

LOAN AGREEMENT

by and between

THE NEW YORK RACING ASSOCIATION, INC.

and

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a  
EMPIRE STATE DEVELOPMENT CORPORATION

SPECIAL APPROPRIATION  
\$25,000,000 LOAN

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## LOAN AGREEMENT

THIS AGREEMENT made this 10<sup>th</sup> day of June 2010 by and between THE NEW YORK RACING ASSOCIATION, INC., a not-for-profit corporation incorporated pursuant to Section 402 of the Not-For-Profit Corporation Law of the State of New York as authorized by Chapter 18 of the Laws of 2008, having its principal office and place of business at 110-00 Rockaway Boulevard, Jamaica, NY 11417 ("Borrower"), and NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT CORPORATION, a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation, having its principal office and place of business at 633 Third Avenue, New York, New York 10017 ("Lender" or "ESDC").

### RECITALS

WHEREAS, the New York State Division of the Lottery, (the "Division"), an executive agency of the State of New York, on behalf of the State of New York, has solicited proposals from vendors seeking the award of a video lottery license to develop and operate a video lottery facility at Aqueduct Racetrack ("Aqueduct") in the Borough of Queens in the City of New York ("Video Lottery Facility"); and,

WHEREAS, pursuant to Chapter 90 of the Laws of 2010 , ESDC is authorized to make a working capital loan to the Borrower of up to Twenty Five Million dollars (\$25,000,000) for operating expenses at Aqueduct, Belmont and Saratoga racetracks.

WHEREAS, the Division has informed the parties that the Division contemplates that it will require the vendor selected to develop and operate the Video Lottery Facility (the "Selected Vendor") to pay to ESDC an amount equal to the aggregate of ESDC's outstanding loan advances to Borrower pursuant to this Agreement and the Note (as hereinafter defined) in order to acquire ESDC's rights and assume ESDC's obligations with respect to the loan and the Note, and that upon receipt of such payment ESDC intends to assign the loan, this Agreement and the Note to the

Selected Vendor.

WHEREAS, the parties desire to enter into this Agreement upon the provisions contained herein.

NOW, THEREFORE, in consideration of the promises and the agreements of the parties contained herein, the Parties agree as follows:

#### ARTICLE 1. DEFINITIONS.

Section 1.01. Certain Defined Terms. As used herein, the following terms have the following meanings (terms defined in the singular shall have the same meaning when used in the plural and vice versa):

"Loan" means the loan made by Lender to Borrower pursuant to this Agreement and the Note.

"Loan Documents" means this Agreement and the Note.

"Note" shall have the meaning assigned to such term in Section 2.02 hereof.

"Person" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

#### ARTICLE 2. THE CREDIT.

Section 2.01. The Loan. Subject to the representations and warranties, terms, covenants and conditions of the Loan Documents, Lender intends to make a loan (the "Loan") to Borrower

not to exceed in aggregate the amount of Twenty-Five Million Dollars (\$25,000,000.00), and that the proceeds of the Loan will be disbursed to Borrower in three disbursements as follows: in June 2010, Eight Million Four Hundred Thousand Dollars (\$8,400,000); with the second and third disbursements to be made on dates prior to March 31, 2011, as determined by the New York State Director of the Division of the Budget. The making of the Loan and the disbursement of the advances are contingent upon ESDC receiving the full amount of funds appropriated for each such advance.

Section 2.02. The Note. The Loan shall be evidenced by a promissory note of even date herewith duly completed and executed by Borrower in substantially the form attached hereto as Exhibit A (the "Note"), the terms, covenants, and conditions of which are by this reference incorporated herein.

Section 2.03. Purpose of Loan. The Loan is to be used for the Borrower's operating expenses at Aqueduct, Belmont and Saratoga racetracks.

Section 2.04. Prepayments. Borrower shall have the right to prepay the Loan at any time or from time to time without penalty.

Section 2.05. Interest. Interest shall accrue on the outstanding and unpaid principal amount of the Loan and shall be calculated in accordance with the Note.

Section 2.06. Payments. The Loan shall be payable in accordance with the Note.

### ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF BORROWER.

Borrower hereby represents and warrants as follows:

Section 3.01. Incorporation, Good Standing and Due Qualification. Borrower's legal

name is The New York Racing Association, Inc., and Borrower is a not-for-profit corporation duly organized and validly existing in the State of New York and in good standing under the laws of the State of New York, has the power and authority to own its assets, to transact the business in which it is now engaged or proposed to be engaged, and to enter into and consummate the transactions contemplated by the Loan Documents.

Section 3.02. Power and Authority; No Conflicts. The execution, delivery and performance by Borrower of the Loan Documents have been duly authorized by all necessary action and do not and will not: (a) require any consent or approval of its owners; (b) contravene its articles of incorporation; (c) violate any provision of, or require any filing, registration, consent or approval under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower or affiliates, (d) result in a breach of, or constitute a default or require any consent under, any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which it or its properties may be bound or affected; (e) result in, or require, the creation or imposition of any lien, upon or with respect to any of the properties now owned or hereafter acquired by Borrower; or (f) cause Borrower to be in default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

Section 3.03. Legally Enforceable Agreements. Each Loan Document is, or when delivered under this Agreement will be, a legal, valid and binding obligation of Borrower enforceable against Borrower in accordance with its terms, except to the extent that such enforcement may be limited by general equity principles, or by bankruptcy, insolvency and other similar laws affecting creditor's rights generally.

#### ARTICLE 4. AFFIRMATIVE COVENANTS.

So long as the Note shall remain unpaid Borrower agrees as follows:

Section 4.01. Maintenance of Existence. Borrower shall preserve and maintain its existence and good standing in the jurisdiction of its organization,

Section 4.02. Conduct of Business. Borrower shall continue to engage in its business substantially as conducted by it on the date of this Agreement.

Section 4.03. Maintenance of Properties. Borrower shall maintain, keep and preserve, all of its properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 4.04. Maintenance of Records. Borrower shall keep adequate records and books of account, in which complete entries will be made in accordance with GAAP, reflecting all financial transactions of Borrower and retain such records and books for three years after payment in full of the Loan at the address of Borrower set forth above.

Section 4.05. Compliance with Laws. Borrower shall comply in all material respects with all applicable federal, state and local laws, rules, regulations and orders.

Section 4.06. Taxes. Borrower shall file when due all tax returns required to be filed by all applicable federal, state and local laws and shall make timely payment of all taxes, assessments and governmental charges and levies assessed, charged or imposed upon Borrower or any of its properties. Borrower shall not permit any such tax, assessment, charge or levy to become a lien upon any of its assets; provided that Borrower shall not be required to pay any such tax, assessment or other charge whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

Section 4.07. Right of Inspection and Audit. At any reasonable time and from time to time, Borrower shall permit Lender or any agent or representative thereof at Lender's cost, to

examine and make copies and abstracts from the records and books of account of, and visit the properties of, Borrower and to discuss the affairs, finances and accounts of Borrower with any of its officers and directors and Borrower's independent accountants. Lender's right of inspection and audit pursuant to this Section shall survive the repayment of the Loan and remain in full force and effect for three years thereafter.

Section 4.08. Reporting Requirements. Borrower shall furnish to Lender the following financial information:

General Information. Such other information respecting the condition or operations, financial or otherwise, of Borrower as Lender may from time to time reasonably request.

Section 4.09. Non-Discrimination and Affirmative Action. Borrower shall comply with the requirements of Exhibit B attached hereto and incorporated herein.

Section 4.10. Expenses. Borrower shall reimburse Lender for all costs, expenses, and charges (including, without limitation, reasonable fees and charges of external legal counsel for Lender) incurred by Lender in connection with the enforcement of this Agreement or the Note. The obligations of Borrower under this Section shall survive the assignment or transfer of the Loan Agreement and Note and the repayment of the Loan.

Section 4.11. Indemnification. Borrower agrees to indemnify Lender and its directors, officers, employees and agents from, and hold each of them harmless against, any and all losses, liabilities, claims, damages or expenses incurred by any of them arising out of or by reason of any investigation or litigation or other proceedings (including any threatened investigation or litigation or other proceedings) relating to any actual or proposed use by Borrower of the proceeds of the Loan, including without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation or litigation or other proceedings (but excluding any such losses, liabilities, claims, damages or expenses incurred by reason of the

gross negligence or willful misconduct of Lender). The obligations of Borrower under this Section shall survive the assignment or transfer of the Loan Agreement and Note and the repayment of the Loan.

Section 4.12 Further Agreements. The Borrower shall execute and deliver, or cause to be executed and delivered, all such instruments, and take all such action as the Lender may reasonably request in order to effectuate the intent and purposes of, and carry out the terms of the Loan Documents.

#### ARTICLE 5. MISCELLANEOUS.

Section 5.01. Amendments and Waivers. No amendment or waiver of any provision of this Agreement nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by an authorized officer of Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right.

Section 5.02. Usury. Anything herein to the contrary notwithstanding, the obligations of Borrower under this Agreement and the Note shall be subject to the limitation that payments of interest shall not be required to the extent that receipt thereof would be contrary to provisions of law applicable to Lender limiting rates of interest which may be charged or collected by Lender.

Section 5.03. Assignment. This Agreement shall be binding upon, and shall inure to the benefit of, Borrower, Lender and their respective successors and assigns, except that Borrower may not assign or transfer its rights or obligations hereunder. Lender may assign all or any part of the Loan to a bank or other entity, including, without limiting the foregoing, a video lottery facility operator, in which event upon notice thereof by Lender to Borrower, the assignee shall have, to the extent of such assignment (unless otherwise provided therein), the same rights and

benefits as it would have if it were Lender hereunder. Lender may furnish any information concerning Borrower in the possession of Lender from time to time to assignees and prospective assignees. ESDC intends to assign the Loan to the Selected Vendor.

Section 5.04. Notices. Unless the party to be notified otherwise notifies the other party in writing as provided in this Section, and except as otherwise provided in this Agreement, notices shall be given to Lender and to Borrower by hand or by certified mail, return receipt requested, addressed to such party at its address set forth below. Notices shall be effective: (a) if given by certified mail, 72 hours after deposit in the mails with first class postage prepaid, addressed as aforesaid; and (b) if given by hand, upon receipt; provided that notices to Lender shall be effective only upon receipt:

Address for notices to Lender

New York State Urban Development Corporation  
d/b/a Empire State Development Corporation  
633 Third Avenue  
New York, New York 10017  
Attention: Senior Vice President and General Counsel

Address for notices to Borrower

Charles E. Hayward, President and CEO  
New York Racing Association  
110-00 Rockaway Boulevard  
Jamaica, NY 11417  
cc. General Counsel

Section 5.05. Jurisdiction; Immunities. (a) Borrower hereby irrevocably submits to the jurisdiction of any New York State or United States Federal court sitting in New York County or, at Lender's sole discretion, in the county where the principal office of the Borrower is located over any action or proceeding arising out of or relating to this Agreement or the Note, and Borrower hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State or Federal court. Borrower irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of

such process to Borrower at its address set forth above. Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Borrower further waives any objection to venue in such county and any objection to an action or proceeding in such county on the basis of forum non conveniens. Borrower further agrees that any action or proceeding brought against Lender shall be brought only in New York State or United States Federal court sitting in New York County.

(b) Nothing in this Section shall affect the right of Lender to serve legal process in any other manner permitted by law or affect the right of Lender to bring any action or proceeding against Borrower or its property in the courts of any other jurisdictions.

(c) To the extent that Borrower has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Borrower hereby irrevocably waives such immunity in respect of its obligations under this Agreement and the Note.

Section 5.06. Captions. The captions and headings hereunder are for convenience only and shall not affect the interpretation or construction of this Agreement.

Section 5.07. Severability. The provisions of this Agreement are intended to be severable. If for any reason any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

Section 5.08. Counterparts. This Agreement may be executed in any number of

counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart.

Section 5.09. Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York (without reference to the conflicts of law provisions thereof).

Section 5.10 Entire Agreement. Loan Documents together with all documents and agreements entered into pursuant to this Agreement, including, but not limited to the Note, and applicable legislation, including but not limited to Chapter 90 of the Laws of 2010, constitute the full and entire agreement between the Borrower and the Lender.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

THE NEW YORK RACING ASSOCIATION,  
INC.,



By:  
Name: *Ellen McClain*  
Title: *SVP & Chief Financial Officer*

NEW YORK STATE URBAN DEVELOPMENT  
CORPORATION d/b/a EMPIRE STATE  
DEVELOPMENT CORPORATION



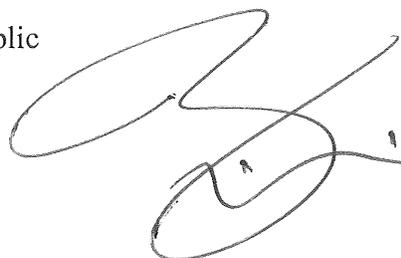
By:  
Name:  
Title:

STATE OF NEW YORK    )  
  ) SS:  
COUNTY OF *Queens*    )

On the *9<sup>th</sup>* day of *June* in the year *2019*, before me, the undersigned, personally appeared *Ellen McClain*, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the 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

**Pasquale Viscusi**  
**Notary Public, State of New York**  
**No. 02VI6068172**  
**Qualified in Queens County**  
**Commission Expires Dec. 24, 20*13***



ASSIGNMENT

The undersigned, New York State Urban Development Corporation d/b/a Empire State Development Corporation, hereby assigns to Geating New York LLC this Loan Agreement, the Note, as defined in the Loan Agreement, and all of the undersigned's rights, interests, and obligations pursuant to this Loan Agreement and the Note.

Dated as of this 8th  
Day of September,  
2010.

NEW YORK STATE URBAN DEVELOPMENT  
CORPORATION d/b/a EMPIRE STATE  
DEVELOPMENT CORPORATION

By:   
Name: Anita W. Lasevant  
Title: Senior Vice President, Legal &  
General Counsel

NOTE

\$25,000,000

June 10, 2010  
New York, New York

FOR VALUE RECEIVED, THE NEW YORK RACING ASSOCIATION, INC., a not-for-profit corporation incorporated pursuant to Section 402 of the Not-For-Profit Corporation Law of the State of New York as authorized by Chapter 18 of the Laws of 2008, with a principal office at 110-00 Rockaway Boulevard, Jamaica, NY 11417 (the "Borrower"), hereby unconditionally promises to pay to the order of NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT CORPORATION with offices at 633 Third Avenue, New York, New York 10017 (the "Lender" or "ESDC"), the principal sum of Twenty-Five Million Dollars (\$25,000,000.00).

The Borrower also unconditionally promises to pay interest on the unpaid principal amount of the loan evidenced by this Note ("Loan") at two percent (2%) per annum (the "Base Rate"). Interest shall accrue on the outstanding and unpaid principal amount of each Loan advance from and including the date of the Loan advance and shall be calculated on the basis of a year of 360 days.

This is the Note referred to in that certain Loan Agreement of even date herewith between Borrower and Lender (the "Loan Agreement"), the terms, covenants and conditions of which Loan Agreement are by this reference incorporated herein. Defined terms utilized and not otherwise defined herein shall have the meaning assigned to such terms in the Loan Agreement. The Loan Agreement provides for the acceleration of the amounts payable under this Note upon the occurrence and/or continuance of Events of Default.

1. Payments. The Loan shall be repaid as follows:

(a) Consecutive payments of principal and interest (applied as set forth below) commencing six months from the date VLT operations at Aqueduct begin, from

Borrower's portion of video lottery revenues from the video lottery facility at Aqueduct Racetrack, pursuant to Tax Law Section 1612 subdivision f paragraphs 3 and 4 (the "NYRA Portion"). Each such payment shall be equal to Twenty-Five percent (25%) of the NYRA Portion. Each payment shall be applied equally to the cumulative amount of accrued interest and principal as of the date of such payment until the Loan, including, without limiting the foregoing, accrued interest thereon, is paid in full. Notwithstanding the foregoing, the Loan, must be repaid to ESDC in accordance with Chapter 90 of the Laws of 2010, unless the Loan Agreement and this Note have been assigned by ESDC to a VLT operator designated by the State of New York to operate the VLT facility at the Aqueduct racetrack, provided, however, that if such repayment to ESDC in accordance with Chapter 90 of the Laws of 2010 is required, Borrower shall promptly enter into a repayment agreement with the Director of the New York State Division of the Budget regarding the terms and conditions of such repayment.

(b) Borrower hereby irrevocably consents to the New York State Division of the Lottery (the "Division"), an executive agency of the State of New York, making or directing transfers and payments to Lender, or the holder hereof, of Twenty-Five percent (25%) of each distribution of the NYRA Portion until all amounts due with respect to the Loan, including, without limiting the foregoing, accrued interest thereon, have been paid in full.

(c) All payments of principal and interest shall be made in lawful funds of the United States of America and sent to the New York State Urban Development Corporation d/b/a Empire State Development Corporation, 633 Third Avenue, New York, New York 10017, to the attention of the Controller, or to such other address as the holder hereof may designate in writing to Borrower from time to time. Payments shall be deemed made when received by the holder hereof in accordance with the foregoing.

Borrower hereby waives presentment, notice of dishonor, demand, protest and any other notice or formality with respect to this Note.

2. Prepayments. Borrower shall have the right from time to time to prepay the unpaid balance due hereunder, in whole or in part, without premium or penalty.

3 Governing Law. This Note shall be construed in accordance with and governed by the Laws of the State of New York without regard to conflicts of law principles that would require the application of the laws of another jurisdiction.

4. Miscellaneous. This Note may not be modified, amended, waived or otherwise altered in whole or in part except by a further writing signed by the party to be charged. This Note shall be binding upon the Borrower and its successors and assigns and shall inure to the benefit of Lender and its successors, assigns and transferees. Notwithstanding the foregoing, Borrower may not assign or transfer its rights or obligations hereunder.



ASSIGNMENT

The undersigned, New York State Urban Development Corporation d/b/a Empire State Development Corporation, hereby assigns to Genting New York LLC this Note, the Loan Agreement, as defined in the Note, and all of the undersigned's rights, interests, and obligations pursuant to this Note and the Loan Agreement.

Dated as of this 8th  
Day of September,  
2010.

NEW YORK STATE URBAN DEVELOPMENT  
CORPORATION d/b/a EMPIRE STATE  
DEVELOPMENT CORPORATION

By: Anita W. Lasemont  
Name: Anita W Lasemont  
Title: Senior Vice President, Legal &  
General Counsel

## EXHIBIT B:

### NON-DISCRIMINATION AND AFFIRMATIVE ACTION POLICY FOR THE PROJECT

It is the policy of the State of New York and ESDC, to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by ESDC's participation in projects or initiatives, and/or the use of ESDC funds. The recipient of State funds represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:

- 1) Borrower shall (i) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize M/WBEs, Minority Group Members and women in its workforce on contracts. Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- 2) Borrower represents and warrants that, for the duration of the Agreement, it shall furnish all information and reports required by the ESDC Affirmative Action Unit and shall permit access to its books and records by ESDC, or its designee, for the purpose of ascertaining compliance with provisions hereof.

### ESDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

#### Affirmative Action

Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation.

#### Minority Business Enterprise (MBE)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the

State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

**Minority Group Member**

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

**Women-owned Business Enterprise (MWBE)**

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.