

RACETRACK MUNICIPALITY CONTRIBUTION AGREEMENT

THIS AGREEMENT is made as of the 29th day of November, 1999

B E T W E E N:

ONTARIO LOTTERY CORPORATION, a statutory corporation continued under the *Ontario Lottery Corporation Act*, with its head office located at 4120 Yonge Street, Suite 420, Toronto, Ontario M2P 2B8, facsimile number 416-224-7003

(hereinafter referred to as "OLC")

OF THE FIRST PART

- and -

The Corporation of the Town of Flamborough, with its administrative office located at 163 Dundas Street East, P.O. Box 50, Waterdown, Ontario L0R 2H0 facsimile number [905] 689-3110

(hereinafter referred to as the "Municipality")

OF THE SECOND PART

WHEREAS the Ontario Government has initiated a program to introduce, through OLC, slot machines into Ontario Racing Commission - licensed racetracks in Ontario (the "Slot Machine Program at Racetracks"), including the racetrack currently known as Flamboro Downs (the "Racetrack") located in the Municipality;

AND WHEREAS those certain municipalities in Ontario (including the Municipality) comprising the Horse Racing Track Communities' Task Force have held discussions with representatives of the Ontario Government in order to determine the basis upon which municipal support for, and participation in the Slot Machine Program at Racetracks can be fostered and maintained, which basis is contained in the document entitled "Expression of Interest from Horse Racing Track Communities' Task Force" the ("EOI") executed on behalf of those certain municipalities (including the Municipality);

AND WHEREAS the EOI contemplates an agreement between OLC and each such municipality setting out the terms and conditions of municipal participation;

AND WHEREAS the parties acknowledge that the Government of Ontario's primary purpose in establishing the Slot Machine Program at Racetracks is to support live horse racing in the Province of Ontario, and subsequently benefit the agricultural sector in the Province of Ontario, by helping to generate anticipated further revenue streams for the participating racetracks and other horse racing industry participants as a way of maintaining the economic viability of such racetracks as venues for live horse racing;

AND WHEREAS each of the parties supports this endeavour;

AND WHEREAS the parties acknowledge that the success of the Slot Machine Program at Racetracks would be for the public good and would be of benefit both to OLC and to the community represented by the Municipality by, for example, assisting the Municipality with access to funds which may be used for municipal purposes.

NOW THEREFORE, in consideration of the respective agreements, representations, warranties and indemnities herein contained and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each party hereto) the parties agree as follows:

1. Definitions

As used herein, including the foregoing recitals, the following terms shall have the respective meanings indicated below:

- (a) "Annual Aggregate" means the aggregate of all Quarterly Amounts paid by OLC pursuant to Section 4 in respect of an Operating Year.
- (b) "Net Win" means, for any period, in respect of OLC's operation during that period of the Prescribed Lottery Scheme at the Racetrack, that certain amount based on Slot Machine revenues and calculated as follows: total "drop", less "fills", less "jackpots" and less "handpays", plus or minus other adjustments; as illustrated by way of example in Section 4; this definition is designed to parallel the definition utilized in the Site Holder Agreement;
- (c) "Opening Date" means such date as OLC shall determine for the opening of OLC's Slot Machine premises at the Racetrack to the general public and the operation of the Prescribed Lottery Scheme;
- (d) "Operating Year" means each period from April 1st to March 31st, inclusive, during the Term, to the end of the Term, except that the first Operating Year shall be the period beginning on the Opening Date and ending on the following March 31st, and if this Agreement shall be terminated effective on a date other than March 31st in any year, then the period from April 1st of the calendar year in which such termination occurs (or April 1st of the immediately preceding calendar year if the date of termination occurs in January, February or March) to such effective date of termination shall be treated as an Operating Year;

- (e) "Prescribed Lottery Scheme" means games of chance operated on or through Slot Machines conducted and managed by OLC, or its successor, pursuant to the *Ontario Lottery Corporation Act* and subject to the *Gaming Control Act, 1992*;
- (f) "Quarterly Amount" has the meaning set forth in Section 4;
- (g) "Site Holder Agreement" means the Prescribed Lottery Scheme Site Holder Facilities Agreement dated May 3, 1999 between OLC and the operator of the Racetrack, as amended from time to time, providing, among other things for OLC's ability to utilize an area of the Racetrack for OLC's conduct and management of the Prescribed Lottery Scheme at the Racetrack;
- (h) "Slot Machine" means a slot machine within the meaning of subsection 198(3) of the *Criminal Code* (Canada) and conducted and managed by OLC at the Racetrack;
- (i) "Term" means the period of time referred to and described in Section 2 hereof; and
- (j) "Quarter-End Number" means the number of Slot Machines determined by OLC to be operating on the final day of a calendar quarter ending during an Operating Year, and where OLC determines that the number of Slot Machines actually operating on such day does not accurately reflect fluctuations in the number of Slot Machines (up or down) during such quarter, the Quarter-End Number will, at OLC's option, be based on OLC's determination of the average number of Slot Machines operating throughout such quarter.

2. Term and Termination

- (a) The term of this Agreement will commence on the Opening Date and will continue in full force and effect, unless otherwise agreed, until such time as the Prescribed Lottery Scheme at the Racetrack is terminated;
- (b) Notwithstanding paragraph (a) hereof,
 - (i) this Agreement is conditional upon the continued existence throughout the Term of appropriate zoning for the operation of slot machines at the Racetrack; and
 - (ii) OLC may, at its option, terminate this Agreement if the Municipality fails to perform or observe any term, covenant or agreement contained herein; provided that OLC shall first provide written notice of its intent to terminate, and termination shall be effective only if the Municipality fails to remedy such failure to perform or observe within thirty (30) days of receipt of notice.

3. Basis of Net Win Definition and Specifics of Net Win Calculation

OLC shall calculate the Net Win on a calendar quarter basis based on OLC's revenues from all of the Slot Machines during that quarter. OLC shall maintain such books and records as OLC considers desirable to record such calculations, and shall provide the Municipality with quarterly unaudited written statements summarizing the calculation of the Net Win.

4. Calculation of Payment to Municipalities

OLC shall, in accordance with the procedures set out in Section 5, pay to the Municipality, in respect of each calendar quarter ending during an Operating Year an amount (the "Quarterly Amount") equal to five percent (5%) of the Net Win derived from the Slot Machines during such quarter (provided that, where the Quarter-End Number exceeds 450, there shall be deducted, in calculating the Quarterly Amount, three percent (3%) of the product obtained by multiplying the Net Win derived from the Slot Machines during such quarter by a fraction, the numerator of which is the difference between the Quarter-End Number and 450 and the denominator of which is the Quarter-End Number).

Example:

The following example is intended only as a guide to demonstrate how some of the key elements of this Section 4 are intended to operate, all other things being equal:

- (1) if the Quarter-End Number is 500 and the Net Win calculated by OLC for that quarter is \$1 million, then
- (2) \$50,000 [i.e. 5% of \$1 million], less
- (3) \$3,000 [i.e. 3% of \$1 million, multiplied by 50/500]
- (4) leads to a Quarterly Amount of \$47,000.

In any given period, Net Win is calculated by OLC in accordance with industry practices, as the difference between the total amount recovered by OLC from the Slot Machines at the Racetrack (the total "drop") less,

- (1) the amounts added to the Slot Machines in the ordinary course by OLC (the total "fill"), and
- (2) the prizes that are not paid out by the Slot Machines ("jackpots" and "handpays").

Adjustments (upward or downward) may occur if any of these components is found to have been inaccurately over-reported or under-reported.

5. Quarterly Payments and Annual Adjustments

Within twenty-one (21) days of the end of each calendar quarter, OLC shall pay to the Municipality the Quarterly Amount in respect of such quarter, subject to adjustment as described below. Within 120 days following the end of each Operating Year, OLC shall provide audited consolidated financial statements to the Municipality in respect of such Operating Year (provided that OLC may extend such 120-day period until such time as such statement have been tabled in the public accounts of Ontario). OLC shall make such adjustments as may be desirable pursuant to such statements, as follows: if the figure representing the Annual Aggregate needs to be adjusted upward, OLC shall pay to the Municipality the difference as soon as practicable after providing such statements; if the figure representing the Annual Aggregate needs to be adjusted downward, the difference may be deducted by way of set-off by OLC from future payments to the Municipality pursuant to this Agreement, until recovered in full.

6. Municipality's Role

The Municipality shall,

- (a) in accordance with applicable law (including the Planning Act and the Ontario Building Code), supply such licenses and permits (including building and occupancy permits) as the Municipality may be empowered to supply, which are necessary or desirable in order to permit the construction, operation and use of the Prescribed Lottery Scheme at the Racetrack;
- (b) at no additional cost to OLC, provide for additional policing services at or near the Racetrack as may be determined by the Municipality and local police authorities, acting reasonably, to be necessary or desirable, to maximize the adult public's ability to access, utilize and derive enjoyment from, the Prescribed Lottery Scheme on a year-round basis.

7. Final Adjustments

In the event of the termination (including natural expiration) of this Agreement, any adjustment necessary as a result of the Municipality having received amounts greater or lesser than its entitlement hereunder prior to such termination shall be calculated by OLC, and any balance owing to the Municipality, or any refund owing to OLC, shall be paid within 120 days following such termination.

8. Entire Agreement

This Agreement constitutes the entire agreement between Municipality and OLC and supersedes the EOI and all prior agreements and understandings, oral or written, between the parties hereto or their respective representatives with respect to the matters herein and shall not be modified or amended, except by written agreement signed by the parties hereto.

9. Further Assurances

The parties agree to do, or cause to be done, all acts or things and execute all such further documents as may be necessary to implement and carry into effect this Agreement to its full extent.

10. No Attornment

For greater certainty, neither OLC nor the Province of Ontario attorns to the jurisdiction of the Municipality with respect to any of the matters described in Section 6(a).

11. Normal Costs of Development

It is understood and agreed by the parties that this Agreement does not preclude the Municipality from imposing upon occupants, owners or developers of the Racetrack, normal development-related costs (including the costs of infrastructure improvements under local or regional jurisdiction) arising from the Prescribed Lottery Scheme in the same manner and to the same extent as may be imposed by the Municipality on other occupants, owners or developers of land within the Municipality, and further that this Agreement does not preclude the Municipality from imposing such taxes, fees, charges, conditions or other requirements as may be imposed in accordance with applicable law upon owners, occupants, developers, properties or businesses in the Municipality (including, without limitation, realty taxes, development charges, conditions of site plan approval and sewer and water charges), provided that such taxes, fees, charges, conditions and requirements are not disproportionate in relation to similar taxes, fees, charges, conditions and requirements existing in respect of other owners, occupants, developers, properties or businesses in the Municipality, having regard to the scale, nature and location of the development of the Racetrack. It is agreed that the Municipality shall not impose or seek to impose any licensing requirements (including, without limitation, business licence fees) upon the operation of the Prescribed Lottery Scheme. For greater certainty, any breach by the Municipality of Section 6 or Section 11 shall entitle to OLC to terminate this Agreement in accordance with Subsection 2(b).

12. No Liability of OLC

The Municipality acknowledges that OLC and any provincial agency, ministry or crown corporation shall not be liable to the Municipality for any loss, direct, indirect or consequential damages or injury relating to the operation of the Prescribed Lottery Scheme or the Racetrack, including but not limited to loss of fees resulting from the operation or malfunction of equipment.

13. Notice

Any notice permitted or required to be given by OLC to the Municipality may be given by posting the same by prepaid registered mail or by telefax addressed to the Municipality at the address appearing in this Agreement; by personal delivery to the Municipality or by telefax. Any notice permitted or required to be given by the Municipality to OLC may be given by posting the same by prepaid registered mail; by personal delivery to OLC or by telefax addressed to OLC at the address appearing in this Agreement. Any notice posted by pre-paid registered mail shall be deemed to have been received on the third business day following such mailing and any notice personally delivered or sent by telefax shall be deemed to have been received on the day so delivered or sent by telefax (if such day is a business day and if not, on the next following business day). During periods of a postal strike or of a general interruption of postal services, any notice shall be given by personal delivery or telefax hereunder and shall be deemed to have been received on the second business day following posting of the same.

14. Relationship of Parties

OLC acknowledges the Municipality's role as a host community and supportive participant in the Slot Machine Program. The Municipality acknowledges that the Municipality is not an employee, agent or representative, joint venturer, or partner of OLC, and the Municipality shall not represent itself to others as being authorized to assume, incur or create any obligation of any kind (express or implied) on behalf of (or in the name of) OLC or any other provincial agency, ministry or crown corporation, or purport to bind OLC or any other provincial agency, ministry or crown corporation in any respect.

15. Severability

If any covenant or term hereof or the application thereof to any person, or in any circumstance, to any extent is held invalid or unenforceable, the remainder of this Agreement or the application of the term, covenant or condition to any person or circumstance, other than those as to which it is held invalid or unenforceable, will not be affected thereby and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law, except that if on the reasonable construction of this Agreement as a whole, the applicability of the other provisions presumes the validity and enforceability of the particular provision, the other provisions will be deemed also to be invalid or unenforceable.

16. Governing Law

This Agreement shall be interpreted and the rights of the parties shall be governed by and construed in accordance with the laws of the Province of Ontario and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of such Province.

17. Dispute Resolution

In the event of any dispute arising out of, or relating to the performance of this Agreement, the parties agree that the dispute will be submitted to a single arbitrator for arbitration in accordance with the *Arbitration Act, 1991*, S.O. 1991, c.17. The appointment of an arbitrator shall be agreed upon by the parties within 30 days of either party giving notice of a dispute, failing which the appointment of an arbitrator shall be made in accordance with the *Arbitration Act, 1991*.

18. Recitals

The recitals to this Agreement form part thereof and this Agreement is to be construed accordingly.

19. Time

Time shall in all respects be of the essence of this Agreement. The time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the parties.

20. Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

21. Disclosure

The parties acknowledge that OLC is a Crown Agency and that it is subject to the *Freedom of Information and Protection of Privacy Act*, and that the Municipality is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, and that, as a result, either party may need to observe certain obligations with respect to the disclosure or non-disclosure of information, whether to government agencies or ministries or otherwise.

22. Waiver

No waiver or any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any provision hereof and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

23. Modifications

If the parties shall deem it necessary or expedient to make any alteration in or addition to this Agreement, they may do so by a written agreement between them which shall be supplemental hereto and form part hereof.

The Municipality acknowledges that OLC shall be entitled to restructure or re-classify the payments hereunder in a way which does not reduce the Municipality's entitlement, and the Municipality agrees to execute such documents as OLC may require in order to reflect the foregoing.

24. Assignment

No transfer, sale or assignment by the Municipality of this Agreement or the Municipality's rights hereunder is valid without the prior written consent of OLC, which consent shall not be unreasonably withheld. This Agreement shall enure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.

25. Other Racetrack Municipalities


It is agreed that in the event that OLC, in its sole judgment, acting reasonably, believes that the formula set out herein for the calculation of payments by OLC has been enhanced by OLC for any racetrack municipality in Ontario, that enhancement shall be applied by OLC to the Municipality in respect of the same time period (or such portion thereof), if any, as may coincide with the unexpired portion (if any) of the Term, in substantially the same manner but shall not be retroactive. The Municipality hereby consents to the disclosure by OLC to each such municipality of information relating to actual or proposed payments to the Municipality.

26. Charity Casino

It is agreed that in the event that the Slot Machine Facility is converted to a charity casino by OLC, the Municipality shall receive five percent (5%) of the Net Win derived from all slot machines in substitution for the formula set out in Section 4 hereof. OLC makes no representation in this Agreement in respect of the establishment of a charity casino.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

ONTARIO LOTTERY CORPORATION

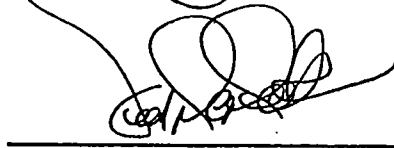


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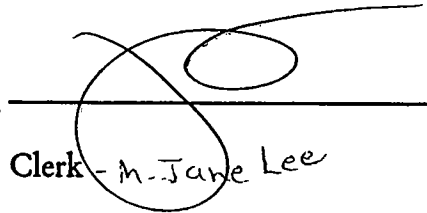
Title:

I have the authority to bind the Corporation

THE CORPORATION OF
THE TOWN OF FLAMBOROUGH



Mayor - Ted McMeekin



Clerk - M. Jane Lee