

AGREEMENT

Between

THE CITY OF BOSTON

And

BOSTON GRAND PRIX, LLC d/b/a GRAND PRIX OF BOSTON

For

THE CONDUCT OF PROFESSIONAL AUTOMOBILE RACING IN DOWNTOWN BOSTON

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AGREEMENT

By and Between

THE CITY OF BOSTON

And

BOSTON GRAND PRIX, LLC

For

THE CONDUCT OF PROFESSIONAL AUTOMOBILE RACING IN DOWNTOWN BOSTON

THIS AGREEMENT ("Agreement") is made and entered into on this day of 2015, ("Execution Date"), by and between the _____, a municipal corporation ("City"), and Boston Grand Prix, LLC, a Massachusetts limited liability company ("BGP"), (collectively "Parties"), and is made in reference to the following facts:

1. The City desires to provide events that are of interest and benefit to the residents of the City and the City also wishes to expand national and international tourism to the City as well as otherwise enhance economic opportunities for the benefit of the City and its residents.
2. The City has determined that the holding of a series of internationally recognized automobile races sanctioned by a recognized automobile sanctioning body, together with a variety of sporting, entertainment, and charitable events to benefit the community as a whole, in downtown Boston, would assist in accomplishing the desires and goals of the City.
3. BGP has considerable experience in automobile racing.
4. BGP desires to produce and conduct an annual automobile race on streets and public land located within the municipal boundaries of the City.
5. The City and BGP have agreed that BGP shall produce and conduct an annual automobile race on certain streets and public land of the City pursuant to the terms and conditions set forth in this Agreement.

6. BGP understands that the City, by entering into this Agreement, is foregoing other opportunities to establish an annual automobile street race in Boston.

ARTICLE I:
INTRODUCTORY TERMS

1.1 **Recitals**. The statements contained in the recitals of fact set forth above ("Recitals") are true and correct, and the Recitals are by this reference made a part of this Agreement.

1.2 **Exhibits**. The exhibits attached to this Agreement are hereby incorporated in whole by reference.

1.3 **Abbreviations and Definitions**. The abbreviations and capitalized terms used in this Agreement have the following definitions or meanings:

- A. "City Code" means the Boston Code of Ordinances.
- B. "City Council" means the Boston City Council.
- C. "City Standards" means the standards for City Streets (as hereinafter defined) as defined by the City's Engineering Department.
- D. "City Streets" means collectively, the public streets owned by the City of Boston, Commonwealth of Massachusetts, and/or United States Federal Government, within the Race Area and/or Race Circuit (as hereinafter defined), as depicted on the map attached hereto as Exhibit A.
- E. "Concessions" means all items associated with a Race Event (as hereinafter defined) offered for sale or provided within the Race Area (as hereinafter defined), including, without limitation, (1) food, (2) alcoholic beverages, (3) non-alcoholic beverages, (4) wearing apparel, (5) programs, (6) souvenirs, (7) toys, and (8) all other merchandise or services offered for sale in connection with a Race Event (as hereinafter defined), the term Concessions specifically excludes the activities of otherwise duly-licensed merchants and business persons in conducting their trade or business at their regular business premises during a Race Event (as hereinafter defined).
- F. "Convention Center Site" means the exposition center located in downtown Boston that is commonly known as the Boston Convention and Exhibition Center and is depicted hereto on Exhibit A.
- G. "Downtown Area" means the portion of the city within the Race Area and/or Race Circuit (as hereinafter defined) and as depicted on the map attached hereto as Exhibit A.
- H. "Facilities" means the designated portion of certain City of Boston and Commonwealth of Massachusetts owned properties and buildings.

- I. "FIA" means the Federation International du L'Automobile, the governing body for international auto sports.
- J. "Front Straightaway" means the straightaway located on D Street, designated on Exhibit A.
- K. "VICS" means the Verizon IndyCar Series and/or IndyCar Series.
- L. "Laws" means all existing and future federal, state, and local constitutions, statutes, ordinances, rules, regulations and resolutions, and all orders and decrees of lawful authorities having jurisdiction over the matter at issue.
- M. "Mayor" means the Mayor of the City of Boston or his designee as authorized in writing.
- N. "Pit Box" means the area designated, by way of a dotted red line, as the Pit Box on Exhibit A.
- O. "Practice" means the on-track activity held on the Thursday, Friday and/or Saturday preceding the Race (as hereinafter defined).
- P. "Premium Suite" means a hospitality suite located in exceptional viewing location along the Race Circuit (as hereinafter defined), and designated as such by BGP.
- Q. "Boston Harbor" means the body of water bordering the City of Boston.
- R. "Race" means the annual automobile race to be held pursuant to this Agreement, which shall be an open wheel Indy-type automobile race, sanctioned by the Sanctioning Body (as hereinafter defined) or such other type of professional automobile race permitted to be held pursuant to all terms within Paragraph 6.2 (Race Circuit Safety Systems and Race Event Materials) below.
- S. "Race Area" means collectively, the area within the Race Circuit (as hereinafter defined) and the area outside the Race Circuit mutually agreed upon by the Parties as necessary to carry out the terms and conditions herein but shall nonetheless include the areas surrounding the Race Event Facilities (as hereinafter defined).
- T. "Race Area Improvements" means all permanent and temporary Downtown Area improvements necessary to conduct the Race Events.
- U. "Race Assets" means the list of assets associated with the Race Event (as hereinafter defined) set forth in Exhibit D hereto.
- V. "Race Circuit" means the temporary street race course upon which the Race shall be held pursuant to this Agreement and such area is designated, by way of a solid blue line, as the Race Circuit on Exhibit A.

- W. "Race Circuit Improvements" means the improvements designed, constructed and installed by the City of Boston pursuant to all terms within Paragraph 6.4 (Race Circuit Maintenance, Repair and Modification) below.
- X. "Race Event" means the Race, supporting automobile races and/or practice(s), and related public relations and social, entertainment and commercial events or affairs held or organized by BGP on or within the Race Event Facilities (as hereinafter defined). The Race Event shall be conducted on five (5) consecutive days, from the Wednesday prior to the Race through the Sunday of the Race.
- Y. "Race Event Facilities" means collectively, the Convention Center Site, such facilities' respective parking area(s) and City of Boston and/or Commonwealth of Massachusetts owned areas adjacent to the Race Area.
- Z. "Race Event Logos" means the logo(s), mark(s), symbol(s), trademark(s), or trade name(s) owned or licensed by BGP and used in connection with the Race Event. Domain Name means the internet address for BGP and/or any other internet address used by BGP in the course of conducting the "GRAND PRIX". BGP intellectual property includes any and all Studies, Proposals, Plans, Documents, Trade Secrets, Marketing Material, and Proprietary/Pro-Forma information subject to BGP Non-Disclosure Non-Compete Agreements.
- AA. "Race Event Materials" means all equipment, materials, and apparatus associated with the conduct of the Race Event, including, without limitation; barriers, blockades, cable (electrical and otherwise), safety equipment and devices, fencing, fence covering material, cranes, forklifts, vehicles, fire protection equipment and apparatus, medical equipment and apparatus, signage, tents, vehicles, concessions facilities, bleachers, grandstands, viewing suites, seats, temporary boat slips, wiring, banners, structures, and components thereof. Race Event Materials shall include all Race Assets conveyed to BGP, by City, pursuant to this Agreement.
- BB. "Race Event Period" means from 8:00 a.m. on the Monday preceding the Race until 6:00 a.m. on the Monday following the Race.
- CC. "Safety Systems" means the systems, procedures, methods, programs and practices designed, constructed and installed by BGP pursuant to Paragraph 6.3 A below to ensure the safety of the Race Event.
- DD. "Sanctioning Agreement" means an agreement between BGP and the Sanctioning Body (as hereinafter defined) permitting BGP to conduct the Race Event in Boston.
- EE. "Sanctioning Body" means VICS, a successor organization to VICS, or a sanctioning body sanctioning races of the type of vehicles currently used by VICS or a successor organization to VICS, which is approved by the FIA or any other support series part of the Race Event programming.

FF. "Ticket Sale Rights" means the right to sell tickets and otherwise charge for admission to or participation in the Race Event, and to sell tickets and otherwise charge for admission to or use of the Race Event Facilities in connection with a Race Event, excluding the right to sell tickets to the general public for parking or otherwise charge the general public for parking within the Race Area.

GG. "Use Agreement" means a written agreement between the City and BGP and/or between City and/or BGP and authorized management of Race Event Facilities, for use of the Race Event Facilities. However, it is understood by all parties to the Use Agreement that the City of Boston does not have the legal authority to guarantee or make any binding agreements related to the use of property owned by the Commonwealth of Massachusetts or the Massachusetts Convention Center Authority, but the City of Boston shall make reasonable efforts to aid BGP in obtaining use agreements with the Commonwealth of Massachusetts and the Massachusetts Convention Center Authority.

ARTICLE II: CONDITIONS PRECEDENT

2.1 **Sanctioning Requirements.** The Race Event shall be sanctioned by the Sanctioning Body and in furtherance of such obligation, a written certification signed by BGP and Sanctioning Body stating the Race Event is sanctioned and accurately summarizing the relevant terms of the Sanctioning Agreement shall be issued to the City not less than one hundred eighty (180) days prior to the beginning of the Race Event Period. BGP shall notify the City at least thirty (30) days prior to any material change in the Sanctioning Agreement that may have an adverse effect on the City and the City shall, following written notice to BGP and the opportunity to cure said material adverse change for period of thirty (30) days, have the authority in its reasonable discretion to terminate this Agreement, on the basis of any such material adverse change.

2.2 **Financial Assurances.**

- A. BGP shall deliver to the City, not later than the commencement of the Race Event Period during each year of the Term of this Agreement, written evidence that BGP has paid the Sanctioning Body Fees in full.
- B. BGP warrants that it has and shall continue to maintain during the Term of this Agreement a net equity of at least One Hundred and Fifty Thousand Dollars (\$150,000).
- C. The City will make commercially reasonable efforts in assisting BGP in securing a title sponsor for the Race Event. BGP shall enter into a multiple year sponsorship agreement, which will be designated as the title sponsor of the Race Event. A written certification signed by BGP and the title sponsor identifying the sponsor as such and accurately summarizing the relevant terms shall be issued to the City not less than sixty (60) days prior to beginning of the Race Event Period. In the event that such sponsorship agreement is terminated for any reason during the Term of this Agreement, BGP shall, within ten (10) days following notice of such termination, provide written notice to the City of the termination and provide additional assurances satisfactory to the City that BGP can meet its financial obligations and

continue to perform in accordance with the terms and conditions of this Agreement notwithstanding such termination.

ARTICLE III:
WARRANTIES AND REPRESENTATIONS

3.1 **Warranties and Representation by City.** The City warrants and represents to BGP the following:

- A. The City is a municipality organized and existing under the laws of the Commonwealth of Massachusetts.
- B. All appropriate action exists or has been accomplished by the City so as to duly authorize the officials identified below to execute this Agreement and all documents contemplated hereby on behalf of the City so as to fully and firmly bind the City to the terms and provisions of this Agreement and such other documents.
- C. There exists no legal actions, or threatened actions, that could materially affect City's performance of its obligations within this Agreement. Further, any existing and executed agreement(s) between City and any third party that may affect BGP's rights or obligations pursuant to this Agreement have been communicated to BGP and are attached hereto as Exhibit B and are incorporated as reference.
- D. The City owns, possesses an easement and/or is not prohibited from obtaining an easement for the property within the Race Area, including the public and private roadways and the Boston Harbor and possesses the authority to permit and license the use of such property for limited periods of time, provided such use is in accordance with applicable Laws.
- E. Subject to BGP's obtaining all required permits, consents and approvals and otherwise complying with the terms and conditions of this Agreement, and further subject to City adopting the ordinances described in Paragraphs 6.16 D (1) – (6) and 6.16 E (Compliance with Laws and Related Matters) below, those activities normally associated with the Race Event of the type contemplated by this Agreement shall not be determined by the City to violate any provision of the City Code and/or the Laws of the Commonwealth of Massachusetts.

3.2 **Warranties and Representations by BGP.** BGP warrants and represents to the City as follows:

- A. BGP is a Massachusetts limited liability company duly formed, presently existing and in good standing and as of the date this agreement is executed and is authorized to do business in the Commonwealth of Massachusetts and the City of Boston.
- B. All appropriate corporate action exists or has been accomplished by BGP so as to duly authorize the officer set forth below to execute this Agreement and all documents contemplated hereby on behalf of

BGP so as to fully and firmly bind BGP to the terms and provisions of this Agreement and such other documents.

- C. There exists no legal actions, or threatened actions, that could materially affect BGP's performance of its obligations within this Agreement. Further, any existing and executed agreement(s) between BGP and any third party that may affect City's rights or obligations pursuant to this Agreement have been communicated to City and are attached hereto as Exhibit B and are incorporated as reference.
- D. BGP has the financial capability to and shall conduct Race Event in accordance with this Agreement, as evidenced by all terms within Paragraph 2.4 (Financial Assurances).

ARTICLE IV: RIGHTS GRANTED

4.1 **Exclusive Right to Conduct Race Event.** Subject to this Agreement including all additional agreements called for and/or incorporated by this Agreement, City hereby grants to BGP the exclusive right to produce and conduct an annual Race Event in accordance with the terms and conditions of this Agreement. BGP hereby acknowledges that the City has police powers pursuant to applicable Laws to take reasonable and appropriate action in the event the conduct of the Race Event or any portion thereof is endangering the health, safety or welfare of the general public or to regulate normal governmental activity. The Parties acknowledge that it would not be reasonable for the City to take any action in this regard if the Race Event only produces those effects, which are normal and customary for events of this type. The safety of Race Event attendees, Race Event spectators and/or the general public shall be controlled by and is the sole responsibility of the City. The safety of the Race Event participants, Race Event drivers, and/or Race Event personnel shall be controlled by and is the sole responsibility of the BGP.

4.2 **Concession Rights.** Subject to this Agreement including all additional agreements called for and/or incorporated by this Agreement, City hereby grants BGP the exclusive right to operate, or to license (in whole or in part) to others, the Concessions during the Race Event Period, but only to the extent such Concessions activity takes place on City owned property. The City shall not hereafter extend any Concession rights to any person and/or entity other than BGP which would permit the operation or licensing of Concessions, or the vending or offering for sale of any goods or services competitive with the Concessions. Vendors conducting their usual trade or business at their regular business premises and such premises is a permanent location with a registered and recognized physical address are unaffected by this section. In addition, any street vendors who are currently licensed by the City of Boston to conduct their usual trade or business within the Race Area shall not be affected by this section so long as their usual trade or business does not compete with BGP Concessions. Notwithstanding the foregoing, except as otherwise provided in Paragraph 6.16 D (4) and (5) (Compliance with Laws and Related Matters) below, all such other persons conducting business within four (4) City blocks or One Hundred (100) Yards of any portion of the Race Circuit shall be deemed a street vendor, and their operations must be controlled. BGP shall issue temporary licenses for all street vendors, other than those previously licensed by the City of Boston who shall not require any additional licensure from BGP to conduct their usual trade or business. Such licenses shall be required for the sale of food, alcoholic beverages, non-alcoholic

beverages, wearing apparel, programs, souvenirs, toys, accessories, pedicabs and all other merchandise or services offered for sale in connection with the Race Event. The City shall identify to BGP all existing and valid licenses that may be implicated by BGP exclusive Concession license policy. Further, the City shall identify all locations within the area stated above that street vendors shall be permitted to operate business and identify any times street vendors shall not be operated to conduct business. BGP and the City shall be mutually responsible for determining the amount of temporary licenses to be issued, the cost of issuance, the locations upon which street vendors shall be permitted to operate its business and the hours of permissible operations. The City shall take reasonable steps to assist BGP, when such assistance is requested, in enforcing BGP's exclusive Concession license policy within the defined area. However, the City will not attempt to take any action related to vendors who are located on Massport or Convention Center Authority property, or who are separately licensed by Massport or the Convention Center Authority.

4.3 **BGP Ticket Sale Rights and City Rights.** The City hereby grants to BGP the exclusive Ticket Sale Rights for the Race Event. BGP shall provide to the City at no cost one thousand (1,000) tickets for the Race for the promotion and development of the City, but not for resale. Such tickets shall be for seating in a grandstand to be determined by mutual consent of the City and BGP. BGP shall issue City, at no cost, a Premium Suite within the hospitality tent area of the Race Area. The Parties shall mutually agree on the size and location of the hospitality tent within the hospitality tent area. Notwithstanding, City shall be responsible for all services and supplies for the City's hospitality tent, including but not limited to food and beverages and shall order such services and supplies from persons and/or entities designated by BGP on terms and conditions comparable to those provided to parties in similarly sized hospitality tents. Capacity of hospitality tent shall be comparable to those similarly sized hospitality tents.

4.4 **Media and Broadcast Rights.** The City hereby grants to BGP the exclusive rights to license any and all media coverage, television broadcasts, or other broadcasts, locally, nationally, internationally, or otherwise, related to the Race Event. BGP shall notify the City of the identity of media entities that will cover the Race Event. In developing its media and broadcast plan, BGP shall make commercially reasonable efforts to consult with or request its licensee to consult with the City's marketing and advertising representatives and other persons or entities under contract with the City to provide similar services (as such persons or entities are designated by the Mayor).

4.5 **Other Automobile Race Events.**

- A. Upon execution of this Agreement, City shall not enter into any other competing agreement granting rights to a third party to stage a professional automobile race within the municipal boundaries of the City during the Term or within two years of the termination of this Agreement by BGP due to the City's Default, as defined in Paragraph 8.1 A (Default). Amateur and/or charitable automobile racing events that are not sanctioned or operated by a nationally recognized sanctioning body or racing organization may be held with BGP's consent, which will not be unreasonably delayed or withheld.
- B. Unless the City provides prior written consent, BGP and its subsidiaries shall not organize, promote, or conduct an open wheel Indy-type automobile race within the state limits of the Commonwealth of

Massachusetts during the Term or within three (3) years of termination of this Agreement by the City due to BGP's Default, as defined in Paragraph 8.1 B (Default).

4.6 **Race Event Logo(s) Domain Name and Intellectual Property.**

- A. The name of the City shall be clearly visible on all Race Event Logo(s) and all printed material and advertising containing the name of the Race Event.
- B. The City acknowledges that BGP is the owner or licensee of the Race Event Logo(s), Domain Name(s) and BGP Intellectual Property, all that is subject to BGP Non-Disclosure Non-Compete Agreement and that the City shall not interfere with BGP's use or licensing of such Race Event Logo(s), Domain Name and BGP Intellectual Property during the Term.
- C. The City shall not sell any Race Event related merchandise without BGP's prior written approval and the Parties' execution of a license agreement permitting such sale.
- D. The City may use the Race Event Logo(s) for promotion of the City or the Race Event with BGP's prior written consent, which consent shall not be unreasonably withheld or delayed. The City shall not alter or modify the Race Event Logo(s) without BGP's prior written consent.
- E. BGP may use City owned logo(s) and trademark(s) for promotion of the Race Event with the City's prior written consent, which consent shall not be unreasonably withheld or delayed. BGP shall not alter or modify the City's logo(s) or trademark(s) without the City's prior written consent.

4.7 **Naming Rights and Placement of the Name of the City.**

- A. The name of the Race Event shall be the GRAND PRIX OF BOSTON or such other name mutually agreed upon by the Parties.
- B. Subject to Paragraph 4.7 A (Naming Rights and Placement of the Name of the City) above, BGP shall have the right to rename or sell the name of the Race Event and to enter into one or more contracts with purchasers of naming rights; provided that the name of the Race Event falls within industry standards for professional automobile races sanctioned by recognized automobile organizations ("Industry Standards"). At least thirty (30) days prior to any renaming or sale of the name of the Race Event, BGP shall provide the City with notice of the proposed name change or sale. During the thirty (30) day period following receipt of such notice, the City may object only if the proposed name does not fall within Industry Standards. In the event the City so objects, the Parties shall negotiate to arrive at a name which the Parties mutually agree falls within Industry Standards. BGP shall be entitled to retain any and all revenue generated from the sale of naming rights for the Race Event and any and all such income collected shall not be declared a cash sponsorship.
- C. The City may place the name of the City in three locations within the Race Area. Such locations and the type of signage shall be mutually agreed upon by the Parties; provided, however, that the name of the

City shall be prominently visible (e.g., on the interior of the Race Circuit) and further provided that the signage shall not be placed in a location or manner that would interfere with the conduct of the Race and/or Race Event.

4.8 **No Interest in Land.** BGP's rights pursuant to this Agreement shall not be construed as a lease, easement, or other interest in land, buildings or other property of the City, unless otherwise stipulated by the Parties.

ARTICLE V: TERM AND EXTENSION

5.1 **Term and Extension.** This Agreement shall be for a term of five (5) years or Race Event periods, whichever is longer. The City shall have the option, in its discretion, to opt of this Agreement if a Race Event raises public safety, public health, transportation or environmental concerns.

ARTICLE VI: SCHEDULING AND CONDUCT OF RACE EVENT

6.1 **Obligation to Conduct Race Event and Scheduling.** BGP shall produce and conduct an annual Race Event during the Term, commencing in the calendar year, 2016. All Race Events shall be held on dates mutually agreeable to the City, BGP and the Sanctioning Body. In the event of postponement of any Race Event due to weather, the Race Event shall be conducted on the next day if possible, if not then on the next available date(s). Any other change in Race Event dates shall be mutually agreed upon by the City, BGP and the Sanctioning Body.

6.2 **Race Circuit Safety Systems and Race Event Materials.**

- A. The Race shall be conducted on the Race Circuit on the Friday, Saturday and/or Sunday during the Race Event Period. The Race shall be conducted in accordance with the terms and conditions of this Agreement and other plans and practices mutually agreed to by BGP and the Sanctioning Body. Such other plans and practices shall meet all recognized standards for races comparable to the Race Event (at a minimum) and be the sole responsibility of BGP and the Sanctioning Body.
- B. In the event that a Sanctioning Body does not exist or a Sanctioning Body does exist but BGP cannot obtain a Sanctioning Agreement to conduct such a race within the city limits of Boston, Massachusetts, BGP may propose to conduct such other type of automobile race featuring a comparable level of racing event; provided, however, that such proposal is subject to City approval, which approval may be withheld in City's sole and absolute discretion. City shall render its decision on when to accept BGP's proposal within sixty (60) days of the City's receipt of the proposal.

6.3 **Race Circuit Safety Systems and Race Event Materials.**

- A. BGP shall design, construct and install Safety Systems and Race Event Materials for the Race Event. The Safety Systems and Race Event Materials shall be in accordance with plans and specifications mutually agreed to by BGP, Sanctioning Body and FIA and shall meet all recognized standards for such systems and materials (at a minimum), and be the sole responsibility of BGP and the Sanctioning Body. BGP shall make any such structures available for inspection by the City's Inspectional Services Department upon reasonable notice.
- B. BGP shall be permitted to use streets owned and/or temporarily or permanently controlled by the City, and the City shall make commercially reasonable efforts to facilitate the use of streets owned and controlled by the Commonwealth of Massachusetts and those streets owned and controlled by the United States Federal Government. Commercially reasonable efforts shall include but is not limited to facilitating negotiations with the respective departments of transportation and other necessary governmental entities.
- C. City shall make commercially reasonable efforts to facilitate the use of the Boston Harbor, and other property as defined in Race Area hereto attached as Exhibit A, with Massport and all other regulatory agencies. Commercially reasonable efforts shall include but is not limited to facilitating negotiations with all reasonably necessary individuals and/or entities to allow for such use of the Boston Harbor as contemplated by this Agreement.
- D. The City shall be granted unfettered access to all areas of the Race Area before, during and after the Race Event Period for the purposes of regulating normal governmental activity and for maintaining public safety.
- E. The City and BGP shall provide the residents within the Race Area unfettered access to the areas within the Race Area at the times with no on-track activity during the Race Event Period.
- F. The City shall restrict access within the Race Area by facilitating access through the foot bridges at the times when there is on-track activity, including but not limited to Race and/or Practice, during the Race Event Period.
- G. During the Race Event Period and subject to compliance with this Agreement and applicable Laws, BGP will be the exclusive user of the areas owned by City within the Race Area, and those areas authorized for use, or the equivalent thereto, by the Commonwealth of Massachusetts, the United States Federal Government and/or Massport within the Race Area.

6.4 **Race Circuit Maintenance, Repair and Modification.**

- A. At its expense, the City shall perform the following tasks within the Race Circuit:
 - (1) Repair, maintain and prevent disturbance to the Race Circuit and the area within, and within ninety (90) days prior to the beginning of the Race Event Period, provide that such area

complies with City Standards and meets the standards set forth in the FIA Bulletin attached hereto as Exhibit C.

- (2) Within (90) ninety days prior to the beginning of the Race Event Period, provide that any elevations at intersections within the Race Circuit that involve straight line speed, be modified by the City to allow for a smooth transition for racing vehicles.
- (3) Under the direction and supervision of the BGP, weld down as required, at the discretion of the BGP, all manhole covers within the Race Circuit prior to the beginning of the Race Event Period and unweld all manhole covers after the conclusion of the Race Event Period.

- B. City shall make all necessary modifications to streets owned and controlled by the City within the Race Circuit, and the City shall make commercially reasonable efforts to facilitate the necessary modifications of those streets owned and controlled by the Commonwealth of Massachusetts and/or Massport within the Race Circuit and those streets owned and controlled by the United States Federal Government within the Race Circuit. Commercially reasonable efforts shall include but is not limited to negotiating with the respective departments of transportation and other necessary governmental entities. Said necessary modifications shall be in accordance with the Sanctioning Body specifications prior to the Race Event and City is responsible for returning all affected streets to pre-Race Event condition if they so choose.
- C. In the event that any change in FIA or Sanctioning Body standards requires a modification of the design, construction or installation of the Race Circuit, City shall be solely responsible, at its expense, for accomplishing such modification.
- D. City Department of Transportation (DOT) shall develop, in cooperation with BGP, a Traffic Management and Parking Plan for the Race Event and such negotiations and development shall commence upon the execution of this Agreement.

6.5 **Race Event Facilities.**

- A. The City shall use commercially reasonable efforts to facilitate the exclusive right to use of Race Event Facilities by the BGP for the period from 6:00 a.m. on the Monday preceding the Race Event until 12:00 p.m. on the Monday following the Race Event; provided, however, that the City shall be permitted to utilize the portion(s) of the Race Event Facilities not utilized by BGP upon obtaining BGP's consent to utilize such facilities, which consent shall not be unreasonably delayed or withheld, provided such use does not interfere with the conduct of the Race Event. It is understood by all parties that BGP may need to enter into separate use agreements with the Commonwealth of Massachusetts and/or the Massachusetts Convention Center Authority in order for BGP to legally use any property owned by such entities.
- B. The Parties recognize that during the Term, the City may modify, demolish, or change the use of any or all of the Race Event Facilities that are owned by the City of Boston, and in such event the City agrees to give BGP fifteen (15) months prior written notice of such modification, demolition, or change in use;

provided, however, that if the City does not have fifteen (15) months prior notice of such a modification, demolition or change in use, it shall provide BGP with as much notice as reasonably practicable. The City shall attempt to minimize the interference to the Race Circuit caused by a modification, demolition or change in use of any Race Event Facilities within the Race Area and the City agrees to cooperate with BGP to take such actions and to modify this Agreement as may be necessary to permit the Race Event to continue and to take place as close as possible in time, place and total geographic area (i.e., size of the Race Area) as if the modification, demolition or change in use had not occurred.

C. In the event the BGP is granted exclusive right to use Race Event Facilities, the City and BGP shall execute a Use Agreement for the Race Event Facilities that BGP elects to use in connection with the Race Event, at least ninety (90) days prior to the beginning of the Race Event Period. BGP will also attempt to enter into separate Use Agreements with authorized persons of any other appropriate entities who may own property that comprise the Race Event Facilities. Such Use Agreement shall contain mutually acceptable terms so that, among other things, the City does not incur any additional costs or expenses (beyond those normally incurred by the City for the operation and maintenance of the Race Event Facilities) as a result of BGP's use of the Race Event Facilities.

D. There shall be no charges imposed by the City associated with BGP's use of the Race Event Facilities. t

(1) In the event BGP is granted exclusive right to use Race Event Facilities, the BGP shall be provided with office space, furnished with a mutually acceptable number of telephone lines, internet and cable connections, a receptionist and a mutually acceptable number of clerical personnel all of which will be under the operational & management control of BGP. Further, BGP shall be provided with parking spaces for all BGP staff and visitors not to exceed a mutually agreeable number and all necessary building and security passes.

E. BGP reserves the right to modify and/or terminate this Agreement in the event BGP and/or City, through commercially reasonable efforts, are unable to secure a Use Agreement for the Race Event Facilities.

6.6 **Water Body.** To the extent permitted by applicable Laws and provided BGP obtains all required permissions, permits and approvals, BGP shall have the right to seek permission from Massport to build temporary boat slips and/or dock boats in the area of the Boston Harbor designated on Exhibit A for use as viewing areas or hospitality sites ("Boating Area"). BGP shall be solely responsible for all operation, maintenance and security related to the Boating Area. BGP shall have the exclusive use of the Boating Area from 6:00 a.m. on the Wednesday prior to the Race until 2:00 p.m. on the Monday following the Race; provided, however, that BGP shall make available to the City, at no cost to the City, two (2) boat slips for the promotion and economic development of the City during such time period. BGP shall remove all boat slips and the barge in accordance with applicable Laws no later than twenty-one (21) days after the end of the Race Event Period. The City's temporary boat slip shall be located within close proximity of a pedestrian bridge connection to the interior of the Race Area.

6.7 **Set-Up and Dismantling Plan.**

- A. At least Ninety (90) days prior to the beginning of the Race Event Period, BGP shall provide the City with a proposed plan indicating the dates and locations of construction, installation, set-up and dismantling of all Race Circuit Safety Systems, and Race Event Materials, with the final Set-Up and Dismantling Plan to be mutually agreed upon by the Parties (“Set-Up and Dismantling Plan”). BGP's proposed Set-Up and Dismantling Plan shall include the time periods during which motor vehicle and pedestrian access may be disrupted or prevented. The City’s Department of Transportation shall, with input and approval from BGP, develop and implement a mutually acceptable traffic control plan for the Race Event Period and any so-called shoulder period that the City and BGP deem reasonable and necessary.
- B. It is the intent of the Parties that the Set-Up and Dismantling Plan will, to the extent reasonably feasible, minimize disruption of motor vehicle and pedestrian traffic on City streets, minimize the disruption of access to residences in and around the Race Area, minimize the disruption to normal operations of private businesses and the City in and around the Race Area, storage areas, and other City properties. The Set-Up and Dismantling Plan shall take into account the legitimate needs of private businesses and the City relating to the use of the Race Area prior to and after the dates of the Race Event and BGP shall reasonably adjust the Set-Up and Dismantling Plan in such a manner as may be reasonably requested by the City to allow the City to fulfill such other legitimate needs.
- C. Subject to the Set-Up and Dismantling Plan, BGP shall have non-exclusive access to the Race Area during a time period commencing up to thirty (30) days before the beginning of the Race Event Period and concluding no later than ten (10) days after the end of the Race Event Period for the purposes of construction, installation, set-up and dismantling.
- D. BGP or its duly authorized designee shall be permitted to construct grandstands and viewing suites in accordance with the Set-Up and Dismantling Plan. Such construction may commence thirty (30) days prior to the beginning of Race Event Period, with all structures being removed within ten (10) days following the conclusion of the Race Event Period.
- E. It is the intent of the Parties that the time periods set forth in the Set-Up and Dismantling Plan and this Agreement are maximum periods for construction, installation, set-up and dismantling and that such periods will be reduced if shorter periods will reasonably permit such activities by BGP without it incurring additional costs and expenses.

6.8 **Safety of Construction.** Any construction undertaken by BGP or at the request or direction of BGP and in any way related to the Race Event, including construction on or in the Race Event Facilities, shall, at a minimum, comply with applicable Laws, including, without limitation, Laws governing construction on public facilities (including any bonding requirements under the Laws of the Commonwealth of Massachusetts regardless of whether the contract for construction is between the contractor and BGP or the contractor and the City) and all applicable permit requirements.

6.9 **Public Access to Race Area.** Except as otherwise provided in Paragraph 6.3 (Race Circuit Safety Systems and Race Event Materials) BGP’s right of exclusive use of the Race Area shall include the right to

exclude any and all persons and vehicles from the Race Area. Such right does not apply to those authorized by BGP and City and/or other governmental employees or agents whose duties require their presence on, at or within Race Area and who shall be permitted controlled access to the Race Area. Emergency and utility vehicles shall have controlled access at all times to the Race Area for the purpose of protecting life and property. All excepted persons and/or vehicles listed herein shall have access to and within the Race Area at no cost.

6.10 **Public and Private Areas.** For the Race Event, the City and BGP shall mutually agree on the definition and delineation of public and private areas and lines of demarcation (for the purposes of crowd control, management of the Race Event, and related purposes), which may be smaller or larger than the Race Area.

6.11 **Security.**

- A. City shall provide security within the Race Area that, at a minimum, is equivalent to the security normally and reasonably provided by the City for events comparable to the Race Event ("Race Area Security"). The City shall designate one person from each of the applicable departments to act as its liaison with BGP. Such liaison shall work with BGP to create a plan for the Race Event Security.
- B. The BGP shall be responsible for the costs of Race Area Security and such other services detailed in Paragraph 6.14 (A) and (B) (City Services and Promotion). BGP and City shall establish a reasonable range of the cost for Race Area Security within 90 days of the execution of this Agreement. The City shall send an invoice to BGP within thirty (30) days after the Race Event detailed the cost of the City's Race Event Security. The invoice shall be in an amount substantially similar to the amounts paid by similar events in the City. Upon receipt of the invoice, BGP shall thereafter have up to thirty (30) days to either raise any questions or request an audit of the invoice or shall pay the full amount to the City. Any request for an audit shall be addressed by delivery of all detailed reports upon which the invoice was based to BGP and its accountant.
- C. BGP shall have the right to employ an individual to act as a consultant and liaison between BGP and the City as it relates to the rendering of services for Race Area Security and if applicable, Additional Security ("Security Expert"). At BGP's sole cost and expense, Security Expert shall work in cooperation with City, Massachusetts Department of Law Enforcement and other lawful authorities.

6.12 **Temporary Sanitation Facilities.** BGP shall provide adequate portable toilets and related sanitation services including hand-washing facilities for the use of participants and spectators for the Race Event.

6.13 **Cleanup and Restoration.** City shall be responsible for cleaning up the Race Area at the end of each day during the Race Event and at the conclusion of each Race Event. Such cleanup shall include, without limitation, removal of litter and debris from City Streets and the Race Event Facilities.

6.14 **City Services and Promotion.**

- A. Subject to Paragraph 6.11 (B) (Security), City shall provide such services and equipment outside of the Race Area as are customarily and normally provided by the City for any major sporting or cultural event, including (1) City services reasonably necessary to enforce the temporary closure of streets and sidewalks and provide crowd control; (2) police, fire and emergency medical services; (3) City-owned temporary barricades (e.g., cones, fencing) to assist in marking the closure of streets; (4) street sweeping; and (5) any additional services the City deems appropriate in its sole and absolute discretion.
- B. Subject to Paragraph 6.11 (B) (Security), City shall provide certain City services, including without limitation, police, fire, emergency medical services, public works, and other staff, within the Race Area during the Race Event as requested by BGP and approved by the City. BGP shall submit to the City, at least ninety (90) days prior to the beginning of the Race Event Period, a plan detailing the nature, type and extent of City services requested by BGP within the Race Area.
- C. At no cost to BGP, the City shall cooperate and assist personnel, designated by the City, for purposes of including, but not limited to, coordinating with neighborhood groups, residents within the Race Area and/or other affected individuals, provided such is not unreasonable or cumbersome.
- D. BGP shall provide the City with the promotional benefits as described in Exhibit E hereto.

6.15 **BGP Race Assets and Storage Areas**. The City shall make reasonable efforts to assist BGP in procuring a storage area for Race Event Materials. All costs and transportation related to storage of Race Events Materials shall be borne by BGP. Such storage area shall be located within the city limits of Boston, Massachusetts. BGP shall be solely responsible for the construction, assembly and placement of all Race Event Materials at the Race Area as well as the loading and unloading of Race Event Materials at both the storage area and Race Area and the costs thereto. BGP also shall be solely responsible for providing all security for the storage area.

6.16 **Compliance with Laws and Related Matters**.

- A. BGP shall comply with all applicable Laws, including without limitation the Laws governing construction on public facilities regardless of whether the contract for construction is between the contractor and BGP or the contractor and the City.
- B. BGP shall obtain all permits, consents and approvals required in connection with each Race Event or otherwise, at no cost to BGP and to perform any construction or other activities related to the Race Event. The City shall cooperate with BGP in BGP's effort to obtain such permits, consents and approvals.
- C. Prior to the Race Event, the City shall issue to BGP, at no cost, such permit as is required by the Laws of the Commonwealth of Massachusetts and/or City Code to allow the Race Event to be conducted during

the Term, provided that City determines that BGP meets the statutory conditions for the issuance of such a permit.

D. Subject to BGP's full compliance with the terms and conditions of this Agreement and the City's issuance of all necessary permits pursuant to Paragraph 6.16 C (Compliance with Laws and Related Matters) above:

- (1) The City shall provide for the temporary closure of those streets owned and controlled by the City to the extent such closures are required pursuant to the terms of this Agreement.
- (2) The City shall make commercially reasonable efforts to provide for the temporary closure of those streets owned and controlled by the Commonwealth of Massachusetts and those streets owned and controlled by the United States Federal Government to the extent such closures are required pursuant to the terms of this Agreement. Commercially reasonable efforts shall include but is not limited to negotiating with the respective departments of transportation and other necessary governmental entities.
- (3) City shall waive and suspend City ordinances pertaining to noise regulation and speed limits, other traffic laws and traffic control devices in, along and through the Race Area and/or Race Circuit.
- (4) City shall waive and suspend City ordinances pertaining to commercial signage and concessions within the Race Area and/or Race Circuit. The City shall make good faith efforts to work with BGP to obtain permission from any landmarks or historic district commissions to display necessary signage or permit concessions in the Race Area.
- (5) Within the parameters of the City Code, the City shall cooperate with BGP and the insurers of the Race Event to allow BGP to develop safety measures that permit the storage and dispensing of all fuels within the Race Area during the Race Event. BGP shall be solely responsible for ensuring that such safety measures are in compliance with all applicable National Fire Protection Association codes and standards. BGP also shall be solely responsible for providing adequate security for all fuels (and other fuels) storage and fueling areas at all times.

6.17 **Approval of Race Event.** City shall have the right to approve Race Events ancillary to Race (e.g., entertainment, concerts, athletic events, social events, etc.), which approval shall not be unreasonably withheld or delayed.

6.18 **Removal of Race Event Materials and Condition of City Owned Property.** After the Race Event, BGP shall discontinue its use of the Race Area and remove all Race Event Materials within the time periods set forth in this Agreement.

6.19 **Liability for Expenses.** Under no circumstances shall the City be liable for any costs or expenses incurred by BGP in any way related to or connected with the Race Event unless specifically provided for in this Agreement. Without limiting the generality of the foregoing, all obligations of BGP pursuant to this Agreement shall be performed by BGP at its sole cost and expense unless this Agreement specifically provides otherwise.

6.20 **Time Periods.** In the event of a delay in a Race Event due to weather conditions, the time periods set forth in this Agreement shall be adjusted to reflect the number of calendar days of delay but such delay shall not exceed seven (7) days (unless the City, BGP, Sanctioning Body and television networks agree to a longer extension) and shall be subject to such conditions for public access that the City may impose.

6.21 **Cooperation and Coordination.** BGP and the City shall cooperate and coordinate in good faith, their activities in planning and conducting the Race Event.

- A. The City will use its best efforts to assist BGP with securing funding participation for the Race Event by the Massachusetts Office of Travel & Tourism and the Commonwealth of Massachusetts Chamber of Commerce. The City shall use commercially reasonable efforts to assist BGP in obtaining the cooperation of the Greater Boston Convention & Visitors Bureau in BGP's promotional efforts for the Race Event. The City will also make personnel from its tourism and development department available to assist BGP in developing and implementing its public relations, promotion, marketing efforts and activation for the Race Event.
- B. Within thirty (30) days following the conclusion of the Race Event, the City shall provide BGP with a description of proposed changes to the Race Event, including set-up and dismantling and changes to the Race Circuit. Representatives of the City and BGP shall meet within forty-five (45) days following the conclusion of the Race Event to discuss such proposed changes and the manner in which future Race Events could be improved yet neither Party is bound to implement any of proposed changes.

ARTICLE VII:

DEFENSE OF CLAIMS, INDEMNIFICATION AND INSURANCE

7.1 **Indemnification.**

- A. BGP shall defend, pay on behalf of, indemnify and hold the City, its officers, agents, employees, elected and appointed officials, and volunteers (collectively, "Indemnified Parties") harmless from any and all claims, suits, demands, liabilities, losses, damages, liens and fines, regardless of whether a lawsuit is filed (collectively, "Claims"), arising from or in any way connected with the Race Event, including but not limited to Claims arising from or in any way connected with set-up, dismantling, design, installation or construction activities, including but not limited to the design, construction and installation of the Race Circuit but excepting Claims for which the City is finally determined to be not liable pursuant to Massachusetts Law, and excepting Claims for which the City is determined by a court of competent and final jurisdiction to be liable due to the City's sole negligence. Without limiting the generality of the foregoing, BGP shall defend, pay on behalf of, indemnify and hold the Indemnified Parties harmless

from any and all Claims, other than those Claims excepted above, which are alleged or claimed to be arising from or in connection with (i) the sole or contributory negligence (active or passive) of BGP, its agents, employees, contractors, subcontractors, concessionaires, licensees, patrons, participants or customers; (ii) the contributory negligence of the Indemnified Parties; (iii) the intentional wrongful acts and omissions of BGP, its agents, employees, contractors, subcontractors, concessionaires, licensees, patrons, participants or customers; (iv) the City's obligations pertaining to defective conditions in the Race Area and the dangerous condition of public property; (v) the failure of BGP, its agents, employees, contractors, subcontractors, concessionaires, licensees, patrons, participants or customers to comply and conform with applicable Laws; (vi) a Race Event or any portion thereof obstructing physical access to property; and (vii) a Race Event or any portion thereof causing a nuisance, including Claims in the nature of nuisance. Nothing in this Paragraph 7.1 A (Indemnification) is intended to or shall be construed as insuring the City against liability for any damages resulting from the Race Event to the extent the City is finally determined to be not liable for such damages.

- B. Notwithstanding anything contained in Paragraph 7.1 A (Indemnification) above to the contrary, in the event any Claim is asserted against any or all of the Indemnified Parties, BGP or its insurer shall, subject to the reasonable approval of the City Attorney, retain counsel to defend such Claim in the name of the Indemnified Party or Indemnified Parties and pay all costs of such defense, including, without limitation, attorneys' and experts' fees at trial and on appeal and court costs; provided, however, that if the City is determined by a court of competent and final jurisdiction to be liable for the Claim due to the Indemnified Party's or Indemnified Parties' sole negligence, the City shall reimburse BGP the reasonable costs of defense associated with such Claim. BGP shall keep the City Attorney fully informed as to the status of the defense of all Claims, all settlement offers and the costs of defense being incurred, including attorneys' fees. BGP shall have the sole discretion to settle Claims provided that BGP pays the entire amount of such settlement and the settlement involves only the payment of money. In no event shall the City be required to pay, contribute to, or be a party to the settlement of any Claim without City approval of such settlement, which approval may be withheld at the City's sole discretion. City shall have the sole discretion any time to direct BGP to settle any Claim provided that the amount of such settlement shall be paid by the City and the settlement involves only the payment of money. Notwithstanding the foregoing, the City Attorney may choose in its sole discretion to defend any Claim at the City's expense and to settle any Claim at the direction of City at the City's expense if the settlement involves only the payment of money.
- C. The insurance required to be obtained by BGP pursuant to all terms within Paragraphs 7.2 (Insurance Coverage), 7.3 (Additional Insurance Coverage Provisions), 7.4 (Additional Insured) and 7.5 (Insurance Policies) hereof, shall include coverage for BGP's obligations to the Indemnified Parties pursuant to this Agreement.
- D. The City and BGP shall not be liable to each other for incidental or consequential damages; provided, however, that this Paragraph 7.1 D (Indemnification) shall not relieve BGP (or its insurer) of its duty to defend and indemnify the City for claims against the City seeking consequential or incidental damages.

7.2 Insurance Coverage.

A. BGP shall obtain and keep in force at all times during the Race Event and during all construction, installation, set-up and dismantling activities (collectively, "Coverage Period"), a Race Event insurance policy, protecting BGP and its respective officers, employees, agents and volunteers against any and all liability due to death, injury, loss or damage to persons or property arising out of or in any way incident to the Race Event or BGP's operations or activities. This Race Event liability policy shall be in an amount of not less than TWENTY MILLION AND NO/100 DOLLARS (\$20,000,000) combined single limit for bodily injury and property damage. In addition, BGP shall obtain and keep in force at all times during the Coverage Period a Commercial General Liability insurance policy, in occurrence form with the following minimum limits:

- (1) Per Occurrence: \$4,000,000
- (2) Aggregate: \$4,000,000
- (3) Fire Damage: \$200,000
- (4) Medical Payments: \$10,000

B. BGP also shall obtain and keep in force at all times during the Coverage Period, an Automobile Liability insurance policy, covering any automobile, in the minimum limit of \$4,000,000 combined single limit.

C. BGP shall also obtain and keep in force at all times during the Coverage Period a Workers' Compensation insurance policy in accordance with the Commonwealth of Massachusetts statutory requirements and also obtain and keep in force an Employers' Liability policy in the following minimum limits:

- (1) Each Accident: \$200,000
- (2) Per Employee: \$200,000
- (3) All diseases: \$1,000,000

7.3 **Additional Insurance Coverage Provisions.** BGP shall also obtain and keep in force at all times during the Coverage Period an Excess Liability insurance policy in the minimum limit of \$6,000,000 for its obligations to the Indemnified Parties.

7.4 **Additional Insured.** All of the insurance policies required pursuant to this Article VII (except Workers' Compensation) shall name the Indemnified Parties as "additional insured" (as their interests may appear).

7.5 **Insurance Policies.**

A. All of the insurance required under this Article VII, which shall not be self-insured by BGP, shall be effected under enforceable policies acceptable to the City and issued by insurers licensed to do business in the Commonwealth of Massachusetts and rated no lower than "A-, VITI" in the then current edition of Best's Insurance Guide.

- B. All policies shall provide contractual liability covering the obligations assumed by BGP in this Agreement, except those obligations assumed by BGP pursuant to Paragraph 7.2 A (1) – (4) (Insurance Coverage) above, and shall not exclude any activity that would normally be associated with use of the Race Area or Race Event Facilities, without the prior written consent of the City which may be withheld by the City at its sole discretion.
- C. All policies shall provide that they shall not be subject to cancellation or material change which affects the Indemnified Parties, except upon at least thirty (30) days prior written notice to the City at the address set forth in Paragraph 9.1 B (Notice) below.
- D. Not less than thirty (30) days prior to the commencement of any activity related to the Race Event, including, without limitation, construction, installation or set up activities, BGP shall provide the City in each year of the Term with a certificate of insurance reflecting the coverage required herein together with satisfactory evidence of the full payment of the premiums thereon and at the request of the City, shall provide the original policy or policies or certified copies thereof.
- E. All certificates of insurance required pursuant to this Agreement shall be provided on standard ACORD forms.
- F. The insurance coverage and limits are set at the sole discretion of the City and are subject to change or revision. The City may, at its sole discretion, change the required insurance coverage and limits within sixty (60) days after the conclusion of the Race Event, to be implemented for the next year's Race Event, so long as such changes are commercially reasonable. Failure of BGP to comply with any such changes shall constitute a material default of this Agreement.
- G. BGP waives any right to recover against the Indemnified Parties for Claims covered by BGP's policies of insurance. This provision is intended to waive fully, and for the benefit of the Indemnified Parties, any rights or claims which might give rise to a right of subrogation in favor of any insurance carrier.
- H. BGP shall be responsible for ensuring that all contractors and subcontractors it hires to perform any work related to a Race Event maintain Commercial General Liability, Automobile Liability, Workers' Compensation and Employers' Liability insurance in the types and amounts set forth in this Article VII and otherwise comply with the terms and conditions of this Article VII related to such insurance, including, without limitation, naming the Indemnified Parties as additional insured pursuant to Paragraphs 7.2 C (1) – (3) (Insurance Coverage), 7.3 (Additional Insurance Coverage Provisions) and 7.4 (Additional Insured) above.

ARTICLE VIII:
DEFAULT AND REMEDIES

- 8.1 **Default.** The following shall be deemed events of default ("Default") under this Agreement:

A. By City: Failure by the City to perform or comply with its obligations or responsibilities hereunder, which is not cured within, unless otherwise stipulated herein, a reasonable time, but in no event to exceed thirty (30) days following receipt by the City of written notice from BGP specifying with particularity the Default so claimed. The thirty (30) day curative period provided herein may be expanded by so much additional time as is reasonably necessary to cure the Default provided that the City commences to cure such Default within such thirty (30) day period and thereafter diligently and continuously proceeds to cure the Default.

(1) City filing a voluntary petition of bankruptcy or becoming the subject of an involuntary petition in bankruptcy that is not discharged within sixty (60) days after the filing of such involuntary petition in bankruptcy shall be deemed a Default.

B. By BGP: Any one or more of the following shall be deemed a Default by BGP:

(1) Failure of BGP to perform or comply with its obligations or responsibilities hereunder, which is not cured within, unless otherwise stipulated herein, a reasonable time, but in no event to exceed thirty (30) days following receipt by BGP of written notice from the City specifying with particularity the Default so claimed. The thirty (30) day curative period provided herein may be expanded by so much additional time as is reasonably necessary to cure the Default provided that BGP commences to cure such Default within such thirty (30) day period and thereafter diligently and continuously proceeds to cure the Default.

(2) Failure of BGP to enter into a Sanctioning Agreement with the Sanctioning Body and the issuance of a written certification to the City signed by BGP and Sanctioning Body stating the Race Event is sanctioned and accurately summarizing the relevant terms of the Sanctioning Agreement not less than one hundred eighty (180) days prior to the beginning of the Race Event Period.

(3) Failure of BGP to conduct the Race Event in calendar year, 2016, on the dates mutually agreed upon by the City, BGP and the Sanctioning Body.

(4) Failure of BGP to conduct a Race Event during any thirteen (13) month period following the inaugural Race Event, unless mutually agreed upon between City and BGP.

(5) Failure of BGP to provide adequate assurances of its intent and ability to conduct any Race Event within thirty (30) days of notice to BGP from the City requesting such assurances.

(6) A principal of BGP shall be adjudicated guilty of committing a felony and all rights of appeal have expired.

(7) BGP makes a voluntary assignment for the benefit of its creditors.

- (8) BGP files a voluntary petition in bankruptcy or becomes the subject of an involuntary petition in bankruptcy that is not discharged within sixty (60) days after the filing of such involuntary petition in bankruptcy.

8.2 **Remedies.** In the event of a material Default by a Party in the performance of its obligations and duties as provided in this Agreement which is not cured within any curative period provided herein, the other party shall have the right to immediately file an action with a court of competent jurisdiction requesting an order granting any and all appropriate remedies, legal and equitable, including, without limitation, injunctive relief, specific performance, termination of this Agreement, damages and/or an order requiring or precluding the conduct of the Race Event or any portion thereof. The Parties hereto shall comply with the terms and conditions of any such order until the order is subsequently modified or revoked by such court or overruled pursuant to an appeal thereof filed by any party hereto; provided, however, that until a court order is obtained establishing the rights and obligations of the Parties pursuant to this Agreement and the Default of a party in the performance of its obligations and duties hereunder, no party shall be excused from performance of its respective obligations pursuant to this Agreement except as otherwise specifically provided in this Agreement to the contrary. Nothing contained herein shall limit the legal and equitable rights of the Parties.

8.3 **Termination.**

- A. By Court: A court of competent jurisdiction may terminate this Agreement pursuant to Paragraph 8.2 (Remedies) above following any Default specified in Paragraph 8.1 A (Default) above or Paragraph 8.1 B (Default) above, which, if required, is not cured within the applicable curative period provided therein.
- B. By Written Notice: Notwithstanding anything to the contrary contained in Paragraphs 8.1 A and 8.1 B (1) – (8) (Default) above, the Parties shall have the right to terminate this Agreement by written notice to the other party and without any court proceedings as follows:
- (1) By City:
- i. City may immediately terminate this Agreement by written notice to BGP by reason of any Default of Paragraph 8.1 B (2) – (8) (Default) above.
 - ii. City may immediately terminate this Agreement by written notice to BGP if Laws of the Commonwealth of Massachusetts are amended or are interpreted or stricken by any court in such a way as to prohibit street auto racing or to remove the protections against liability currently afforded the City under the Laws of the Commonwealth of Massachusetts.
 - iii. City may terminate this Agreement upon thirty days (30) prior written notice if BGP fails to comply with Paragraph 6.18 (Removal of Race Event Material and Condition of City Owned Property) above.
 - iv. City may terminate this Agreement if the Race Event places a significant hardship on the City pursuant to Paragraph 5.1 upon thirty days (30) written notice to BGP.

(2) By Either City or BGP:

- i. Either City or BGP may terminate this Agreement if the Parties fail to mutually agree when such mutual agreement is required pursuant to the terms and conditions of this Agreement, provided that the Parties have negotiated in good faith to attempt to reach a mutual agreement on the matter at issue. Prior to terminating the Agreement pursuant to this Paragraph 8.3 B (2) (i) (Termination), the party seeking to terminate shall give the other party at least thirty (30) days prior written notice of its intent to terminate and during such thirty (30) day period the Parties shall continue to negotiate in good faith to attempt to reach a mutual agreement. If no mutual agreement is reached during such thirty (30) day period, the party that provided the notice of intent to terminate may terminate this Agreement after the end of the thirty (30) day period. In the event the City or BGP terminates this Agreement in accordance with this Paragraph 8.3 B (2) (i) (Termination), such termination shall not constitute termination by reason of Default.

ARTICLE IX:
MISCELLANEOUS

9.1 Notices.

- A. Any and all notices to be given to BGP under this Agreement or required by law to be given to BGP may be given or served by certified or registered letter deposited in the U.S. Mail with postage prepaid, overnight courier, or facsimile, addressed to:

Boston Grand Prix, LLC
Attn: Roberto L. DiMarco, Esq.
350 Main Street
Malden, Massachusetts 02148
Fax: (781) 322-3757

- B. Any and all notices to be given to the City under this Agreement or required by law to be given to the City may be given or served by certified or registered letter deposited in the U.S. Mail with postage prepaid, overnight courier, or facsimile, addressed to:

City of Boston
Attn: Eugene L. O'Flaherty
1 City Hall Square, Room 615
Boston, MA 02201
Fax: (617) 635-3199

- C. All notices shall be deemed given or served upon receipt. Any party may change its address for the giving of notice pursuant to notice given in accordance with the provisions of Paragraphs 9.1 A and/or 9.1 B (Notices) above, which notice shall be effective upon receipt by the other party.

9.2 **Assignment.** BGP shall not assign this Agreement, or any part thereof, without first obtaining the written consent of City, which consent may be withheld by City at its sole discretion. Any change in the majority ownership or majority interest of BGP by any means, whether by a single transaction or a combination of transactions, shall constitute an assignment of this Agreement for purposes of this Paragraph 9.2 (Assignment). Any assignment of this Agreement contrary to this Paragraph 9.2 (Assignment), whether voluntary or involuntary, shall be void and shall confer no rights upon an assignee.

9.3 **Waiver.** Any waiver by either party of any breach by either party of any one or more of the covenants, conditions or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition or provision of this Agreement, nor shall any failure on the part of BGP to comply with or satisfy any of the covenants, conditions or provisions of this Agreement be construed as in any manner changing the terms hereof or prevent the City from enforcing the full provisions hereof, nor shall the terms of this Agreement be changed or altered in any manner whatsoever other than by written agreement of the City and BGP.

9.4 **Severability.** In the event that any portion of this Agreement shall be held to be invalid for any reason, such invalidity shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

9.5 **Applicable Law and Venue.** This Agreement shall be deemed to have been executed, delivered and performed in the Commonwealth of Massachusetts and it shall be governed by and interpreted in accordance with the Laws of the Commonwealth of Massachusetts.

9.6 **Parties in Interest.** All agreements made and entered into in connection with the transactions contemplated herein shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns.

9.7 **Captions.** Captions are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

9.8 **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original.

9.9 **Relationship of Parties.** This Agreement does not in any way constitute BGP as the agent, employee or legal representative of the City for any purpose whatsoever. BGP is in all respects an independent contractor and nothing contained in this Agreement shall create or be construed as creating a partnership or joint venture between the City and BGP. The City shall in no way be responsible for any debts incurred by BGP.

9.10 **Nondiscrimination.** BGP shall not illegally discriminate against anyone in the use of the Race Event Facilities or the conduct of the Race Event.

9.11 **Force Majeure**. Each party shall be excused from performance of its obligations hereunder when such performance has been delayed, hindered or prevented by any cause or causes beyond such party's reasonable control, which shall include, without limitation, labor disputes, riots, civil commotion or insurrection, war, war-like operations, or terrorist acts, invasion, rebellion, military or usurped power, sabotage, governmental restrictions, regulations or controls, inability to obtain any materials or services, fire or other casualties, natural disasters or acts of God. Without limiting all terms within Paragraph 6.5 (Race Event Facilities) above, in the event any Race Event Facility or portion thereof (other than the area within the Race Circuit) is destroyed or substantially damaged at any time during the Term by fire, casualty or other cause, the City shall not be required to repair or rebuild such Race Event Facility or portion thereof. Subject to the foregoing and Paragraph 9.13 (Non-Appropriation) below, if any property within the Race Circuit is destroyed or damaged due to an event of force majeure, the City shall repair or rebuild such property as soon as reasonably practicable. If the City, for whatever reason, is unable to repair or rebuild such property prior to any Race Event, this shall not constitute a Default by the City. The City shall promptly notify BGP if it is unable (for whatever reason) to repair or rebuild any property within the Race Circuit prior to any Race Event.

9.12 **Action by City**. The Mayor is hereby authorized and empowered in his/her sole and absolute discretion to take such action, including but not limited to the granting of any consent or approval required or permitted to be given by the City pursuant to this Agreement, and to execute any required instruments or documents to effectuate such action, except any consent or approval required to be granted by City pursuant to this Agreement, applicable Laws and/or City Code.

9.13 **Non-Appropriation**. The obligations of the City as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget, appropriate and pay from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.

9.14 **No Third Party Beneficiaries**. Persons or entities not a party to this Agreement may not claim any benefit hereunder or as third party beneficiaries hereto.

9.15 **Joint Effort**. The drafting of this Agreement was a joint effort of the Parties and any ambiguity in this Agreement shall not be construed and/or interpreted against any one of the Parties.

9.15 **Entire Agreement**. This Agreement and the documents to be delivered hereunder constitute the entire agreement between the Parties pertaining to the subject matters covered hereby and there are no oral representations, arrangements or understandings between or among the Parties relating to the subject matters of this Agreement. No change to this Agreement will be valid unless made by a written amendment duly executed by the Parties.

IN WITNESS WHEREOF:

The Parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.


ATTEST:

By: 

Name: Martin J Walsh (Seal)

Title: Mayor, City of Boston

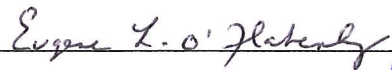
Date: 5/13/2015

By: 

Name: MAIKEL PERRONE (Seal)

Title: Pres/CEO

Date: 5/13/2015



Approved as to form *DW*

Eugene O'Flaherty

Corporation Counsel