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DATED 28<sup>th</sup> November 2003

THE COUNCIL OF THE CITY OF CHESTER

-and-

THE CHESTER RACE COMPANY LIMITED

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**LEASE**

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We hereby certify this to be a true  
and complete copy of the original.

Dated this 9<sup>th</sup> day of June 2004.

Birch Cullimore

Birch Cullimore

Solicitors

Friars

White Friars

Chester CH1 1XS

Relating to

Chester Race Course, Chester

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Brabners Chaffe Street  
1 Dale Street  
Liverpool  
L2 2ET

brabners chaffe street



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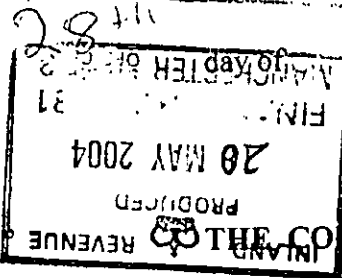
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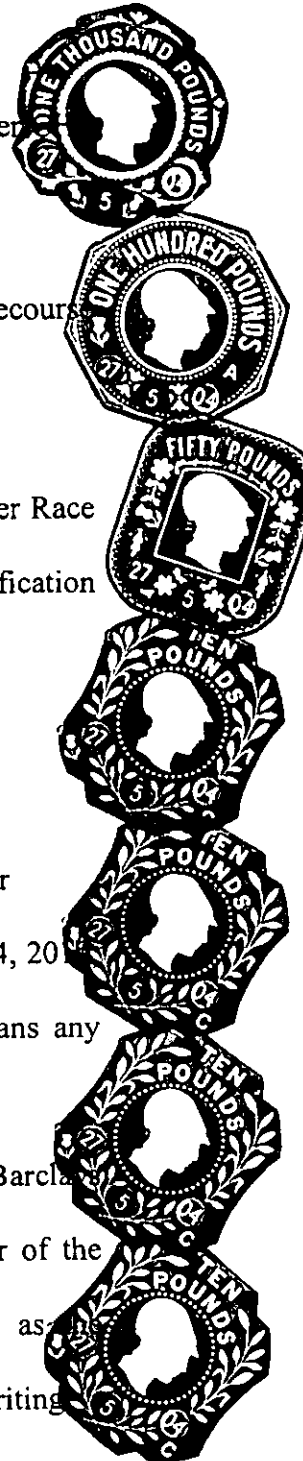


28th November

2003

**1 Particulars**

- 1.1 "the Landlord" **THE COUNCIL OF THE CITY OF CHESTER** whose office is at The Forum Chester 2HS
- 1.2 "the Tenant" **THE CHESTER RACE COMPANY LIMITED** whose registered office is at The Racecourse Chester CH1 2LY
- 1.3 "the Guarantor" None
- 1.4 "the Premises" ALL THAT land and buildings known as Chester Race Course Chester shown for the purpose of identification only edged red on the Plan
- 1.5 "Contractual Term" 35 years from and including 1<sup>st</sup> January 2000
- 1.6 "Rent Commencement Date" 1<sup>st</sup> January 2000
- 1.7 "Initial Basic Rent" Forty Eight Thousand Pounds (£48,000) per year
- 1.8 "Review Dates" 1<sup>st</sup> day of January in the years 2004, 2009, 2014, 2019, 2024, 2029 and 2034 and 'Review Date' means any one of the Review Dates
- 1.9 "Interest Rate" 4% per year above the base lending rate of Barclays Bank plc or such other bank being a member of the Committee of London and Scottish Bankers as the Landlord may from time to time nominate in writing
- 1.10 "Permitted User" a horse racing course together with such other uses at such times when race meetings are not being held as the Landlord shall consent to in writing



such consent not to be unreasonably withheld or delayed

- 1.11 "Decorating Years" in the years 2004 and in every subsequent fifth year of the Term and in the last year of the Term

## **2 Definitions**

- 2.1 For all purposes of this lease the terms defined in clauses 1 and 2 have the meanings specified
- 2.2 'Adjoining Property' means any neighbouring or adjoining land in which the Landlord (or a company that is a member of the same group as the Landlord within the meaning of Section 42 of the 1954 Act) has a freehold or leasehold interest or in which during the Term the Landlord or such company shall have acquired a freehold or leasehold interest
- 2.3 'Building' means the building or buildings now or at any time during the Term erected on part of the Premises
- 2.4 'Insured Risks' means fire lightning explosion aircraft (including articles dropped from aircraft) riot civil commotion malicious persons earthquake storm tempest flood bursting and overflowing of water pipes tanks and other apparatus and impact by road vehicles and such other risks as the Tenant from time to time in its absolute discretion may think fit to insure against or such risks as the Landlord reasonably requires to be insured against
- 2.5 'Interest' means interest during the period from the date on which the payment is due to the date of payment both before and after any judgment at the Interest Rate then prevailing or should the base rate referred to in clause 1.9 cease to exist such other rate of interest as is most closely comparable with the Interest Rate to be agreed

between the parties or in default of agreement to be determined by the Surveyor acting as an expert and not as an arbitrator

- 2.6 'the 1954 Act' means the Landlord and Tenant Act 1954
- 2.7 'the Open Land' means all parts of the Premises which are not for the time being built upon
- 2.8 "the Paddock" means that land buildings and racing equipment being part of the Premises and coloured brown on the Plan
- 2.9 'Pipes' means all pipes sewers drains mains ducts conduits gutters watercourses wires cables channels flues and all other conducting media and includes any fixings louvres cowls and any other ancillary apparatus which are in on or under or which serve the Premises
- 2.10 'the Plan' means the plan annexed to this lease
- 2.11 'the Planning Act' means the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990 the Planning (Consequential Provisions) Act 1990 and the Planning (Hazardous Substances) Act 1990 and all other planning legislation from time to time in force and all statutes regulations and orders included by virtue of clause 3.14
- 2.12 "the Race Course" means the horse racing track with fencing on either side coloured blue on the Plan
- 2.13 'Rent' means the Initial Basic Rent the Turnover Rent and rent ascertained in accordance with the second schedule
- 2.14 "the Roodee" means such part of the Adjoining Property located wholly within the Premises
- 2.15 'Surveyor' means any person or firm appointed by the Landlord to perform any of the functions of the Surveyor under this lease (including an employee of the Landlord or a

company that is a member of the same group as the Landlord within the meaning of Section 42 of the 1954 Act and including also the person or firm appointed by the Landlord to collect the rents)

2.16 "the Turnover Rent" means the rent ascertained in accordance with the third schedule

2.17 "the Stands" means the stands dining and refreshment rooms cloakrooms lavatories Roodee Lodge and other erections coloured red on the Plan

### **3 Interpretation**

3.1 The expressions 'the Landlord' and 'the Tenant' wherever the context so admits include the person for the time being entitled to the reversion immediately expectant on the determination of the Term and the Tenant's successors in title respectively and any reference to a superior landlord includes the Landlord's immediate reversioner (and any superior landlords) at any time

3.2 Where the Landlord the Tenant or the Guarantor for the time being are two or more persons obligations expressed or implied to be made by or with such party are deemed to be made by or with such persons jointly and severally

3.3 Words importing one gender include all other genders and words importing the singular include the plural and vice versa

3.4 The expression 'Guarantor' includes not only the person referred to in clause 1.3 (if any) but also any person who enters into covenants with the Landlord pursuant to clause 5.25

3.5 The expression 'the Premises' includes:

3.5.1 the Building

3.5.2 all additions and improvements to the Premises

3.5.3 all the Landlord's fixtures and fittings and fixtures of every kind which shall from time to time be in or upon the Premises (whether originally affixed or

fastened to or upon the Premises or otherwise) except any such fixtures installed by the Tenant that can be removed from the Premises without defacing the Premises

3.5.4 all Pipes in on under or over the Premises that exclusively serve the Premises and

3.5.5 the entire thickness of all walls and fences forming the boundaries of the Premises

but such expression includes no air space above the height of the top of the Building and references to 'the Premises' in the absence of any provision to the contrary include any part of the Premises

3.6 The expression 'the Term' includes the Contractual Term and any period of holding-over or extension or continuance of the Contractual Term whether by statute or common law

3.7 References to 'the last year of the Term' include the last year of the Term if the Term shall determine otherwise than by effluxion of time and references to 'the expiration of the Term' include such other determination of the Term

3.8 References to any right of the Landlord to have access to the Premises shall be construed as extending to any superior landlord and any mortgagee of the Premises and to all persons authorised by the Landlord or any superior landlord or mortgagee (including agents professional advisers contractors workmen and others)

3.9 Any covenant by the Tenant not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person

3.10 Any provision in this lease referring to the consent or approval of the Landlord shall be construed as also requiring the consent or approval of any mortgagee of the Premises and any superior landlord where such consent shall be required but nothing

in this lease shall be construed as implying that any obligation is imposed upon any mortgagee or any superior landlord not unreasonably to refuse any such consent or approval

- 3.11 References to 'consent of the Landlord' or words to similar effect mean a consent in writing signed by or on behalf of the Landlord and to 'approved' and 'authorised' or words to similar effect mean (as the case may be) approved or authorised in writing by or on behalf of the Landlord
- 3.12 The term 'the parties' or 'party' mean the Landlord and/or the Tenant but except where there is an express indication to the contrary exclude the Guarantor
- 3.13 'Development' has the meaning given by Section 55 of the Planning Act
- 3.14 Any references to a specific statute include any statutory extension or modification amendment or re-enactment of such statute and any regulations or orders made under such statute and any general reference to 'statute' or 'statutes' includes any regulations or orders made under such statute or statutes
- 3.15 References in this lease to any clause sub-clause or schedule without further designation shall be construed as a reference to the clause sub-clause or schedule to this lease so numbered
- 3.16 The clause paragraph and schedule headings and the table of contents do not form part of this lease and shall not be taken into account in its construction or interpretation

#### **4 Demise**

The Landlord demises to the Tenant the Premises but EXCEPTING AND RESERVING to the Landlord the rights specified in the first schedule TO HOLD the Premises to the Tenant for the Contractual Term SUBJECT to all rights easements privileges restrictions covenants and stipulations of whatever nature affecting the Premises YIELDING AND PAYING to the Landlord:

- 4.1 the Basic Rent payable without any deductions by one annual payment in advance on the first day of June in every year and proportionately for any period of less than a year the first such payment being a proportionate sum in respect of the period from and including the Rent Commencement Date to and including the 1<sup>st</sup> day of June 2000 to be paid on the date of this lease and
- 4.2 by way of further rent the Turnover Rent payable on demand in accordance with the third schedule

## **5 The Tenant's covenants**

The Tenant covenants with the Landlord:

### **5.1 Rent**

- 5.1.1 to pay the rents on the days and in the manner set out in this lease and not to exercise or seek to exercise any right or claim to withhold rent or any right or claim to legal or equitable set-off
- 5.1.2 if so required in writing by the Landlord to make such payments by banker's order or credit transfer to any bank and account that the Landlord may from time to time nominate

### **5.2 Outgoings and value added tax**

to pay and indemnify the Landlord against:

- 5.2.1 all rates taxes assessments duties charges impositions and outgoings which are now or during the Term shall be charged assessed or imposed upon the Premises or upon the owner or occupier of them excluding any payable by the Landlord occasioned by receipt of the rents or by any disposition of dealing with or ownership of any interest reversionary to the interest created by this lease and if the Landlord shall suffer any loss of rating relief which may be applicable to empty premises after the end of the Term by reason of such relief

being allowed to the Tenant in respect of any period before the end of the Term to make good such loss to the Landlord and

5.2.2 VAT (or any tax of a similar nature that may be substituted for it or levied in addition to it) chargeable in respect of the rents or any payment made by the Tenant under any of the terms of or in connection with this lease or in respect of any payment made by the Landlord where the Tenant agrees in this lease to reimburse the Landlord for such payment

### **5.3 Electricity gas and other services consumed**

to pay to the suppliers and to indemnify the Landlord against all charges for electricity gas and other services consumed or used at or in relation to the Premises (including meter rents)

### **5.4 Repair cleaning decoration etc**

5.4.1 as to the Open Land:

5.4.1.1 to manage the Open Land in a good and proper manner

5.4.1.2 to keep all the hedges ditches fences and gates always in good repair and condition

5.4.1.3 to keep that portion of the Open Land which is for the time being laid out as hard standing adequately surfaced in a good and clean condition and free from weeds

5.4.1.4 not to deposit any waste rubbish or refuse on the Open Land provided always that if waste rubbish or refuse is deposited on the Open Land as a consequence of use of the Premises as a race course such waste rubbish or refuse shall be collected within twenty four hours after each race day



5.4.1.5 not to bring keep store stack or lay out upon the Open Land any materials equipment plant bins crates cartons boxes or any receptacle for waste or any other item which is or may become untidy unclean unsightly or in any way detrimental to the Premises or the area generally save such as shall be reasonably required in connection with the Tenant's use of the Premises

5.4.1.6 to remove from the Open land and/or the Roodee any horse or other grazing animal which shall be found straying or grazing thereon

5.4.2 as to the Building:

5.4.2.1 to repair the Building and keep it in repair

5.4.2.2 to replace from time to time the Landlord's fixtures and fittings (if any) in the Building which may be or become beyond repair at any time during or at the expiration of the Term

5.4.2.3 to clean the Building and keep it in a clean condition

5.4.2.4 in each of the Decorating Years and in the last year of the Term to redecorate the Building in a good and workmanlike manner and with appropriate materials of good quality to the reasonable satisfaction of the Surveyor

5.4.3 as to the Premises:

5.4.3.1 not to cause any land roads or pavements abutting the Premises to be untidy or in a dirty condition and in particular (but without prejudice to the generality of the above) not to deposit on them refuse or other materials

5.4.3.2 where the use of Pipes boundary structures or other things is common to the Premises and other property to be responsible for and to indemnify the Landlord against all sums due from and to undertake all work that is the

responsibility of the owner lessee or occupier of the Premises in relation to those Pipes or other things

5.4.4 as to the steps and approaches to and from the entrances marked 'B' and 'C' on the Plan to keep the same in good and substantial repair and condition provided always that the Landlord shall pay for all damage to the same caused by the Landlord or anyone authorised by it (excluding the Tenant) in using the Roodee on condition that notice of such damage shall have been given to the Landlord by the Tenant as soon as is reasonably and practically possible and provided that the Tenant shall not be obliged to put the said steps and approaches in any better condition than at the commencement of the Term as evidenced by a Schedule of Condition attached to this lease

5.4.5 as to the embankment (including the retaining wall) on the north west of Grosvenor Road to restore and make good any damage caused to the same by persons attending race meetings or otherwise arising out of the holding of race meetings at the Premises

5.4.6 as to the City Walls to repay to the Landlord such sum as is specified by the Surveyor as the cost of repair and making good any damage to the City Walls attributable to the Tenant's use and occupation of the Premises or the exercise of any rights hereby granted provided that the onus of proof for such damage shall be the responsibility of the Landlord

## **5.5 Waste and alterations**

5.5.1 not to:

5.5.1.1 commit any waste

5.5.1.2 make any alteration to the Building save as permitted by the following provisions of this clause

5.5.2 not to construct or erect any additional buildings or structures on the Premises (whether permanent or temporary) nor make any structural alterations to the Building or any alterations to the exterior of the Building without:

5.5.2.1 obtaining and complying with all necessary consents of any competent authority and paying all charges of any such authority in respect of such consents

5.5.2.2 making an application to the Landlord supported by drawings and where appropriate a specification in duplicate prepared by an architect or member of some other appropriate profession (who shall supervise the work throughout to completion)

5.5.2.3 paying the reasonable fees of the Landlord any superior landlord any mortgagee and their respective professional advisers and

5.5.2.4 entering into such covenants as the Landlord may reasonably require as to the execution and reinstatement of the alterations

PROVIDED that the consent of the Landlord shall not be withheld to any alteration to the Building that may from time to time be required by the licensing justices

5.5.3 subject to the provisions of clause 5.5.2 not to construct or erect any additional buildings or structures on the Premises (whether permanent or temporary) nor make any structural alterations to the Building or any alteration to the exterior of the Building without the consent of the Landlord such consent not to be unreasonably withheld or delayed

5.5.4 not to make connection with the Pipes that serve the Premises otherwise than in accordance with plans and specifications approved by the Landlord such approval not to be unreasonably withheld or delayed subject to consent to

make such connection having previously been obtained from the competent statutory authority or undertaker

- 5.5.5 not without the Landlord's consent to raise the height of any building or structure above the top of the parapet of the outer wall of the City Walls or above the level of the footway on the north westerly side of Grosvenor Road

## **5.6 Aerials signs and advertisements**

- 5.6.1 not to erect upon the Premises any pole mast or wire whether in connection with telegraphic telephonic radio or television communication or otherwise without the consent of the Landlord such consent not to be unreasonably withheld or delayed
- 5.6.2 not to display anywhere on the Premises any placard sign notice fascia board or advertisement except any sign permitted by virtue of any consent given by the Landlord pursuant to a covenant contained in this lease provided that the consent of the Landlord shall not be required to any sign which solely states the use of the Premises by the Tenant or the name of the Tenant
- 5.6.3 not to use the Premises for any commercial or other advertising without the prior written consent of the Landlord whose consent shall be withheld unless such advertising is in accordance with the principles and standards required by the Landlord provided that the consent of the Landlord shall not be required to an advertisement which solely advertises the use of the Premises by the Tenant

## **5.7 Statutory obligations**

- 5.7.1 at the Tenant's own expense to execute all works and provide and maintain all arrangements upon or in respect of the Premises or the use to which the Premises are being put that are required in order to comply with the requirements of any statute (already or in the future to be passed) or any

government department local authority other public or competent authority or court of competent jurisdiction regardless of whether such requirements are imposed on the lessor the lessee or the occupier

5.7.2 not to do in or near the Premises any act or thing by reason of which the Landlord may under any statute incur have imposed upon it or become liable to pay any penalty damages compensation costs charges or expenses

5.7.3 without prejudice to the generality of the above to comply in all respects with the provisions of any statutes and any other obligations imposed by law or by any byelaws applicable to the Premises or in regard to carrying on the user for the time being carried on on the Premises

## **5.8 Access of Landlord and notice to repair**

5.8.1 to permit the Landlord and all persons authorised by Landlord upon reasonable notice during normal business hours except in the case of emergency:

5.8.1.1 to enter upon the Premises for the purpose of ascertaining that the covenants and conditions of this lease have been observed and performed

5.8.1.2 to view the state of repair and condition of the Premises and the City Walls

5.8.1.3 to serve on the Tenant a notice specifying any repairs cleaning maintenance or painting that the Tenant has failed to execute in breach of the terms of this lease and to request the Tenant immediately to execute the same including the making good of any opening-up under the provisions of clause 5.8.1.2

5.8.1.4 to repair and maintain the Roman Quay and to erect on a site close to the Roman Quay such signage and information boards as the Landlord shall reasonably require

5.8.2 immediately to comply with the requirements of any notice served under clause 5.8.1.3

5.8.3 if within three months of the service of a notice under clause 5.8.1.3 the Tenant shall not have commenced and be proceeding diligently with the execution of the work referred to in the notice or shall fail to complete the work within a reasonable period to permit the Landlord to enter the Premises to execute such work as may be necessary to comply with the notice and to pay to the Landlord the cost of so doing and all expenses incurred by the Landlord (including legal costs and surveyor's fees) within 14 days of a written demand

## **5.9 Alienation**

5.9.1 not to hold on trust for another or (save pursuant to a transaction permitted by and effected in accordance with the provisions of this lease) part with or share the possession of the whole or any part of the Premises or permit another to occupy the whole or any part of the Premises

5.9.2 the Tenant may during ten days before each race meeting grant a licence to any person or persons to erect set up or place on such parts of the Roodee or the Premises such tents booths bars stalls standings and for the sale of refreshments and intoxicating liquors provided always that the terms of such licence are previously approved in writing by the Landlord such approval not to be unreasonably withheld or delayed and such licence shall include a direct covenant with the Landlord from the licensee prohibiting the licensee from

doing or allowing any act or thing to the licensed area inconsistent with or in breach of the provisions of this lease and the terms of the licence shall be of a reasonable commercial nature depending on the circumstances of each particular licence

5.9.3 the Tenant may grant a licence to any person to use any part of the Stands when the same are not required for race meetings provided the terms of such licence are of a reasonable commercial nature depending on the circumstances of the particular licence

5.9.4 within 28 days of any licence relating to the Premises to produce for registration with the Landlord's solicitor or the Landlord a certified copy of such licence if specifically requested by the Landlord

5.9.5 Subject to clauses 5.9.6 and 5.9.7 below not to assign the whole of the Premises without first obtaining the written licence of the Landlord which shall not be unreasonably withheld

5.9.6 If any of the following circumstances in this clause (which are specified for the purposes of the Landlord and Tenant Act 1927 Section 19(1A)) shall apply either at the date when the application for the licence to assign is made or after the date but before such licence is given the Landlord may withhold licence to this assignment and if after such licence to assign is made or after that date but before such licence is given the Landlord may withhold licence for this assignment and if after such licence has been given but before completion of the assignment any such circumstances apply the Landlord may revoke such licence (whether such licence is expressly subject to a condition referred to in clause 5.9.7 or not)

5.9.6.1 any sum due from the Tenant under this Lease remains unpaid

5.9.6.2 there are any material outstanding breaches of any covenant relating to the state and condition of the Premises

5.9.6.3 subject to clause 5.9.6.4 below in the Landlord's reasonable opinion the assignee is not a person who is likely to be able both to comply with the tenant covenants of this Lease and to continue to be such a person following the assignment;

5.9.6.4 in the case of an assignment to a company which is in the same group (within the meaning of the 1954 Act) as the Tenant in the Landlord's reasonable opinion the assignee is a person who is or may become less likely to be able to comply with the tenant covenants of this Lease than the Tenant making the application for the licence to assign (which likelihood is adjudged by reference in particular to the financial strength of that Tenant aggregated with that of any guarantor for the performance of the tenant covenants when assessed at the date of the grant or assignment of the Lease to that Tenant);

5.9.6.5 the assignee or any guarantor for the assignee (other than any guarantor under an authorised guarantee agreement) has the benefit of state or diplomatic immunity; and

5.9.6.6 the assignee is a corporation registered in (or otherwise is resident in) a jurisdiction in which the order of a court obtained in England and Wales will not necessarily be enforced without any consideration of the merits of the case

5.9.7 The Landlord may impose any or all of the following conditions (which are specified for the purpose of the Landlord and Tenant Act 1927 Section 19 (1A)) on giving any licence for an assignment by the Tenant of the whole of



the Premises and any such licence shall be treated as being subject to each of the following conditions:

5.9.7.1 upon or before any assignment and before giving occupation to the assignee the Tenant making the application for the licence to assign shall covenant by way of indemnity and guarantee with the Landlord in the terms of an authorised guarantee agreement in such form as the Landlord shall reasonably require

5.9.7.2 if so reasonably required by the Landlord the assignee shall upon or before any assignment and before taking occupation obtain guarantors reasonably acceptable to the Landlord who shall covenant by way of indemnity and guarantee (if more than one jointly and severally) with the Landlord in the terms set out in clause 8 to this Lease;

5.9.7.3 the licence of the Landlord contains a condition that if at any time prior to the assignment the circumstances (or any of them) specified in clause 5.9.6 cease to exist the Landlord may revoke the licence by written notice to the Tenant

5.9.8 Within 28 days of any assignment or any transmission or other devolution relating to the Premises to produce for registration with the Landlord's solicitor's such deed or document and to pay the Landlord's solicitors' reasonable charges for the registration of every such document

## **5.10 Nuisance etc**

5.10.1 not to do nor allow to remain upon the Premises anything which may be or become or cause a nuisance annoyance disturbance inconvenience injury or damage to the Landlord or the Landlord's tenants or the owners or occupiers of adjacent or neighbouring premises provided always that the Tenants use of

the Premises as a race course shall not be deemed to be a breach of this covenant

5.10.2 not to use the Premises for any dangerous noxious noisy or offensive trade business manufacture or occupation nor for any illegal or immoral act or purpose

#### **5.11 User**

5.11.1 to use the Premises for the Permitted User only

5.11.2 not to hold horse racing upon the Premises for more than twelve days in each calendar year the actual date and times in each year for such horse racing to be agreed in writing between the parties in the previous calendar year and the Tenant shall use its best endeavours to obtain the maximum number of available fixture dates from the British Horse Racing Board or such other governing body so that the Landlord and Tenant may have the widest possible choice of dates to be agreed as aforesaid

5.11.3 not to use any part of the Premises for the sale of intoxicating liquor except on race days between the hours of nine o'clock a.m. and seven o'clock p.m. for an afternoon race meeting and between five o'clock p.m. and ten thirty o'clock p.m. for an evening race meeting save that this provision shall not apply to the Stands

5.11.4 not to discharge into any Pipes any oil grease or other deleterious matter or any substance which may be or become a source of danger or injury to the drainage system

#### **5.12 Licence for intoxicating liquor**

5.12.1 to apply or cause application to be made at all proper times to the licensing authorities for the time being and to use the Tenant's best endeavours to obtain

the grant or renewal of any certificates or licences necessary for the maintenance of the bar facilities in the Building and to pay all necessary fees and excise duties

5.12.2 to conduct the bar facilities in a lawful and orderly manner strictly in accordance with every such certificate or licence and to preserve the character of the bar facilities with the licensing authorities

5.12.3 to conduct the bar facilities in accordance with such rules and regulations as are reasonably required by the Landlord

5.12.4 in the conduct of the bar facilities not to do anything that would or would be likely to endanger any certificate or licence or render it liable to forfeiture or suspension

5.12.5 on the expiration of the Term to assign transfer and deliver to the Landlord or the Landlord's nominee the then existing licences and certificates in respect of the Building and to sign make and do all necessary notices applications and acts for procuring the transfer of the existing licences and certificates or for obtaining renewals of them to the Landlord or the Landlord's nominee and upon failure of the Tenant to do anything which under this covenant ought to be done by the Tenant the Landlord may and is now authorised by the Tenant to sign make and do any such notice application or act in the name and as agent of the Tenant as the case may require

### **5.13. Race Meetings**

5.13.1 Within 14 days before every race meeting the Tenant shall enclose any part or parts of the Roodee by and with such open fencing posts rails ticket entrances and other appliances and means as shall be in accordance with plans and specifications approved by the Landlord and to construct thereof such

temporary stands and other temporary structures as shall be in accordance with plans and specifications approved by the Landlord

5.13.2 Within 21 days before every race meeting the Tenant shall erect and set up upon such parts of the Roodee and the Premises with such materials and in such manner as is approved by the Landlord such number of temporary lavatories for men and women as the Landlord shall approve and shall keep such lavatories in good order during each race meeting and take down and remove the same within 7 days after the end of each race meeting and make good all damage to the Roodee and the Premises caused thereby and fill in level and restore the surface of the Roodee and the Premises so far as is reasonably practicable provided always that in the case of such lavatories having a concrete base the Tenant may at its own risk leave the same standing in the same calendar year between each race meeting when held on or between the months of May July and September or at such other times as the Landlord may agree but shall take all reasonable steps to prevent a nuisance arising from such retention and shall also remove them in the event of the Landlord so requiring for any reason during the period between each race meeting provided further that the Tenant shall not make any concrete bases for such lavatories without the approval of the Landlord to the positions number levels type of construction finish and colour thereof and in the event of such approval being granted the Tenant shall maintain such concrete bases in good repair and condition to the satisfaction of the Landlord

5.13.3 To permit the use by the Horse Race Totalisator Board of such land buildings machinery and facilities as are comprised in an Agreement dated 14<sup>th</sup> May 1947 with power to extend such agreement for any period during the Term or

enter into any new agreement on similar terms provided that the term of any such agreement shall not extend beyond the Term

5.13.4 To permit the Horse Race Totalisator Board at its own risks to leave standing in the same calendar year between each race meeting when held in or between the months of May and September or at such other times as the Landlord shall agree such buildings erected by the Horse Race Totalisator Board but shall take all necessary steps to prevent a nuisance arising from such retention and shall also remove them in the event of the Landlord so requiring for any reason between each race meeting

5.13.5 Except as otherwise provided within seven days after the close of each race meeting the Tenant shall cause to be taken down and removed all temporary stands sheds booths structures tents bars erections railings fences and enclosures created or set up by them or by their authority or permission and cause to be collected and removed from the Roodee and the Premises within seven days after the end of each race meeting all stones broken glass earthenware and within a period of three working days after the end of each race meeting all straw paper and other rubbish left on the ground and forthwith to restore and make good the ground and turf where it shall have been displaced or injured and generally to restore and make good all damage done to the Roodee and the Premises by the holding of the race meeting

5.13.7 If the Tenant shall fail to observe or perform the covenant in sub clauses 5.13.2 5.13.4 and 5.13.5 the Landlord may enter the Premises after reasonable notice to execute such work as may be necessary to remedy such failure or breach and all costs and expenses incurred by the Landlord shall be payable within seven days of a written demand

- 5.13.8 The Tenant may lay and maintain continuously in or under the surface of any part of the Roodee and/or the Premises all cables pipes and drains which may be reasonably necessary for the proper use of all moveable buildings erections or machinery which may be temporarily erected for each race meeting provided that the Tenant makes good and restores to the satisfaction of the Landlord all damage done to the Roodee and/or the Premises
- 5.13.9 To employ and pay for sufficient police officers stewards and other persons to keep proper order and control at each race meeting and to indemnify the Landlord against all loss damage and claims which may be made against them arising out of the holding of every race meeting
- 5.13.10 To take the responsibility for and use all necessary precautions to ensure the stability and safety of all stands erections structures and things which are now or which hereafter shall be built set up or brought on to the Roodee and/or the Premises for the accommodation or use of persons attending the race meetings and shall indemnify the Landlord against all actions proceedings costs damages claims demands and liability by reason or in consequence of the instability or un-safety of any such stand erection or thing or of any damage or accident that may happen or occur thereat or thereto
- 5.13.11 The Tenant may during race meetings hinder stop or prevent ingress or egress by all persons whomsoever (other than police officers and officers of the Landlord or any person authorised by them) to or from any part of the Roodee otherwise than by consent permission or authority of the Tenant and the Tenant may close the roadway across the land of the Tenant which is the subject of a Deed of Grant between the parties made the 26<sup>th</sup> day of November 1981

5.13.12 The Tenant may during each race meeting levy a charge for admission to the Roodee and/or the Premises and during each race meeting by any lawful means prevent any person or persons not licensed or authorised by the Tenant from going on to the Roodee or to the Premises and remaining thereon or doing on the Roodee or the Premises anything which the Tenant may think proper to forbid and to remove therefrom any person or persons they may think fit (other than police officers and officers of the Landlord or any persons authorised by them)

**5.14 Landlord's costs**

to pay to the Landlord on an indemnity basis all costs fees charges disbursements and expenses (including without prejudice to the generality of the above those payable to counsel solicitors surveyors and bailiffs) incurred by the Landlord in relation to or incidental to:

5.14.1 every application made by the Tenant for a consent or licence required by the provisions of this lease whether such consent or licence is granted or refused or proffered subject to any qualification or condition or whether the application is withdrawn

5.14.2 the preparation and service of a notice under the Law of Property Act 1925 Section 146 or incurred by or in contemplation of proceedings under the Law of Property Act 1925 Sections 146 or 147 notwithstanding that forfeiture is avoided otherwise than by relief granted by the court

5.14.3 the recovery or attempted recovery of arrears of Rent or other sums due from the Tenant and

5.14.4 any steps taken in connection with the preparation and service of a schedule of dilapidations during or after the expiration of the Term

## **5.15 The Planning Act**

5.15.1 not to commit any breach of planning control (such term to be construed as it is used in the Planning Act) and to comply with the provisions and requirements of the Planning Act that affect the Premises whether as to the Permitted User or otherwise and to indemnify (both during and following the expiration of the Term) and keep the Landlord indemnified against all liability whatever including costs and expenses in respect of any contravention

5.15.2 at the expense of the Tenant to obtain all planning permissions and to serve all such notices as may be required for the carrying out of any operations or user on the Premises which may constitute Development provided that no application for planning permission shall be made without the previous consent of the Landlord such consent not to be unreasonably withheld or delayed

5.15.3 subject only to any statutory direction to the contrary to pay and satisfy any charge or levy that may subsequently be imposed under the Planning Act in respect of the carrying out or maintenance of any such operations or the commencement or continuance of any such user

5.15.4 notwithstanding any consent which may be granted by the Landlord under this lease not to carry out or make any alteration or addition to the Premises or any change of use until:

5.15.4.1 all necessary notices under the Planning Act have been served and copies produced to the Landlord

5.15.4.2 all necessary permissions under the Planning Act have been obtained and produced to the Landlord and



5.15.4.3 the Landlord has acknowledged that every necessary planning permission is acceptable to the Landlord such acknowledgement not to be unreasonably withheld the Landlord being entitled to refuse to acknowledge its acceptance of a planning permission on the grounds that any condition contained in the planning permission or anything omitted from it or the period referred to in it would be (or be likely to be) prejudicial to the Landlord

5.15.5 unless the Landlord shall otherwise direct to carry out and complete before the expiration of the Term:

5.15.5.1 any works stipulated to be carried out to the Premises by a date subsequent to such expiration as a condition of any planning permission granted for any Development begun before the expiration of the Term and

5.15.5.2 any Development begun upon the Premises in respect of which the Landlord shall or may be or become liable for any charge or levy under the Planning Act

5.15.6 in any case where a planning permission is granted subject to conditions and if the Landlord so requires to provide security for the compliance with such conditions and not to implement the planning permission until security has been provided

5.15.7 if required by the Landlord but at the cost of the Tenant to appeal against any refusal of planning permission or the imposition of any conditions on a planning permission relating to the Premises following an application by the Tenant

## **5.16 Plans documents and information**

5.16.1 if called upon to do so to produce to the Landlord or the Surveyor all plans documents and other evidence as the Landlord may require in order to satisfy itself that the provisions of this lease have been complied with

5.16.2 if called upon to do so to furnish to the Landlord the Surveyor or any person acting as the third party determining the Rent in default of agreement between the parties under the provisions for rent review contained in the third schedule such information as may be requested in writing in relation to any pending or intended step under the 1954 Act or the implementation of any provisions for rent review

#### **5.17 Indemnities**

to be responsible for and to keep the Landlord fully indemnified against all damage damages losses costs expenses actions demands proceedings claims and liabilities made against or suffered or incurred by the Landlord arising directly or indirectly out of:

5.17.1 any act omission or negligence of the Tenant or any person for whose acts the Tenant is responsible or

5.17.2 any breach or non-observance by the Tenant of the covenants conditions or other provisions of this lease or any of the matters to which this demise is subject

#### **5.18 Reletting boards**

to permit the Landlord at any time during the last 6 months of the Contractual Term and at any time after that unless the Tenant shall have made a valid court application under Section 24 of the 1954 Act or otherwise be entitled in law to remain in occupation or to a new tenancy of the Premises to enter upon the Premises and affix and retain anywhere upon the Premises a notice for reletting the Premises and during

such period to permit persons with the written authority of the Landlord or the Landlord's agent at reasonable times of the day to view the Premises

#### **5.19 Encroachments**

5.19.1 to take all steps to prevent any new window light opening doorway path passage pipe or other encroachment or easement being made or acquired in against out of or upon the Premises and to notify the Landlord immediately if any such encroachment or easement shall be made or acquired (or attempted to be made or acquired) and at the request of the Landlord to adopt such means as shall be required to prevent such encroachment or the acquisition of any such easement

#### **5.20 Yield up**

at the expiration of the Term:

5.20.1 to yield up the Premises in repair and in accordance with the terms of this lease

5.20.2 to give up all keys of the Premises to the Landlord and

5.20.3 to remove all signs erected by the Tenant in upon or near the Premises and immediately to make good any damage caused by such removal

#### **5.21 Interest on arrears**

5.21.1 subject to clause 4.2.1 of the third schedule if the Tenant shall fail to pay the rents or any other sum due under this lease within 14 days of the date due whether formally demanded or not or if the Landlord shall refuse to accept any rents or other sums due under this lease by reason of any breach of covenant by the Tenant the Tenant shall pay to the Landlord Interest on the rents or other sum from the date when they were due to the date on which they are paid

or accepted (as the case may be) and such Interest shall be deemed to be rents due to the Landlord

5.21.2 nothing in clause 5.21.1 shall entitle the Tenant to withhold or delay any payment of the rents or any other sum due under this lease after the date upon which they fall due or in any way prejudice affect or derogate from the rights of the Landlord in relation to such non-payment including (but without prejudice to the generality of the above) under the proviso for re-entry contained in clause 9.1

**5.22 Statutory notices etc**

to give full particulars to the Landlord of any notice direction order or proposal for the Premises made given or issued to the Tenant by any local or public authority within 7 days of receipt and if so required by the Landlord to produce it to the Landlord and without delay to take all necessary steps to comply with the notice direction or order and at the request of the Landlord but at the cost of the Tenant to make or join with the Landlord in making such objection or representation against or in respect of any notice direction order or proposal as the Landlord shall deem expedient

**5.23 Sale of reversion etc**

to permit upon reasonable notice at any time during the Term prospective purchasers of or agents instructed in connection with the sale of the Landlord's reversion or of any other interest superior to the Term to view the Premises without interruption provided they are authorised in writing by the Landlord or the Landlord's agents

**5.24 Defective premises**

to give notice to the Landlord of any defect in the Premises which may give rise to an obligation on the Landlord to do or refrain from doing any act or thing in order to comply with the provisions of this lease or the duty of care imposed on the Landlord

pursuant to the Defective Premises Act 1972 or otherwise and at all times to display and maintain all notices which the Landlord may from time to time require to be displayed at the Premises

#### **5.25 New guarantor**

within 14 days of the death during the Term of any Guarantor (here meaning only a person who has become Guarantor at the request of the person who is the Tenant under this lease for the time being and not for any predecessor in title of the Tenant) or of such person becoming bankrupt or having a receiving order made against him or having a receiver appointed under the Mental Health Act 1983 or being a company passing a resolution to wind up or entering into liquidation or having a receiver appointed to give notice of this to the Landlord and if so required by the Landlord at the expense of the Tenant within 28 days to procure some other person acceptable to the Landlord such acceptance not to be unreasonably withheld to execute a guarantee in respect of the Tenant's obligations contained in this lease in the form of the Guarantor's covenants contained in clause 8

#### **5.26 Landlord's rights**

to permit the Landlord at all time during the Term to exercise without interruption or interference any of the rights granted to the Landlord by virtue of the provisions of this lease

#### **5.27 Corporate Governance**

5.27.1 At all times during the Term not to vary the articles of the Tenant company in such a way as to prevent the Landlord appointing three directors of the Tenant company and to supply the Landlord annually with a copy of the audited accounts of the Tenant company and if so requested produce the books of

account of the Tenant company to the Landlord or to any qualified accountant appointed by them

5.27.2 At all times during the Term appoint the Mayor of Chester ex officio a Patron of the Tenant company who shall be entitled to attend all meetings of the Tenant company but who shall have no voting powers

5.27.3 At all times during the Term to manage the affairs of the Tenant company in such a way that not more than fifteen per cent of the voting share capital of the Tenant company is held at any time by any one person or institution without the consent of the Landlord which consent shall be notified in writing to the Tenant company on a notice by the Tenant company to the Landlord of an intent to register any such holding or add to an existing holding so as to create this position

## **5.28 Non Racing Payment**

In the event of the Tenant stopping horse racing under the Rules of Horse Racing on the Premises and/or the Roodee the Tenant shall pay to the Landlord the sum of £24,628 adjusted in accordance with the Retail Prices Index published by the Department of Trade and Industry or any successor ministry or department which sum shall be held on trust by the Landlord to provide the continuation of horse racing on the Premises and/or the Roodee under the Rules of Horse Racing provided always that if the Landlord is unable to provide such a race meeting within eighteen months of the Tenant stopping racing as aforesaid the said sum shall be refunded to the Tenant

## **6 The Landlord's covenants**

The Landlord covenants with the Tenant:

### **6.1 Quiet enjoyment**

to permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for the Landlord or by title paramount

## **7 Insurance**

### **7.1 Warranty**

The Tenant warrants that prior to the execution of this lease it has disclosed to the Landlord in writing any conviction judgment or finding of any court or tribunal relating to the Tenant (or any director other officer or major shareholder of the Tenant) of such a nature as to be likely to affect the decision of any insurer or underwriter to grant or to continue insurance of any of the Insured Risks

### **7.2 Tenant to insure**

The Tenant covenants with the Landlord to insure the Premises in accordance with the provisions of clause 7.3 with the interest of the Landlord noted on the policy of insurance

### **7.3 Details of the insurance**

Insurance shall be effected:

7.3.1 in such reputable insurance office or with such underwriters and through such agency as the Landlord may from time to time approve such approval not to be unreasonably withheld or delayed

7.3.2 for the following sums:

7.3.2.1 the full cost of rebuilding and reinstatement including architects' surveyors' and other professional fees payable upon any application for planning permission or other permits or consents that may be required in relation to the rebuilding or reinstatement of the Premises

the cost of debris removal demolition site clearance any works that may be required by statute and incidental expenses and

7.3.2.2 the loss of Rent payable under this lease from time to time (having regard to any review of rent which may become due under this lease) for 3 years

7.3.3 against damage or destruction by the Insured Risks to the extent that such insurance may ordinarily be arranged for property such as the Premises with an insurer of repute and subject to such excesses exclusions or limitations as the insurer may require

#### **7.4 Suspension of Rent**

7.4.1 If and whenever during the Term:

7.4.1.1 the Premises or any part of them are damaged or destroyed by any of the Insured Risks so that the Premises or any part of them are unfit for occupation or use and

7.4.1.2 payment of the insurance money is not refused in whole or in part by reason of any act or default of the Tenant or anyone for whose acts the Tenant is responsible

the provisions of clause 7.4.2 shall have effect

7.4.2 When the circumstances contemplated in clause 7.4.1 arise the Rent or a fair portion of the Rent according to the nature and the extent of the damage sustained shall cease to be payable until the Premises or the affected part are made fit for occupation or use or until the expiration of 3 years from the destruction or damage whichever period is the shorter (the amount of such portion and the period during which the Rent shall cease to be payable to be determined by the Surveyor acting as an expert and not as an arbitrator)



## **7.5 Reinstatement and termination if prevented**

7.5.1 If and whenever during the Term the Premises or any part of them are damaged or destroyed by any of the Insured Risks the Tenant shall use the Tenant's best endeavours to obtain all planning permissions or other permits and consents that may be required under the Planning Act or other statutes (if any) to enable the Tenant to rebuild and reinstate ('the Permissions')

7.5.2 Subject to the provisions of clauses 7.5.3 and 7.5.4 the Tenant shall as soon as the Permissions have been obtained or immediately where no Permissions are required apply all money received in respect of such insurance (except sums in respect of loss of Rent) in rebuilding or reinstating the Premises so destroyed or damaged making up any difference between the cost of rebuilding and reinstating and the money received out of the Tenant's own money

7.5.3 For the purposes of clause 7.5 the expression 'Supervening Events' means:

7.5.3.1 the Tenant has failed despite using its best endeavours to obtain the Permissions

7.5.3.2 any of the Permissions has been granted subject to a lawful condition with which it would be impossible for the Tenant to comply

7.5.3.3 some defect or deficiency in the site upon which the rebuilding or reinstatement is to take place would render the rebuilding or reinstatement impossible

7.5.3.4 the Tenant is unable to obtain access to the site for the purposes of rebuilding or reinstating

7.5.3.5 the rebuilding or reinstating is prevented by war act of God Government action strike lock-out or

7.5.3.6 any other circumstances beyond the control of the Tenant

7.5.4 The Tenant shall not be liable to rebuild or reinstate the Premises if and for so long as such rebuilding or reinstating is prevented by Supervening Events

7.5.5 If upon the expiry of a period of 3 years commencing on the date of the damage or destruction the Premises have not been rebuilt or reinstated so as to be fit for the Tenant's occupation and use either party may by notice served at any time within 6 months of the expiry of such period invoke the provisions of clause 7.5.6

7.5.6 Upon service of a notice in accordance with clause 7.5.5

7.5.6.1 the Term will absolutely cease but without prejudice to any rights or remedies that may have accrued to either party against the other including (without prejudice to the generality of the above) any right that the Landlord may have against the Tenant for a breach of the Tenant's covenants set out in clauses 7.5.1 and 7.5.2

7.5.6.2 all money received in respect of the insurance effected by the Tenant pursuant to this clause shall belong to the Landlord

## **7.6 Tenant's further insurance covenants**

The Tenant covenants with the Landlord:

7.6.1 to comply with all the requirements and recommendations of the insurers

7.6.2 not to do or omit anything that could cause any policy of insurance on or in relation to the Premises to become void or voidable wholly or in part or (unless the Tenant shall have agreed to pay the increased premium) anything by which additional insurance premiums may become payable

7.6.3 to keep the Premises supplied with such fire fighting equipment as the insurers and the fire authority may require or as the Landlord may reasonably require

and to maintain such equipment to their satisfaction and in efficient working order and at least once in every 6 months to cause any sprinkler system and other fire fighting equipment to be inspected by a competent person

7.6.4 not to store or bring onto the Premises any article substance or liquid of a specially combustible inflammable or explosive nature and to comply with the requirements and recommendations of the fire authority and the requirements of the Landlord as to fire precautions relating to the Premises save the parking of motor vehicles on the Premises shall not be deemed to be a breach of this clause

7.6.5 not to obstruct the access to any fire equipment or the means of escape from the Building nor to lock any fire door while the Building is occupied

7.6.6 to give notice to the Landlord immediately upon the happening of any event which may affect any insurance policy on or relating to the Premises or upon the happening of any event against which the Tenant may have insured under this lease

7.6.7 immediately to inform the Landlord in writing of any conviction judgment or finding of any court or tribunal relating to the Tenant (or any director other officer or major shareholder of the Tenant) of such a nature as to be likely to affect the decision of any insurer or underwriter to grant or to continue any such insurance

7.6.8 if at any time the Tenant shall be entitled to the benefit of any insurance on the Premises which is not effected or maintained in pursuance of any obligation contained in this lease to apply all money received by virtue of such insurance in making good the loss or damage in respect of which such money shall have been received

7.6.9 to produce to the Landlord on demand a copy of the policy and the last premium renewal receipt

7.6.10 to notify the Landlord of any change in the risks covered by the policy from time to time and

7.6.11 to pay to the Landlord forthwith any money received under the loss of rent policy

## **8 The Guarantor's covenants**

The Guarantor covenants with the Landlord and without the need for any express assignment with all the Landlord's successors in title that:

### **8.1 To pay observe and perform**

during the Term the Tenant shall punctually pay the rents and observe and perform the covenants and other terms of this lease and if at any time during the Term the Tenant shall make any default in payment of the rents or in observing or performing any of the covenants or other terms of this lease the Guarantor will pay the rents and observe or perform the covenants or terms in respect of which the Tenant shall be in default and make good to the Landlord on demand and indemnify the Landlord against all losses damages costs and expenses arising or incurred by the Landlord as a result of such non-payment non-performance or non-observance notwithstanding:

8.1.1 any time or indulgence granted by the Landlord to the Tenant or any neglect or forbearance of the Landlord in enforcing the payment of the rents or the observance or performance of the covenants or other terms of this lease or any refusal by the Landlord to accept rents tendered by or on behalf of the Tenant at a time when the Landlord was entitled (or would after the service of a notice under the Law of Property Act 1925 Section 146 have been entitled) to re-enter the Premises

8.1.2 that the terms of this lease may have been varied by agreement between the parties

8.1.3 that the Tenant shall have surrendered part of the Premises in which event the liability of the Guarantor under this lease shall continue in respect of the part of the Premises not so surrendered after making any necessary apportionments under the Law of Property Act 1925 Section 140 and

8.1.4 any other act or thing by which but for this provision the Guarantor would have been released

## **8.2 To take lease following disclaimer**

if at any time during the Term the Tenant (being an individual) shall become bankrupt or (being a company) shall enter into liquidation and the trustee in bankruptcy or liquidator shall disclaim this lease the Guarantor shall if the Landlord shall by notice within 60 days after such disclaimer so require take from the Landlord a lease of the Premises for the residue of the Contractual Term which would have remained had there been no disclaimer at the Rent then being paid under this lease and subject to the same covenants and terms as in this lease (except that the Guarantor shall not be required to procure that any other person is made a party to that lease as guarantor) such new lease to take effect from the date of such disclaimer and in such case the Guarantor shall pay the costs of such new lease and execute and deliver to the Landlord a counterpart of it

## **8.3 To make payments following disclaimer**

if this lease shall be disclaimed and for any reason the Landlord does not require the Guarantor to accept a new lease of the Premises in accordance with clause 8.2 the Guarantor shall pay to the Landlord on demand an amount equal to the rents for the

period commencing with the date of such disclaimer and ending on whichever is the earlier of the following dates:

8.3.1 the date 6 months after such disclaimer and

8.3.2 the date (if any) upon which the Premises are relet

## **9 Provisos**

### **9.1 Re-entry**

If and whenever during the Term:

9.1.1 the rents (or any of them or any part of them) under this lease are outstanding for 28 days after becoming due whether formally demanded or not or

9.1.2 there is a breach by the Tenant or the Guarantor of any covenant or other term of this lease or any document supplemental to this lease or

9.1.3 an individual Tenant becomes bankrupt or suffers the appointment of an administrative receiver in respect of his property or suffers the making of a bankruptcy order against him or

9.1.4 a company Tenant or the Guarantor

9.1.4.1 enters into liquidation whether compulsory or voluntary (but not if the liquidation is for amalgamation or reconstruction of a solvent company) or

9.1.4.2 has a receiver appointed or

9.1.4.3 suffers the making of an administration order or

9.1.4.4 suffers any person to become entitled to exercise the powers conferred on an administrative receiver or

9.1.5 the Tenant enters into an arrangement for the benefit of the Tenant's creditors or

9.1.6 the Tenant has any distress or execution levied on the Tenant's goods

the Landlord may re-enter the Premises (or any part of them in the name of the whole) at any time (and even if any previous right of re-entry has been waived) and then the Term will absolutely cease but without prejudice to any rights or remedies which may have accrued to the Landlord against the Tenant or the Guarantor in respect of any breach of covenant or other term of this lease (including the breach in respect of which the re-entry is made)

## **9.2 Exclusion of use warranty**

Nothing in this lease or in any consent granted by the Landlord under this lease shall imply or warrant that the Premises may lawfully be used under the Planning Act for the purpose authorised in this lease (or any purpose subsequently authorised)

## **9.3 Entire understanding**

This lease embodies the entire understanding of the parties relating to the Premises and to all the matters dealt with by any of the provisions of this lease

## **9.4 Representations**

The Tenant acknowledges that this lease has not been entered into in reliance wholly or partly on any statement or representation made by or on behalf of the Landlord except any such statement or representation that is expressly set out in this lease

## **9.5 Licences etc under hand**

Whilst the Landlord is a limited company or other corporation all licences consents approvals and notices required to be given by the Landlord shall be sufficiently given if given under the hand of a director the secretary or other duly authorised officer of the Landlord

## **9.6 Tenant's property**

If after the Tenant has vacated the Premises on the expiry of the Term any property of the Tenant remains in or on the Premises and the Tenant fails to remove it within 28

days after being requested in writing by the Landlord to do so or if after using its best endeavours the Landlord is unable to make such a request to the Tenant within 14 days from the first attempt so made by the Landlord:

9.6.1 the Landlord may as the agent of the Tenant sell such property and the Tenant will indemnify the Landlord against any liability incurred by the Landlord to any third party whose property shall have been sold by the Landlord in the mistaken belief held in good faith (which shall be presumed unless the contrary be proved) that such property belonged to the Tenant

9.6.2 if the Landlord having made reasonable efforts is unable to locate the Tenant the Landlord shall be entitled to retain such proceeds of sale absolutely unless the Tenant shall claim them within 6 months of the date upon which the Tenant vacated the Premises and

9.6.3 the Tenant shall indemnify the Landlord against any damage occasioned to the Premises and any actions claims proceedings costs expenses and demands made against the Landlord caused by or related to the presence of the property in or on the Premises

#### **9.7 Compensation on vacating**

Any statutory right of the Tenant to claim compensation from the Landlord on vacating the Premises shall be excluded to the extent that the law allows

#### **9.8 Service of notices**

The provisions of the Law of Property Act 1925 Section 196 together with the Recorded Delivery Service Act 1962 shall apply to the giving and service of all notices and documents under or in connection with this lease except that the Law of Property Act 1925 Section 196 shall be deemed to be amended as follows:



9.8.1 the final words of the Law of Property Act 1925 Section 196(4) ... 'and that service ... be delivered' shall be deleted and there shall be substituted '... and that service shall be deemed to be made on the third Working Day after the registered letter has been posted "Working Day" meaning any day from Monday to Friday (inclusive) other than Christmas Day Good Friday and any statutory bank or public holiday'

9.8.2 any notice or document shall also be sufficiently served if sent by telex telephone facsimile transmission or any other means of electronic transmission to the party to be served and that service shall be deemed to be made on the day of transmission if transmitted before 4 pm on a Working Day but otherwise on the next following Working Day (as defined above)

and in this clause 'party' includes the Guarantor

#### **9.9 Rights easements etc**

The operation of the Law of Property Act 1925 Section 62 shall be excluded from this lease and the only rights granted to the Tenant are those expressly set out in this lease and the Tenant shall not by virtue of this lease be deemed to have acquired or be entitled to and the Tenant shall not during the Term acquire or become entitled by any means whatever to any easement from or over or affecting any Adjoining Property

#### **9.10 Break Option**

If the Horserace Betting Levy Board (or other governing authority) shall withdraw or refuse its financial support of the Chester Race Meetings and if in consequence the Tenant satisfies the Landlord that it is no longer practicable for them to promote horse racing meetings under the Rules of Horse Racing on the Premises and pay the rent hereby reserved except at a loss the Tenant shall have the right by six months prior written notice served by the Tenant on the Landlord to determine this lease without

prejudice to any claims by the Landlord against the Tenant in respect of any antecedent breach of any covenant or condition herein on the Tenant's part to be observed or performed provided always that the Tenant shall use its best endeavours and do all things in its power to prevent or avoid such withdrawal or refusal and for the avoidance of doubt it is hereby agreed and declared that the Stands and other permanent buildings erected on the Premises are not for the purpose of this clause property or assets of the Tenant but on termination of this lease will belong to the Landlord

AS WITNESS whereof this deed has been executed as a deed on the date hereof

### **FIRST SCHEDULE**

#### **Rights reserved**

Except during race meetings and for such other periods as shall be agreed from time to time between the parties hereto having regard to the race meetings the Landlord shall have the following facilities subject to the exercise of the conditions imposed on the use of those facilities

#### **1. Use of buildings in the Paddock**

- 1.1 The right to use and permit the use of those parts of the buildings in the Paddock as are coloured brown and edged blue on the Plan for such youth purposes as the Landlord may in its absolute discretion decide
- 1.2 To use and permit the use of the lavatories forming part of the buildings in the Paddock as are coloured brown and edged red on the Plan by all members of the general public lawfully upon the Roodee on the occasion of any function taking place upon the Roodee to which members of the public are admitted provided that in connection with any function organised by a person or body other than the Landlord it

shall be open to the Tenant to make a reasonable charge for the use of the said lavatories such charge in default of agreement shall be determined by the Landlord whose decision shall be final

1.3 The conditions imposed on the exercise of rights in the Paddock are:

- 1.3.1 Control of the buildings shall at all times be exercised by the caretaker of the Premises employed by the Tenant ("the Race Course Manager") who will hold the key of the Paddock which will be obtained from him on each occasion on which the buildings are used and returned to him afterwards provided that (except when the buildings are used other than by the Landlord) the Landlord shall provide an attendant or take steps to see that one is provided at its expense to supervise the use of the buildings
- 1.3.2 The Landlord shall be responsible for cleaning the buildings while in use by them or with their permission
- 1.3.3 A joint inspection by the Landlord and the Tenant of the buildings shall be made as nearly as possible to four weeks before the first race meeting of the season and the Landlord shall at its own expense forthwith carry out such decorations and repairs as may reasonably be necessary arising out of the Landlord's use such decorations and repairs to be completed one week before the first day of the race meeting PROVIDED ALWAYS that any damage which cannot conveniently be put right at such frequent intervals it being of an accumulating nature (such as damage to floors by football boots) shall be reviewed every five years and any necessary work to make such damage good shall be carried out by the Landlord at its own expense
- 1.3.4 The Landlord shall in accordance with arrangements to be agreed pay for the proportion of the electrical current used in the buildings (which shall include

the electrical current used for operating the drain ejector plant) as is attributable to the use of the buildings by the Landlord or with its permission

1.3.5 In the event of the Tenant being in a position to make a charge for the use of the buildings as hereinbefore set out under paragraph 1.2 the Landlord shall not exercise its right to use the buildings during the period when the Tenant is permitted to make such a charge

1.3.6 The Landlord will keep the Tenant indemnified against any claim by persons using the said accommodation by permission of the Landlord for loss or injury sustained in the said accommodation except such as may be attributable to the failure of the Tenant to perform any of their obligations under this lease

1.3.7 The Tenant shall be responsible for taking all necessary precautions for protecting the drainage and water supply systems of the buildings in the Paddock from damage by frost or floods and will repair and make good at their own expense any damage that may be caused thereby

## **2. Use of the Race Course**

The right for the Landlord in common with the general public and all other persons so entitled in connection with the use of the Roodee to cross the Race Course with or without animals and vehicles at the points marked A B C D E and F on the Plan or at such other points not exceeding six in number as may from time to time be agreed between the parties hereto PROVIDED ALWAYS that the Landlord shall use its best endeavours to ensure that vehicles and animals which might damage the Race Course shall only be allowed to cross the Race Course at a point 'D' or in special circumstances point 'A' and if point 'A' is used the Landlord shall take all necessary precautions to prevent damage to the surface of the Race Course and in the event of such damage occurring the Landlord shall make the same good to

the reasonable satisfaction of the Tenant The Tenant shall not exclude the general public from the pedestrian use of the Race Course except so far as may be reasonably necessary for proper maintenance of the Race Course to the standards of a first-class Race Course The Tenant shall ensure that at all times of the year (except when the Roodee is closed for the race meetings) a sufficient space is left in the rails and wire mesh screens enclosing the Roodee at the aforementioned access to the Roodee to enable pedestrians to gain access/ points No action for trespass on the Race Course arising out of any such exclusion of the public shall be taken by the Tenant against any person without the previous written consent of the Landlord except in any case where there is sufficient evidence to support a criminal charge of malicious damage The Landlord shall (without thereby accepting any financial responsibility subject to the aforesaid provisions concerning point 'A') co-operate with the Tenant at all times in order to prevent damage to the turf or undue or uneven consolidation of any part of the Race Course and whereas it is essential for the proper conduct of horse racing that no part of the Race Course shall be unevenly compacted so as to lead to any specific advantages being gained by any horse The Tenant shall be entitled to erect fences hurdles or barriers to prevent or deter such persons from racing round the inner half of the Race Course provided that in order that there shall be no misunderstanding upon seven days notice in writing thereof being given to the Tenant by the Landlord the general public and all persons authorised by the Landlord shall have the right to race on foot round the Roodee side of the running rail but not on the Race Course or during race meetings and for this purpose the Tenant will mark with a white line a strip of land ten yards wide measured inwards from the inside of the running rail On the annual occasion of the Round the Walls Race the Landlord shall have the right to start and finish the race on the Race Course at the six furlong mark or thereabouts provided that in no circumstances shall the competitors be permitted to start or finish the race on the last three furlongs of the Race Course

### 3. Use of the Premises

- 3.1 The right to use the main sewer running through or under the Premises and the Roodee and the works appertaining thereto with right from time to time and at all times during the Term (except as herein mentioned) to inspect repair scour cleanse maintain alter enlarge alter the course of or otherwise improve and use the said sewer and works or to construct a new sewer with the necessary incidental works either in substitution for or in addition to the said main sewer and to exercise all the said rights in respect of such additional sewer (they restoring and making good the surface as soon as practicable) and for all or any of the purposes mentioned in this clause at all reasonable times other than (except in case of pressing necessity) during and for fourteen days before a race meeting to enter be upon and return from the Premises and the Roodee or any part thereof
- 3.2 The full and unrestricted rights of the Landlord as owners to use occupy let dispose of and turn to whatever use and purpose (not incompatible or inconsistent with or so as in any way to limit as to area or time the enjoyment of the liberties and rights hereby demised or granted) as the Landlord shall deem fit the whole or any part of the Adjoining Property at all times except during the race meetings in each year and a week before each such meeting PROVIDED ALWAYS that the Landlord shall not depasture by animals the Roodee or grant permission to others to depasture the Roodee
- 3.3 The right for the Landlord at any time or times and from time to time (except during and subject to the Landlord undertaking to restore the same before the week of a race meeting) to remove and take up any of the posts and rails enclosing the Race Course at the crossing points hereinbefore mentioned and also to remove and take up any railings or fences to be erected for enclosure of the Roodee as aforesaid at such

crossing points they first giving seven days notice in writing to the Tenant of its intention to do so and of the posts railing or fences intended to be removed or interfered with and at their own expense and before the next race meeting reinstating the same in their former state and condition or replacing them by new posts rails railings or fencing where required to the reasonable satisfaction of the Tenant PROVIDED ALWAYS that this right shall not be exercised in such a way as to derogate from the Landlord's grant of the lease of the race course as a track fit for horse racing

#### **4. General**

If any dispute shall arise as to the amount of repair work to be carried out by the Landlord or the proportion of any payment to be made by the Landlord or the amount of any damage attributable to the Landlord arising out of the exercise of these rights the same shall be referred to arbitration in accordance with the arbitration clause set out herein

#### **5. Access**

5.1 The right at any time during the Term at reasonable times and upon reasonable notice except in cases of emergency to enter (or in cases of emergency to break and enter) the Premises

5.1.1 to inspect the condition and state of repair of the Premises

5.1.2 to inspect cleanse connect repair remove replace with others alter or execute any works whatever to or in connection with the Pipes easements services or supplies referred to in this schedule

5.1.3 to carry out work of any kind to the Adjoining Property which cannot conveniently be carried out without access to the Premises

5.1.4 to take schedules or inventories of fixtures and other items to be yielded up on the expiry of the Term and

5.1.5 to exercise any of the rights granted to the Landlord elsewhere in this lease

5.2 The right with the Surveyor on reasonable prior notice to enter and inspect the Premises for all purposes connected with any pending or intended step under the 1954 Act

## **6. Light**

Full right and liberty at any time after the date of this lease to erect any new building of any height on the Adjoining Property in such manner as the Landlord shall think fit notwithstanding the fact that this may obstruct affect or interfere with the amenity of or the access to the Premises or the passage of light and air to the Premises

## **SECOND SCHEDULE**

### **Basic Rent and Basic Rent Review**

#### **1 Definitions**

- 1.1 The terms defined in this paragraph shall for all purposes of this schedule have the meanings specified
- 1.2 'Review Period' means the period between any Review Date and the day prior to the next Review Date (inclusive) or between the last Review Date and the expiry of the Term (inclusive)
- 1.3 'the President' means the President for the time being of the Royal Institution of Chartered Surveyors the duly appointed deputy of the President or any person authorised by the President to make appointments on his behalf
- 1.4 'the Arbitrator' means a person appointed by agreement between the parties or in the absence of agreement within 14 days of one party giving notice to the other of its nomination or nominations nominated by the President on the application of either



party made not earlier than 6 months before the relevant Review Date or at any time afterwards

## **2 Ascertaining the Basic Rent**

### **2.1 The Basic Rent shall be:**

2.1.1 until the first Review Date the Initial Basic Rent and

2.1.2 during each successive Review Period a rent equal to the greater of:

2.1.2.1 the Basic Rent payable immediately prior to the relevant Review Date

2.1.2.2 such Basic Rent as may be ascertained in accordance with this schedule

2.2 Such revised Basic Rent for any Review Period may be agreed in writing at any time between the parties or (in the absence of agreement) shall be determined not earlier than the relevant Review Date by the Arbitrator

2.3 The revised Basic Rent to be determined by the Arbitrator shall be such as he shall decide to be a fair and reasonable sum when taking into account all prevailing conditions as compared with the previous Review Date including changes in the value of money the prosperity of racing generally and in Chester any new sources of income to the Tenant arising out of the Premises the financial position of the Tenant arising out of the Tenant's interest in the Premises and changes in the Retail Price Index published by the Department for Trade and Industry or any successor ministry or department

2.4 The arbitration shall be conducted in accordance with the Arbitration Act 1996 except that if the Arbitrator nominated pursuant to paragraph 1.6 shall die or decline to act the President may on the application of either party discharge the Arbitrator and appoint another in his place

- 2.5 Whenever the Basic Rent shall have been ascertained in accordance with this schedule memoranda to this effect shall be signed by or on behalf of the parties and annexed to this lease and its counterpart and the parties shall bear their own costs in this respect

### **3 Arrangements pending ascertainment of revised Basic Rent**

- 3.1 If the revised Basic Rent payable during any Review Period has not been ascertained by the relevant Review Date Basic Rent shall continue to be payable at the rate previously payable such payments being on account of the Basic Rent for that Review Period
- 3.2 If one party shall upon publication of the Arbitrator's award pay all the Arbitrator's fees and expenses such party shall be entitled to recover (in default of payment within 21 days of a demand to that effect in the case of the Landlord as Basic Rent in arrear or in the case of the Tenant by deduction from Rent) such portion of them (if any) as the Arbitrator shall award against the other party

### **4 Payment of revised Basic Rent**

- 4.1 If the revised Basic Rent payable during any Review Period has not been ascertained by the relevant Review Date then immediately after the date when the same has been agreed between the parties or the date upon which the Arbitrator's award shall be received by one party the Tenant shall pay to the Landlord:
- 4.1.1 any shortfall between the Basic Rent which would have been paid on the Review Date had the revised Basic Rent been ascertained on or before the relevant Review Date and the payments made by the Tenant on account and
- 4.1.2 interest at the base lending rate of the bank referred to in or nominated pursuant to clause 1.9 prevailing on the day upon which the shortfall is paid in respect of each instalment of Basic Rent due on or after the Review Date on the amount by which the instalment of revised Basic Rent which would have

been paid on the relevant Review Date or such quarter day exceeds the amount paid on account and such interest shall be payable for the period from the date upon which the instalment was due up to the date of payment of the shortfall

**5 Arrangements when increasing Basic Rent prevented etc**

5.1 If at any of the Review Dates there shall be in force a statute which shall prevent restrict or modify the Landlord's right to review the Basic Rent in accordance with this Lease and/or to recover any increase in the Basic Rent the Landlord shall when such restriction or modification is removed relaxed or modified be entitled (but without prejudice to the Landlord's rights (if any) to recover any Rent the payment of which has only been deferred by law) on giving not less than one month's nor more than 3 months' notice in writing to the Tenant at any time within 6 months (time being of the essence of the contract) of the restriction or modification being removed relaxed or modified to invoke the provisions of paragraph 5.2

5.2 Upon the service of a notice pursuant to paragraph 5.1 the Landlord shall be entitled:

5.2.1 to proceed with any review of the Basic Rent which may have been prevented or further to review the Basic Rent in respect of any review where the Landlord's right was restricted or modified and the date of expiry of such notice shall be deemed for the purposes of this lease to be a Review Date PROVIDED that without prejudice to the operation of this paragraph nothing in this paragraph shall be construed as varying any subsequent Review Dates and

5.2.2 to recover any increase in Basic Rent with effect from the earliest date permitted by law

## **THIRD SCHEDULE**

### **The Turnover Rent**

#### **1. Obligation to pay the Turnover Rent**

- 1.1 The Tenant will pay to the Landlord the Turnover Rent
- 1.2 The Turnover Rent is 3 per cent of Turnover in a Year
- 1.3 Turnover Rent is to be calculated and dealt with in accordance with this Schedule
- 1.4 The Turnover Rent is exclusive of such value added tax as may be chargeable on the payment

#### **2. Meaning of 'Turnover'**

'Turnover' means the aggregate of money received for admissions car parking bookmakers badges income from bar and catering and tented chalets and marquees and income from race cards together with time form commission and commentary fund less expenditure in relation to the tented chalets and marquees and race card expenditure

#### **3. Meaning of 'Year'**

- 3.1 'Year' means a consecutive period of 12 months during the Term ending on 31<sup>st</sup> December

#### **4. Turnover certificate and demands for Turnover Rent**

- 4.1 The Tenant must deliver to the Landlord within 20 working days after 31<sup>st</sup> December or as soon as reasonably practicable thereafter a certificate ('Turnover Certificate') given by a competent qualified professional auditor appointed by the Tenant of the amount of Turnover during the Year just ended which accurately specifies the amount of Turnover for that Year
- 4.2 If the Tenant fails to deliver to the Landlord the Turnover Certificate as required in paragraph 4.1:

- 4.2.1 the Tenant will at the expiry of 20 working days after 31<sup>st</sup> December pay to the Landlord on account of the current Turnover Rent an amount equal to the full Turnover Rent payable in respect of the last preceding Year or in the case of the first Year an amount reasonably estimated by the Tenant as the likely amount of Turnover Rent; and
- 4.2.2 if the Turnover Certificate discloses that the amount paid on account exceeded the actual Turnover Rent for the Year the Landlord will give credit for the excess against the next payment of Basic Rent by the Tenant or if in the meantime this Lease has come to an end the Landlord will promptly repay to the Tenant the excess
- 4.3 Turnover Rent for a Year becomes due on production by the Tenant of the Turnover Certificate or if earlier at the expiry of 20 working days after 31<sup>st</sup> December
- 5. Account Records inspections and audit**
- 5.1 The Tenant will maintain account records ('Account Records') fully and accurately and take the measures required in this paragraph and will also procure that other persons who trade at and from the Premises do so
- 5.2 Account Records are books and other documents or records including computer tapes discs and other storage systems cash register tapes receipts inventory records bank statements and any tax returns which relate to value added tax or any similar or substituted tax which are or ought in the reasonable opinion of the Landlord to be kept by the Tenant for the purpose of ascertaining and verifying Turnover
- 5.3 The Tenant will keep safely on the Premises or in another place reasonably accessible for inspection as the Landlord may approve (such approval not to be unreasonably withheld) the Account Records from time to time relating to the then current and two immediately preceding Years

5.4 The Tenant will make the Account Records relating to those Years available for inspection at all reasonable times on request by the employee or accountant (duly authorised in writing by the Landlord to make the inspection) of the Landlord

5.5 If it appears from an inspection or audit or from any other circumstance that further Turnover rent is payable the further amount is to be paid by the Tenant immediately

5.6 The Tenant may not alter its procedures controls or equipment for recording Turnover without the approval in writing of the Landlord (such approval not to be unreasonably withheld)

## **6. End of Tenancy**

This Schedule is to continue to apply after this Lease has come to an end in respect of the period down to the end of this Lease

## **7. Interest**

7.1 If the Tenant has not paid an amount of Turnover Rent within 10 working days of it becoming due interest is to be payable on the amount or so much of it as remains unpaid from time to time at the Interest Rate compounded at quarterly rents on 31 March 30 June 30 September and 31 December in each year for the period commencing on the day the amount became due and ending on the day that it is paid

## **8. Determination of disputes**

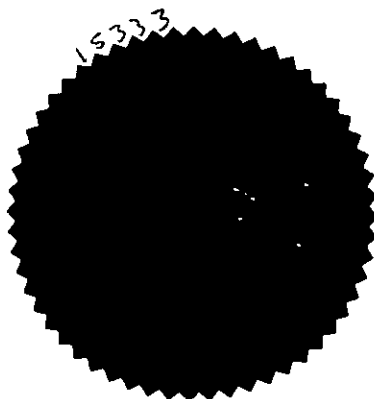
8.1 If any dispute arises between the parties as to the amount of Turnover or Turnover Rent or the operation of this Schedule the issue in dispute is to be determined by an independent expert

8.2 The expert is to be appointed by the parties jointly or if they cannot or do not agree on the appointment appointed by the President (or other acting senior officer for the time being) of the Institute of Chartered Accountants in England and Wales at the request of either party


- 8.3 The person appointed is to act as an expert and not as an arbitrator
- 8.4 The expert must afford the parties the opportunity within reasonable time limits to make representations to him inform each party of the representations of the other and allow each party to make submissions to him on the representations of the other
- 8.5 The decision of the person so acting in the absence of manifest error is to be final and binding on the parties
- 8.6 The fees and expenses of the expert including the cost of his nomination are to be borne equally by the parties who (unless they otherwise agree) are to bear their own costs with respect to the determination of the issue by the expert

EXECUTED AS A DEED by  
THE COUNCIL OF THE  
CITY OF CHESTER  
in the presence of:-

  
Authorised Signatory

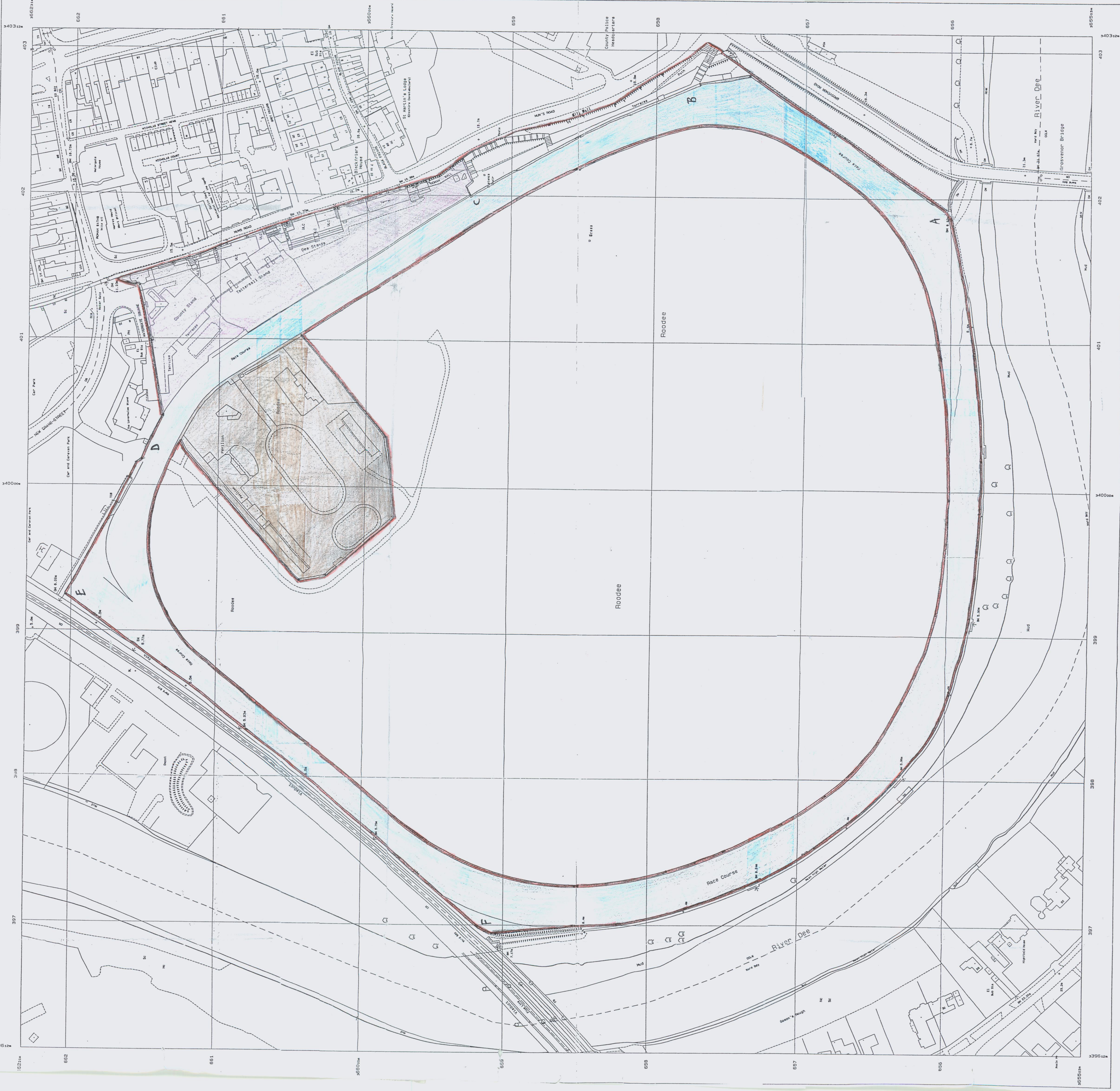


It is hereby certified that there is no Agreement for leave  
to which this leave gives effect

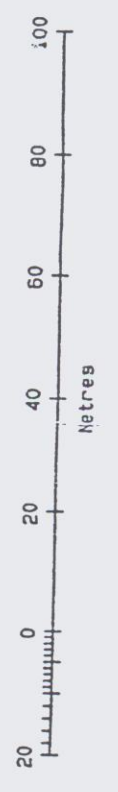


NICHOLAS CUMMINGS  
BIRCH CULLIMORE  
FRIARS  
WHITE FRIARS  
CHESTER  
CH1 1XS  
SOLICITORS





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Scale 1:1250

Notes:  
National Grid sheet reference at centre  
of this Superplan: SJ35593  
The representation of a road, track or  
path is no evidence of a right of way.  
Heights are given in metres above  
Datum.  
The alignment of tunnels is approximate.  
Centre Coordinates: 339522 339517  
Supplied by: Bookland, Chester