administrative fee, interest shall accrue at the rate of one percent (1%) per month after any amount is due until the amount of the delinquent balance is paid in total.
- 4.1.2 CITY is empowered when any monthly payment or installment payment becomes delinquent, to issue written notice to FACILITY of its failure to receive payment within the time required and, if known to CITY, such notice shall set forth the full amount of the payment due, with the interest, administrative fee, and cost of collection. CITY may enforce, by any means available to it, the collection of payments imposed by this Agreement.
- 4.2 All payments required under this Agreement shall be in the name of Pompano Beach and mailed as directed below:
 - C. William Hargett, Jr., City Manager
 - City of Pompano Beach, Florida
 - 100 W. Atlantic Blvd., Room 135
 - Pompano Beach, Florida 33060
- CITY's CM, or his appointee, may direct FACILITY in writing to change the address for the receipt of payment by CITY and CM and FACILITY may agree in writing to a different manner for delivery of payment.
- 4.3 If this Agreement ends for any reason other than as provided in Article 3, the requirements of Section 9.8 shall be applicable.
- 4.4 FACILITY agrees to execute a Declaration of Covenants which shall run with the land to ensure that the monetary obligations of this Agreement shall be complied with by FACILITY and by any person or entity purchasing the stock or assets of the FACILITY and operating slot machines from FACILITY's location. The declaration is attached

hereto and made a part hereof as Attachment 1. CITY shall be entitled to record same pursuant to Section 28.222, Florida Statutes.

4.5 FACILITY agrees that it will not seek the approval of the Department of Business and Professional Regulation, Division of Pari-mutuel Wagering or any other state agency permitted to authorize the relocation of slot machine operations, for authorization to move in whole or in part the physical location of the operation of slot machines authorized by Article X, Section 23 of the Florida Constitution to a location other than the location identified in this Agreement without the prior written consent of the CITY. This shall not prohibit FACILITY from demolishing or renovating the current building within the confines of the current location as set forth within the legal description attached to the Declaration of Covenants attached hereto and made a part hereof as Attachment 1. City will not object to Pari-mutuel commencing slot operations within any new building(s) constructed within the legal description attached to the Declaration of Covenants attached hereto as Attachment 1 providing all necessary approvals and permits have been acquired.

ARTICLE 5

GOVERNMENTAL IMMUNITY

Nothing herein is intended to serve as a waiver of sovereign immunity by CITY nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement.

ARTICLE 6

INDEMNIFICATION

6.1 FACILITY shall at all times hereafter indemnify, hold harmless and, at City Attorney's option, defend or pay for an attorney selected by CITY Attorney to defend CITY, its officers, Commission members, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, expenses, and judgments through and including all appellate or administrative proceedings, or both, caused by any conduct of, or negligent act or omission of FACILITY, its employees, agents, servants, or officers, accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. Notwithstanding any other provision in this Agreement, FACILITY shall have no obligation to indemnify, defend or hold harmless CITY, its officers, members of the Commission, agents, servants and employees against any claim, loss, liability, and expenditure of any kind caused by action on the part of CITY or any of its officers, members of the Commission, agents, servants and employees due to CITY'S use or misuse of any revenues paid to CITY by FACILITY pursuant to this Agreement.

- 6.2 In the event of litigation, an administrative proceeding, or both, arising out of or in connection with this Agreement, including as to its validity and enforceability, is brought by a third person naming CITY its officers, Commission members, agents, servants, and employees as a defendant, FACILITY shall at all times hereafter indemnify, hold harmless and, at City Attorney's option, defend or pay for an attorney selected by CITY Attorney to defend CITY, its officers, Commission members, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, expenses, and judgments through and including all appellate actions, resulting from said litigation or administrative proceeding. Notwithstanding any other provision in this Agreement, FACILITY shall have no obligation to indemnify, defend or hold harmless CITY, its officers, members of the Commission, agents, servants and employees against any claim, loss, liability, and expenditure of any kind caused by action on the part of CITY or any of its officers, members of the Commission, agents, servants and employees due to CITY'S use or misuse of any revenues paid to CITY by FACILITY pursuant to this Agreement.
- 6.3 The provisions of this Article 6 shall survive termination or other end to this Agreement and shall continue until the end of any and all applicable statutes of limitation for any and all court actions and administrative proceedings which may be filed against CITY, its officers, Commission members, agents, servants, and employees. However, if CITY is sued and the action is one that FACILITY would have had an obligation to defend pursuant to Article 6, and CITY raises the defense of statute of limitations, then FACILITY shall indemnify, hold harmless and defend CITY, its officers, Commission members, agents, servants, and employees as required by Sections 6.1 and 6.2 if a court fails to dismiss said action.
- 6.4 Notwithstanding the foregoing and subject to CITY's rights set forth in this Section 6.4 and Section 6.5, FACILITY shall have the sole and exclusive authority to defend CITY, its officers, members of the Commission of CITY Commissioners, agents, servants, and employees in any proceeding covered by this Article 6 and to direct the defense of any such proceeding when the relief sought in such proceeding has the potential to adversely impact slot machine operations at the FACILITY. For the purposes of this Article 6, a proceeding shall be considered to have the potential to "Adversely Impact Slot Machine Operations" at a particular facility, if the relief sought in such proceeding would reasonably result in a material reduction in the amount of Gross Slot Revenues generated by such FACILITY. If CITY and FACILITY are each named as parties in any litigation that could Adversely Impact Slot Machine Operations or if CITY deems it to be in its best interest, CITY may at its sole option, elect to hire a separate, independent attorney at CITY'S expense to represent CITY'S interests in such litigation.
- 6.5 CITY shall be fully and timely apprised and kept informed as the litigation progresses by FACILITY of any litigation in which CITY is a named party and shall have the right to monitor such litigation, as some litigation may have financial or political ramifications of concern to CITY.

ARTICLE 7

BANKRUPTCY PROVISIONS

- 7.1 To the fullest extent provided or allowed by law, in the event FACILITY files for protection under any federal or state bankruptcy, insolvency, receivership or other creditor protection statute, or otherwise has filed against it a similar involuntary proceeding that is not dismissed within thirty (30) days (a "Bankruptcy Occurrence"), then such FACILITY agrees that this Agreement shall not be deemed an executory contract given that CITY has fully performed its obligations hereunder and all that remains is FACILITY's payment of the moneys due hereunder to CITY. In all respects, FACILITY agrees that it will not assert that this is an executory contract, and hereby waives all claims, arguments and/or contentions to the contrary.
- 7.2 Notwithstanding the provisions of Section 7.1, in the event it is determined that this is an executory contract or that the waiver set forth above is unenforceable for any reason, then FACILITY agrees not to seek to reject this Agreement pursuant to Section 365(a) of the Bankruptcy Code, or any similar state law provision, if any, as an executory contract, or to assist, support or join any motion made by a third party seeking to force a rejection of this Agreement as an executory contract or for any other reason. If a Bankruptcy Occurrence occurs, then FACILITY agrees to use its best efforts to obtain as soon as practicable an order of the court approving the assumption of this Agreement, under Section 365 of the Bankruptcy Code, or any applicable state law, and if a motion is made seeking the rejection of this Agreement, to oppose such motion and instead seek the assumption hereof.

ARTICLE 8

OBLIGATIONS WITH
REGARD TO DEVELOPMENT PROCESS

- 8.1 In order to facilitate and expedite the development approval process, FACILITY hereby agrees to proceed in good faith with the following work in a timely and responsive manner, subject to its rights to move forward with Phase-1 of the Project and/or modify the Project, including Phase-1 based on the enactment by the Florida Legislature of favorable enabling legislation effective on or before July 1, 2005, which in sum and substance is acceptable to the FACILITY:
- 8.1.1 With regard to the implementation of Phase-1 Building, deemed to be a development project under the City's Code, given the FACILITY's existing buildings and facilities, FACILITY shall:

- A. Prepare and submit request for CITY DRC Site Plan Approval and City Architectural Appearance Committee Design Approval, on or about March 11, 2005, in accordance with the conceptual plan attached hereto as Exhibit "B" and incorporated herein by reference (completed);
- B. Prepare and submit request for CITY Planning and Zoning Board Site Plan Approval, in accordance with the submittal requirements established by the CITY'S Zoning Director. This was completed and approved on April 27, 2005 by the Planning and Zoning Board.
- C. Prepare and submit requests for CITY Building Permit Approval for the Core/Shell Phase-1 Building on or about February 21, 2005 (completed);
- D. Prepare and submit requests for County Demolition Permit Approval for the Phase-1 Work area on or about March 11, 2005;
- E. Prepare and submit requests for CITY Building Permit Approval for the Interior work build-out within the Phase-1 Building on or about July 1, 2005;
- F. Prepare and submit request for engineering permits, as required, for Phase-1 for water, sewer, drainage and paving, and the payment of all applicable fees.
- G. Agree to landscape and buffer to the CITY'S satisfaction the FACILITY'S southern boundary line adjacent to Cypress Bend development. Such work to be completed and approved by CITY prior to the issuance of a Temporary or Final Certificate of Occupancy for the Phase-1 building.

8.1.2 With regard to the implementation of subsequent development phases of the proposed Redevelopment Plan, FACILITY intends to:

- A. Prepare and submit its proposed conceptual Redevelopment Plan for approval by CITY in an expeditious manner subsequent to implementing legislation being enacted by the Florida legislature in the 2005 legislative session, which in sum and substance is acceptable to FACILITY; said plans shall include additional surface and structured parking to adequately accommodate patrons and the additional uses, and will provide adequate parking and drop off and pick-up areas for patrons that use alternate transportation, including buses and for those patrons that use tri-rail in the event a tri-rail station is developed along FACILITY's eastern property line. In addition, in the event the Redevelopment Plan calls for the relocation of any horse stables, the relocation will provide for ample buffering and setbacks from the FACILITY's southern boundary line. In addition, FACILITY will conduct at its expense a traffic impact study for

traffic on Powerline Road south of Atlantic Boulevard to determine whether additional turn lanes are needed. If traffic study determines that additional turn lanes are warranted then FACILITY will dedicate additional right-of-way from its property adjacent to Powerline Road to allow for an additional turn lane(s) to be developed and for Powerline Road to be reconfigured as necessary at that location. Such costs shall not be borne by CITY. In addition, Facility will conduct at its expense a traffic impact study addressing all traffic impacts from the proposed Redevelopment Plan (site master plan) to be completed and submitted with the site master plan to be reviewed and approved prior to the issuance of a final certificate of occupancy for the Phase 1 development. However, City will agree to issue a TCO upon receipt, review and conceptual approval of the traffic impact study, which TCO shall expire in 180 days if the traffic impact study is not approved by the City in that time frame

- B. To the extent required by applicable law, expeditiously thereafter FACILITY will prepare and submit requests for boundary plat approval by CITY and County of the real property within the Redevelopment Plan;
- C. To the extent required by applicable law for the future phases of development, expeditiously thereafter FACILITY will prepare and submit requests, as may be required for a Land Use Plan Amendment or Zoning Overlay District, and/or Zoning Amendment to PCD or other applicable zoning district, and/or a request for Development of Regional Impact (pursuant to Chapter 380, Florida Statutes) approval for the lands within the proposed Master Plan;
- D. Prepare and submit requests on an expedited timetable, for CITY Building Permit approval for subsequent phases of the Redevelopment Plan; and,
- E. Prepare and submit requests thereafter for Demolition Permits to County and City, as required for subsequent phases of the Redevelopment Plan.
- F. FACILITY shall be responsible and shall bear the costs of any and all improvements of any kind and nature that would otherwise be required by FACILITY in the absence of this Agreement. It is agreed and expressly understood that FACILITY's payment to CITY is for the sole purpose of offsetting costs that would otherwise be the burden of the City and is in no way intended to grant FACILITY relief, credit or otherwise excuse such costs to be borne by FACILITY.

8.1.3 The FACILITY shall pay all licensing, permit, processing, review and impact fees as may be required pursuant to the Codes of the CITY and the County and other Applicable Laws as such fees become due and payable.

CITY does not offer, promise or otherwise grant to FACILITY by this agreement any right, prior approval or action in contradiction to any existing rule, regulation or law. CITY'S sole and only commitment by this Agreement is the timely processing and consideration of such requests and submittals made by FACILITY. In this regard, City will use its best efforts to expedite said reviews and processing of Facility's applications, whenever possible. In this regard, City will use its best efforts to expedite said reviews and processing Facility's applications were possible.

8.2 CITY Obligations with Regard to Expediting and Processing FACILITY's Plans For Approval. In exchange for the compensation and consideration to be paid by the FACILITY to the CITY, the CITY shall have the following affirmative contractual obligations:

8.2.1 Consistent with Broward County Planning Council's position and provided that any necessary rights of way dedications have been made by FACILITY, and provided that FACILITY has provided CITY with any impact analysis that CITY may desire including but not limited to water, sewer and traffic, then CITY staff shall timely consider a request for waiver of platting requirements.

CITY staff shall provide timely consideration and expedite administrative processing of the Site Plan for Phase-1 Building, provided that the FACILITY submits a complete package of plans and support documents consistent with the requirements for standard CITY site plan review.

8.2.2 Provided that FACILITY provides the CITY with completed applications, CITY staff shall allow for the concurrent processing of Site Plan and Building Permit applications for Phase-1 Building through all levels of review, including review and processing by the CITY Fire Marshall.

8.2.3 CITY hereby acknowledges and agrees that FACILITY will be applying for an "at risk" demolition permit from the County to allow for selective demolition of pavement and existing utilities and CITY staff shall timely consider FACILITY's completed application as required for such permit. CITY staff shall also expedite issuing any necessary CITY demolition permits associated with the Phase-1 Building. For purposes of this sub-paragraph, "at risk" shall mean that FACILITY will indemnify and hold harmless the CITY and its employees with regard to any changes or additional costs incurred by CITY to include loss damages and lawsuits that are attributable to the issuance of such permit.

8.2.4 CITY staff shall initiate and process to the point of permit issuance as permitted by law, at FACILITY's sole risk and expense, the timely consideration of Building Permits for Phase-1 Building prior to receipt of any required approvals from the County DPEP.

- 8.2.5 CITY staff shall timely consider a conceptual master plan for project signage, provided that all code regulations have been met, which shall be subject to detailed review and approval by CITY staff, and such signage shall be subject to CITY Building Permit approval and any necessary Architectural Appearance Committee approvals and Architectural Appearance Committee development orders. In considering signage to be approved for the FACILITY Facility, CITY staff will take into consideration the size and nature of the project, and safety and traffic issues associated with the proposed uses and such other evaluation criteria in order to allow for the most appropriate signage for the benefit and convenience of the general public.

Furthermore, in consideration of the fact that the FACILITY Facilities encompass an area greater than 150 acres in size and provide an entertainment and recreational venue for the general public, and that operations at the FACILITY Facilities are expected to routinely generate traffic consistent with the maximum use of the existing harness race track activities, therefore in order to provide for safe and efficient auto travel by the general public, CITY staff shall timely consider and process from the FACILITY requests for a Zoning Code Amendment, for City Commission consideration, to allow for facilities of this magnitude to install a maximum of four (4) offsite signs (not including roadway signs) within public right-of-ways. Said offsite signs as may be approved shall be located so as to identify safe and convenient access routes from the public roadway system to the FACILITY. Said additional offsite signs shall otherwise comply with all requirements of the City with regard to size, and type, lighting limitations, and locations (i.e. to be safely situated with regard to roadway and sight triangles) and FACILITY shall obtain any necessary license agreements from and approvals of any other government agency whose right of way is being utilized.

- 8.2.6 To the extent more than 10 feet is required for the easement by applicable CITY zoning requirements, then City staff will timely consider and process a request for a variance to allow for the reduction in width of perimeter landscape buffers for the overall Redevelopment Plan to a minimum of 10' wide. The City staff will consider all matters allowed by Code and will accommodate PPI where possible.
- 8.2.7 CITY staff shall timely consider and process a request for a variance to allow for the computation of open space and landscape requirements for Phase-1 and all other future individual parcels to be shown on the Redevelopment Plan based upon the overall open space and landscape area provided on the Redevelopment Plan, and in furtherance of the Zoning Code, will consider the open water lake area to be used to comply with landscape area requirements as permitted by law. With regard to Phase-1, CITY staff shall allow development to proceed with the assumption that there is adequate open space and landscaping throughout the remainder of the FACILITY, with the specific accounting of which will take

place in conjunction with the Redevelopment Plan review and permitting associated with future Phase-2 development plans but before the issuance of a final certificate of occupancy for Phase-1. PPI shall be allowed to proceed with Phase 1 development provided that there is adequate open space and landscaping throughout the remainder of the Facility as determined by City's review of Facility's Redevelopment Plan, which will be submitted to City for review by Facility and approved prior to the issuance of a final certificate of occupancy for Phase 1. However, City will agree to issue a TCO upon receipt, review and conceptual approval of the traffic impact study, which TCO shall expire in 180 days if the traffic impact study is not approved by the City in that time frame

- 8.2.8 In deference to safety considerations associated with gaming facilities, CITY staff shall consider as permitted by law, regulation or applicable acceptable lighting standards for recommendation a Redevelopment Plan that allows for the use of onsite lighting with pole heights to a maximum of 35' tall (including any supporting foundations) and with lighting levels as follows: internal roadways at 12 foot-candles; parking lots/garages at 14 foot-candles; and, Porte Cochere at 25 to 30 foot-candles. Site lighting to be designed according to acceptable lighting standards.
- 8.2.9 CITY staff shall take all reasonable efforts to expedite the review and approval of all Building, Engineering and Utility plans for permitting, so as to allow for the timely and efficient implementation of Phase-1 improvements. CITY staff shall review and consider plans for the routing of utilities from the adjacent public right-of-ways to the Phase-1 improvements as proposed by FACILITY, subject to the dedication of all necessary and appropriate easement areas consistent with CITY's criteria and requirements for such easements.
- 8.2.10 In an effort to maximize revenues to the CITY under Section 4 hereof, pursuant to its authority under Florida Statutes, Section 562.14, CITY staff will timely review, process and forward a request for City Commission consideration to extend the hours of operation of the FACILITY to 24 hours per day/7 days per week, as an amendment to the City Code provisions otherwise limiting the hours of operation relating to liquor sales.
- 8.2.11 CITY staff will review and evaluate each of the proposed Phase-1 and Redevelopment Plan improvements to determine if they are consistent with and permissible under the existing land use and zoning classifications for the project site and, that Phase-1 improvements may be deemed to be an expansion of the existing special exception use and, to the extent required and if in the best interest of the City to allow for such intended uses in future Phases, City staff will also timely review and transmit for City Commission consideration, if permitted under the CITY'S Zoning Code, a Zoning change for future phases to the PCD District.

8.2.12 CITY staff will recommend and support utilization of any applicable State or County exemptions and/or applicable waivers of any platting and/or applicable exemptions to DRI requirements for the proposed developments contained in the Redevelopment Plan.

8.2.13 CITY staff shall process all completed applications expeditiously through the appropriate reviewing agency.

ARTICLE 9

MISCELLANEOUS

9.1 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of FACILITY directly relating to the calculation of Gross Slot Revenues, upon reasonable notice, in order to ascertain the correctness of the Gross Slot Revenues payment required to be made to CITY pursuant to this Agreement, including the accurate reporting of Gross Slot Revenues and the determination of Gross Slot Revenues payment under this Agreement. FACILITY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the calculation of Gross Slot Revenues. All books, records, and accounts of FACILITY relating to Gross Slot Revenues shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon reasonable request to do so, FACILITY shall make same available at no cost to CITY in written form. Audited financial statements of FACILITY which in addition details the amount of annual Gross Slot Revenues shall be provided to CITY within four (4) months of the close of each fiscal year of FACILITY.

FACILITY shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to the calculation of Gross Slot Revenues and the Gross Slot Revenues payment pursuant to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after the creation of the record. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined to be applicable to FACILITY's records relating to Gross Slot Revenues, FACILITY shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by FACILITY. Any incomplete or incorrect entry or entries in excess of Two Hundred Thousand Dollars (\$200,000.00) of cumulative, annual funds that should have been paid to the CITY as a Gross Slot Revenues payment in a particular

fiscal year in such books, records, and accounts shall be a basis for CITY to apply an administrative fee of ten percent (10%) of any delinquent amount owed to CITY plus interest in an amount of one percent (1%) per month until the delinquent amount owed has been paid. Said interest shall not accrue for a period greater than three (3) years. Any underpayment shall be paid by FACILITY to CITY within ten (10) days of notice of the audit finding, including interest and the administrative fee if owed.

9.2 INDEPENDENT CONTRACTOR

FACILITY is an independent contractor under this Agreement. Neither FACILITY nor its agents shall act as officers, employees, or agents of the CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to FACILITY or FACILITY's agents any authority of any kind to bind CITY in any respect whatsoever.

9.3 THIRD PARTY BENEFICIARIES

Neither FACILITY nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.4 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

To the CITY:

City Manager
C. William Hargett, Jr.
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, FL 33061

With a copy to: City Attorney
Gordon B. Linn
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, FL 33061

To the FACILITY: Dick Feinberg, General Manager
Pompano Park Racing
1800 S.W. 3rd Street
Pompano Beach, FL 33069

With copies to: Allan Solomon, Exec. Vice President
Isle of Capri Casinos, Inc.
2200 Corporate Blvd. NW #310
Boca Raton, FL 33431

And to: Alan B. Koslow, Esq.
Becker & Poliakoff, P.A.
3111 Stirling Road
Fort Lauderdale, FL 33312-6525

Any Party to this Agreement may change its notification address(es) by providing written notification to the remaining parties pursuant to the terms and conditions of this section.

9.5 SUCCESSION AND ASSIGNMENT

This Agreement and any interest herein shall be binding upon and shall inure to the benefit of any and all successors, assigns, heirs, legal representatives, and personal representatives of any party hereto. Notwithstanding, FACILITY shall not assign this Agreement without the written consent of the City Commission, which consent shall not be unreasonably withheld. CITY's consent shall be deemed to have been given if the State of Florida, Department of Business & Professional Regulation authorizes the transfer of FACILITY's pari-mutuel permit to conduct pari-mutuel wagering and FACILITY shall provide written notice to CITY within five (5) days of the date of transfer.

9.6 WAIVER OF BREACH

Neither CITY's nor FACILITY'S failure to enforce any provision of this Agreement shall be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.7 COMPLIANCE WITH LAWS

CITY and FACILITY, respectively, shall comply with all applicable Federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement, including but not limited to the City of Pompano Beach zoning regulations, City of Pompano Beach Comprehensive Plan and CITY platting regulations set forth within the City Code of Ordinances and City Comprehensive Plan. No subsequently enacted law, code, ordinance, rule or regulation shall be construed to limit or restrict the payment required to be made to CITY by FACILITY under this Agreement. In addition, FACILITY acknowledges that this Agreement does not reduce or mitigate FACILITY's obligation to pay CITY all applicable taxes required by Florida Statutes or City ordinances.

9.8 SEVERANCE

In the event any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be effective. In such event, the parties shall first negotiate to amend this Agreement to address any portion found to be invalid or unenforceable. If the parties fail to negotiate an amendment, CITY shall be entitled to present to FACILITY an alternative provision which FACILITY shall agree to provided that such provision gives CITY no greater rights and gives FACILITY no greater obligations than the provision invalidated or determined to be unenforceable. Notwithstanding FACILITY's continuing obligation to agree to an alternative provision as provided above, this Agreement shall be subject to reformation or other equitable remedy by a court of competent jurisdiction inasmuch as the parties expressly intend that the invalidity or unenforceability of any portion of this Agreement shall not result in the invalidity or unenforceability of the purpose and intent of the parties in entering into this Agreement.

Notwithstanding the foregoing, if a court of competent jurisdiction were to determine that this Agreement must terminate, CITY shall be entitled to present to FACILITY an alternative form of agreement which FACILITY shall enter into provided that (a) such agreement gives CITY no greater rights and gives FACILITY no greater obligations than this Agreement, and (b) if litigation is commenced pertaining to such alternative agreement, then CITY, because it is a material and necessary party of interest in any litigation regarding or arising out of the new agreement, shall have the right and obligation to intervene or FACILITY may cause CITY to become a party to the litigation without objection by CITY, and CITY, at the option of FACILITY, shall defend FACILITY in any such litigation. The provisions of this section shall survive if this Agreement ends for any reason.

Unless and until any court of competent jurisdiction expressly determines in an action in which both CITY and FACILITY are named party defendants that it is illegal for

FACILITY to do so, FACILITY shall pay CITY the amounts required by Article 4 and shall continue to make such payments until a new agreement is entered into by the parties.

9.9 JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not be construed more strictly against one of the parties than the other.

9.10 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida, without regard to conflict of laws principles. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be in a state court located in Broward County, Florida, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. By entering into this Agreement, FACILITY and CITY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement.

9.11 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by FACILITY and by CITY following approval by the Board.

9.12 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.13 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties and such Whereas clauses and Attachment 1 hereto are incorporated into and made a part of this Agreement for all purposes.

9.14 REPRESENTATION OF AUTHORITY; LICENSE REQUIREMENT; PARI-MUTUEL REPRESENTATIONS

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party. FACILITY represents that it is a licensed pari-mutuel operator under Chapter 550, Florida Statutes. FACILITY shall take all reasonable action necessary to continue and retain its FACILITY license and obtain and retain a license authorizing the operation of slot machines throughout the term of this Agreement.

FACILITY represents that it is the entity, subject to approval of the Referendum, that is authorized by Article X, Section 23 of the Florida Constitution to operate slot machines at its existing FACILITY. FACILITY shall not direct, assign or create a new entity which would in any way divert slot machine revenues which would result in slot machine revenues not being subject to the terms of this Agreement, and FACILITY shall not sell its stock or assets, or both, which sale would render the terms of this Agreement inapplicable to slot machines operations.

9.15 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

9.16 EQUITY REQUIREMENT/EXPANSION

Broward County is the sole county in Florida that passed the Referendum as defined in this Agreement. Therefore, it is mutually desirable that any agreement between any city in Broward County and a pari-mutuel facility located in the said county provides substantially equivalent value to each city.

If agreements are entered into by a pari-mutuel facility in Broward County, which provides for a percentage payment that is greater than that to CITY, then CITY shall be entitled to increase the percentage payments it is entitled to receive under this Agreement pursuant to Section 4.1 to match the higher percentage payable not to exceed 3%. In the event that any agreement is made between a pari-mutuel facility in Broward County which provides that the percentage payments are to be made on a sliding scale that is different than is set out above, then the parties agree that CITY shall be entitled to amend this Agreement to incorporate the percentage payment provisions of the applicable agreement up to 3%.

Should FACILITY be permitted to further expand its operation to offer additional forms of casino betting, such as, but not limited to, table games, FACILITY and CITY agree to use their best efforts to negotiate an amendment to this agreement to further assist CITY in offsetting and defraying the impacts which such expansion may create.

9.17 REMEDIES

In addition to all other remedies provided in this Agreement or under applicable law, CITY shall also be entitled to specifically enforce this Agreement, including the payment obligations of FACILITY provided herein. FACILITY acknowledges and agrees that the provisions hereof are unique, and the damages CITY might suffer upon a breach hereof incapable of precise calculation, and accordingly waive any and all objections, whether provided under federal or state law, including any bankruptcy or insolvency provisions, that they might have to any claim for specific performance that CITY might assert.

9.18 COVENANT NOT TO SUE

CITY and FACILITY hereby covenant that they shall not commence or maintain any lawsuit, administrative proceeding, or other action, whether at law or in equity, which challenges the validity or enforceability of this Agreement. This covenant shall be binding upon, and inure to, the benefit of the parties, their successors, assigns, heirs, legal representatives, and personal representatives.

9.19 WAIVER OF DEFENSES

FACILITY and CITY hereby waive any and all claims for lack, inadequacy or insufficiency of consideration, lack of mutuality of remedy or obligation, definiteness in time or other uncertainty, or any other defense or claim to the formation and creation of an enforceable contract. In all respects, the parties agree that this Agreement shall be enforceable as written and, unless otherwise mutually agreed to by the parties, waive any and all objections or arguments to the contrary. FACILITY hereby waives any and all claims that the covenant running with the land attached hereto as Attachment 1 is invalid or unenforceable in any respect and FACILITY agrees that said covenant is enforceable as written.

9.20 GOOD FAITH COOPERATION IN DEVELOPMENT PROCESS

CITY hereby agrees to provide a timely review of all development related applications submitted by or on behalf of FACILITY in accordance with all applicable regulations. CITY agrees to perform its duties set forth within the provisions of this Agreement in good faith.

9.21 CONFLICT OF INTERESTS

In accordance with the various agreements entered into among CITY and its Lobbyists, CITY agrees to direct its lobbyists not to lobby or to hire any sub-consultants to lobby the

Legislature, Governor or Cabinet as to any position concerning slot machines that is adverse to any stated, or later adopted position of CITY concerning the issue of slot machines.

9.22 SINGULAR AND PLURAL

As used in this Agreement, the singular includes the plural, and the plural includes the singular, unless the context otherwise requires.

9.23 STATUS QUO

If the CITY takes affirmative action by way of ordinance, resolution or otherwise that results in a reduction in the generation or capacity of generation of Gross Slot Revenues at the FACILITY, then the CITY and the FACILITY agree to negotiate in good faith to revise the terms and conditions of this Agreement. By exception, the City shall have no good faith obligation in the event the City's affirmative action is mandated by County, State or Federal law. If and until such time as an amendment or revised agreement is executed, all terms and conditions of this Agreement shall remain in place. Nothing herein shall be construed to obligate the CITY to revise any term or condition of this Agreement. In the event that FACILITY is granted additional gaming rights in addition to slot machines, CITY and FACILITY agree to negotiate in good faith to revise the terms and conditions of this Agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: CITY OF POMPANO BEACH through its CITY COMMISSION, signing by and through its MAYOR and CITY MANAGER, authorized to execute same by City Commission action on the 14th day of June, 2005, and the FACILITY, signing by and through its specified corporate officer, who is duly competent and authorized to execute same.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

Lisa Reichsach

By: John C. Rayson
JOHN C. RAYSON, MAYOR

Shelley R. Bartholomew

By: C. William Hargett, Jr.
C. WILLIAM HARGETT, JR.
CITY MANAGER

Attest:

Mary L. Chambers
MARY L. CHAMBERS, CITY CLERK

(SEAL)

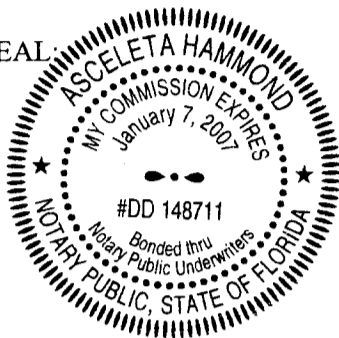
Approved by:

Gordon B. Linn
GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 20th day of June, 2005 by JOHN C. RAYSON, as Mayor of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL



Asceleta Hammond
NOTARY PUBLIC, STATE OF FLORIDA

Asceleta Hammond
Name of Acknowledger Typed, Printed or Stamped

Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 20th day of June, 2005 by C. WILLIAM HARGETT, JR. as City Manager of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL



Asceleta Hammond
NOTARY PUBLIC, STATE OF FLORIDA

Asceleta Hammond
Name of Acknowledger Typed, Printed or Stamped

Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 20th day of June, 2005 by MARY L. CHAMBERS as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL



Asceleta Hammond
NOTARY PUBLIC, STATE OF FLORIDA

Asceleta Hammond
Name of Acknowledger Typed, Printed or Stamped

Commission Number

"FACILITY":

Witnesses:

PPI, INC.,
a Florida corporation

Joseph R. Wilcox.

By: Dick Feinberg

[Signature]

Print Name: DICK FEINBERG

Title: GM

(SEAL)

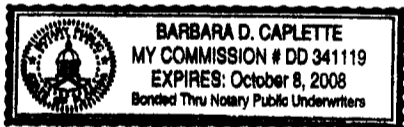
STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 25 day of MAY, 2005 by DICK FEINBERG as GM of PPI, INC., a Florida corporation (He) she is personally known to me or who has produced — (type of identification) as identification.

NOTARY'S SEAL:

Barbara D. Caplette
NOTARY PUBLIC, STATE OF FLORIDA



BARBARA D. CAPLETTE
Name of Acknowledger Typed, Printed or Stamped

DD 341119
Commission Number

GBL/jrm
4/1/05
l:agr/slot machines-Final 4-1-05
(2005-599)

EXHIBIT "B"

AGREEMENT

AGREEMENT

Between

**CITY OF POMPANO BEACH,
A MUNICIPAL CORPORATION ORGANIZED AND EXISTING UNDER
THE LAWS OF THE STATE OF FLORIDA**

and

**PPI, INC.,
A CORPORATION ORGANIZED
UNDER THE LAWS OF THE STATE FLORIDA**

for

**OPERATION OF SLOT MACHINES
IN A PARI-MUTUEL FACILITY**

INTRODUCTION

This is an Agreement (the "Agreement"), made and entered into by and between: CITY OF POMPANO BEACH, a Florida municipal corporation organized and existing under the laws of the State of Florida (the "CITY"),

AND

PPI, INC., a corporation organized pursuant to the laws of the State of Florida, the owner of real property located at 1800 SW 3rd Street, Pompano Beach, Broward County, Florida (the "FACILITY"), at which such slot machines may be authorized, and the holder of the pari-mutuel permit issued by the Florida Department of Business & Professional Regulation pursuant to Chapter 550 of the Florida Statutes.

WHEREAS, in the November 2004 general election, the residents of the State of Florida voted to adopt an amendment to the Florida Constitution ("Amendment 4") that gave the governing body of Broward County the authority to hold a County-wide referendum on whether to authorize slot machines to be placed within existing, licensed pari-mutuel facilities located in the County, codified as Article X, Section 23 of the Florida Constitution; and

WHEREAS, pursuant to Resolution No. 2005-26, on January 18, 2005, the Board of County Commissioners approved and authorized a county-wide special election to be held on Tuesday, March 8, 2005 (the "Special Election") for the purpose of submitting to the qualified electors of Broward County the question of whether to authorize slot machines in existing, licensed pari-mutuel facilities as provided in Article X, Section 23 of the Florida Constitution (the "Referendum"); and

WHEREAS, the Special Election in Broward County did approve the question of whether to authorize slot machines in certain existing, licensed pari-mutuel facilities located within the County as provided in Article X, Section 23; and

WHEREAS, CITY agrees such modification or redevelopment of the Facility to include slot machines will further the public interest by providing economic stimulation and enabling redevelopment of the Facility and the geographic areas surrounding the Facility; and

WHEREAS, FACILITY may desire to modify or develop its facility in accordance with land development regulations as set forth in applicable federal, state and local law, as may be modified from time to time; and

WHEREAS, CITY and FACILITY recognize that each entity is concerned with the health and general welfare of the residents of the CITY; and

WHEREAS, CITY and FACILITY recognize that Facility impacts the health and general welfare of the residents of CITY; and

WHEREAS, CITY and FACILITY recognize that the residents of the CITY have legitimate concerns over any increased development, traffic, crime, congestion, and the quality of life in the CITY; and

WHEREAS, FACILITY is willing to enter into this Agreement as a responsible corporate citizen of the CITY and in recognition of the fact that FACILITY's long-term business interests are best served by accommodating the legitimate needs and concerns of residents of the CITY; and

WHEREAS, FACILITY desires to assist CITY in offsetting and defraying governmental impacts, including the costs of local law enforcement, road improvements and maintenance and mass transit operation that CITY will incur as a result of FACILITY's slot machine operations in the CITY; and

WHEREAS, this Agreement represents a good faith concerted and negotiated effort on the part of CITY and FACILITY to achieve a positive and constructive resolution of significant issues that could have otherwise negatively impacted the relationship between CITY and FACILITY to the detriment of both parties and the residents of the CITY generally. Instead, this Agreement reflects an enhancement of that relationship and a continuing desire by CITY and FACILITY to take a proactive approach to issues for the benefit of the residents of the CITY; NOW THEREFORE,

Each party hereto agrees that good and valuable consideration has been given and received by such party as consideration for entering into this Agreement, the adequacy and sufficiency of which the parties hereby acknowledge, and further in consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, CITY and FACILITY agrees as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

In addition to the terms defined in the Whereas clauses above or in the body of this Agreement, the following definitions shall apply herein:

- 1.1 **Agreement** - means this document, Articles 1 through 9, inclusive, along with any attachments, exhibits and documents that are expressly incorporated by reference.
- 1.2 **Contract Administrator** - The Pompano Beach City Manager or the designee of such City Manager. The primary responsibilities of the Contract Administrator are to coordinate and communicate with FACILITY and to manage and supervise execution and completion of the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the terms and conditions of this Agreement.
- 1.3 **City Manager** - The Chief Executive Officer of the CITY pursuant to Section 28 of the Charter of the City of Pompano Beach, Florida.
- 1.4 **City Attorney** - The chief legal counsel for CITY who directs and supervises the Office of the CITY Attorney pursuant to Section 62 of the Charter of the City of Pompano Beach, Florida.
- 1.5 **Gross Slot Revenues** - The term "Gross Slot Revenues" shall mean the total of wagers received by a slot machine less the sum of: (1) cash or cash equivalents paid out to patrons as a direct result of playing a slot machine which are paid to patrons either manually or paid out by the slot machine; and (2) cash paid to purchase annuities to fund prizes payable to patrons over a period of time as a direct result of playing a slot machine; and (3) the cost of any personal property distributed to a patron as the direct result of playing a slot machine, which does not include travel expenses, food, refreshments, lodging or services.
- 1.6 **Facility** - The term "FACILITY" shall mean the owner of the real property located at 1800 SW 3rd Street, Pompano Beach, Broward County, Florida, at which slot machines may be authorized pursuant to Article X, Section 23 of the Florida Constitution, the operator of the FACILITY at which such slot machines may be authorized, and the holder of the pari-mutuel permit issued by the Florida Department of Business & Professional Regulation pursuant to Chapter 550 of the Florida Statutes and shall also include any heirs, successors and assigns.

ARTICLE 2

CONDITIONS FOR GROSS SLOT REVENUES PAYMENT

Until such time that FACILITY commences to operate slot machines and during such time that FACILITY does not actually operate slot machines, FACILITY shall have no obligation to pay the Gross Slot Revenues payment set forth in Section 4.1 below.

ARTICLE 3

TERM

This Agreement shall be for a term of thirty (30) years, beginning on the date it is fully executed by both parties, and shall be automatically renewed for successive thirty (30) year terms unless the CITY sends to FACILITY written notice of its intent not to renew at least thirty (30) days prior to the expiration of any such term or renewal term.

ARTICLE 4

PAYMENT

- 4.1 To assist in defraying the cost of local government impacts, including the effects upon quality of life and community values, costs and expenses which CITY will incur as a result of FACILITY's development and operation of slot machines as authorized by Article X, Section 23 of the Florida Constitution, and for other good and valuable consideration, FACILITY shall make a monthly payment to CITY in the amount of one and seven-tenths percent (1.7%) of the Gross Slot Revenues generated from each and every slot machine operated by FACILITY or at the Facility authorized pursuant to Article X, Section 23 of the Florida Constitution until Gross Slot Revenues from said slot machines reach Two Hundred Fifty Million Dollars (\$250,000,000.00) on an annual basis. Said annual basis shall be FACILITY's fiscal year. A subsequent change of FACILITY's fiscal year shall not alter the annual basis unless agreed to by the parties. FACILITY shall pay two and five-tenths percent (2.5%) monthly on Gross Slot Revenues from said slot machines when said Gross Slot Revenues in any fiscal year exceed Two Hundred Fifty Million Dollars (\$250,000,000.00). In addition, FACILITY shall pay an additional sum up to a maximum of \$250,000 annually such that the amount of annual revenues to CITY shall not be less than 1.5% of the first \$100,000,000 in gross slot revenues plus 2.0% of gross slot revenues between \$100,000,000 and \$200,000,000 plus 2.5% of gross revenues between \$200,000,000 and \$300,000,000 plus 2.5% of gross revenues in excess of \$300,000,000. FACILITY shall notify CITY in writing of its fiscal year period within thirty (30) days of the effective date of this Agreement and such notification shall reference Section 4.1.

Payment shall be accompanied by a form to be promulgated by City Manager (or his appointee), which form will reconcile wagers received from slot machines to Gross Slot Revenues and any other payments required under this Agreement including any credits, prepayments, administrative fees or interest due, or other adjustments of said revenues and signed by an authorized representative of FACILITY. Said form shall be submitted

monthly to CITY regardless of whether any payment is owed. If the State of Florida or any agency thereof develops a form pertaining to revenues generated from slot machines and said form is acceptable to City Manager (CM), then FACILITY may utilize said form to fulfill its obligations under this paragraph. If CITY's CM requires additional information to verify accuracy of the percentage payments of Gross Slot Revenues contemplated by this Agreement not otherwise set forth on the state form, CM may require that the FACILITY submit a supplemental form containing such additional information.

4.1.1 The monthly payments required by Section 4.1 of this Agreement shall be due to CITY on the fifteenth (15th) day of each month succeeding the first month of operations of slot machines and be delinquent on the last day of each month payment is due. Any monthly payment when delinquent will result the imposition of in an administrative fee of ten percent (10%) of the unpaid delinquent balance; however, it shall never be less than Fifty Dollars (\$50.00). In addition to the administrative fee, interest shall accrue at the rate of one percent (1%) per month after any amount is due until the amount of the delinquent balance is paid in total.

4.1.2 CITY is empowered when any monthly payment or installment payment becomes delinquent, to issue written notice to FACILITY of its failure to receive payment within the time required and, if known to CITY, such notice shall set forth the full amount of the payment due, with the interest, administrative fee, and cost of collection. CITY may enforce, by any means available to it, the collection of payments imposed by this Agreement.

4.2 All payments required under this Agreement shall be in the name of Pompano Beach and mailed as directed below:

C. William Hargett, Jr., City Manager
City of Pompano Beach, Florida
100 W. Atlantic Blvd., Room 135
Pompano Beach, Florida 33060

CITY's CM, or his appointee, may direct FACILITY in writing to change the address for the receipt of payment by CITY and CM and FACILITY may agree in writing to a different manner for delivery of payment.

4.3 If this Agreement ends for any reason other than as provided in Article 3, the requirements of Section 9.8 shall be applicable.

4.4 FACILITY agrees to execute a Declaration of Covenants which shall run with the land to ensure that the monetary obligations of this Agreement shall be complied with by FACILITY and by any person or entity purchasing the stock or assets of the FACILITY and operating slot machines from FACILITY's location. The declaration is attached

hereto and made a part hereof as Attachment 1. CITY shall be entitled to record same pursuant to Section 28.222, Florida Statutes.

- 4.5 FACILITY agrees that it will not seek the approval of the Department of Business and Professional Regulation, Division of Pari-mutuel Wagering or any other state agency permitted to authorize the relocation of slot machine operations, for authorization to move in whole or in part the physical location of the operation of slot machines authorized by Article X, Section 23 of the Florida Constitution to a location other than the location identified in this Agreement without the prior written consent of the CITY. This shall not prohibit FACILITY from demolishing or renovating the current building within the confines of the current location as set forth within the legal description attached to the Declaration of Covenants attached hereto and made a part hereof as Attachment 1. City will not object to Pari-mutuel commencing slot operations within any new building(s) constructed within the legal description attached to the Declaration of Covenants attached hereto as Attachment 1 providing all necessary approvals and permits have been acquired.

ARTICLE 5

GOVERNMENTAL IMMUNITY

Nothing herein is intended to serve as a waiver of sovereign immunity by CITY nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement.

ARTICLE 6

INDEMNIFICATION

- 6.1 FACILITY shall at all times hereafter indemnify, hold harmless and, at City Attorney's option, defend or pay for an attorney selected by CITY Attorney to defend CITY, its officers, Commission members, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, expenses, and judgments through and including all appellate or administrative proceedings, or both, caused by any conduct of, or negligent act or omission of FACILITY, its employees, agents, servants, or officers, accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. Notwithstanding any other provision in this Agreement, FACILITY shall have no obligation to indemnify, defend or hold harmless CITY, its officers, members of the Commission, agents, servants and employees against any claim, loss, liability, and expenditure of any kind caused by action on the part of CITY or any of its officers, members of the Commission, agents, servants and employees due to CITY'S use or misuse of any revenues paid to CITY by FACILITY pursuant to this Agreement.

- 6.2 In the event of litigation, an administrative proceeding, or both, arising out of or in connection with this Agreement, including as to its validity and enforceability, is brought by a third person naming CITY its officers, Commission members, agents, servants, and employees as a defendant, FACILITY shall at all times hereafter indemnify, hold harmless and, at City Attorney's option, defend or pay for an attorney selected by CITY Attorney to defend CITY, its officers, Commission members, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, expenses, and judgments through and including all appellate actions, resulting from said litigation or administrative proceeding. Notwithstanding any other provision in this Agreement, FACILITY shall have no obligation to indemnify, defend or hold harmless CITY, its officers, members of the Commission, agents, servants and employees against any claim, loss, liability, and expenditure of any kind caused by action on the part of CITY or any of its officers, members of the Commission, agents, servants and employees due to CITY'S use or misuse of any revenues paid to CITY by FACILITY pursuant to this Agreement.
- 6.3 The provisions of this Article 6 shall survive termination or other end to this Agreement and shall continue until the end of any and all applicable statutes of limitation for any and all court actions and administrative proceedings which may be filed against CITY, its officers, Commission members, agents, servants, and employees. However, if CITY is sued and the action is one that FACILITY would have had an obligation to defend pursuant to Article 6, and CITY raises the defense of statute of limitations, then FACILITY shall indemnify, hold harmless and defend CITY, its officers, Commission members, agents, servants, and employees as required by Sections 6.1 and 6.2 if a court fails to dismiss said action.
- 6.4 Notwithstanding the foregoing and subject to CITY's rights set forth in this Section 6.4 and Section 6.5, FACILITY shall have the sole and exclusive authority to defend CITY, its officers, members of the Commission of CITY Commissioners, agents, servants, and employees in any proceeding covered by this Article 6 and to direct the defense of any such proceeding when the relief sought in such proceeding has the potential to adversely impact slot machine operations at the FACILITY. For the purposes of this Article 6, a proceeding shall be considered to have the potential to "Adversely Impact Slot Machine Operations" at a particular facility, if the relief sought in such proceeding would reasonably result in a material reduction in the amount of Gross Slot Revenues generated by such FACILITY. If CITY and FACILITY are each named as parties in any litigation that could Adversely Impact Slot Machine Operations or if CITY deems it to be in its best interest, CITY may at its sole option, elect to hire a separate, independent attorney at CITY'S expense to represent CITY'S interests in such litigation.
- 6.5 CITY shall be fully and timely apprised and kept informed as the litigation progresses by FACILITY of any litigation in which CITY is a named party and shall have the right to monitor such litigation, as some litigation may have financial or political ramifications of concern to CITY.

ARTICLE 7

BANKRUPTCY PROVISIONS

- 7.1 To the fullest extent provided or allowed by law, in the event FACILITY files for protection under any federal or state bankruptcy, insolvency, receivership or other creditor protection statute, or otherwise has filed against it a similar involuntary proceeding that is not dismissed within thirty (30) days (a "Bankruptcy Occurrence"), then such FACILITY agrees that this Agreement shall not be deemed an executory contract given that CITY has fully performed its obligations hereunder and all that remains is FACILITY's payment of the moneys due hereunder to CITY. In all respects, FACILITY agrees that it will not assert that this is an executory contract, and hereby waives all claims, arguments and/or contentions to the contrary.
- 7.2 Notwithstanding the provisions of Section 7.1, in the event it is determined that this is an executory contract or that the waiver set forth above is unenforceable for any reason, then FACILITY agrees not to seek to reject this Agreement pursuant to Section 365(a) of the Bankruptcy Code, or any similar state law provision, if any, as an executory contract, or to assist, support or join any motion made by a third party seeking to force a rejection of this Agreement as an executory contract or for any other reason. If a Bankruptcy Occurrence occurs, then FACILITY agrees to use its best efforts to obtain as soon as practicable an order of the court approving the assumption of this Agreement, under Section 365 of the Bankruptcy Code, or any applicable state law, and if a motion is made seeking the rejection of this Agreement, to oppose such motion and instead seek the assumption hereof.

ARTICLE 8

OBLIGATIONS WITH
REGARD TO DEVELOPMENT PROCESS

- 8.1 In order to facilitate and expedite the development approval process, FACILITY hereby agrees to proceed in good faith with the following work in a timely and responsive manner, subject to its rights to move forward with Phase-1 of the Project and/or modify the Project, including Phase-1 based on the enactment by the Florida Legislature of favorable enabling legislation effective on or before July 1, 2005, which in sum and substance is acceptable to the FACILITY:
- 8.1.1 With regard to the implementation of Phase-1 Building, deemed to be a development project under the City's Code, given the FACILITY's existing buildings and facilities, FACILITY shall:

- A. Prepare and submit request for CITY DRC Site Plan Approval and City Architectural Appearance Committee Design Approval, on or about March 11, 2005, in accordance with the conceptual plan attached hereto as Exhibit "B" and incorporated herein by reference (completed);
- B. Prepare and submit request for CITY Planning and Zoning Board Site Plan Approval, in accordance with the submittal requirements established by the CITY'S Zoning Director. This was completed and approved on April 27, 2005 by the Planning and Zoning Board.
- C. Prepare and submit requests for CITY Building Permit Approval for the Core/Shell Phase-1 Building on or about February 21, 2005 (completed);
- D. Prepare and submit requests for County Demolition Permit Approval for the Phase-1 Work area on or about March 11, 2005;
- E. Prepare and submit requests for CITY Building Permit Approval for the Interior work build-out within the Phase-1 Building on or about July 1, 2005;
- F. Prepare and submit request for engineering permits, as required, for Phase-1 for water, sewer, drainage and paving, and the payment of all applicable fees.
- G. Agree to landscape and buffer to the CITY'S satisfaction the FACILITY'S southern boundary line adjacent to Cypress Bend development. Such work to be completed and approved by CITY prior to the issuance of a Temporary or Final Certificate of Occupancy for the Phase-1 building.

8.1.2 With regard to the implementation of subsequent development phases of the proposed Redevelopment Plan, FACILITY intends to:

- A. Prepare and submit its proposed conceptual Redevelopment Plan for approval by CITY in an expeditious manner subsequent to implementing legislation being enacted by the Florida legislature in the 2005 legislative session, which in sum and substance is acceptable to FACILITY; said plans shall include additional surface and structured parking to adequately accommodate patrons and the additional uses, and will provide adequate parking and drop off and pick-up areas for patrons that use alternate transportation, including buses and for those patrons that use tri-rail in the event a tri-rail station is developed along FACILITY'S eastern property line. In addition, in the event the Redevelopment Plan calls for the relocation of any horse stables, the relocation will provide for ample buffering and setbacks from the FACILITY'S southern boundary line. In addition, FACILITY will conduct at its expense a traffic impact study for

traffic on Powerline Road south of Atlantic Boulevard to determine whether additional turn lanes are needed. If traffic study determines that additional turn lanes are warranted then FACILITY will dedicate additional right-of-way from its property adjacent to Powerline Road to allow for an additional turn lane(s) to be developed and for Powerline Road to be reconfigured as necessary at that location. Such costs shall not be borne by CITY. In addition, Facility will conduct at its expense a traffic impact study addressing all traffic impacts from the proposed Redevelopment Plan (site master plan) to be completed and submitted with the site master plan to be reviewed and approved prior to the issuance of a final certificate of occupancy for the Phase 1 development. However, City will agree to issue a TCO upon receipt, review and conceptual approval of the traffic impact study, which TCO shall expire in 180 days if the traffic impact study is not approved by the City in that time frame

- B. To the extent required by applicable law, expeditiously thereafter FACILITY will prepare and submit requests for boundary plat approval by CITY and County of the real property within the Redevelopment Plan;
- C. To the extent required by applicable law for the future phases of development, expeditiously thereafter FACILITY will prepare and submit requests, as may be required for a Land Use Plan Amendment or Zoning Overlay District, and/or Zoning Amendment to PCD or other applicable zoning district, and/or a request for Development of Regional Impact (pursuant to Chapter 380, Florida Statutes) approval for the lands within the proposed Master Plan;
- D. Prepare and submit requests on an expedited timetable, for CITY Building Permit approval for subsequent phases of the Redevelopment Plan; and,
- E. Prepare and submit requests thereafter for Demolition Permits to County and City, as required for subsequent phases of the Redevelopment Plan.
- F. FACILITY shall be responsible and shall bear the costs of any and all improvements of any kind and nature that would otherwise be required by FACILITY in the absence of this Agreement. It is agreed and expressly understood that FACILITY's payment to CITY is for the sole purpose of offsetting costs that would otherwise be the burden of the City and is in no way intended to grant FACILITY relief, credit or otherwise excuse such costs to be borne by FACILITY.

8.1.3 The FACILITY shall pay all licensing, permit, processing, review and impact fees as may be required pursuant to the Codes of the CITY and the County and other Applicable Laws as such fees become due and payable.

CITY does not offer, promise or otherwise grant to FACILITY by this agreement any right, prior approval or action in contradiction to any existing rule, regulation or law. CITY'S sole and only commitment by this Agreement is the timely processing and consideration of such requests and submittals made by FACILITY. In this regard, City will use its best efforts to expedite said reviews and processing of Facility's applications, whenever possible. In this regard, City will use its best efforts to expedite said reviews and processing Facility's applications were possible.

8.2 CITY Obligations with Regard to Expediting and Processing FACILITY's Plans For Approval. In exchange for the compensation and consideration to be paid by the FACILITY to the CITY, the CITY shall have the following affirmative contractual obligations:

8.2.1 Consistent with Broward County Planning Council's position and provided that any necessary rights of way dedications have been made by FACILITY, and provided that FACILITY has provided CITY with any impact analysis that CITY may desire including but not limited to water, sewer and traffic, then CITY staff shall timely consider a request for waiver of platting requirements.

CITY staff shall provide timely consideration and expedite administrative processing of the Site Plan for Phase-1 Building, provided that the FACILITY submits a complete package of plans and support documents consistent with the requirements for standard CITY site plan review.

8.2.2 Provided that FACILITY provides the CITY with completed applications, CITY staff shall allow for the concurrent processing of Site Plan and Building Permit applications for Phase-1 Building through all levels of review, including review and processing by the CITY Fire Marshall.

8.2.3 CITY hereby acknowledges and agrees that FACILITY will be applying for an "at risk" demolition permit from the County to allow for selective demolition of pavement and existing utilities and CITY staff shall timely consider FACILITY's completed application as required for such permit. CITY staff shall also expedite issuing any necessary CITY demolition permits associated with the Phase-1 Building. For purposes of this sub-paragraph, "at risk" shall mean that FACILITY will indemnify and hold harmless the CITY and its employees with regard to any changes or additional costs incurred by CITY to include loss damages and lawsuits that are attributable to the issuance of such permit.

8.2.4 CITY staff shall initiate and process to the point of permit issuance as permitted by law, at FACILITY's sole risk and expense, the timely consideration of Building Permits for Phase-1 Building prior to receipt of any required approvals from the County DPEP.

- 8.2.5 CITY staff shall timely consider a conceptual master plan for project signage, provided that all code regulations have been met, which shall be subject to detailed review and approval by CITY staff, and such signage shall be subject to CITY Building Permit approval and any necessary Architectural Appearance Committee approvals and Architectural Appearance Committee development orders. In considering signage to be approved for the FACILITY Facility, CITY staff will take into consideration the size and nature of the project, and safety and traffic issues associated with the proposed uses and such other evaluation criteria in order to allow for the most appropriate signage for the benefit and convenience of the general public.

Furthermore, in consideration of the fact that the FACILITY Facilities encompass an area greater than 150 acres in size and provide an entertainment and recreational venue for the general public, and that operations at the FACILITY Facilities are expected to routinely generate traffic consistent with the maximum use of the existing harness race track activities, therefore in order to provide for safe and efficient auto travel by the general public, CITY staff shall timely consider and process from the FACILITY requests for a Zoning Code Amendment, for City Commission consideration, to allow for facilities of this magnitude to install a maximum of four (4) offsite signs (not including roadway signs) within public right-of-ways. Said offsite signs as may be approved shall be located so as to identify safe and convenient access routes from the public roadway system to the FACILITY. Said additional offsite signs shall otherwise comply with all requirements of the City with regard to size, and type, lighting limitations, and locations (i.e. to be safely situated with regard to roadway and sight triangles) and FACILITY shall obtain any necessary license agreements from and approvals of any other government agency whose right of way is being utilized.

- 8.2.6 To the extent more than 10 feet is required for the easement by applicable CITY zoning requirements, then City staff will timely consider and process a request for a variance to allow for the reduction in width of perimeter landscape buffers for the overall Redevelopment Plan to a minimum of 10' wide. The City staff will consider all matters allowed by Code and will accommodate PPI where possible.
- 8.2.7 CITY staff shall timely consider and process a request for a variance to allow for the computation of open space and landscape requirements for Phase-1 and all other future individual parcels to be shown on the Redevelopment Plan based upon the overall open space and landscape area provided on the Redevelopment Plan, and in furtherance of the Zoning Code, will consider the open water lake area to be used to comply with landscape area requirements as permitted by law. With regard to Phase-1, CITY staff shall allow development to proceed with the assumption that there is adequate open space and landscaping throughout the remainder of the FACILITY, with the specific accounting of which will take

place in conjunction with the Redevelopment Plan review and permitting associated with future Phase-2 development plans but before the issuance of a final certificate of occupancy for Phase-1. PPI shall be allowed to proceed with Phase 1 development provided that there is adequate open space and landscaping throughout the remainder of the Facility as determined by City's review of Facility's Redevelopment Plan, which will be submitted to City for review by Facility and approved prior to the issuance of a final certificate of occupancy for Phase 1. However, City will agree to issue a TCO upon receipt, review and conceptual approval of the traffic impact study, which TCO shall expire in 180 days if the traffic impact study is not approved by the City in that time frame

- 8.2.8 In deference to safety considerations associated with gaming facilities, CITY staff shall consider as permitted by law, regulation or applicable acceptable lighting standards for recommendation a Redevelopment Plan that allows for the use of onsite lighting with pole heights to a maximum of 35' tall (including any supporting foundations) and with lighting levels as follows: internal roadways at 12 foot-candles; parking lots/garages at 14 foot-candles; and, Porte Cochere at 25 to 30 foot-candles. Site lighting to be designed according to acceptable lighting standards.
- 8.2.9 CITY staff shall take all reasonable efforts to expedite the review and approval of all Building, Engineering and Utility plans for permitting, so as to allow for the timely and efficient implementation of Phase-1 improvements. CITY staff shall review and consider plans for the routing of utilities from the adjacent public right-of-ways to the Phase-1 improvements as proposed by FACILITY, subject to the dedication of all necessary and appropriate easement areas consistent with CITY's criteria and requirements for such easements.
- 8.2.10 In an effort to maximize revenues to the CITY under Section 4 hereof, pursuant to its authority under Florida Statutes, Section 562.14, CITY staff will timely review, process and forward a request for City Commission consideration to extend the hours of operation of the FACILITY to 24 hours per day/7 days per week, as an amendment to the City Code provisions otherwise limiting the hours of operation relating to liquor sales.
- 8.2.11 CITY staff will review and evaluate each of the proposed Phase-1 and Redevelopment Plan improvements to determine if they are consistent with and permissible under the existing land use and zoning classifications for the project site and, that Phase-1 improvements may be deemed to be an expansion of the existing special exception use and, to the extent required and if in the best interest of the City to allow for such intended uses in future Phases, City staff will also timely review and transmit for City Commission consideration, if permitted under the CITY'S Zoning Code, a Zoning change for future phases to the PCD District.

8.2.12 CITY staff will recommend and support utilization of any applicable State or County exemptions and/or applicable waivers of any platting and/or applicable exemptions to DRI requirements for the proposed developments contained in the Redevelopment Plan.

8.2.13 CITY staff shall process all completed applications expeditiously through the appropriate reviewing agency.

ARTICLE 9

MISCELLANEOUS

9.1 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of FACILITY directly relating to the calculation of Gross Slot Revenues, upon reasonable notice, in order to ascertain the correctness of the Gross Slot Revenues payment required to be made to CITY pursuant to this Agreement, including the accurate reporting of Gross Slot Revenues and the determination of Gross Slot Revenues payment under this Agreement. FACILITY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the calculation of Gross Slot Revenues. All books, records, and accounts of FACILITY relating to Gross Slot Revenues shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon reasonable request to do so, FACILITY shall make same available at no cost to CITY in written form. Audited financial statements of FACILITY which in addition details the amount of annual Gross Slot Revenues shall be provided to CITY within four (4) months of the close of each fiscal year of FACILITY.

FACILITY shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to the calculation of Gross Slot Revenues and the Gross Slot Revenues payment pursuant to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after the creation of the record. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined to be applicable to FACILITY's records relating to Gross Slot Revenues, FACILITY shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by FACILITY. Any incomplete or incorrect entry or entries in excess of Two Hundred Thousand Dollars (\$200,000.00) of cumulative, annual funds that should have been paid to the CITY as a Gross Slot Revenues payment in a particular

fiscal year in such books, records, and accounts shall be a basis for CITY to apply an administrative fee of ten percent (10%) of any delinquent amount owed to CITY plus interest in an amount of one percent (1%) per month until the delinquent amount owed has been paid. Said interest shall not accrue for a period greater than three (3) years. Any underpayment shall be paid by FACILITY to CITY within ten (10) days of notice of the audit finding, including interest and the administrative fee if owed.

9.2 INDEPENDENT CONTRACTOR

FACILITY is an independent contractor under this Agreement. Neither FACILITY nor its agents shall act as officers, employees, or agents of the CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to FACILITY or FACILITY's agents any authority of any kind to bind CITY in any respect whatsoever.

9.3 THIRD PARTY BENEFICIARIES

Neither FACILITY nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.4 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

To the CITY:

City Manager
C. William Hargett, Jr.
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, FL 33061

With a copy to: City Attorney
Gordon B. Linn
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, FL 33061

To the FACILITY: Dick Feinberg, General Manager
Pompano Park Racing
1800 S.W. 3rd Street
Pompano Beach, FL 33069

With copies to: Allan Solomon, Exec. Vice President
Isle of Capri Casinos, Inc.
2200 Corporate Blvd. NW #310
Boca Raton, FL 33431

And to: Alan B. Koslow, Esq.
Becker & Poliakoff, P.A.
3111 Stirling Road
Fort Lauderdale, FL 33312-6525

Any Party to this Agreement may change its notification address(es) by providing written notification to the remaining parties pursuant to the terms and conditions of this section.

9.5 SUCCESSION AND ASSIGNMENT

This Agreement and any interest herein shall be binding upon and shall inure to the benefit of any and all successors, assigns, heirs, legal representatives, and personal representatives of any party hereto. Notwithstanding, FACILITY shall not assign this Agreement without the written consent of the City Commission, which consent shall not be unreasonably withheld. CITY's consent shall be deemed to have been given if the State of Florida, Department of Business & Professional Regulation authorizes the transfer of FACILITY's pari-mutuel permit to conduct pari-mutuel wagering and FACILITY shall provide written notice to CITY within five (5) days of the date of transfer.

9.6 WAIVER OF BREACH

Neither CITY's nor FACILITY'S failure to enforce any provision of this Agreement shall be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.7 COMPLIANCE WITH LAWS

CITY and FACILITY, respectively, shall comply with all applicable Federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement, including but not limited to the City of Pompano Beach zoning regulations, City of Pompano Beach Comprehensive Plan and CITY platting regulations set forth within the City Code of Ordinances and City Comprehensive Plan. No subsequently enacted law, code, ordinance, rule or regulation shall be construed to limit or restrict the payment required to be made to CITY by FACILITY under this Agreement. In addition, FACILITY acknowledges that this Agreement does not reduce or mitigate FACILITY's obligation to pay CITY all applicable taxes required by Florida Statutes or City ordinances.

9.8 SEVERANCE

In the event any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be effective. In such event, the parties shall first negotiate to amend this Agreement to address any portion found to be invalid or unenforceable. If the parties fail to negotiate an amendment, CITY shall be entitled to present to FACILITY an alternative provision which FACILITY shall agree to provided that such provision gives CITY no greater rights and gives FACILITY no greater obligations than the provision invalidated or determined to be unenforceable. Notwithstanding FACILITY's continuing obligation to agree to an alternative provision as provided above, this Agreement shall be subject to reformation or other equitable remedy by a court of competent jurisdiction inasmuch as the parties expressly intend that the invalidity or unenforceability of any portion of this Agreement shall not result in the invalidity or unenforceability of the purpose and intent of the parties in entering into this Agreement.

Notwithstanding the foregoing, if a court of competent jurisdiction were to determine that this Agreement must terminate, CITY shall be entitled to present to FACILITY an alternative form of agreement which FACILITY shall enter into provided that (a) such agreement gives CITY no greater rights and gives FACILITY no greater obligations than this Agreement, and (b) if litigation is commenced pertaining to such alternative agreement, then CITY, because it is a material and necessary party of interest in any litigation regarding or arising out of the new agreement, shall have the right and obligation to intervene or FACILITY may cause CITY to become a party to the litigation without objection by CITY, and CITY, at the option of FACILITY, shall defend FACILITY in any such litigation. The provisions of this section shall survive if this Agreement ends for any reason.

Unless and until any court of competent jurisdiction expressly determines in an action in which both CITY and FACILITY are named party defendants that it is illegal for

FACILITY to do so, FACILITY shall pay CITY the amounts required by Article 4 and shall continue to make such payments until a new agreement is entered into by the parties.

9.9 JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not be construed more strictly against one of the parties than the other.

9.10 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida, without regard to conflict of laws principles. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be in a state court located in Broward County, Florida, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. By entering into this Agreement, FACILITY and CITY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement.

9.11 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by FACILITY and by CITY following approval by the Board.

9.12 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.13 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties and such Whereas clauses and Attachment 1 hereto are incorporated into and made a part of this Agreement for all purposes.

9.14 REPRESENTATION OF AUTHORITY; LICENSE REQUIREMENT; PARI-MUTUEL REPRESENTATIONS

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party. FACILITY represents that it is a licensed pari-mutuel operator under Chapter 550, Florida Statutes. FACILITY shall take all reasonable action necessary to continue and retain its FACILITY license and obtain and retain a license authorizing the operation of slot machines throughout the term of this Agreement.

FACILITY represents that it is the entity, subject to approval of the Referendum, that is authorized by Article X, Section 23 of the Florida Constitution to operate slot machines at its existing FACILITY. FACILITY shall not direct, assign or create a new entity which would in any way divert slot machine revenues which would result in slot machine revenues not being subject to the terms of this Agreement, and FACILITY shall not sell its stock or assets, or both, which sale would render the terms of this Agreement inapplicable to slot machines operations.

9.15 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

9.16 EQUITY REQUIREMENT/EXPANSION

Broward County is the sole county in Florida that passed the Referendum as defined in this Agreement. Therefore, it is mutually desirable that any agreement between any city in Broward County and a pari-mutuel facility located in the said county provides substantially equivalent value to each city.

If agreements are entered into by a pari-mutuel facility in Broward County, which provides for a percentage payment that is greater than that to CITY, then CITY shall be entitled to increase the percentage payments it is entitled to receive under this Agreement pursuant to Section 4.1 to match the higher percentage payable not too exceed 3%. In the event that any agreement is made between a pari-mutuel facility in Broward County which provides that the percentage payments are to be made on a sliding scale that is different than is set out above, then the parties agree that CITY shall be entitled to amend this Agreement to incorporate the percentage payment provisions of the applicable agreement up to 3%.

Should FACILITY be permitted to further expand its operation to offer additional forms of casino betting, such as, but not limited to, table games, FACILITY and CITY agree to use their best efforts to negotiate an amendment to this agreement to further assist CITY in offsetting and defraying the impacts which such expansion may create.

9.17 REMEDIES

In addition to all other remedies provided in this Agreement or under applicable law, CITY shall also be entitled to specifically enforce this Agreement, including the payment obligations of FACILITY provided herein. FACILITY acknowledges and agrees that the provisions hereof are unique, and the damages CITY might suffer upon a breach hereof incapable of precise calculation, and accordingly waive any and all objections, whether provided under federal or state law, including any bankruptcy or insolvency provisions, that they might have to any claim for specific performance that CITY might assert.

9.18 COVENANT NOT TO SUE

CITY and FACILITY hereby covenant that they shall not commence or maintain any lawsuit, administrative proceeding, or other action, whether at law or in equity, which challenges the validity or enforceability of this Agreement. This covenant shall be binding upon, and inure to, the benefit of the parties, their successors, assigns, heirs, legal representatives, and personal representatives.

9.19 WAIVER OF DEFENSES

FACILITY and CITY hereby waive any and all claims for lack, inadequacy or insufficiency of consideration, lack of mutuality of remedy or obligation, definiteness in time or other uncertainty, or any other defense or claim to the formation and creation of an enforceable contract. In all respects, the parties agree that this Agreement shall be enforceable as written and, unless otherwise mutually agreed to by the parties, waive any and all objections or arguments to the contrary. FACILITY hereby waives any and all claims that the covenant running with the land attached hereto as Attachment 1 is invalid or unenforceable in any respect and FACILITY agrees that said covenant is enforceable as written.

9.20 GOOD FAITH COOPERATION IN DEVELOPMENT PROCESS

CITY hereby agrees to provide a timely review of all development related applications submitted by or on behalf of FACILITY in accordance with all applicable regulations. CITY agrees to perform its duties set forth within the provisions of this Agreement in good faith.

9.21 CONFLICT OF INTERESTS

In accordance with the various agreements entered into among CITY and its Lobbyists, CITY agrees to direct its lobbyists not to lobby or to hire any sub-consultants to lobby the

Legislature, Governor or Cabinet as to any position concerning slot machines that is adverse to any stated, or later adopted position of CITY concerning the issue of slot machines.

9.22 SINGULAR AND PLURAL

As used in this Agreement, the singular includes the plural, and the plural includes the singular, unless the context otherwise requires.

9.23 STATUS QUO

If the CITY takes affirmative action by way of ordinance, resolution or otherwise that results in a reduction in the generation or capacity of generation of Gross Slot Revenues at the FACILITY, then the CITY and the FACILITY agree to negotiate in good faith to revise the terms and conditions of this Agreement. By exception, the City shall have no good faith obligation in the event the City's affirmative action is mandated by County, State or Federal law. If and until such time as an amendment or revised agreement is executed, all terms and conditions of this Agreement shall remain in place. Nothing herein shall be construed to obligate the CITY to revise any term or condition of this Agreement. In the event that FACILITY is granted additional gaming rights in addition to slot machines, CITY and FACILITY agree to negotiate in good faith to revise the terms and conditions of this Agreement.

(The remainder of this page is intentionally left blank.)


IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: CITY OF POMPANO BEACH through its CITY COMMISSION, signing by and through its MAYOR and CITY MANAGER, authorized to execute same by City Commission action on the 14th day of June, 2005, and the FACILITY, signing by and through its specified corporate officer, who is duly competent and authorized to execute same.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

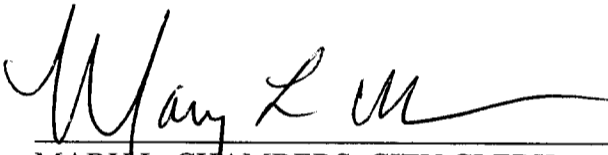
Lisa Reichbach

By: 
JOHN C. RAYSON, MAYOR

Shelley R. Bartholomew

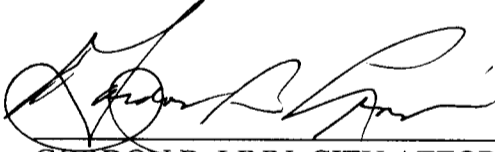
By: 
C. WILLIAM HARGETT, JR.
CITY MANAGER

Attest:


MARY L. CHAMBERS, CITY CLERK

(SEAL)

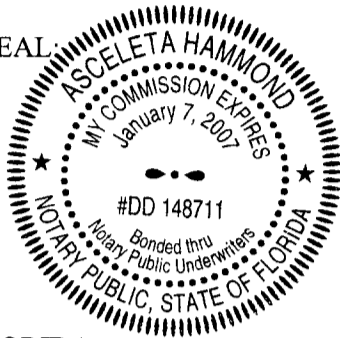
Approved by:


GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 20th day of June, 2005 by JOHN C. RAYSON, as Mayor of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:



Asceleta Hammond
NOTARY PUBLIC, STATE OF FLORIDA

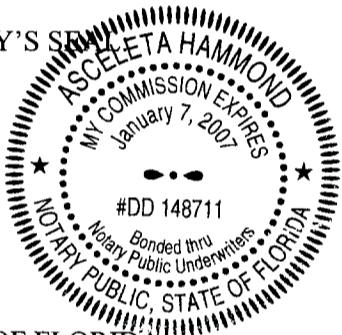
Asceleta Hammond
Name of Acknowledger Typed, Printed or Stamped

Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 20th day of June, 2005 by C. WILLIAM HARGETT, JR. as City Manager of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:



Asceleta Hammond
NOTARY PUBLIC, STATE OF FLORIDA

Asceleta Hammond
Name of Acknowledger Typed, Printed or Stamped

Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 20th day of June, 2005 by MARY L. CHAMBERS as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:



Asceleta Hammond
NOTARY PUBLIC, STATE OF FLORIDA

Asceleta Hammond
Name of Acknowledger Typed, Printed or Stamped

Commission Number

"FACILITY":

Witnesses:

PPI, INC.,
a Florida corporation

Joseph R. DiBlasi.

By: Dick Feinberg

[Signature]

Print Name: DICK FEINBERG

Title: GM

(SEAL)

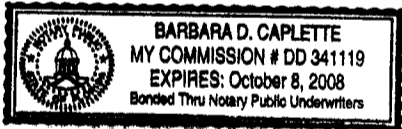
STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 25 day of MAY,
2005 by DICK FEINBERG as GM of PPI,
INC., a Florida corporation (He) she is personally known to me or who has produced —
— (type of identification) as
identification.

NOTARY'S SEAL:

Barbara D. Caplette
NOTARY PUBLIC, STATE OF FLORIDA



BARBARA D. CAPLETTE
Name of Acknowledger Typed, Printed or Stamped

DD 341119
Commission Number

GBL/jrm
4/1/05
l:agr/slot machines--Final 4-1-05
(2005-599)

EXHIBIT "B"

AGREEMENT

Return recorded copy to:

Document prepared by:

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants, made this 14th day of June, 2005, by PPI, INC., hereinafter referred to as "FACILITY", a Florida corporation whose address is 1800 SW 3rd Street, Pompano Beach, Florida, for the benefit of the City of Pompano Beach, a political subdivision of the State of Florida (the "CITY"), with a post office address at 100 W. Atlantic Boulevard, Pompano Beach, Florida 33360.

WHEREAS, FACILITY is the fee title owner of that certain real property, located in Broward County, Florida, and legally described in Exhibit "A" attached hereto and incorporated herein (the "Property"); and

WHEREAS, FACILITY hereby covenants that FACILITY is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Declaration; that FACILITY has good right and lawful authority to make this Declaration; and that FACILITY agrees to fully warrant and defend this Declaration against the claims of all persons whomsoever; and

WHEREAS, in the November 2004 general election, the residents of the State of Florida voted to adopt an amendment to the Florida Constitution so that the residents of the CITY could vote at a referendum election in order to decide whether to authorize the operation of slot machines exclusively at existing licensed parimutuel facilities located in Broward County; and

WHEREAS, CITY and FACILITY recognize that each entity is concerned with the health and general welfare of the residents of the CITY as it relates to addition of slot machines within the FACILITY; and

WHEREAS, CITY and FACILITY recognize that FACILITY impacts the health and general welfare of the residents of the CITY; and

WHEREAS, CITY and FACILITY recognize that the residents of the CITY have legitimate concerns over increased development, traffic, crime, congestion, and the quality of life in Pompano Beach; and

NOW, THEREFORE, the undersigned agree and covenant to the following:

1. The recitals set forth above are true and correct and are incorporated into these restrictive covenants.
2. In order to assist CITY in offsetting and defraying governmental impacts including, but not limited to, the costs of local law enforcement, road improvements and maintenance, and mass transit operation, that CITY will incur as a result of FACILITY'S slot machine operations in CITY, FACILITY agrees to pay CITY in accordance with the Agreement (hereinafter referred to as "Agreement") entered into between CITY and FACILITY, attached hereto and made a part hereof as Exhibit "B".
3. CITY, through its Mayor and City Commissioners, its successors and assigns, is the beneficiary of these restrictive covenants and as such, the CITY OF POMPANO BEACH may enforce these covenants against the Property by action at law or in equity, including against any person or persons, entity or entities, violating or attempting to violate the terms of this Covenant.
4. Any failure of CITY to enforce these covenants shall not be deemed a waiver of the right to do so thereafter.
5. Invalidation of any one of these covenants by judgment or court order shall in no way affect any other conditions which remain in full force and effect.
6. This Declaration of Covenants shall be recorded in the Public Records of Broward County, Florida, and the provisions hereof shall run with the land and shall remain in full force an effect and be binding upon the undersigned, and their heirs, legal representatives, personal representatives, grantees, and assigns, including any person or entity taking title to the land.

IN WITNESS WHEREOF, FACILITY has executed this Declaration of Restrictive Covenants on the 27 day of MAY, 2005.

"FACILITY":

Witnesses:

PPI, INC.,
a Florida corporation

Joseph C. DeLase

By: Dick Feinberg

[Signature]

Print Name: DICK FEINBERG

Title: GM

(SEAL)

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 27 day of May, 2005 by DICK FERNBERG as GM of PPI, INC. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Name of Acknowledger Typed, Printed or Stamped

Commission Number

GBL/jrm
5/26/05
l:agr/declaration of restrictive covenants
(2005-600)

EXHIBIT "A"

LEGAL DESCRIPTION

All of the following described lands lying in and being a part of Section 3, Township 49 South, Range 42 East, Broward County, Florida:

The South 1/2 of the Northwest 1/4, EXCEPT the West 33 feet thereof for road right-of-way;

AND that part of the South 1/2 of the Northeast 1/4 lying West of the Seaboard Coast Line Railroad;

AND Government Lot 5, EXCEPT the West 33 feet thereof for road right-of-way, and also EXCEPT ARVIDA POMPANO PARK, as recorded in Plat Book 137, Page 33, of the Public Records of Broward County, Florida;

AND that part of Government Lot 6 lying South of said Plat Book 137, Page 33;

AND that part of Government Lot 7 lying South of said Plat Book 137, Page 33 and West of the Seaboard Coast Line Railroad;

TOGETHER WITH a portion of Tract B, of the aforesaid ARVIDA POMPANO PARK;

SAID LANDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commence at the Northwest corner of the aforementioned Section 3; run

THENCE on an assumed bearing of South 00 degrees 00 minutes 26 seconds West along the West line of said Section 3, a distance of 1708.26 feet to the Northwest corner of the aforesaid Government Lot 5;

THENCE South 88 degrees 01 minutes 37 seconds East along the North line of said Government Lot 5 and along the westerly extension of the centerline of RACE TRACK ROAD and along said centerline, a distance of 1328.63 feet;

THENCE South 00 degrees 09 minutes 21 seconds East a distance of 53.03 feet to a point on the South right-of-way line of RACE TRACK ROAD as shown on the aforementioned Plat of ARVIDA POMPANO PARK;

THENCE South 88 degrees 01 minutes 37 seconds East along said South right-of-way, a distance of 571.42 feet to the Northeast corner of the lands described in Official Records Book 15678 at Page 145 of the aforesaid Public Records;

THENCE continue South 88 degrees 01 minutes 37 seconds East along said South right-of-way line, a distance of 689.71 feet to the POINT OF BEGINNING of the lands herein described;

THENCE continue along said right-of-way the following two courses and distances:

South 88 degrees 01 minutes 37 seconds East, a distance of 100.00 feet;

South 88 degrees 07 minutes 14 seconds East, a distance of 1087.87 feet to the point of the aforementioned westerly right-of-way line of the Seaboard Coast Line Railroad;

THENCE South 13 degrees 04 minutes 16 seconds West along said westerly right-of-way line, a distance of 2969.90 feet to a point of the South line of the aforesaid South 1/2 of the Northeast 1/4;

THENCE North 86 degrees 02 minutes 40 seconds West along said South line and the South line of the aforesaid South 1/2 of the Northwest 1/4, a distance of 3078.57 feet to a point on the East right-of-way line of POWERLINE ROAD said point being 33.00 feet by right angle measurement East of the West line of the aforesaid Northwest 1/4 of Section 3;

THENCE North 00 degrees 00 minutes 26 seconds East parallel with said West line of the Northwest 1/4 and along said East right-of-way line, a distance of 2039.93 feet to a point on the boundary on the aforesaid ARVIDA POMPANO PARK;

THENCE along said boundary the following thirteen courses and distances:

South 45 degrees 06 minutes 41 seconds East a distance of 94.55 feet;

North 89 degrees 46 minutes 38 seconds East, a distance of 1025.36 feet;

North 44 degrees 56 minutes 16 seconds East, a distance of 49.49 feet (North 44 degrees 48 minutes 39 seconds East, 49.47 feet per plat);

North 00 degrees 09 minutes 21 seconds West, a distance of 685.69 feet;

North 88 degrees 01 minutes 37 seconds West, a distance of 50.25 feet;

North 00 degrees 09 minutes 21 seconds West, a distance of 71.66 feet (71.60 feet per plat) to a point on the aforementioned South right-of-way line of RACETRACK ROAD;

South 88 degrees 01 minutes 37 seconds East along said South right-of-way line, a distance of 220.15 feet (220.20 feet per plat);

South 00 degrees 09 minutes 21 seconds East, a distance of 71.66 feet (71.60 feet per plat);

North 88 degrees 01 minutes 37 seconds West, a distance of 49.86 feet;

South 00 degrees 09 minutes 21 seconds East, a distance of 680.94 feet (680.99 feet per plat);

South 45 degrees 11 minutes 21 seconds East, a distance of 49.53 feet;

North 89 degrees 46 minutes 38 seconds East, a distance of 1241.18 feet;

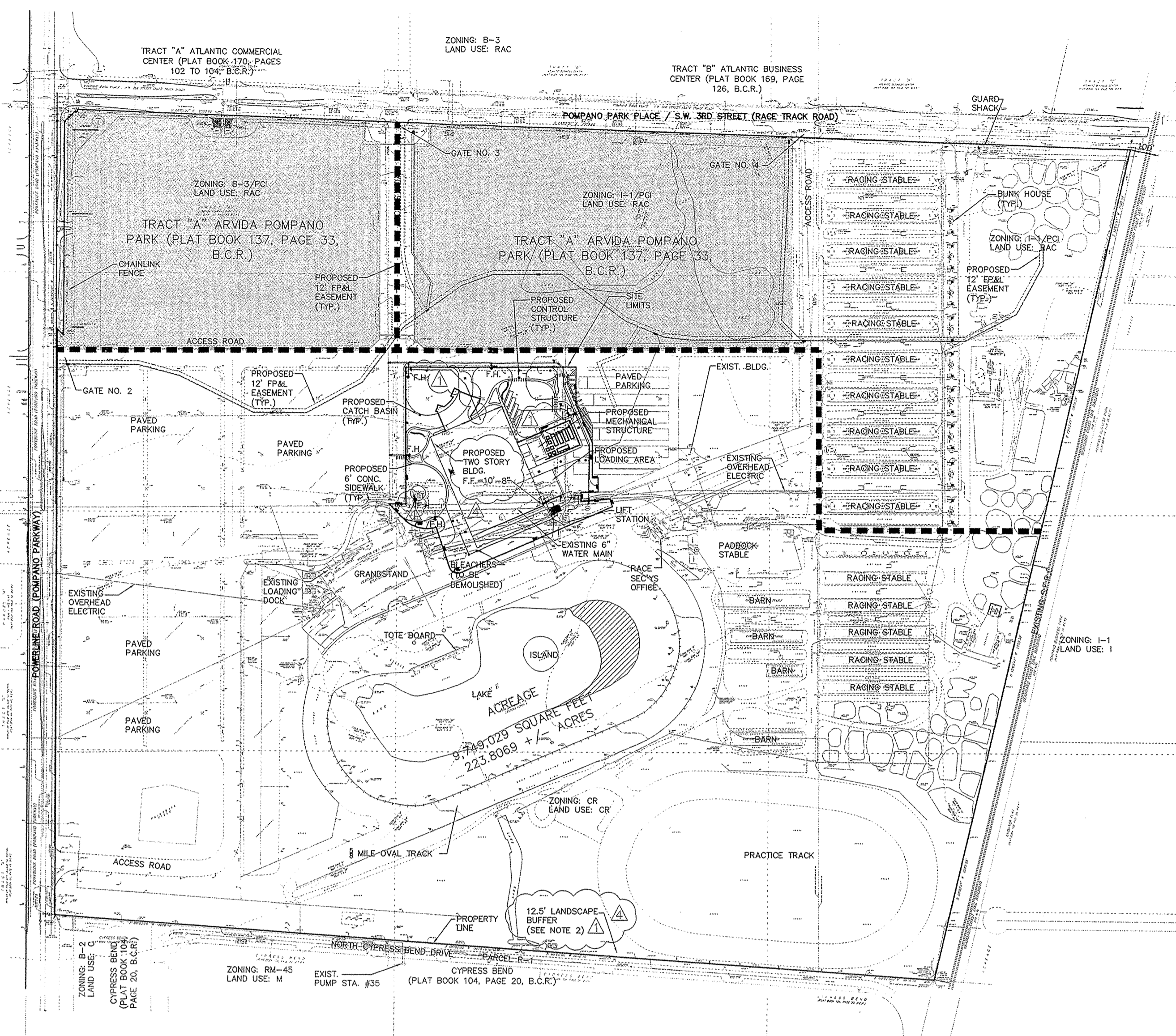
North 51 degrees 23 minutes 55 seconds East, a distance of 43.24 feet;

THENCE North 00 degrees 09 minutes 21 seconds West, a distance of 710.57 feet to the POINT OF BEGINNING.

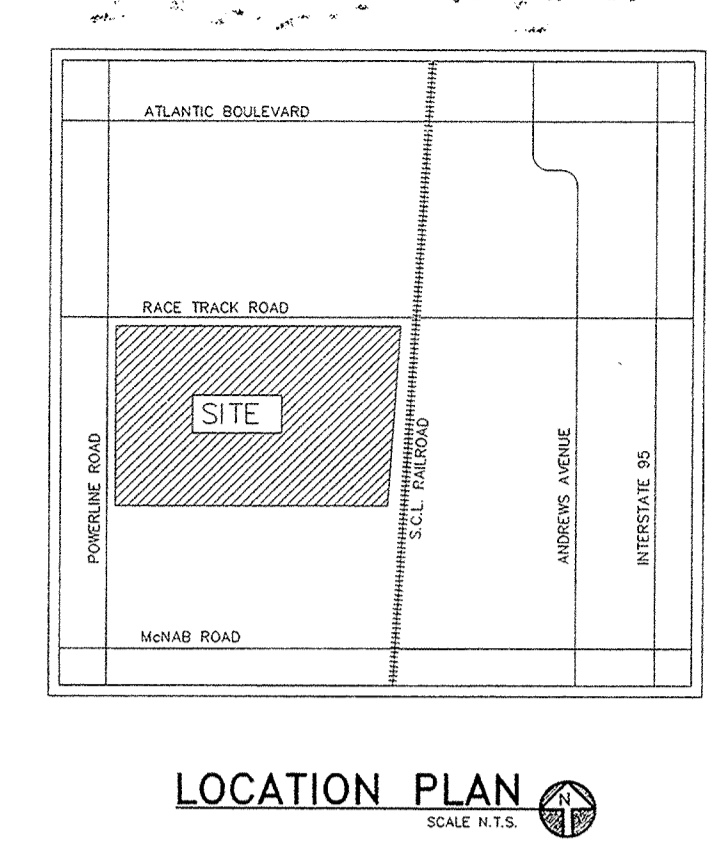
Containing 180.46 acres of land, more or less

EXHIBIT "B"

AGREEMENT



PROJECT: POMPADO PARK RACEWAY 1800 SW 3RD STREET, POMPADO BEACH, FL 33069. OWNER: ISLE OF CAPRI CASINOS, INC. ARCHITECT: GERALD MARTIN COPE. CIVIL ENGINEER: DHAROSE DESIGN CONSULTANTS, INC. PLANNER: ROBERT J. MOTOCHWITZ, P.E. STRUCTURAL ENGINEER: D'AMONICO CONSULTING ENGINEERS. MECH/ELEC ENGINEER: GIOVANNETTI SHULMAN ASSOCIATES.



NO. REVISIONS DATE. 1. SITE PLAN 08/27/05. 2. CONSULTANT COMMENTS 08/28/05. 3. SITE PLAN REVISIONS 08/28/05. 4. SITE PLAN REVISIONS 08/28/05. 5. DEC. COMPOSITE PRELIMINARY 04/11/05.

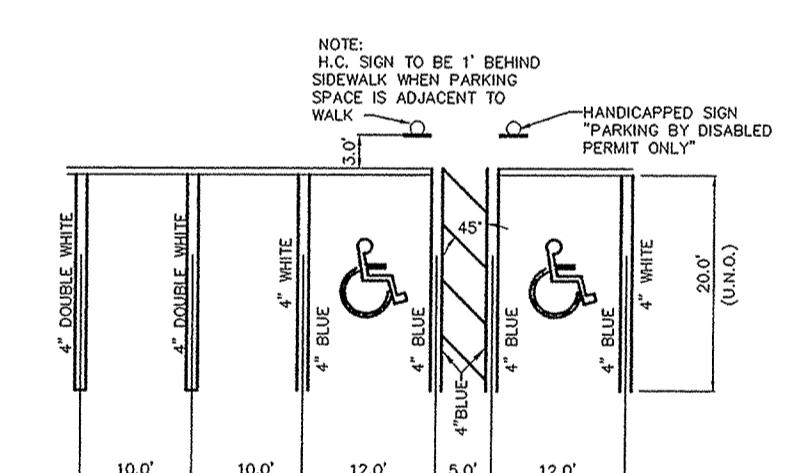
CIVIL LEGEND. Symbols for existing and proposed structures, roads, utilities, and other site features.

SURVEY LEGEND. Symbols for various survey points, markers, and features.

FIRE FLOW CALCULATIONS. Formula: F = 100Q^0.5. Where: F = REQUIRED FIRE FLOW IN GPM. Q = COEFFICIENT RELATED TO TYPE OF CONSTRUCTION. A = TOTAL FLOOR AREA. Results: 18(0.6)(157,545)^0.5 = 5,716 GPM REQUIRED.

WATER AND SEWER DEMAND TABLE. Table with columns: NEW BUILDING DESCRIPTION, AREA (S.F.), SEATS, GPD MULTIPLIER, GPD REQUIRED. Totals: 14,740 area, 2,970 seats, 29,548 GPD.

TOTAL SITE CRITERIA. Table with columns: DESCRIPTION, AREA (S.F.), AREA (ACRES), PERCENTAGE (%), PERCENTAGE CHANGE (%). Totals: 2,484,128 S.F. area, 56.63 acres, +2.26% change.



PROPOSED OVERALL SITE PLAN

NOTES: 1. SEE SHEET SP-3 FOR BUILDING AND SITE GEOMETRY. 2. REFER TO LANDSCAPING PLANS FOR LANDSCAPING BUFFER DETAILS.

PARKING INDEX REQUIREMENTS:

PARKING REQUIRED: SPACE/250 PATRONS IN GAMING FACILITY. SPACE/250 S.F. OF OFFICE AREA. SPACE/250 S.F. OF RETAIL AREA. SPACE/1 SLEEPING ROOM. SPACE/5 BARN STALLS. REQUIRED TRUCK LOADING: 5 SPACES. PROPOSED TRUCK LOADING: 5 SPACES.

PARKING REQUIREMENTS TABLE:

Table with columns: DESCRIPTION (# OF BUILDINGS), TOTAL AREA, OFFICE AREA (SPACES), MAXIMUM OCCUPANCY (SPACES), RETAIL AREA (SPACES), RESIDENTIAL AREA-ROOMS (SPACES), STABLES AREA-STALLS (SPACES), PARKING REQUIRED. Totals: 1,196,979 area, 110 office spaces, 3,830 parking spaces.

SITE DATA:

ADDRESS: 1800 SW 3RD STREET, POMPADO BEACH. CURRENT ZONING: CR - COMMERCIAL RECREATION. PROPOSED ZONING: CR - COMMERCIAL RECREATION. PROPOSED LAND USE: CR - COMMERCIAL RECREATION. TOTAL EXIST. BUILDING FOOTPRINT AREA: 2,484,128 S.F. (56.63 ACRES). TOTAL BUILDING FOOTPRINT AREA: 2,484,128 S.F. (56.63 ACRES).

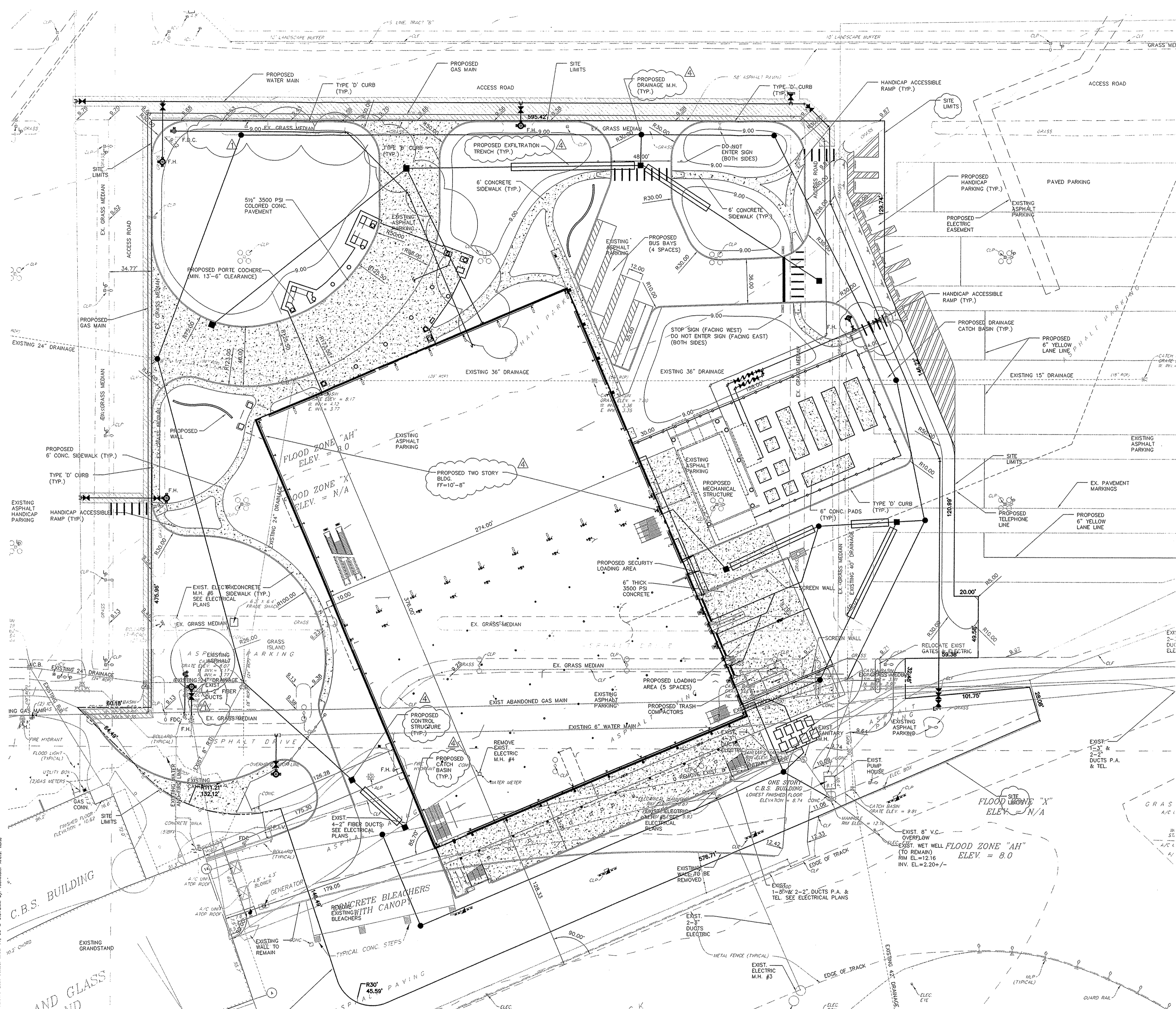
POMPADO PARK RACEWAY PHASE 1. POMPADO BEACH, FLORIDA

DeRose Design Consultants Inc. LAND PLANNING • CIVIL • STRUCTURAL. 470 S. ANDREWS AVENUE, POMPADO BEACH, FLORIDA 33069. (954) 442-7703.

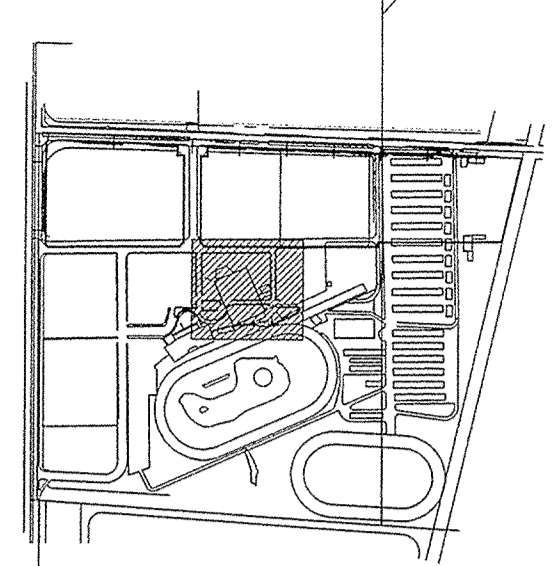
DRAWING TITLE: PROPOSED OVERALL SITE PLAN. DRAWN: CMD. CHECKED: LDR. DATE: 2-07-05. SCALE: AS SHOWN. PROJECT NO: 04071. SHEET: SP-2 OF:.

DeRose Design Consultants Inc. logo and contact information. Includes phone number (954) 442-7703 and website URL.

Lawrence Dharose, P.E. LICENSED ENGINEER NO. 20989 STATE OF FLORIDA. Includes contact information and a note about the drawing being a preliminary.



SITE PLAN
SCALE 1/4" = 1'-0"



KEY PLAN
SCALE 1/4" = 1'-0"

CIVIL LEGEND

⊙	EXIST. MANHOLE	≡≡≡	POLYETH. DRAINAGE
⊖	EXIST. DATE WALK	- - -	NON-SLOPE POLYETHYLENE PVC
⊕	EXIST. LINE WALK	≡≡≡	SIDE FENCE
⊚	EXIST. DATE BASIN	≡≡≡	STIFFER FLOW LINE
⊞	EXIST. DATE BASIN	≡≡≡	REINFORCED CONC. PIPE
⊡	PROP. ELEVATION	≡≡≡	CONCRETE CURB
⊛	EXIST. ELEVATION	≡≡≡	DRIVEWAY
⊜	NEW CONCRETE PAVEMENT	≡≡≡	UTILITY EXPOSURE
⊝	EXISTING	≡≡≡	SHRIMP GRAD
⊞	ORIGIN	≡≡≡	NEW ELEVATION
⊡	ORIGIN	≡≡≡	ADJUST ELEVATION
⊡	ORIGIN	≡≡≡	AND BREAKING
⊡	ORIGIN	≡≡≡	HYDROLOGICAL PAINT
⊡	ORIGIN	≡≡≡	ORANGE RICE
⊡	ORIGIN	≡≡≡	EXIST. TREE

SURVEY LEGEND

⊞	CATCH BASIN	⊞	EXIST. ELEVATION
⊡	SEWER/STORM MANHOLE	⊞	EXIST. ELEVATION
⊞	CONC. UTILITY POLE	⊞	NON-VEHICULAR ACCESS LINE
⊞	WOOD UTILITY POLE	⊞	OVERHEAD WIRE
⊞	VALVE	⊞	METAL POST
⊞	FIRE HYDRANT	⊞	MINOR/CY CONTROL BOX
⊞	EXISTING ELEVATION	⊞	TRAFIC SIGNAL CONTROL BOX
⊞	PROP. ELEVATION (NEEDS NOTES)		
⊞	DRAINAGE MANHOLE		
⊞	LIGHT POLE		
⊞	F.P. BOX		
⊞	S.P. BOX		
⊞	F.P. METER		
⊞	NON-VEHICULAR ACCESS LINE		
⊞	OVERHEAD WIRE		
⊞	METAL POST		
⊞	MINOR/CY CONTROL BOX		
⊞	TRAFIC SIGNAL CONTROL BOX		

Call 48 hours
Toll free 800-832-4770
Fax 904-944-4770
P.O. Box 1000
Pompano Beach, Florida 33069
Saville State One Call of Florida, Inc.

DeRose Design Consultants Inc.
LAND PLANNING • CIVIL • STRUCTURAL
ENGINEERING • MECHANICAL • ELECTRICAL
ENGINEERING
POMPA NO BEACH, FLORIDA 33069
CERTIFICATE OF AUTHORIZATION # 4584

LAWRENCE DeROSE, P.E.
LICENSED PROFESSIONAL ENGINEER
STATE OF FLORIDA
DATE: DeRose Design, Job # 04071
CIVIL DESIGN REVIEWED:
BRIAN DeROSE

NO.	REVISIONS	DATE
	SITE PLAN	02/09/05
	CONTRACT COORDINATION	02/09/05
	SITE PLAN REVISIONS	02/23/05
	SITE PLAN REVISIONS	03/11/05
	PERMISSIVE DATE SUBMITTAL	04/11/05

POMPA NO PARK RACEWAY
PHASE 1

POMPA NO BEACH, FLORIDA

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ENGINEERING
POMPA NO BEACH, FLORIDA 33069
CERTIFICATE OF AUTHORIZATION # 4584

DRAWING TITLE:
SITE PLAN
DRAWN: CMD
CHECKED: LDR
DATE: 2-07-05
SCALE: AS SHOWN
PROJECT NO: 04071
SHEET:
SP-3
OF:

Files:\2007\14832\DWG\1162.dwg User: mdr Date: 01/10/05 11:00 AM Plot: 11.00 x 17.00 in. 0.75 inch scale by: mdr