

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "Agreement"), dated as of _____, 2013, by and between TIOGA DOWNS RACETRACK, LLC, a New York limited liability company with its principal office located at 2384 West River Road, Nichols, New York 13812 (the "Company") and the TIOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public-benefit corporation duly organized and validly existing under the laws of the State of New York with an office for the transaction of business located at 56 Main Street, Owego, New York 13827 (the "Agency"), collectively, (the "Parties").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A, as amended, of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the 1969 Laws of the State of New York (the "State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities on such terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes; and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to pledge the revenues and receipts from its facilities or from the lease thereof; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 534 of the 1971 Laws of the State of New York, as amended by Chapter 883 of the 1974 Laws of the State of New York, constituting Section 912 of said General Municipal Law (said Chapter and Enabling Act being hereinafter referred to as the "Act") created the Agency, which is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, the Agency and the Company have agreed to a lease and leaseback transaction, on real property more particularly described in Exhibit "A" attached hereto (the "Premises") to facilitate the following: (A) (1) the construction and renovation on approximately 8.78 acres of land located at 2384 River Road and River Road in the Town of Nichols, County of Tioga and State of New York (the "Land") of a new 84,357+/- square foot six (6) story, 135 key hotel, a new 85,743+/- square foot convention/events center that includes a restaurant, pool and

fitness area, and a roof top terrace that overlooks the racetrack, and a new 105,552+/- square foot three (3) level parking garage with covered entry in the facility (the "Facility") and (2) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be leased by the Company as a hotel, convention/ events center, restaurant, pool and fitness area, parking garage, and any other directly or indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); (C) the lease of the Project Facility by the Company to the Agency; and (D) the leaseback of the Project Facility by the Agency to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Agency will lease the Project Facility, including the Premises, from the Company pursuant to a certain lease agreement (the " Lease Agreement"), and the Agency will lease the Project Facility, including the Premises, to the Company pursuant to a certain leaseback agreement (the "Leaseback Agreement"); and

WHEREAS, the Agency is exempt from the payment of taxes and assessments imposed upon real property, and the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the Agency, to be distributed to the Town of Nichols (the "Town"), the Tioga Central School District (the "School District") and the County of Tioga (the "County") in lieu of general tax levies on the Premises.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed as follows:

1. Pursuant to Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law, the Parties understand that, upon acquisition of a leasehold interest in the Premises by the Agency and the filing of an Equalization and Assessment Form RP-412-a (the "Exemption Form") with respect to the Premises, and for so long thereafter as the Agency shall have a leasehold interest in the Premises, the Premises shall be assessed by the various taxing entities having jurisdiction over the Premises, including, without limitation, the Town, the School District and the County, as exempt on their respective assessment rolls prepared subsequent to the acquisition by the Agency of a leasehold interest in the Premises and the filing of the Exemption Form. The Parties understand that the Premises shall not be entitled to such exempt status on any tax roll until the first tax year following the tax status date subsequent to the date upon which the Agency acquires a leasehold interest in the Premises and an Exemption Form is filed. The Company shall be required to pay all taxes and assessments lawfully levied and/or assessed against the Premises, including taxes and assessments levied for the current tax year and all subsequent years until the Premises is entitled to exempt status on the tax roll. The Agency will cooperate with the Company to obtain and preserve the tax exempt status of the Premises, including the preparation and filing of the Exemption Form.

2. During the period the Agency has a leasehold interest in the Premises, the Company agrees to pay to the Agency, to be distributed to the Town, the County and the School District, the following payments in lieu of taxes.

<u>PILOT Year</u>	<u>School Tax Year</u>	<u>Town/County Tax Year (Calendar Year)</u>	<u>Percentage of Tax Due</u>
Year 1	2014-2015	2015	5%
Year 2	2015-2016	2016	10%
Year 3	2016-2017	2017	15%
Year 4	2017-2018	2018	20%
Year 5	2018-2019	2019	25%
Year 6	2019-2020	2020	30%
Year 7	2020-2021	2021	35%
Year 8	2021-2022	2022	40%
Year 9	2022-2023	2023	45%
Year 10	2023-2024	2024	50%
Year 11	2024-2025	2025	55%
Year 12	2025-2026	2026	60%
Year 13	2026-2027	2027	65%
Year 14	2027-2028	2028	70%
Year 15	2028-2029	2029	75%
Year 16	2029-2030	2030	80%
Year 17	2030-2031	2031	85%
Year 18	2031-2032	2032	90%
Year 19	2032-2033	2033	95%

Commencing with Year 20, the Company shall pay the actual real property taxes that would have been imposed upon the Premises but for the Agency's tax exemption.

3. During the term of this Agreement, the Company waives the right to contest the assessment on the Facility. The calculation of the market value of the Facility, for purposes of determining the Company's right to contest the assessment, shall not be deemed to include any future improvements to the Facility.

4. Should the Agency cease to hold a leasehold interest in the Premises, this Agreement shall terminate immediately and the Premises shall be returned to the non-exempt portion of the tax roll and be subject to taxation thereafter, including any portion of a tax year not otherwise covered by this Agreement.

5. If any default shall be made in the payment referred to in Paragraph 2, supra, the Company hereby agrees to pay the same to the extent above specified:

A. Without requiring any notice of non-payment or of default to the Company, the Agency, or to any other person;

B. Without proof of demand.

6. The Parties understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-A of the Real Property Tax Law does not entitle the Agency to an exemption from special assessments and special ad valorem levies such as, but without limitation, charges for metered water and sewer rent. The Company hereby agrees to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Premises.

7. Pursuant to Section 858 (15) of the General Municipal Law, the Agency agrees to give the Town, the School District and the County a copy of this Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy thereof be given to the appropriate officer or officers with respect to each taxing jurisdiction responsible for preparing the tax rolls for said jurisdiction, together with a request that said officer or officers submit to the Agency and the appropriate receiver of taxes periodic statements specifying the amount and due date or dates of the payments due to each hereunder. Such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such jurisdictions.

8. The Company agrees to pay the amounts due hereunder to each particular taxing jurisdiction in any calendar year to the Agency within the period that such taxing entity allows the payment of taxes levied in such calendar year without penalty, but no later than five (5) days prior to the due date. The Company shall be entitled to receive receipts for such payments.

9. Pursuant to Section 874(5) of the General Municipal Law, if the Company shall fail to make any payment required by this Agreement when due, the Company shall pay the same, together with a late-payment penalty equal to five (5%) percent of the amount due. If the Company shall remain in default beyond the first month after such payment is due, the Company shall thereafter pay a late-payment penalty of one (1%) percent per month for each month, or part thereof, that the payment is delinquent beyond the first month plus interest thereon, to the extent permitted by law, at the greater of (a) one (1%) percent per month, or (b) the rate per annum which would have been payable if such amount were delinquent taxes, until so paid in full.

10. Pursuant to Section 874(6) of the General Municipal Law, if the Company defaults in performing any of its obligations, covenants or agreements under this Agreement and the Agency or any taxing jurisdiction employs attorneys or incurs other expenses for the collection of any amounts payable hereunder, or for the enforcement or performance or observation of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such taxing jurisdiction, as the case may be, not only the amounts adjudicated due hereunder, together with the late-payment penalty and interest due thereon, but also reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred whether or not an action is commenced.

11. No remedy herein conferred upon or reserved to the Agency or any taxing jurisdiction is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now and hereafter existing at law or in equity or by statute. No delay or admission in exercising any such right or power accruing upon a default hereunder shall impair any such right or power or be construed as a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

12. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE AGENCY:

Tioga County Industrial Development Agency
56 Main Street
Owego, New York 13827
Attn: Chairman

Copy to: Thomas, Collison, Meagher & Seiden
1201 Monroe Street
P.O. Box 329
Endicott, New York 13761-0329
Attn: Joseph B. Meagher, Esq.

IF TO THE COMPANY:

Tioga Downs Racetrack, LLC
2384 West River Road
Nichols, New York 13812
Attn: Jay Dinga

Copy to: Bond Schoeneck & King PLLC
One Lincoln Center
110 West Fayette Street
Syracuse, New York 13202-1355
Attn: Edwin J. Kelley, Jr.

13. The Town, the County, the School District, the Agency and the Company as used herein shall include their successors and assigns. The terms of this Agreement shall inure to the benefit of, and shall be binding upon, any future owners of the Project Facility and the Company's successors and assigns.

14. This Agreement shall remain in effect until termination or expiration of the Lease to Agency which, by its terms, expires _____.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed the date set forth hereinabove.

TIOGA DOWNS RACETRACK, LLC

By: _____

TIOGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Aaron Gowan, Chairman

STATE OF NEW YORK:

: ss:

COUNTY OF TIOGA :

On this ____ day of _____, 2013, before me, the undersigned, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK:

: ss.:

COUNTY OF TIOGA :

On this ____ day of _____, 2013, before me, the undersigned, personally appeared AARON GOWAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT "A"

LAND DESCRIPTION