

New York Gaming Facility Location Board
Response to Request for Applications to Develop and Operate a
Gaming Facility in New York State

TIOGA DOWNS RACETRACK, LLC

Exhibit VIII.C.2.a.

A. Ownership of Fee Title to Land.

1. Current Fee Owner. Tioga Downs Racetrack, LLC (“Tioga Downs”) is the current owner of the fee title to the property known as 2384 West River Road, Nichols, Tioga County, New York (Section 158, Block 3, Lots 49, 51, 52, and 53) (the “Land”), consisting of approximately 144.9 acres. Tioga Downs acquired fee title to the Land pursuant to:
 - a. a Trustee’s Deed dated June 21, 2004, made by Tioga Park, LLC, Chapter 11 Debtor-in Possession, by James W. Hawkins, in favor of Tioga Downs, as recorded in the Tioga County Clerk’s Office (the “Clerk’s Office”) on October 18, 2004, Instrument Number 114157-001 (the “2004 Deed”)¹; and
 - b. a Trustee’s Deed dated May 31, 2005, made by Paul A. Levine, Esq., Chapter 11 Bankruptcy Trustee for Tioga Park, LLC, Chapter 11 Debtor-in Possession, in favor of Tioga Downs, as recorded in the Clerk’s Office on June 9, 2005, Instrument Number 121268-001 (the “2005 Deed”).
2. Prior Fee Owners in Past Twenty (20) Years.
 - a. Parcel A, B, and C. The portion of the Land identified as Parcels A, B, and C in the 2004 Deed was previously owned by Tioga Park, LLC, a New York limited liability company (“Tioga Park”). Tioga Park acquired this portion of the Land from Donald Nuckel, Jill Nuckel and James C. Nuckel, as tenants-in-common, pursuant to an Indenture dated May 30, 1996 and recorded in the Clerk’s Office on May 31, 1996 in Book 583, Page 45. These tenants-in-common acquired this portion of the Land from Donald Nuckel and Jill Nuckel, as Co-Administrators of the Estate of James Nuckel (who died on January 26, 1983) pursuant to an Indenture dated December 8, 1995 and recorded in the Clerk’s Office on December 18, 1995 in Book 577, Page 103.

¹ The metes and bounds description for “Parcel A” included in the 2004 Deed contains a scrivener’s error regarding one call which is noted as “S 36 degrees 37’ 20” E”, when it should instead be “S 86 degrees 37’ 20” E”. The 2004 Deed does specifically state, however, that it is the same premises as was conveyed in the prior vesting deed dated May 30, 1996 and recorded in Liber 583, Page 45. The legal description in the prior vesting deed correctly references the call as “S 86 degrees 37’ 20” E”. As a result, a corrective deed is being sought in order to correct the typo.

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- b. Parcel D. The portion of the Land identified as Parcel D in the 2004 Deed was previously owned by Tioga Park. Tioga Park acquired this portion of the Land from Lynn A. Bailey, an individual, pursuant to a Warranty Deed with Lien Covenant dated August 7, 1996 and recorded in the Clerk's Office on August 24, 1998 in Book 614, Page 141. Lynn Bailey acquired this portion of the Land by Indenture dated November 1, 1993 and recorded on November 3, 1993 in Book 548, Page 46.

- c. Erie Lackawanna Railroad Company Land (i.e. Land Included in the 2005 Deed). The portion of the Land included in the 2005 Deed was previously owned by Tioga Park. Tioga Park acquired this portion of the Land from The Town of Nichols, a municipal corporation organized under the laws of the State of New York, pursuant to a Deed dated December 23, 1996 and recorded in the Clerk's Office on January 29, 1997 in Book 592, Page 272. The Town of Nichols acquired title to this portion of the Land by deed dated May 13, 1982 and recorded May 28, 1982 in the Clerk's Office in Book 398, Page 130.

B. Easements, Options and Other Interests.

The Land is subject to and encumbered by the following interests:

- 1. Verizon Easement. Grant of Easement dated January 19, 2006 made by Tioga Downs in favor of Verizon New York Inc., a New York corporation ("Verizon") and recorded in the Clerk's Office on April 21, 2006 as Instrument Number 131539-002. Pursuant to this instrument, Verizon holds a non-exclusive easement right to construct, place, operate, replace, remove, repair and maintain service lines, including buried cable, pedestals, conduits, manholes, poles, crossarms, guys, stubs, anchors, cables, wires and fixtures on a portion of the Land that crosses the existing racetrack. The easement may not be used in any way that would interfere with the property owner's use of the racetrack facility located on the Land. In addition, the property owner reserves the right to construct improvements within the easement area (so long as the improvements do not, in the property owner's reasonable judgment, physically impinge upon, conflict or interfere with, or adversely affect the easement holder's facilities).

- 2. NYSEG Guying Easement. Easement (Guying) dated September 3, 2011 made by Tioga Downs in favor of New York State Electric & Gas Corporation, a New York corporation ("NYSEG") and recorded in the Clerk's Office on November 8, 2011 as Instrument Number 193378-003. Pursuant to this instrument, NYSEG holds an easement and right of way to install a guy stub pole and guying facilities within a 5-foot wide area located at a point approximately 35 feet south from the northern property line of the Land and about 67 feet northeast of the guard shack located on the Land.

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Exhibit VIII.C.2.a. (cont.)

3. NYSEG Transformer Easement. Easement dated December 1, 2011 made by Tioga Downs in favor of NYSEG and recorded in the Clerk's Office on February 23, 2012 as Instrument Number 196278-002. Pursuant to this instrument, NYSEG holds an easement and right of way to install, maintain and repair a padmount transformer within a 15 feet x 15-foot area, the center of which is approximately 554 feet south from the centerline of Bardwell Road and approximately 31 feet west from the chain link fence on the Land.
4. NYSEG Transformer Easement. Easement dated January 27, 2012 made by Tioga Downs in favor of NYSEG and recorded in the Clerk's Office on April 2, 2012 as Instrument Number 197436-001. Pursuant to this instrument, NYSEG holds an easement and right of way to install, maintain and repair a padmount transformer within a 15 feet x 15-foot area, the center of which is approximately 14 feet east from the grantor's privately owned utility pole numbered 15 and approximately 151 feet west from the grantor's privately owned utility pole numbered 14.
5. Drainage/Utility Easements. The Indenture dated December 8, 1995 and recorded in the Clerk's Office on December 18, 1995 in Book 577, Page 103 references the following easements:
 - a. Two permanent drainage easements reserved in favor of The People of the State of New York more particularly described in a Warranty Deed dated November 21, 1975 made by Ralph Ostrander in favor of James Nuckel and recorded in the Clerk's Office in Book 372, Page 97. The drainage easements cover portions of the Land adjacent to the Southern Tier Expressway and totaling 0.185 acres and 0.444 acres, respectively.
 - b. Permanent drainage easement reserved in favor of The People of the State of New York more particularly described in a Warranty Deed dated January 13, 1976 made by Jess Ennis and Leonard Wilcox in favor of James Nuckel and recorded in the Clerk's Office in Book 372, Page 926. The drainage easements covers a portion of the Land adjacent to the Southern Tier Expressway and totaling 0.04 acres.
 - c. Permanent drainage easement shown as parcel 1128 of Map 1027 filed in the Clerk's Office on May 13, 1970.
 - d. Utility Easements in favor of NYSEG recorded in the Clerk's Office in Book 216, Page 87 (Right of Way dated April 14, 1956 granted in favor of NYSEG for a right-of-way for a pole line and related equipment for transmission and distribution of electric current); Book 200, Page 380 (Right of Way dated June 27, 1930

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granted in favor of NYSEG for a right-of-way for a pole line and related equipment for transmission and distribution of electric current); Book 373, Page 339 (Easement dated January 27, 1976 granted in favor of NYSEG for a right-of-way 30-feet in width (the center line of which runs along the southerly side of West River Road); and Book 342, Page 714 (Easement dated September 9, 1969 granted in favor of NYSEG for an easement and right-of-way for electric cables and related equipment for transmission and distribution of electric current).

C. Mortgages.

1. Current Mortgages Encumbering the Land. The Land is currently encumbered by the following two mortgages:
 - a. Consolidated, Amended and Restated Mortgage, Extension, Security Agreement and Fixture Filing dated June 30, 2011 in the consolidated principal amount of \$26,750,000.00 made by Tioga Downs, Mid-State Raceway Inc., and Mid-State Development Corporation, in favor of FS Investment Corporation, as Administrative Agent, as recorded in the Clerk's Office on July 15, 2011 as Instrument Number 190444-006 (the "First Mortgage"). By its terms, the First Mortgage encumbers the Land, together with additional property located in Vernon, Oneida County, New York. The interests secured by the First Mortgage are also evidenced by a UCC Financing Statement identifying Tioga Downs as the debtor and FS Investment Corporation, as Administrative Agent, as the secured party, and recorded in the Clerk's Office on August 16, 2011 as Instrument Number 191226-001.
 - b. Amended and Restated Second Mortgage and Security Agreement dated June 30, 2011 in the principal amount of \$18,500,000.00 made by Tioga Downs, Mid-State Raceway, Inc. and Mid-State Development Corporation in favor of FS Investment Corporation, as Administrative Agent, as recorded in the Clerk's Office on July 15, 2011 as Instrument Number 190444-005 (the "Second Mortgage"). By its terms, the Second Mortgage encumbers the Land, together with additional property located in Vernon, Oneida County, New York. The interests secured by the Second Mortgage are also evidenced by a UCC Financing Statement identifying Tioga Downs as the debtor and FS Investment Corporation, as Administrative Agent, as the secured party, and recorded in the Clerk's Office on August 16, 2011 as Instrument Number 191226-002.

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2. Prior Mortgages.

- a. The First Mortgage consolidates, amends and restates (i) a Mortgage dated March 30, 2006 in the original principal amount of \$20,000,000 made by Tioga Downs in favor of RCG Longview II, L.P., a Delaware limited partnership and recorded in the Clerk's Office on March 31, 2006 as Instrument Number 130837-001 (which mortgage was originally assigned to Capital One, N.A., a national banking association pursuant to an Assignment of Mortgage dated June 15, 2009 and recorded in the Clerk's Office on June 25, 2009 as Instrument Number 169387-001, thereafter assigned to FS Investment Corporation pursuant to an Assignment of Mortgage and Note dated June 30, 2011 and recorded in the Clerk's Office on July 15, 2011 as Instrument Number 190444-003, and thereafter consolidated into the mortgage reference in clause (ii) below), and (ii) an Amended, Restated and Consolidated Mortgage dated June 18, 2009 in the consolidated amount of \$12,000,000 made by Tioga Downs in favor of Capital One, N.A. and recorded in the Clerk's Office on June 25, 2009 as Instrument Number 169387-002 (which consolidated mortgage was previously assigned to FS Investment Corporation pursuant to an Assignment of Mortgage and Note dated June 30, 2011 and recorded in the Clerk's Office on July 15, 2011 as Instrument Number 190444-003).
- b. Tioga Downs had previously collaterally assigned to RCG Longview II, L.P. all of the income, issues, and profits arising from the ownership of the Land pursuant to an Assignment of Income and Revenue dated March 30, 2006 and recorded in the Clerk's Office on March 31, 2006 as Instrument Number 130837-002. This Assignment was cancelled and discharged of record by a Cancellation of Assignment of Income and Revenue dated June 15, 2009 and recorded in the Clerk's Office on June 25, 2009 as Instrument Number 169394-001.
- c. The Second Mortgage amends and restates a Mortgage and Security Agreement dated May 26, 2006 in the original principal amount of \$18,500,000.00 made by Tioga Downs and Mid-State Raceway, Inc. in favor of Oneida Entertainment Holdings Inc., a Delaware corporation, and recorded in the Clerk's Office on May 30, 2006 as Instrument Number 132854-001 (which mortgage was previously assigned to FS Investment Corporation pursuant to an Assignment of Mortgage dated June 30, 2011 and recorded in the Clerk's Office on July 15, 2011 as Instrument Number 190444-002).

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D. Lease Option for Golf Course Land.

Tioga Downs also has an exclusive right to lease a golf course property known as the Tioga Country Club which is located to the southeast of the Land and consists of approximately 112.07 acres (the "Golf Course Land"). The Golf Course Land (Tax Map Nos. 170.00-1-6.10 and 159.18-2-2) and the improvements located thereon (collectively, the "Golf Course Property") are currently owned by Tioga Recreation Association, Inc., a New York not-for-profit corporation ("Tioga Recreation"). If Tioga Downs is awarded a Gaming Facility license, Tioga Downs intends to lease the Golf Course Property from Tioga Recreation.

For this purpose, Tioga Downs and Tioga Recreation have entered into a Lease Option Agreement dated April 14, 2014, which is memorialized by a Memorandum of Lease Option Agreement dated April 14, 2014 and recorded in the Clerk's Office on April 14, 2014 as Instrument Number 2014-00001505. Pursuant to the Lease Option Agreement, Tioga Downs has the exclusive right to lease the Golf Course Property.

The initial term of the Lease Option Agreement expires on April 13, 2015; provided, however, it may be extended for additional successive 12-month terms (not to exceed a total of 21 years).

In the event that Tioga Downs exercises its right to lease the Golf Course Property in accordance with the Lease Option Agreement, the term of the lease shall be for ninety-nine (99) years. The form of lease is attached as Exhibit B to the Lease Option Agreement. Under the lease, Tioga Downs would have the right to construct a new clubhouse on the Golf Course Land and to demolish the existing clubhouse in connection therewith.