

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.b.

Tioga Downs Racetrack, LLC ("Tioga Downs") is the current owner of the fee title to the property known as 2384 West River Road, Nichols, 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:

1. 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")<sup>1</sup>; and
2. 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").

Copies of the 2004 Deed and the 2005 Deed are attached hereto.

In addition, Tioga Downs has the exclusive right to lease a 112.07-acre golf course property known as the Tioga Country Club which is located at 151 Ro-Ki Boulevard in the Town of Nichols and Village of Nichols, Tioga County, New York (the "Golf Course Property"). Tioga's lease option is set forth in:

1. Lease Option Agreement dated April 14, 2014 by and between Tioga Downs and Tioga Recreation Association, Inc., a New York not-for-profit corporation ("Tioga Recreation"); and
2. Memorandum of Lease Option Agreement dated April 14, 2014 and recorded in the Clerk's Office on April 14, 2014 as Instrument Number 2014-0000150.

The form of lease for the Golf Course Property is included as Exhibit B to the Option Agreement.

Copies of the Option Agreement (and its exhibits) and the Memorandum of Lease Option Agreement are attached hereto.

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<sup>1</sup> 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.

**2004 Deed**

**[See Attached]**



**Robert L Woodburn**  
**TIOGA COUNTY CLERK**

16 Court St PO Box 307  
Owego, NY 13827  
(607) 687-8660  
Fax: (607) 687-4612

**Instrument Number**  
**\*114157-001\***

No. of Pages: 13

Delivered By: TOWNE LAW OFFICES, PC

Receipt No. 114157

Return To:

THE TOWNE LAW OFFICES PC  
421 NEW KARNER ROAD

DATE: 10/18/2004

ALBANY, NY 12205

Time: 11:12 AM

Document Type: DEED

Parties To Transaction: TIOGA PARK LLC - TIOGA DOWNS TRUSTE

Deed Information

Mortgage Information

Consideration: \$0.00

Mortgage Amount:

Transfer Tax: \$0.00

Basic Mtge. Tax:

RETT No: 00573

Special Mtge. Tax:

Additional Mtge. Tax:

State of New York  
Tioga County Clerk

Mortgage Serial No.:

This sheet constitutes the Clerk endorsement required by Section 316-A(5) & Section 319 of the Real Property Law of the State of New York. DO NOT DETACH

Tioga County Clerk



R&R: The Towne Law Offices, P.C.  
421 New Karner Road  
PO Box 15072  
Albany, NY 12212-5072

**TRUSTEE'S DEED**

\_\_\_\_\_ Deed made this 21<sup>st</sup> day of June, 2004 by Tioga Park, LLC, Chapter 11 Debtor-in Possession, by James W. Hawkins, herein referred to as the Grantor, to Tioga Downs Racetrack, LLC, herein referred to as the Grantee, with offices located at 421 New Karner Road, the City of Albany, County of Albany, State of New York, as assignee of Asolare II, LLC.

WHEREAS, in an bankruptcy proceeding in the United States Bankruptcy Court for the Northern District of New York entitled Tioga Park, LLC, Case # 03-60078, a Chapter 11 Plan of Reorganization was confirmed by the Order of the Honorable Stephen D. Gerling, Chief United States Bankruptcy Court Judge dated June 1, 2004 and entered in the office of the United States Bankruptcy Court Clerk on June 2, 2004, a copy of which is annexed hereto and incorporated herewith, Tioga Park, LLC in its capacity as Trustee of the Bankrupt Estate of Tioga Park, LLC, was duly authorized and empowered to sell the bankrupt's estate herein described to Tioga Downs Racetrack, LLC to satisfy the obligations of Tioga Park, LLC to Asolare II, LLC., and;

NOW, Tioga Park, LLC as Chapter 11 Trustee, Debtor-in-Possession, in order to carry into effect the sale so made by it, as aforesaid, in the pursuance of and by virtue of the power and authority vested as aforesaid by the Order of the Court, by virtue of the foregoing and in consideration of the satisfaction of the obligation of Tioga Park, LLC to Asolare II, LLC, and in conformity to the statute in such case made and provided, grants and conveys to Grantee, and its' heirs and assigns forever, all the right title and interest which is vested as Trustee in Bankruptcy of Tioga Park, LLC, (case # 03-60078) the real property located in the Town of Nichols, County of Tioga, State of New York, which is more particularly bounded and described as follows:

PARCEL A

All that piece of parcel of property situate in the Town of Nichols, County of Tioga, State of New York and described as follows:

BEGINNING at a granite monument on the northerly boundary of the Southern Tier Expressway at its intersection with the easterly boundary of Davenport Hill Road; thence along the easterly boundary of Davenport Hill Road the following nine courses and distances: 1) N. 2 degrees 52' 37" W, a distance of 124.46 ± feet to a point; thence 2) S 87 degrees 05' 27" W, a distance of 40.00 ± feet to a granite monument; thence 3) N 3 degrees 41' 13" W, a distance of 404.31 ± feet to a point; thence 4) on a curve to the right having a radius of 145.75 feet, a distance of 154.89 ± feet to a point, also having a chord bearing N 26 degrees 45' 26" E, 147.70 ± feet; thence 5) N 57 degrees 12' 06" E, a distance of 67.78± feet to a point; thence 6) on a curve to the left having a radius of 186.50 feet, a distance of 212.59 ± feet to a point, also having a chord bearing N 24 degrees 32' 46" E, 201.27 ± feet; thence 7) N 8 degrees 06' 33" W, a distance of 202.33 ± feet to a point; thence 8) on a curve to the left having a radius of 326.28 feet, a distance of 291.45 ± feet to a point, also having a chord bearing N 67 degrees 12' 13" E, 281.86 ± feet; thence 9) N 41 degrees 36' 48" E, a distance of 65.85 ± feet to a point on the southerly boundary of the Erie Lackawanna Railway Company; thence easterly, on a curve to the left having a radius of 15,675.82 feet, a distance of 782.63 ± feet to a point; thence continuing S 36 degrees 37' 20" E, southerly along said boundary a distance of 1462.36 ± feet to a point on the division line between the property of Ralph S. Ostrander and Eva P. Ostrander (reputed owners) on the west and the property of Robert H. Schmidt (reputed owner) on the east; thence S 2 degrees 25' 54" E, along said division line, a distance of 1463.87 ± feet to a point on the northerly boundary of the Southern Tier Expressway; thence westerly, along

said northerly boundary, a distance of 2738.58 ± feet to the point of beginning; being 82.608 acres more or less.

**ALSO, ALL THAT PIECE OR PARCEL OF PROPERTY, situate in the Town of Nichols, County of Tioga and State of New York, described as follows:**

**Beginning at a point on the southerly boundary of West River Drive at its intersection with the division line between the property of Ralph S. Ostrander and Eva P. Ostrander (reputed owners) on the west and the property of Wilfred F. Fruitiger (reputed owner) on the east; thence S 2 degrees 25' 54" E, along said division line, a distance of 277.41 ± feet to a point on the northerly boundary of the Erie Lackawanna Railway Company; thence N 86 degrees 37' 20" W, along said northerly boundary, a distance of 759.69± feet to a point; thence N 0 degrees 51' 34" W, a distance of 221.18± feet to a point on the southerly boundary of West River Drive; thence N 89 degrees 08' 26" E, along said southerly boundary, a distance of 750.00 ± feet to the point of beginning; being 4.311 acres more or less.**

**PARCEL B**

**ALSO, ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Nichols, County of Tioga and State of New York, bounded and described as follows:**

**Beginning at a granite monument on the northerly boundary of the Southern Tier Expressway at its intersection with the division line between the property of Robert H. Schmidt (reputed owner) on the east and the property now or formerly of Ralph S. Ostrander and Eva P. Ostrander on the west; thence N 2 degrees 25' 54" W, along said division line, a distance of 1463.87 ± feet to a point on the southerly boundary of the Erie Lackawanna Railway Company; thence S 86 degrees 37' 20" E, along said southerly boundary, a distance of 996.75 ± feet to a point on the division line between**

the property of Robert H. Schmidt (reputed owner) on the west and the property of Clifford J. Park and Helen May Park (reputed owners) on the east; thence S 6 degrees 36' 48" E, along said division line, a distance of 302.06 ± feet to an iron pin on the division line between the property of Robert H. Schmidt (reputed owner) on the north and the property of Clifford J. Park and Helen May Park (reputed owners) on the south; thence S 89 degrees 38' 17" W, along the said division line, a distance of 184.91 feet to an iron pin on the division line between the property of Robert H. Schmidt (reputed owner) on the west and the property of Clifford J. Park and Helen May Park (reputed owners) on the east, thence S 3 degrees 00' 58" E, along said division line, and continuing along the division line between the property of Robert H. Schmidt (reputed owner) on the west and the property of the Town of Nichols (reputed owner), a total distance of 1208.46 ± feet to a point on the northerly boundary of the Southern Tier Expressway; thence westerly, along said northerly boundary, a distance of 852.77 ± feet to the point of beginning; being 29.754 acres more or less.

ALSO, a right of way for motor vehicles and pedestrians over a strip of land approximately forty feet in width along the westerly boundary of the premises conveyed to Wilford E. Frutiger by deed dated December 30, 1968 and recorded on the same day in the Tioga County Clerk's Office in Book 338 of Deeds at Page 376, said right of way to extend in length from West River Road on the north to his southerly boundary line, and in width from his westerly boundary line to the westerly edge of the concrete sidewalk which runs along the westerly side of his property.

PARCEL C

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Nichols, County of Tioga and State of New York, bounded and described as follows:

Beginning at a granite monument on the northerly boundary of the Southern Tier Expressway

at its intersection with the division line between the property of the Town of Nichols (reputed owner) on the west and the property of Ernest W. Goodwin and Elizabeth Goodwin (reputed owners) on the east; thence N 2 degrees 57' 20" W, along said division line, a distance of 1150.00± feet to a point on the division line between the property of the Town of Nichols (reputed owner) on the south and the property of Clifford J. Park and Helen May Park (reputed owners) on the north; thence N 83 degrees 02' 02" W, along said division line, a distance of 838.20± feet to a point on the division line between the property of the Town of Nichols (reputed owner) on the east and the property of Robert H. Schmidt (reputed owner) on the west; thence S 3 degrees 00' 58" E, along said division line, a distance of 1150.00 ± feet to a point on the northerly boundary of the Southern Tier Expressway; thence easterly, along said northerly boundary, a distance of 837.00 ± feet to the point of beginning; being 21.780 acres more or less, according to a survey made by McFarland-Johnson-Gibbons Engineers, Inc. dated September 8, 1975. All bearings are referred to True North.

ALSO a right of way and easement over and upon premises now or formerly owned by Clifford J. Park and Helen May Park adjoining the above premises on the north, said right of way and easement to be 25 feet in width measured in an easterly direction from the westerly boundary line of lands now or formerly of Schmidt and running from the lands now or formerly of the Erie Lackawanna Railroad Company southerly to the land above described.

BEING the same premises conveyed from Donald Nuckel, Jill Nuckel and James C. Nuckel as tenants-in-common, each holding an undivided interest of  $33 \frac{1}{34}$  to Tioga Park, LLC by deed dated May 30, 1996 and recorded in the County Clerk's Office of Tioga County on May 31, 1996 in Liber 583 of Deeds at Page 45.

PARCEL D

**ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Nichols, County of Tioga and State of New York, bounded and described as follows:**

**COMMENCING at a point in the south line of premises now or formerly of the Delaware, Lackawanna & Western Railroad Company which said point is the northwest corner of premises now or formerly of E.W. Goodwin;**

**RUNNING thence S 2° 57' 20" E., along the west line of the said Goodwin premises a distance of 422.38 feet to an iron in the northeast corner of premises conveyed to James Nuckel by deed recorded in Tioga County Deed Liber 373 at page 452;**

**RUNNING thence N. 83° 02' 02" W., along the north line of the said Nuckel premises a distance of 838.20 feet to an iron pin in an east line of premises conveyed to the aforesaid Nuckel by deed recorded in the Tioga County Deed Liber 372 at page 926;**

**RUNNING thence N. 3° 00' 58" W., along the line of the Nuckel premises a distance of 58.46 feet an iron pin;**

**RUNNING thence N. 89° 38' 17" E., along a line of the Nuckel premises a distance of 184.91 feet to a point in the west line of a right-of-way;**

**RUNNING thence N. 6° 36' 48" W., along an east line of the Nuckel premises (being the west line of the aforementioned right-of-way) a distance of 301.78 feet, more or less, to the south line of the Delaware, Lackawanna & Western Railroad Company premises;**

**RUNNING thence S. 86° 37' 13" E., along the south line of the Delaware, Lackawanna & Western Railroad Company premises a distance of 664.31 feet to a steel railroad monument, the point and place of beginning.**

**SUBJECT to a right-of-way 25 feet in width from the south line of the D. L. & W. Railroad**

Co. premises to the northerly line of Nuckel, and the westerly boundary of which said right-of-way shall commence at the intersection of the northeast corner of the Nuckel premises and the south line of the D. L. & W. Railroad Co.; running thence S. 6° 36' 48" E., to the north line of other premises of Nuckel.

FURTHER SUBJECT to a permanent easement for drainage purposes taken by the State of New York in connection with the construction of the Southern Tier Expressway, said easement being shown as parcel #1128 on map #1047 filed in the Tioga County Clerk's Office and described in the Notice of Appropriation dated April 16, 1969 and recorded May 13, 1970 in Liber 340 of Deeds at page 672 in the Tioga County Clerk's Office, the description contained in said notice of appropriation being hereby incorporated herein by reference.

The above parcel contains 6.279 acres, more or less, according to a survey of John R. Barno, dated June 10, 1976.

BEING the same premises conveyed from Lynn A. Bailey to Tioga Park, LLC by deed dated August 7, 1996 and filed in the Tioga County Clerk's Office August 24, 1998 in Liber 614 of Deeds at Page 141.

To have and to hold all and singular the premises described above and hereby conveyed to Grantee, and its' heirs and assigns forever. And said Grantor covenants as follows:

FIRST. That said Grantor is seized of said premises in fee simple, and has good right to convey the same;

SECOND. That the Grantee shall quietly enjoy the said premises;

THIRD. That the said premises are free from encumbrances;

FOURTH. That the Grantor will execute or procure any further necessary assurance of the

title to said premises;

This conveyance is made subject, however, thereto all real property tax liens as of this date unpaid.

IN WITNESS WHEREOF, Tioga Park, LLC, as Chapter 11 Trustee, Debtor-in-Possession, as aforesaid has hereto set his hand this 21st day of June, 2004.

Tioga Park, LLC

By: James W. Hawkins  
James W. Hawkins

Witness

\_\_\_\_\_  
(Print name)

State of New York    }  
                                  } ss.:  
County of Broome    }

On this 21<sup>st</sup> day of June, 2004, before me came James W. Hawkins, personally known to me and to me known to be the subscribing witness within named, who, being by me sworn, did depose and say, that he resides in the Town of Colesville, Broome County, that he knows James W. Hawkins to be the manager of Tioga Park, LLC, the grantor, within-named, knows him to be the grantor who is described in and who executed the within instrument, that he was present and saw the said James W. Hawkins execute the same, and that he acknowledged to him the said that he, the said grantor, executed the same, and that he, the said James W Hawkins thereupon subscribed his name as a witness thereto.

Craig R Fritzer  
Notary Public  
QUALIFIED IN BROOME CO  
MY COMM. EXPIRES 10/1/06

FILED

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

2004 JUN -2 PM 1:59

In re:

**TIOGA PARK, LLC**

**RECEIVED**

Case No. 03-60076

CLERK OF THE  
BANKRUPTCY COURT  
N.D. OF N.Y.  
UTICA

Debtor

MAY 28 2004

RESERVE CAPITAL CORPORATION  
HAWKINS DEVELOPMENT LLC  
JAMES W. and LORI JO HAWKINS  
HAWKINS FAMILY, LLC  
HAWKINS MANUFACTURED HOUSING, INC.  
FOREST VIEW, INC.  
WOODED ESTATES, LLC

OFFICE OF THE BANKRUPTCY JUDGE  
UTICA, NY

Case No. 03-60071  
Case No. 03-60072  
Case No. 03-60073  
Case No. 03-60074  
Case No. 03-60075  
Case No. 03-60076  
Case No. 03-60077

CLERK OF THE  
BANKRUPTCY COURT  
N.D. OF N.Y.  
UTICA

2004 MAY 28 PM 3:53

RECEIVED

Jointly Administered Debtors

**ORDER APPROVING DISCLOSURE STATEMENT AND  
CONFIRMING JOINT CHAPTER 11 PLAN OF REORGANIZATION**

Debtor, TIOGA PARK, LLC, together with ASOLARE II, LLC and SOUTHERN TIER ACQUISITION, LLC, the Joint Proponents of the Joint Chapter 11 Plan of Reorganization dated and filed on March 10, 2004 and revised pursuant to Order entered May 17, 2004, a copy of which is attached hereto, incorporated herein, made a part hereof and referenced hereafter as "the Joint Plan", and said Joint Plan together with the Disclosure Statement dated March 5, 2004 and revised pursuant to Order entered May 17, 2004 having been transmitted to all of the known holders of claims or interests pursuant to Order entered May 17, 2004, AND the matter having come on for a combined hearing for the approval of Disclosure Statement and confirmation of the Joint Plan on the 27<sup>th</sup> day of May, 2004.

Debtor as Joint Plan Proponent having appeared by its attorney, Craig R. Fritsch, Esq. and its fiduciary, James W. Hawkins, Managing Member; Joint Plan Proponent and secured creditor Asolare II, LLC having appeared by its attorney, the Towne Law Offices, PC (James Towne, Esq. and Michael Rhodes-Devey, Esq., Of Counsel); Joint Plan Proponent Southern Tier Acquisition, LLC having

appeared by its attorney, E. Lisa Tang, Esq.; BSB Bank & Trust having appeared by its attorney, Myles Wren, Esq. of Nogi, Appleton, Weinberger & Wren, PC; the Office of the United States Trustee having appeared by Guy VanBaalen, Esq., Assistant US Trustee; each of the Jointly Administered Debtors having appeared by Craig R. Fritsch, Esq., their attorney and James W. Hawkins as debtor in possession or fiduciary of the jointly administered estates and there being no other appearances and no written opposition to the approval of the Disclosure Statement or the confirmation of the Joint Plan.

The Court having heard the arguments of counsel, the testimony of the Debtor and Joint Plan Proponents in support of confirmation, and having reviewed the Disclosure Statement and Plan as revised pursuant to Order entered May 17, 2004. There being no evidence in opposition thereto, and the Court having determined that the evidence proffered is credible and relevant with respect to the findings and conclusions herein, AND the Court having made the following findings upon the record of the hearing:

- a) That the Disclosure Statement dated March 5, 2004 and revised pursuant to Order entered May 17, 2004 contains adequate information with respect to the Joint Plan pursuant to Bankruptcy Code Section 1125;
- b) That each class provided under the Joint Plan, and each holder of an allowed claim or interest is unimpaired by the terms of the Joint Plan within the meaning of Bankruptcy Code Section 1124, *as modified by the Order of 5/17/04*
- c) That under the terms of the Joint Plan, the valuation of the Debtor and appraisal of Debtor's assets is not a material factor with respect to the confirmation of the Joint Plan;
- d) That the terms of the Joint Plan have been proposed in good faith and not by any means forbidden by law.
- e) That each of the requirements for confirmation as set forth in Bankruptcy Code Section 1129(a) has been met by the terms of the Joint Plan and by the Joint Plan Proponents;
- f) That the terms of the Joint Plan, and the Joint Plan in its entirety, are fair and reasonable under the circumstances.

*BSB:*

- g) Confirmation of the Joint Plan is in the best interest of the Debtor, the Estate, creditors and interested parties, and the confirmation of the Joint Plan is in conformance with the spirit and intent of the Bankruptcy Code.
- h) That the terms of the Joint Plan, and the provisions for plan implementation, are reasonably certain, feasible and capable of performance; it is

ORDERED, that the Joint Disclosure Statement dated March 10, 2004 and revised pursuant to Bankruptcy Court Order entered on May 17, 2004 be and the same hereby is approved pursuant to Bankruptcy Code Section 1125, and it is

ORDERED, that the Joint Plan dated March 10, 2004 and revised pursuant to Bankruptcy Court Ordered entered on May 17, 2004 the terms of which are incorporated herein, be and it hereby is confirmed in its entirety, including each and every term thereof, which confirmation shall be deemed effective upon the execution and entry of this Order, and it is

ORDERED, that the confirmation of the Joint Plan shall have the effect provided in accordance with Bankruptcy Code Section 1141, and the following Bankruptcy Code provisions:

- a) That subject to the payment in full of all allowed claims, all transfers of property pursuant to the terms of the confirmed Joint Plan shall be deemed and have the effect of a transfer of property, free and clear of liens, claims and encumbrances pursuant to Bankruptcy Code Section 363(b), and the Debtor is hereby authorized and directed to execute and deliver to Asolare II, LLC or the post-confirmation transferee as its assign, any documents in proper form for recording as necessary, desirable or required for the transfer of marketable title.
- b) That pursuant to Bankruptcy Code Section 365, all executory contracts shall be deemed rejected in accordance with the terms of the confirmed Joint Plan, and the rejection thereof shall be deemed approved by the Bankruptcy Court.
- c) That the determination of any claim or any dispute with respect to the allowance of any claim including administrative claims pursuant to Order of the Bankruptcy Court entered herein or

hereafter pursuant to Bankruptcy Code Section 501 et. seq. shall be deemed incorporated in and allowed hereunder for purposes of distribution under the terms of the Joint Plan.

d) That in addition to any other requirement for the entry of a Final Decree, and as a condition precedent to the transfer of any property by the Debtor or the Estate pursuant to the terms of the confirmed Joint Plan, the Joint Plan Proponents shall provide to the Court and the Office of the United States Trustee, proof of payment in full satisfaction of each allowed claim and in accordance with the terms of the confirmed Joint Plan which proof shall be in the form of an affidavit together with copies of each distribution check. That in the event any payment shall be returned or shall otherwise remain uncashed or undeliverable, the funds provided for such distribution shall remain in escrow, and shall be treated in accordance with the further order of this Court upon motion made by any party in interest including the Joint Plan Proponents, the United States Trustee, or any other party with standing.

e) That any of the agreements entered into by the Debtor as expressly referenced and incorporated in the Disclosure Statement and Joint Plan, and any agreement contemplated pursuant to the terms of the confirmed Joint Plan are hereby deemed authorized and approved, and it is

ORDERED, that unless the express terms of the confirmed Joint Plan, any Order entered herein or hereafter, or any agreement duly executed, authorized and approved in this case shall so require, the confirmation of the Joint Plan is without prejudice to any issue now or hereafter arising in any of the jointly administered cases, and it is

ORDERED, that the Joint Venturers, Southern Tier Acquisition, LLC and Asolare II, LLC shall be designated as disbursing agent in the place and stead of NEWCO until such time as the intended successor entity shall be organized and authorized to conduct business, and said Joint Venturers shall remain responsible, liable and obligated for the performance of the terms of the confirmed Plan, together

with the successor entity, until such time as the Court shall release said parties or enter Final Decree, upon full performance by said parties of the obligations as set forth in the confirmed Joint Plan, and it is

**ORDERED**, that the Debtor shall provide to the disbursing agent such information as may be requested and necessary for the distribution and implementation provided by the terms of the confirmed Joint Plan, and it is

**ORDERED**, that the Joint Plan Proponents shall make all payments to the United States Trustee pursuant to 28 USC 1930(a)(6) until entry of a Final Decree.

Dated: June , 2004  
Utica, New York

  
\_\_\_\_\_  
**HON. STEPHEN D. GERLING**  
Chief United States Bankruptcy Court

**2005 Deed**

**[See Attached]**



**Robert L Woodburn**  
**TIOGA COUNTY CLERK**

16 Court St PO Box 307  
Owego, NY 13827  
(607) 687-8660  
Fax: (607) 687-4612

**Instrument Number**  
**\*121268-001\***

No. of Pages: 10

Delivered By: TOWNE LAW OFFICES PC

Receipt No. 121268

Return To:

TOWNE LAW OFFICES PC  
421 NEW KARNER ROAD  
PO BOX 15072  
ALBANY NY 12212-5072

DATE: 06/09/2005

Time: 10:32 AM

Document Type: DEED

Parties To Transaction: TIOGA PARK BY TRUSTEE - TIOGA DOWNS

Deed Information

Mortgage Information

Consideration: \$0.00

Mortgage Amount

Transfer Tax: \$0.00

Basic Mtge. Tax:

RETT No: 02181

Special Mtge. Tax:

Additional Mtge. Tax:

State of New York  
Tioga County Clerk

Mortgage Serial No.:

This sheet constitutes the Clerk endorsement required by Section 316-A(5) & Section 319 of the Real Property Law of the State of New York. DO NOT DETACH

Tioga County Clerk



Record and Return to:

The Towne Law Offices, P.C.  
421 New Karner Rd  
PO Box 15072  
Albany, New York 12212-5072

## TRUSTEE'S DEED

*THIS INDENTURE*, is made the 31<sup>st</sup> day of May, 2005 between:

***PAUL A. LEVINE, ESQ.***, Chapter 11 Bankruptcy Trustee for Tioga Park, LLC, Chapter 11 Debtor-in Possession, duly appointed in the proceeding hereinafter mentioned, with offices for the transaction of business c/o Lemery Greisler, LLC, 50 Beaver Street, Albany, New York 12207 (the "Grantor"), to Tioga Downs Racetrack, LLC, herein referred to as the Grantee, with offices located at 421 New Karner Road, the City of Albany, County of Albany, State of New York, as assignee of Asolare II, LLC (the "Grantee").

*WITNESSETH*, that the Grantor, the Trustee Paul A. Levine, was appointed the Chapter 11 Trustee of the Bankrupt estate of Tioga Park, LLC by Order dated September 16, 2004 in the United States Bankruptcy Court, Northern District of New York, Case No.03-60072 entitled "In re: Hawkins Development, LLC", and a Chapter 11 Plan of Reorganization was confirmed by the Order of the Honorable Stephen D. Gerling, Chief United States Bankruptcy Court Judge dated June 1, 2004 and entered in the office of the United States Bankruptcy Court Clerk on June 2, 2004, a copy of which is annexed hereto and incorporated herewith, Tioga Park, LLC was duly authorized and empowered to sell the bankrupt's estate herein described to Tioga Downs Racetrack, LLC to satisfy the obligations of Tioga Park, LLC to Asolare II, LLC., and;

NOW, Paul A. Levine as Chapter 11 Trustee, Debtor-in-Possession, in order to carry into

effect the sale so made by it, as aforesaid, in the pursuance of and by virtue of the power and authority vested as aforesaid by the Order of the Court, by virtue of the foregoing and in consideration of the satisfaction of the obligation of Tioga Park, LLC to Asolare II, LLC, and in conformity to the statute in such case made and provided, grants and conveys to Grantee, and its' heirs and assigns forever, all the right title and interest which is vested as Trustee in Bankruptcy of Tioga Park, LLC, (case # 03-60078) the real property located in the Town of Nichols, County of Tioga, State of New York, which is more particularly bounded and described as follows:

ALL THAT PORTION of the former Erie Lackawanna Railroad property in the Town of Nichols, County of Tioga and State of New York conveyed to the Town of Nichols by deed dated May 13, 1982 and recorded May 28, 1982 in the Tioga County Clerk's Office in Book 398 of Deeds at page 130, which runs through and is adjacent to lands conveyed to the grantee on the north and south by Donald, Jill and James Nuckel by deed dated May 30, 1996 and recorded May 31, 1996 in the Tioga County Clerk's Office in Book 583 of Deeds at page 45. The property to be conveyed hereby is specifically bounded and described as follows:

COMMENCING at a ½" iron pin situate at a common point marking the intersection of the southeast corner of lands now or formerly of Arthur B. Frank, III and Candace Frank, (405 D 938); a southwest corner of lands of the grantee, Tioga Park, LLC (583 D 45); and the northwest corner of the lands conveyed hereby; THENCE S 76° 18' 15" E along the common boundary of the grantor on the south and the grantee on the north a distance of 759.69 feet to a point, which point marks the intersection of a southeast corner of grantees land and the northern boundary of the lands conveyed hereby; THENCE southerly at right angles to the first described course through the lands of the grantor 99± feet to the southern line of the grantors land which is also a northern boundary of the

grantees property (583 D 45); THENCE N 76° 18' 15" W along the common boundary of the grantor on the north and the grantee on the south a distance of 759± feet to a point; THENCE northerly at right angles to the last described course through the lands of the grantee a distance of 99± feet to the point or place of beginning. Containing by estimation .17 acres more or less.

The aforesaid parcel is depicted on a map attached hereto for information purposes as Exhibit "A". Being a portion of Town of Nichols tax map 158.00-1-61.00.

Being the same premises conveyed to Tioga Park, LLC by Deed dated December 23, 1996 from the Town of Nichols, which deed was recorded in the Tioga County Clerk's Office on the 29<sup>th</sup> day of January, 1997 in Liber 592 of Deeds at page 272.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises

This conveyance is made subject, however, thereto all real property tax liens as of this date unpaid.

IN WITNESS WHEREOF, the Grantor has duly executed this deed the day and year first above written.

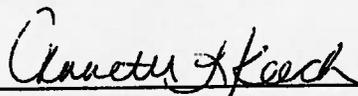
\_\_\_\_\_  
Witness



\_\_\_\_\_  
Paul A. Levine, Esq.,  
Chapter 11 Bankruptcy Trustee for  
Tioga Park, LLC

State of New York    )  
                                  ) ss.:  
County of Albany    )

On the 31<sup>st</sup> day of May, in the year 2005 before me, the undersigned, personally appeared **Paul A. Levine**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

ANNETTE L. KNOCH  
Notary Public, State of New York  
Qualified Albany County  
No. 1259  
Commission Expires 12/31/2007



FILED

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

2004 JUN 2 PM 1:59

In re:

**TIOGA PARK, LLC**

**RECEIVED**

Case No. 03-60076

CLERK OF THE  
BANKRUPTCY COURT  
N.D. OF N.Y.  
UTICA

Debtor

MAY 28 2004

OFFICE OF THE BANKRUPTCY JUDGE  
UTICA, NY

Case No. 03-60071

Case No. 03-60072

Case No. 03-60073

Case No. 03-60074

Case No. 03-60075

Case No. 03-60076

Case No. 03-60077

CLERK OF THE  
BANKRUPTCY COURT  
N.D. OF N.Y.  
UTICA

2004 MAY 28 PM 3:53

RECEIVED

RESERVE CAPITAL CORPORATION  
HAWKINS DEVELOPMENT LLC  
JAMES W. and LORI JO HAWKINS  
HAWKINS FAMILY, LLC  
HAWKINS MANUFACTURED HOUSING, INC.  
FOREST VIEW, INC.  
WOODED ESTATES, LLC

Jointly Administered Debtors

**ORDER APPROVING DISCLOSURE STATEMENT AND  
CONFIRMING JOINT CHAPTER 11 PLAN OF REORGANIZATION**

Debtor, TIOGA PARK, LLC, together with ASOLARE II, LLC and SOUTHERN TIER ACQUISITION, LLC, the Joint Proponents of the Joint Chapter 11 Plan of Reorganization dated and filed on March 10, 2004 and revised pursuant to Order entered May 17, 2004, a copy of which is attached hereto, incorporated herein, made a part hereof and referenced hereafter as "the Joint Plan", and said Joint Plan together with the Disclosure Statement dated March 5, 2004 and revised pursuant to Order entered May 17, 2004 having been transmitted to all of the known holders of claims or interests pursuant to Order entered May 17, 2004, AND the matter having come on for a combined hearing for the approval of Disclosure Statement and confirmation of the Joint Plan on the 27<sup>th</sup> day of May, 2004.

Debtor as Joint Plan Proponent having appeared by its attorney, Craig R. Fritsch, Esq. and its fiduciary, James W. Hawkins, Managing Member; Joint Plan Proponent and secured creditor Asolare II, LLC having appeared by its attorney, the Towne Law Offices, PC (James Towne, Esq. and Michael Rhodes-Devey, Esq., Of Counsel); Joint Plan Proponent Southern Tier Acquisition, LLC having

appeared by its attorney, E. Lisa Tang, Esq.; BSB Bank & Trust having appeared by its attorney, Myles Wren, Esq. of Nogi, Appleton, Weinberger & Wren, PC; the Office of the United States Trustee having appeared by Guy VanBaalen, Esq., Assistant US Trustee; each of the Jointly Administered Debtors having appeared by Craig R. Fritsch, Esq., their attorney and James W. Hawkins as debtor in possession or fiduciary of the jointly administered estates and there being no other appearances and no written opposition to the approval of the Disclosure Statement or the confirmation of the Joint Plan.

The Court having heard the arguments of counsel, the testimony of the Debtor and Joint Plan Proponents in support of confirmation, and having reviewed the Disclosure Statement and Plan as revised pursuant to Order entered May 17, 2004. There being no evidence in opposition thereto, and the Court having determined that the evidence proffered is credible and relevant with respect to the findings and conclusions herein, AND the Court having made the following findings upon the record of the hearing:

- BSB*
- a) That the Disclosure Statement dated March 5, 2004 and revised pursuant to Order entered May 17, 2004 contains adequate information with respect to the Joint Plan pursuant to Bankruptcy Code Section 1125;
  - b) That each class provided under the Joint Plan, and each holder of an allowed claim or interest is unimpaired by the terms of the Joint Plan within the meaning of Bankruptcy Code Section 1124, *as modified by the Order of 5/17/04*
  - c) That under the terms of the Joint Plan, the valuation of the Debtor and appraisal of Debtor's assets is not a material factor with respect to the confirmation of the Joint Plan;
  - d) That the terms of the Joint Plan have been proposed in good faith and not by any means forbidden by law.
  - e) That each of the requirements for confirmation as set forth in Bankruptcy Code Section 1129(a) has been met by the terms of the Joint Plan and by the Joint Plan Proponents;
  - f) That the terms of the Joint Plan, and the Joint Plan in its entirety, are fair and reasonable under the circumstances.

- g) Confirmation of the Joint Plan is in the best interest of the Debtor, the Estate, creditors and interested parties, and the confirmation of the Joint Plan is in conformance with the spirit and intent of the Bankruptcy Code.
- h) That the terms of the Joint Plan, and the provisions for plan implementation, are reasonably certain, feasible and capable of performance; it is

ORDERED, that the Joint Disclosure Statement dated March 10, 2004 and revised pursuant to Bankruptcy Court Order entered on May 17, 2004 be and the same hereby is approved pursuant to Bankruptcy Code Section 1125, and it is

ORDERED, that the Joint Plan dated March 10, 2004 and revised pursuant to Bankruptcy Court Ordered entered on May 17, 2004 the terms of which are incorporated herein, be and it hereby is confirmed in its entirety, including each and every term thereof, which confirmation shall be deemed effective upon the execution and entry of this Order, and it is

ORDERED, that the confirmation of the Joint Plan shall have the effect provided in accordance with Bankruptcy Code Section 1141, and the following Bankruptcy Code provisions:

- a) That subject to the payment in full of all allowed claims, all transfers of property pursuant to the terms of the confirmed Joint Plan shall be deemed and have the effect of a transfer of property, free and clear of liens, claims and encumbrances pursuant to Bankruptcy Code Section 363(b), and the Debtor is hereby authorized and directed to execute and deliver to Asolare II, LLC or the post-confirmation transferee as its assign, any documents in proper form for recording as necessary, desirable or required for the transfer of marketable title.
- b) That pursuant to Bankruptcy Code Section 365, all executory contracts shall be deemed rejected in accordance with the terms of the confirmed Joint Plan, and the rejection thereof shall be deemed approved by the Bankruptcy Court.
- c) That the determination of any claim or any dispute with respect to the allowance of any claim including administrative claims pursuant to Order of the Bankruptcy Court entered herein or

hereafter pursuant to Bankruptcy Code Section 501 et. seq. shall be deemed incorporated in and allowed hereunder for purposes of distribution under the terms of the Joint Plan.

d) That in addition to any other requirement for the entry of a Final Decree, and as a condition precedent to the transfer of any property by the Debtor or the Estate pursuant to the terms of the confirmed Joint Plan, the Joint Plan Proponents shall provide to the Court and the Office of the United States Trustee, proof of payment in full satisfaction of each allowed claim and in accordance with the terms of the confirmed Joint Plan which proof shall be in the form of an affidavit together with copies of each distribution check. That in the event any payment shall be returned or shall otherwise remain uncashed or undeliverable, the funds provided for such distribution shall remain in escrow, and shall be treated in accordance with the further order of this Court upon motion made by any party in interest including the Joint Plan Proponents, the United States Trustee, or any other party with standing.

e) That any of the agreements entered into by the Debtor as expressly referenced and incorporated in the Disclosure Statement and Joint Plan, and any agreement contemplated pursuant to the terms of the confirmed Joint Plan are hereby deemed authorized and approved, and it is

ORDERED, that unless the express terms of the confirmed Joint Plan, any Order entered herein or hereafter, or any agreement duly executed, authorized and approved in this case shall so require, the confirmation of the Joint Plan is without prejudice to any issue now or hereafter arising in any of the jointly administered cases, and it is

ORDERED, that the Joint Venturers, Southern Tier Acquisition, LLC and Asolare II, LLC shall be designated as disbursing agent in the place and stead of NEWCO until such time as the intended successor entity shall be organized and authorized to conduct business, and said Joint Venturers shall remain responsible, liable and obligated for the performance of the terms of the confirmed Plan, together

with the successor entity, until such time as the Court shall release said parties or enter Final Decree, upon full performance by said parties of the obligations as set forth in the confirmed Joint Plan, and it is

**ORDERED**, that the Debtor shall provide to the disbursing agent such information as may be requested and necessary for the distribution and implementation provided by the terms of the confirmed Joint Plan, and it is

**ORDERED**, that the Joint Plan Proponents shall make all payments to the United States Trustee pursuant to 28 USC 1930(a)(6) until entry of a Final Decree.

Dated: June 1st, 2004  
Utica, New York

  
\_\_\_\_\_  
HON. STEPHEN D. GERLING  
Chief United States Bankruptcy Court

**Option Agreement**

**[See Attached]**

## **LEASE OPTION AGREEMENT**

This Lease Option Agreement (the "Agreement") is made and entered into as of April 14, 2014 (the "Effective Date") by and between TIOGA RECREATION ASSOCIATION, INC., a New York State Not-for-Profit Corporation with an office at 151 Ro-Ki Boulevard, Nichols, New York 13812 ("Owner"), and TIOGA DOWNS RACETRACK, LLC, a New York State Limited Liability Company with an office at 2384 West River Road, Nichols, New York 13812 ("Optionee"). Owner and Optionee may be referred to herein individually as a "Party" or collectively as the "Parties."

### **RECITALS**

A. Owner is the owner of approximately 112.07 acres of improved real property located at 151 Ro-Ki Boulevard in the Town and Village of Nichols, County of Tioga, State of New York, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Parcels"), upon which Owner owns and operates a golf course and related facilities known as Tioga Country Club.

B. Optionee intends to submit an application to be licensed as a destination gaming resort pursuant to the Upstate NY Gaming Economic Development Act and, if it is awarded such a license as a destination gaming resort, Optionee desires to have the option to lease the Property (as hereinafter defined) for the purpose of operating a golf course and related facilities.

C. Optionee desires to acquire the right (but not the obligation) to lease the Property and Owner desires to grant Optionee an option to lease the Property on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of these premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

#### **1. GRANT OF OPTION.**

1.1 Definitions. As used herein, the term "Premises" includes (a) the Parcels; (b) all buildings and improvements located on the Premises; (c) all of Owner's easement rights and appurtenances thereto; and (d) all necessary easements and appurtenances in any adjoining and adjacent land, highways, roads, streets, lanes, whether public or private, and driveways and approaches to and from abutting highways for the use and benefit of the Premises. As used herein, the term "Property" includes: (i) the Premises; (ii) all furniture, fixtures, equipment and rolling stock owned or used in connection with the operation of Tioga Country Club, including, without limitation, operation of the golf course and existing clubhouse; and (iii) any entitlements, government approvals, permits and other intangible property associated with the Premises and/or Owner's operations at the Premises.

1.2 Option. Owner hereby unconditionally and irrevocably grants, bargains, sells and conveys to Optionee the exclusive right and option (the "Option") to lease the Property

in accordance with the terms and conditions of a Ground Lease to be entered into between the Parties upon Optionee's exercise of the Option, substantially in the form attached hereto as Exhibit B (the "Lease").

1.3 Memorandum of Option. Concurrently with the execution of this Agreement, the Parties shall execute a short form or memorandum of the Option and shall record such short form or memorandum of the Option in the office of the County Clerk of Tioga County, New York. Optionee shall pay all fees associated with the recording of such short form or memorandum of the Option.

2. TERM OF OPTION.

2.1 Option Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of twelve (12) months (the "Option Term"), unless extended or earlier terminated pursuant to the terms hereof.

2.2 Extension of Option Term. Optionee shall have the right to extend the Term (as hereinafter defined) for additional successive twelve (12) month terms (each an "Extended Term"), subject to the limitations set forth below, by, at any time prior to the expiration of the Option Term or the then current Extended Term, providing the Owner with: (a) written notice of its intention to extend the Term; and (b) payment of the Extension Payment set forth in Section 3 below. The Option Term and any and all Extended Terms may be collectively referred to herein as the "Term". Optionee's right to extend the Term for additional Extended Terms shall terminate one hundred twenty (120) days after all four (4) destination gaming resort licenses contemplated by the Upstate NY Gaming Economic Development Act have been finally awarded pursuant to final, nonappealable decision(s), order(s), or judgment(s) of the applicable commission, agency, board, or committee, or, if and as applicable, of a court of competent jurisdiction, and all four (4) such licenses are in place with finality from which no appeal has or can be taken. Without limiting the foregoing, it is the intention of the Parties that the Optionee's right to extend the Term for additional Extended Terms continue until Optionee knows, with finality and certainty, whether or not it has been awarded a license as a destination gaming resort and for a period of one hundred twenty (120) days thereafter. Notwithstanding anything herein to the contrary, the Term of the Option granted herein shall not, under any circumstances, extend for a period longer than twenty-one (21) years after the Effective Date hereof.

3. CONSIDERATION FOR OPTION. In consideration of the Option granted herein, Optionee shall pay to Owner the sum of [REDACTED] (the "Option Payment"), which Option Payment shall be paid to Owner within thirty (30) days of the Effective Date. If Optionee elects to extend the Term pursuant to Section 2.2 above, Optionee shall also pay to Owner the sum of [REDACTED] for each Extended Term (the "Extension Payment(s)"), which shall be paid in accordance with Section 2.2 of this Agreement. Notwithstanding anything herein to the contrary, the Extension Payment for each Extended Term after the fifth anniversary of the Effective Date shall increase by [REDACTED]. [REDACTED]. Once paid to Owner in accordance with this Agreement, the Option Payment and any and all Extension Payment(s) (collectively,

the "Option Consideration") shall be considered non-refundable to Optionee except as otherwise provided in Section 7 herein.

4. EXERCISE OF OPTION.

4.1 Exercise Notice. Optionee may exercise the Option (if at all) at any time during the Term by delivering a written notice to Owner (the "Option Notice") of Optionee's intent to exercise the Option and the date upon which Optionee desires to exercise the Option (the "Exercise Date"), which Exercise Date shall be at least one hundred twenty (120) days following the date of the Option Notice. Upon the Owner's receipt of the Option Notice the Owner shall take any and all necessary steps to obtain and/or provide any and all approvals or notices necessary for the Lease (including, without limitation, Supreme Court approval and Attorney General notice as may be required by the New York State Not-for-Profit Corporation Law) and to cause the Lease and any related agreements (including, without limitation, a short form or memorandum of the Lease) to be executed and delivered to Optionee on or before the Exercise Date. Optionee shall likewise take any and all necessary steps to cause the Lease and any related agreements to be executed and delivered to Owner on or before the Exercise Date. Optionee agrees to pay Owner's reasonable expenses, including reasonable attorney's fees associated with Optionee's exercise of the Option, which expenses shall not exceed [REDACTED]

4.2 Failure to Exercise. Owner expressly acknowledges that Optionee may decline to exercise the Option for any or no reason as Optionee deems appropriate. If Optionee fails to exercise the Option by the expiration of the Term: (a) Owner shall have no obligation to refund the Option Consideration to Optionee; (b) Optionee shall promptly deliver to Owner any documentation reasonably requested by Owner to evidence termination of this Agreement; (c) this Agreement shall immediately terminate without further action of the Parties; and (d) the Parties shall have no further obligations to each other except as otherwise specifically provided in this Agreement. This Section 4.2 is not intended to and does not in any way limit or affect any of the rights or remedies available to any Party in the event the other Party defaults in the due and timely performance of any of its obligations under this Agreement.

5. REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants to Optionee as follows:

5.1 Representations and Warranties in Lease. All representations and warranties of Owner set forth in the Lease are expressly incorporated herein in their entirety; provided that (a) where applicable, references therein to the Lease shall, for purposes of this Agreement, instead be deemed to be references to this Agreement; and (b) references therein to the leased assets shall, for purposes of this Agreement, instead be deemed to be references to the Property.

5.2 Exclusivity. No person or entity other than Optionee holds or will hold any option or other right to lease or purchase all or any part of any of the Property or any interest in the Property.

5.3 Description of Parcels. The real property described on Exhibit A and herein defined as the Parcels contains the entirety of the real property owned and/or utilized in connection with Tioga Country Club and includes multiple points of direct access to Tioga Country Club from public roads. Owner possesses fee title to those portions of the Parcels connecting Tioga Country Club to public roads.

5.4 Timing. All representations and warranties of Owner set forth in this Agreement are true and correct on and as of the Effective Date, shall remain true and correct throughout the duration of the Term and shall be true and correct on and as of the Exercise Date with the same force and effect as though such representations and warranties had been made on and as of the Exercise Date.

5.5 Inaccuracies. In the event that Owner becomes aware of facts or circumstances after the Effective Date that might result in any of Owner's representations or warranties set forth herein not being true at any time prior to the Exercise Date, Owner shall give prompt written notice to Optionee of such facts or circumstances.

## 6. COVENANTS AND OTHER AGREEMENTS.

6.1 Due Diligence Investigation. Optionee shall have the right, at any time and from time to time during the Term, to make due diligence investigations of the Property, including, but not limited to, title investigations, environmental assessments and physical inspections of the Property. Owner agrees to provide Optionee with abstracts of title for the Premises and any and all documentation in Owner's possession or control that Optionee may reasonably request regarding the Premises, including, without limitation, title evidence, title policies and surveys. Owner shall also provide Optionee with tax lien, judgment and UCC searches; evidence of payment of taxes; any environmental reports, notices, permits or other related information; and any other information that Optionee may reasonably request in connection with Optionee's due diligence investigation of the Property. Without limiting the foregoing, Optionee's right to perform due diligence investigations shall include the right to order a survey of the Premises and to perform Phase I, Phase II, or any other environmental investigations with respect to the Premises. If Optionee's due diligence investigations disclose any fact or circumstance that might result in any of Owner's representations or warranties set forth herein not being true, Owner shall take any and all necessary action to remedy such matters.

6.2 Access. Owner agrees that Optionee and its contractors, subcontractors, and their employees (collectively the "Representatives") shall have the right to enter upon the Premises at any time during the Term of this Agreement, upon reasonable notice and at reasonable times, to make such inspections, examinations and measurements of, or with respect to, the Premises as Optionee may desire. Owner shall also permit Optionee and its Representatives to have reasonable access at reasonable times, and in a manner so as not to interfere with the normal business operations of Owner, to all books, records and documents of or pertaining to the Property.

6.3 Confidentiality. Optionee will treat and hold as confidential any information it receives from Owner in the course of the reviews contemplated by this Section 6

that was not known to Optionee prior to the Effective Date and is not and does not become generally available in the public domain (the "Confidential Information"). Optionee will not use any of the Confidential Information except in connection with this Agreement and the Lease; provided, however, that Optionee may disclose Confidential Information in response to a valid order by a court or other governmental body, as otherwise required by law, or as necessary to establish the rights of Optionee under this Agreement. If reasonably possible, Optionee shall give Owner notice of any such disclosure of Confidential Information prior to such disclosure.

6.4 Conduct of Business. From the Effective Date and throughout the term of this Agreement, Owner shall not take any action that would materially and adversely affect the Property or make the representations and warranties of Owner set forth herein untrue. During the Term of this Agreement, Owner shall carry on the operation of Tioga Country Club in the ordinary course in substantially the same manner as conducted on the Effective Date. Without limiting the foregoing, Owner agrees that, during the Term of this Agreement, Owner shall operate Tioga Country Club within budget and shall not spend money in excess of the operating revenues of Tioga Country Club or existing capital funds of Owner. During the Term of this Agreement, [REDACTED] and (b) all real property taxes.

6.5 No Encumbrances. Owner shall not take any action during the Term that will encumber the Premises or any of the Property in any way (whether via lien, easement, tenancy, restriction, right of access, or otherwise) or will cause the Premises or any of the Property to be or become subject to any lien, encumbrance, easement, tenancy, right of access, or restriction. Owner acknowledges that this prohibition shall include, without limitation, any sale, lease, exchange, or conveyance of rights of any kind (including mineral, oil and/or gas rights) to the extent that such sale, lease exchange, or conveyance of rights involves, permits, causes or otherwise entails any lien, encumbrance, easement, tenancy, right of access, or restriction or could, in any way, affect Optionee's use and enjoyment of any of the Property upon Optionee's exercise of the Option granted herein. Without limiting the foregoing, Owner shall not and shall not permit any other party to: (i) perform or conduct any oil or gas related operations or activities of any kind on the surface of the Premises; (ii) enter upon or disturb any part of the surface of the Premises at any time for any reason related to subsurface rights; or (iii) drill a well, or construct, build, install, place or situate any pad, site, road, facility, or equipment of any type or nature on any part of the surface of the Premises.

6.6 Compliance With Laws. Owner shall not, and shall not allow any officers, directors, employees, agents, affiliates or any other third party to, engage in any transactions or situations or maintain any conditions or activities which would result in a violation of New York gaming regulations, liquor regulations or any other regulations which govern Optionee or that could, during the Term or at any time in the future, cause Optionee to lose its gaming, liquor or other license or which would result in Optionee being assessed penalties under any such license.

6.7 Insurance. During the Term, Owner shall, at its own expense, insure and keep insured the buildings and improvements on the Parcels against loss or damage by means of

all-risk insurance from a responsible insurance company licensed in New York State. Owner shall also maintain and keep in force Comprehensive General Liability insurance, on an occurrence basis, insuring against claims for personal injury, death or property damage occurring in, on or about the Premises with a combined single limit of not less than [REDACTED] for Bodily Injury, Death and Property Damage Liability. Owner shall deliver to Optionee, upon request, a certificate of insurance and of any renewals from time to time during the Term.

7. DEFAULT BY OWNER. In the event Owner refuses to consummate the transactions contemplated by this Agreement or in the case of any other default or breach by Owner hereunder, including, without limitation, a failure by Owner to have and demonstrate good and marketable title to the Premises and the Property, free and clear of all liens, encumbrances, easements, tenancies and restrictions other than the Community Bank Mortgage, Optionee shall give Owner written notice of such default or breach and shall provide Owner with thirty (30) days to cure the default or breach. If Owner fails to cure the default or breach within such thirty (30) day period, Optionee shall be entitled to reimbursement of the Option Consideration and, in addition to reimbursement of the Option Consideration, Optionee shall be entitled to pursue any and all other rights and remedies available to Optionee in law and in equity. Owner (a) acknowledges that its failure to comply with any covenant in this Agreement may cause irreparable harm and that a remedy at law for such failure would be an inadequate remedy for Optionee, and (b) consents to Optionee seeking from a court having jurisdiction specific performance, an injunction, a restraining order or any other equitable relief in order to enforce any such compliance without the necessity of proof of actual damages or the posting of a bond. Without limiting or affecting Owner's obligation to refund the Option Consideration and cure any default or breach pursuant to this Section 7, Owner's maximum liability under this Agreement for additional monetary damages over and above the Option Consideration and any costs associated with curing a default or breach shall not exceed [REDACTED]

8. MISCELLANEOUS.

8.1. Entire Agreement. This Agreement (including the exhibits hereto) contains the entire agreement among the Parties with respect to the Option and related transactions and supersedes all prior agreements, written or oral, with respect thereto.

8.2. Severability. In the event that any provision of this Agreement, or the applicability of any such provision to any persons or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

8.3. Successors and Assigns. The terms, conditions and covenants of this Agreement shall be binding upon and shall inure to the benefit of each of the Parties, their heirs, personal representatives, successors or assigns, and shall run with the land. Optionee may assign this Agreement or any of its rights, interests, or obligations hereunder at any time (a) to an

affiliate of Optionee without the consent of Owner; or (b) to any third party with the prior written consent of Owner, which consent shall not be unreasonably withheld.

8.4 Waivers and Amendments. No waivers, alterations or modifications of this Agreement shall be valid unless in writing duly executed by both Parties.

8.5. Construction. The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs of this Agreement or in any way affect this Agreement. Any gender used shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular. The term "person" as used herein means an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof).

8.6 Waiver of Jury Trial. Owner and Optionee agree to waive any right to have a trial by jury with respect to any lawsuit based on, or arising under, this Agreement or any course of conduct, course of dealing, statements or actions of Owner or Optionee in connection with this Agreement.

8.7. Governing Law/Venue. This Agreement shall be construed in accordance with the laws of the State of New York, without regard to principles of conflict of laws. Any and all disputes, controversies, actions or suits arising out of or relating to this Agreement or the interpretation, performance, breach, validity or enforcement thereof shall have their exclusive venue and jurisdiction in a state or federal court of competent jurisdiction located in Tioga County, New York. The Parties hereby irrevocably submit to the jurisdiction of such courts.

8.8 Notice. Any notice, demand or communication required or permitted to be given by any provision of this Agreement be upon the other party, such notice, demand or communication shall be in writing signed by the party serving notice and shall be served in person or sent by nationally recognized overnight carrier or registered or certified United States mail, return receipt requested and postage or other charges prepaid.

If intended for Owner, the notice shall be addressed to:

Tioga Recreation Association, Inc.  
151 Ro-Ki Boulevard  
Nichols, New York 13812  
Attention: President

If intended for Optionee, the notice shall be addressed to :

Tioga Downs Racetrack, LLC  
2384 West River Road  
Nichols, New York 13812  
Attention: President and COO

With a copy to:

Newmark Grubb Knight Frank  
125 Park Ave.  
New York, New York 10017  
Attention: Jeff Gural

or such other address as either Party may have furnished to the other in writing as a place for the service of notice.

8.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

8.10 Further Assurances. At any time after the Effective Date, Each of the Parties shall execute such documents and other papers and perform such further acts as may be reasonably required or desirable to carry out the provisions of this Agreement and the transactions contemplated by this Agreement.

**[Signature Page Follows]**



**EXHIBIT A**  
**Legal Description**

**PARCEL I**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Nichols, County of Tioga and State of New York, commencing at a point in the easterly line of Johnson Street at the southwesterly corner of lands now or formerly of Ockerman and running thence South  $74^{\circ} 35'$  East eighty-one (81) feet; thence South  $15^{\circ} 25'$  West three hundred thirty-nine (339) feet to an iron pin; thence North  $86^{\circ} 15'$  West twenty (20) feet; thence North  $11^{\circ}$  East two hundred fifteen (215) feet; thence North  $79^{\circ}$  West thirty (30) feet; thence North  $11^{\circ}$  East one hundred twenty-five (125) feet to the place of beginning, containing 0.42 acres of land, more or less. Being the same premises conveyed to Tioga Recreation Association, Inc. by Deed recorded in the Tioga County Clerk's Office on October 27, 1965, in Book 323 of Deeds at Page 211.

**PARCEL II**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Nichols, County of Tioga and State of New York, bounded and described as follows: Beginning in the center of the highway now or formerly known as the DeBolder Road at the southwest corner of lands conveyed to Francis Baxter and Lotie M. Baxter by Harvey E. Keener by deed recorded in Tioga County Clerk's Office March 14, 1947 in Book 240 of Deeds at Page 521, and running thence North  $7^{\circ} 45'$  East nine hundred fifty-eight (958) feet to the place of beginning; thence continuing on a course North  $7^{\circ} 45'$  East a distance of one thousand sixty (1,060) feet to an iron pin; thence South  $73^{\circ} 15'$  East four hundred forty-five (445) feet to an iron pin; thence South  $7^{\circ} 45'$  West seven hundred sixty (760) feet to an iron pin; thence South  $69^{\circ} 30'$  West five hundred eight (508) feet to the place of beginning. Being the same premises conveyed to Tioga Recreation Association, Inc. by Deed recorded in the Tioga County Clerk's Office on October 27, 1965, in Book 323 of Deeds at Page 213.

**PARCEL III**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town and Village of Nichols, County of Tioga and State of New York, bounded and described as follows: Commencing at a point on the easterly side of Johnson Street at the southwest corner of lands now or formerly owned by Douglas Jones which point is  $235\pm$  feet southerly from the southerly line of River Street; thence South  $66^{\circ} 45'$  East 157.5 feet to a point; thence North  $11^{\circ} 35'$  East 44 feet to a point; thence North  $27^{\circ} 55'$  East 147.5 feet to a point in the southerly line of River Street; thence South  $58^{\circ} 20'$  East 50 feet to a point; thence South  $14^{\circ} 25'$  West 258 feet to a point; thence South  $77^{\circ}$  East 100 feet to a point; thence South  $7^{\circ} 25'$  West 63.5 feet to a point; thence South  $73^{\circ} 05'$  East 393.8 feet to a point; thence South  $13^{\circ} 15'$  West 124 feet to a point; thence South  $87^{\circ} 25'$  East 61.6 feet to a point; thence South  $5^{\circ} 20'$  West 88 feet to a point; thence in a northeasterly direction by the small brook or ravine  $190\pm$  feet to the southwesterly corner of lands now or formerly owned by Leonard A. Stradley; thence South  $69^{\circ} 45'$  East 200 feet to a point; thence South  $7^{\circ} 45'$  West 160 feet to a point; thence South  $72^{\circ} 15'$  East 120 feet to a

point; thence South 7° 45' West 224± feet to the southwest corner of lands now or formerly owned by Jesse L. Barton; thence South 81° 30' East 178 feet to a point in the westerly line of Bliven Street; thence South 7° East along the westerly line of Bliven Street 57± feet to the northeast corner of lands now or formerly owned by Charles Thetga; thence North 81° 30' West 178 feet along lands now or formerly of Charles Thetga to the northwest corner of said lands, thence South 7° 45' West 2,159 feet to a point; thence South 66° 45' West 528 feet to a point; thence North 7° 45' East 925 feet to a point; thence North 73° 15' West 445 feet to a point; thence South 7° 45' West 2,018 feet to a point in the center line of the Township Road; thence South 88° 45' West along the center line of said highway 100.6 feet to a point; thence North 7° 45' East 640 feet to a point; thence North 84° 30' West 529 feet to a point; thence North 7° 45' East 3,044 feet to a point; thence North 13° East 179 feet to a point; thence South 68° 15' East 307.7 feet to a point; thence North 15° 25' East 425 feet to a point; thence South 75° 45' East 37.5 feet to a point; thence North 14° 25' East 65.5 feet to a point; thence North 25° 30' East 74 feet to a point; thence North 70° West 135 feet to a point; thence North 14° 15' East along the easterly bounds of Johnson Street 88 feet to the place of beginning.

Excepting and reserving therefrom that parcel of land which was conveyed by a Deed recorded in Tioga County Clerk's Office April 23, 1906, in Book 147 of Deeds at Page 299, and all rights of way and easements of record.

ALSO excepting and reserving therefrom, a parcel conveyed to Deming by Deed recorded in the Tioga County Clerk's Office July 14, 1958, in Book 277 of Deeds at Page 597, and therein described as follows: Commencing at an iron pin set at the southwest corner of lands of Tioga Recreation Association, Inc., which point is S. 14° 25' W. two hundred fifty-eight (258) feet from the southerly line of River Street and also S. 70° E. two hundred thirty-five (235) feet from the easterly line of Johnson Street; running thence N. 14° 25' E. one hundred twenty-nine (129) feet to a point; thence southerly to a point ten (10) feet west of the place of beginning; thence S. 70° E. ten (10) feet to the place of beginning.

ALSO excepting and reserving therefrom a parcel conveyed to Humphreys by deed recorded in Tioga County Clerk's Office July 14, 1958, in Book 277 of Deeds at Page 600, and therein described as follows: Commencing on the southerly line of River Street in said Village of Nichols at an iron pin set at the northeast corner of lands now or formerly of R. Sexton; running thence S. 27° 55' W. one hundred forty-seven and five-tenths (147.5) feet to an iron pin; thence S. 11° 35' W. forty-four (44) feet to an iron pin; thence easterly eighty-four (84) feet to the westerly line of lands conveyed by JHIM Corporation to Herbert Deming and Isabel Deming; thence northerly along said line and along the easterly line of lands conveyed by Herbert W. Deming and Isabel Deming to JHIM Corporation, to the southerly line of River Street; thence westerly along the southerly line of River Street sixty (60) feet to the place of beginning.

ALSO excepting and reserving therefrom a parcel conveyed to Middleton by Deed recorded in Tioga County Clerk's Office April 1, 1952, in Book 204 of Deeds at Page 165, and therein described as follows: Commencing at a point on the easterly side of Johnson Street at the southwest corner of lands now or formerly owned by Douglas Jones, which point is 235± feet southerly from the southerly line of River Street; thence South 66° 45' East 231.5 feet to a point; thence South 14° 25' West 73 feet to a point; thence North 70° West 217 feet to a point on the

easterly line of Johnson Street; thence North 14° 15' East along the easterly side of Johnson Street 88 feet to the place of beginning.

ALSO excepting and reserving a parcel conveyed to Stradley by Deed recorded in Tioga County Clerk's Office July 7, 1965, in Book 321 of Deeds at Page 764, and therein described as follows: Beginning at an iron pin located in the southerly boundary of River Street at the northwest corner of lands now or formerly owned by Chester Deming; thence S. 7° 45' W. 190 feet to the place of beginning; thence continuing on the same course 160 feet to an iron pin; thence N. 70° W. 331 feet to an iron pin; thence in a northeasterly direction along the center of the course of a small creek 176± feet to the southeast corner of lands of Leonard Stradley; thence S. 69° 45' E. 219 feet to the place of beginning.

ALSO excepting and reserving a parcel conveyed to Deming by Deed recorded in Tioga County Clerk's Office July 7, 1965, in Book 321 of Deeds at Page 766, and therein described as follows: Commencing at a point 135 feet east of Johnson Street at the northeast corner of premises owned by Tioga Recreation Association, Inc. and running thence S. 70° E. 100 feet to an iron pin; running thence S. 14° 25' W. 65 feet; running thence N. 76° 15' W. 87± feet to the southeast corner of premises owned by Tioga Recreation Association, Inc.; and running thence N. 25° 30' W. along the easterly line of premises of Tioga Recreation Association, Inc. 74± feet to the place of beginning.

Also all right, title and interest of Tioga Recreation Association, Inc. in and to part of a strip of land bounded and described as follows: Commencing in the center of the highway leading from Nichols to Windham Summit and running thence westerly along the southerly line of premises owned by the Nichols Water Company 407± feet to an iron pin; thence southerly 20± feet; thence easterly parallel with the first course herein and 20± feet distant therefrom to the center of the highway; thence northerly along the center line of said highway to the place of beginning.

Being the same premises conveyed to Tioga Recreation Association, Inc. by Deed recorded in the Tioga County Clerk's Office on October 27, 1965, in Book 323 of Deeds at Page 215.

#### **PARCEL IV**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Nichols, County of Tioga and State of New York, commencing at a point in the center of the highway leading from Windham Summit Road to the Sacketts Creek Road at the southwest corner of lands formerly owned by Scott W. Johnson and running thence South 87° 15' West 351 feet along the center of said highway; thence North 7° 45' East 234 feet to a point; thence South 88° 45' West 179 feet to a point; thence North 7° 45' East 486 feet to an iron pin; thence South 84° 30' East 529 feet to an iron pin; thence South 7° 45' West 640 feet to the place of beginning. Being the same premises conveyed to Tioga Recreation Association, Inc. by Deed recorded in the Tioga County Clerk's Office on October 27, 1965, in Book 323 of Deeds at Page 218.

Parcels I, II, III and IV are more fully described as follows: ALL THAT TRACT OR PARCEL OF LAND, situate in the Village and Town of Nichols, County of Tioga, and State of New York, bounded and described as follows: Commencing at a point in the westerly line of premises now or formerly owned and occupied by John H. Middleton and running thence South 68 degrees and 15 minutes East a distance of 287.7 feet to a point; thence North 11 degrees East a distance of 215 feet to a point; thence North 79 degrees West a distance of 30 feet to a point; thence North 11 degrees East a distance of 125 feet to a point; thence South 74 degrees and 35 minutes East a distance of 81 feet to a point; thence North 15 degrees 25 minutes East a distance of 84 feet to a point; thence South 75 degrees and 45 minutes East a distance of 37.5 feet to a point; thence North 14 degrees and 25 minutes East a distance of 65.5 feet to a point; thence South 76 degrees and 15 minutes East a distance of 84 feet to a point; thence North 14 degrees and 25 minutes East a distance of 62.5 feet to a point; thence South 77 degrees East a distance of 100 feet to a point; thence South 7 degrees and 25 minutes West a distance of 63.5 feet to a point; thence South 73 degrees and 05 minutes East a distance of 393.8 feet to a point; thence South 13 degrees and 15 minutes West a distance of 124 feet to a point; thence South 87 degrees and 25 minutes East a distance of 61.6 feet to a point; thence South 5 degrees and 20 minutes West a distance of 98 feet to a point; thence South 70 degrees East a distance of 331 feet to a point; thence South 82 degrees and 15 minutes East a distance of 120 feet to a point; thence South 7 degrees and 45 minutes West a distance of 2,085 feet crossing a ten foot right of way of the Nichols Water Company to a point; thence South 83 degrees East a distance of 407.7 feet to a point; thence South 37 degrees West a distance of 23 feet to a point; thence North 83 degrees West a distance of 398 feet to a point; thence South 7 degrees and 45 minutes West a distance of 335 feet to a point; thence South 66 degrees and 45 minutes West a distance of 528 feet to a point; thence North 7 degrees and 45 minutes West a distance of 165 feet to a point; thence South 69 degrees and 30 minutes West a distance of 508 feet to a point; thence South 7 degrees and 45 minutes West a distance of 775 feet to a point; thence South 86 degrees and 45 minutes West a distance of 450 feet to a point; thence South 88 degrees and 45 minutes West a distance of 179 feet to a point; thence North 7 degrees and 45 minutes East a distance of 3,530 feet to a point; thence North 13 degrees East a distance of 179 feet to the point or place of beginning, containing 118.97 acres of land.

SUBJECT to the rights of the Nichols Water Company in a water reservoir and a ten foot right of way in the southeasterly portion of the land described above, as shown on a map prepared by George K. Jones, Licensed Land Surveyor, under date of June 16, 1965.

EXCEPTING AND RESERVING from the above-described premises, ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Nichols, County of Tioga and State of New York, bounded and described as follows:

BEGINNING at a point in the centerline of DeBolder Road which lies 140 feet westerly from its intersection with the centerline of RoKi Boulevard; thence N.  $89^{\circ} 27' 43''$  W. 139.43 feet along the centerline of DeBolder Road to a point; thence S.  $87^{\circ} 59' 29''$  W. 237.66 feet along the centerline of DeBolder Road to a point; thence S.  $82^{\circ} 46' 32''$  W. 75.29 feet along the centerline of DeBolder Road to a point; thence N.  $6^{\circ} 53' 21''$  E. 238.62 feet to a  $3/4$ " rebar set with a cap at the former location of a corner post and stones and an iron bolt; thence S.  $81^{\circ} 06' 12''$  E. 84.74 feet through lands of Tioga Recreation Association, Inc. to a  $3/4$ " rebar set with a cap; thence N.  $66^{\circ} 25' 10''$  E. 433.55 feet through lands of Tioga Recreation Association, Inc. to a  $3/4$ " rebar set

with a cap; thence S. 8° 40' 17" W. passing through a 3/4" rebar set with a cap at 360.14 feet, a total distance of 385.14 feet to the point of beginning. CONTAINING 2.939 acres of land as shown as Parcel I and Parcel 2 on a map by Scott E. Edsall, L.S., No. 49784, dated May 29, 2003, Job No. 2003-045.

The properties described herein are intended to cover and include all of Town of Nichols Tax Map No. 170.00-1-6.10 and all of Village of Nichols Tax Map No. 159.18-2-2.

**EXHIBIT B**  
**Ground Lease**

**See attached.**

## GROUND LEASE

**THIS GROUND LEASE** ("Lease") is dated \_\_\_\_\_ between **TIOGA RECREATION ASSOCIATION, INC.**, a New York not-for-profit corporation with its principal offices at 151 Ro-Ki Boulevard, Nichols, New York 13812 ("Landlord"), and **TIOGA DOWNS RACETRACK, LLC**, a New York limited liability company with an office at 2384 West River Road, Nichols, New York 13812 ("Tenant").

**1. PREMISES:** Landlord, for and in consideration of the covenants contained in this Lease and made on the part of Tenant, demises and leases unto Tenant, and Tenant leases from Landlord (i) the parcel of land located at 151 Ro-Ki Boulevard in the Town of Nichols and in part in the Village of Nichols, County of Tioga, State of New York, containing approximately 112.07 acres of land and shown on the Tioga County Tax Maps as Town of Nichols parcels 170.00-1-6.1 and 159.18-2-2, being more particularly described on Exhibit A (the "Leased Parcels"), together with all of Landlord's easement rights and appurtenances thereto, all buildings and improvements now located on the Leased Parcels, and all necessary easements and appurtenances in any adjoining and adjacent land, highways, roads, streets, lanes, whether public or private, and driveways and approaches to and from abutting highways, for the use and benefit of the Leased Parcels, including the improvements to be erected on the Leased Parcels (the Leased Parcels, together with the easements, appurtenances, buildings and improvements described above are collectively referred to as the "Premises"), (ii) all of the Landlord's furniture, fixtures, equipment and rolling stock owned or used in connection with operation of Tioga Country Club, including without limitation operation of the golf course and existing clubhouse, as of the commencement of this Lease, and (iii) any entitlements, government approvals, permits and other intangible property associated with the Premises and/or Landlord's operations at the Premises.

### **2. LEASE TERM:**

A. Tenant shall have and hold the Premises for a term (the "Term") commencing on the date of this Lease and ending 99 years from that date, unless earlier terminated pursuant to the terms of this Lease. Notwithstanding any other provision of this Lease, Tenant may terminate this Lease as of November 15 of any calendar year upon not less than ninety (90) days notice to Landlord; provided, however, that if Tenant terminates this Lease after it has torn down the existing clubhouse but before it has completed construction of a new clubhouse in accordance with Section 3.G., Tenant shall complete construction of the new clubhouse notwithstanding the termination of the Lease.

B. If Tenant shall fail to promptly keep and perform any significant covenant of this Lease in a material way and shall continue in default (without commencing to eliminate the cause of such default and proceeding diligently and with reasonable dispatch) for a period of 180 days after written notice by Landlord of default and demand for performance, then Landlord may declare the Term ended and enter into the Premises, expel Tenant from the Premises and repossess and enjoy the Premises as in Landlord's former estate, in which event Tenant shall thereafter have no further responsibility to Landlord under this Lease.

**3. TENANT'S COVENANTS:** Tenant, in consideration of this Lease and the promises made by Landlord herein, covenants and agrees as follows:

A. **Expenses of Operation:** Tenant shall pay all costs, expenses and charges of every kind and nature directly relating to the Premises that may be attributed to operation of the Premises during the term of this Lease, including, without limitation, purchase or lease of any

new or replacement furniture, fixtures, equipment and rolling stock for use in connection with the operation of the Premises. It is the contemplation of the parties that Landlord's existing furniture, fixtures, equipment and rolling stock, which are being leased hereunder, will be replaced and supplemented, as necessary when those wear out, by assets acquired and owned by Tenant. Landlord acknowledges and agrees that Tenant, in its discretion, may discard or otherwise dispose of Landlord's existing furniture, fixtures, equipment and rolling stock when those wear out or are replaced by Tenant without any obligation to Landlord with respect to same.

**B. Taxes:** Except as provided below, [REDACTED] at any time during the term of this Lease, upon or against the Premises, including the land and all buildings, furniture, fixtures, equipment and improvements now or later located on the Leased Parcels, lawfully assessed either in the name of Landlord or Tenant. Tenant's obligation to pay taxes shall commence on the date of this Lease. A prorata adjustment shall be made with respect to the commencement and ending of Tenant's tax liability if the commencement or ending of Tenant's liability does not coincide with the tax year. Tenant shall have the right, in its own name or in the name of Landlord, to make and prosecute applications for abatement of taxes or appeals for correction of assessments, and Landlord agrees to cooperate fully with Tenant in this regard. Landlord agrees to sign all necessary instruments in connection with such application or appeal and, in addition, appoints Tenant its attorney-in-fact for purposes of such signature, which shall be an agency coupled with an interest. Landlord shall not settle any such application or appeal without Tenant's prior written approval in each instance. Notwithstanding anything contained in this Lease, Tenant shall not be obligated to pay any part of any franchise, excise, estate, inheritance, income or similar tax which is or may become payable by Landlord or which may be imposed against Landlord or against the payments made under the Lease or upon the income or profits of Landlord by reason of any law now in force or later enacted.

**C. Insurance:** Tenant shall, at its own expense, insure and keep insured the buildings and improvements on the Leased Parcels against loss or damage by means of all-risk insurance from a responsible insurance company licensed in New York State. Subject to the terms of this Lease, such insurance proceeds shall be made payable to Tenant in case of loss. Tenant shall also maintain and keep in force Comprehensive General Liability insurance, on an occurrence basis, insuring against claims for personal injury, death or property damage occurring in, on or about the Premises with a combined single limit of not less than \$1,000,000.00 for Bodily Injury, Death and Property Damage Liability. Tenant shall deliver to Landlord, upon request, a certificate of insurance and of any renewals from time to time during the term of this Lease and Landlord shall be named an additional insured on such Comprehensive General Liability insurance policy. Notwithstanding any provision in the Lease to the contrary, Tenant may self-insure for all of the insurance coverages required in this Lease to the extent that it is not prohibited by law from doing so.

**D. Repairs:** Tenant shall keep the Premises in a safe and good condition and repair, subject to ordinary wear and tear. Any dispute or claim arising under this Section 3.D. regarding an alleged failure by Tenant to keep the Premises in safe and good condition and repair will be resolved by arbitration in Tioga County, New York before a single arbitrator mutually appointed by Landlord and Tenant. If Landlord and Tenant fail to mutually appoint a single arbitrator, the matter shall be submitted to and determined by a panel of three (3) arbitrators with each party selecting one arbitrator and those arbitrators selecting a third arbitrator. Each arbitrator selected or appointed pursuant to this Section shall be a person who has served as a golf course superintendent for at least five (5) years or has similar skills and experience. The parties shall use the Commercial Rules of the American Arbitration Association. The costs of arbitration (including but not limited to reasonable attorneys' fees) shall be determined by the

arbitrator(s). The decision of the arbitrator(s) shall be final and binding on the parties and, if the arbitrator(s) determine that Tenant has failed to keep the Premises in safe and good condition and repair, the issuance of the arbitrator(s)' decision will qualify as notice by Landlord of a default and demand for performance pursuant to Section 2.B of this Lease and Tenant will be obligated to take any corrective actions identified by the arbitrator(s) within the cure period set forth in Section 2.B of this Lease.

**E. Utilities:** Tenant shall pay when due all charges for all utility services used on the Premises.

**F. Community Bank Mortgage:** As further consideration for this Lease [REDACTED]

[REDACTED] Landlord represents that all payments to Community Bank have heretofore been made when due, that it has not taken any action since April 12, 2012 to increase or alter the amount due Community Bank and [REDACTED]

[REDACTED] Landlord shall hereafter make no further draws or borrowings or take any other actions to increase the amount due under the Community Bank Mortgage. Notwithstanding the foregoing, Tenant, by entering into this Lease, is not obligating itself to Community Bank, N.A. on the underlying debt. In the event of a default by Landlord on the Community Bank Mortgage, Tenant may in its sole discretion pay off such debt or otherwise remedy any outstanding default.

**G. New Clubhouse:** [REDACTED]

Tenant shall be deemed to have commenced construction by initiating and reasonably pursuing action related to construction of the new clubhouse, including, but not limited to, engagement of design and/or construction professionals, development of design plans and/or petition for land use approvals. The new clubhouse will contain a dedicated room that is reserved exclusively for use by the Landlord for storing records and Tenant shall, at reasonable times and upon reasonable prior notice, make a room available to Landlord as may be necessary for purposes of holding board meetings and/or related activities. It is contemplated that the location of the new clubhouse will include some or all of the space where the present clubhouse is located and that the existing clubhouse will need to be demolished, at Tenant's expense, which may require use of tents or other such facilities during the demolition and new construction period. If the current practice green at Tioga Country Club is rendered unusable during the demolition and new construction period, Tenant will provide a new practice green. Design plans for the new clubhouse, which Tenant presently contemplates will be an approximately 9,000 square foot facility, will be created with input from and in consultation with Landlord's Board of Directors, with Tenant having exclusive authority to make all decisions.

**H. Landlord's Legacy Members:** Notwithstanding the absolute ultimate authority of Tenant to make all decisions with respect to operation of the Premises during the Term, the individuals identified by name, addresses and membership category on the attached Schedule 1, who were golf members of Landlord on July 15, 2014, (Landlord's "Legacy Members") shall be offered certain benefits as Legacy Members (as set forth herein) for seasons in which they purchase seasonal golf memberships. The 2014 seasonal membership rates (including early bird rates) charged by Landlord for each category of membership are set forth on the attached Schedule 2 and are referred to herein as the "2014 Legacy Member Rates".

The following benefits shall be offered to Legacy Members, subject to the limitations set forth in this Section 3.H: (i) for the first five (5) full annual golf seasons of the Term, the price of seasonal golf memberships for Legacy Members shall not be more than three percent (3%) greater than the rates charged for the preceding year for the applicable category of membership; and (ii) commencing with the sixth full annual golf season of the Term, Legacy Members shall receive a ten percent (10%) discount from the seasonal golf membership rates charged to members who are not Legacy Members ("Non-Legacy Members") for the applicable category of membership.

Notwithstanding anything herein to the contrary the price of seasonal golf memberships for Legacy Members shall never be lower than the 2014 Legacy Member Rates.

I. **Rent:** Tenant shall pay to Landlord an annual rent of [REDACTED]

[REDACTED] On and after the fifth anniversary of the date of this Lease, the amount of the annual rent shall increase to an amount equal to Landlord's reasonable annual costs for a part time administrative employee to maintain Landlord's business records, the annual premiums for Landlord's directors and officers liability insurance and Landlord's reasonable annual outside accounting fees (collectively, "Landlord's Annual Expenses") in the event that Landlord's Annual Expenses exceed [REDACTED]

J. **Furniture, Fixtures, Equipment and Inventory:** As of the commencement of this Lease, Landlord will provide Tenant with an itemized list of the furniture, fixtures, equipment and rolling stock being leased to Tenant pursuant to this Lease, which will be attached hereto as Schedule 3, and an itemized list of inventory being transferred to Tenant pursuant to this Lease, which will be attached hereto as Schedule 4. Notwithstanding anything herein to the contrary, upon termination or expiration of the Term of this Lease, Tenant will transfer and deliver to Landlord all of Tenant's right, title and interest in and to furniture, fixtures, equipment, rolling stock and inventory in at least the same quantities as set forth on Schedules 3 and 4, free and clear of any and all liens and encumbrances; provided, however, that the Parties acknowledge, agree and understand that (i) Tenant shall not be obligated to transfer or deliver to Landlord all furniture, fixtures, equipment, rolling stock and inventory owned or utilized by Tenant in connection with operation of the golf course as of the termination or expiration date, but rather, Tenant shall only be obligated to transfer such quantities as are set forth on Schedules 3 and 4 and were delivered to Tenant upon commencement of this Lease (subject to the terms of subsections (ii), (iii) and (iv) below); (ii) Tenant is not obligated to deliver to Landlord the actual furniture, fixtures, equipment, or rolling stock set forth on Schedule 3, but rather, Tenant shall only be obligated to transfer replacements for those items (pursuant to Section 3.A. of this Lease) or reasonably comparable items in quantities equal to the quantities set forth on Schedule 3; (iii) Tenant is not obligated to deliver to Landlord the actual inventory set forth on Schedule 4, but rather, Tenant shall only be obligated to transfer reasonably comparable items in the same general inventory categories (e.g. golf clubs, golf balls, clothing, food and beverages, etc.) in quantities equal to the quantities set forth on Schedule 4; and (iv) any and all furniture, fixtures, equipment, rolling stock and inventory to be delivered to Landlord pursuant to this Section will be delivered by Tenant "as is".

K. **Covenant Not to Compete:** During the Term, Tenant covenants and agrees that no property (other than the Premises) now or hereafter owned, leased or controlled, directly or indirectly, by Tenant or any affiliate of Tenant within twenty (20) miles of the Premises shall be leased, used or occupied as a golf course. Landlord shall be entitled to injunctive and other appropriate relief, whether under the provisions of this Lease or otherwise, to enforce the provisions of this covenant.

**4. LANDLORD'S WARRANTIES AND COVENANTS:** Landlord covenants, represents and warrants to Tenant that:

**A. Zoning:** Landlord shall, as necessary, use its best efforts to obtain the approval of all public and governmental authorities as to all matters relating to zoning, subdivision, or similar requirements for present and future use of the Premises by Tenant.

**B. Utilities:** All water and gas mains, electric power lines, telephone lines, sanitary and storm sewers are available and adequate for Tenant's intended use.

**C. Premises:** Landlord represents and warrants that the Premises are free of hazardous substances and that any previous activity involving hazardous substances on the Premises was conducted in compliance with applicable law. Landlord will defend and indemnify Tenant against any damage and expense Tenant may suffer by reason of any claims resulting from use of or damage from hazardous substances in, on or under the Premises prior to commencement of this Lease.

**D. Possession:** The Premises is free and clear of all tenancies, whether oral or written, and Tenant shall have sole and actual possession of the Premises commencing on the date of this Lease.

**E. Covenant of Title and Quiet Enjoyment:** Landlord has good and marketable title to the Premises and all of the leased assets on the date of this Lease, free and clear of all liens, encumbrances, easements, tenancies and restrictions other than the Community Bank Mortgage. Landlord warrants and will defend title and will indemnify Tenant against any damage and expense which Tenant may suffer by reason of any claim against title or defect in the title to the Premises and all of the leased assets. In addition, Landlord agrees that Tenant's quiet enjoyment of the Premises will not be disturbed or interfered with by Landlord or by anyone claiming by, through or under Landlord. Landlord agrees to provide Tenant with any and all non-disturbance agreements deemed necessary by Tenant, in a form acceptable to Tenant, covering any lenders within 14 days of a request by Tenant. Such non-disturbance agreements will provide in part that Tenant shall not be disturbed in its peaceful enjoyment of the Premises nor deprived of its rights pursuant to the terms of this Lease. Landlord shall not take any action during the Term that will encumber the Premises or any of the leased assets in any way (whether via lien, easement, tenancy, restriction, right of access, or otherwise) or will cause the Premises or any of the leased assets to be or become subject to any lien, encumbrance, easement, tenancy, right of access, or restriction. Landlord acknowledges that this prohibition shall include, without limitation, any sale, lease, exchange, or conveyance of rights of any kind (including mineral, oil and/or gas rights) to the extent that such sale, lease, exchange, or conveyance of rights involves, permits, causes or otherwise entails any lien, encumbrance, easement, tenancy, right of access, or restriction or could, in any way, affect Tenant's use and enjoyment of the property leased to Tenant. Without limiting the foregoing, Landlord shall not and shall not permit any other party to: (i) perform or conduct any oil or gas related operations or activities of any kind on the surface of the Premises; (ii) enter upon or disturb any part of the surface of the Premises at any time for any reason related to subsurface rights; or (iii) drill a well, or construct, build, install, place or situate any pad, site, road, facility, or equipment of any type or nature on any part of the surface of the Premises.

**F. Covenant Not To Compete:** During the Term, for so long as Tenant is operating a golf course on the Premises (excluding periods closed due to seasonal weather conditions, remodeling, refixturing, casualty, condemnation or Acts of God), Landlord covenants and agrees that no property (other than the Premises) now or hereafter owned, leased or controlled, directly

or indirectly, by Landlord or any affiliate of Landlord within twenty (20) miles of the Premises shall be leased, used or occupied as a golf course, pro shop, food and beverage service, or related facility. Tenant shall be entitled to injunctive and other appropriate relief, whether under the provisions of this Lease or otherwise, to enforce the provisions of this covenant.

**G. Operating Name:** Tenant is entitled to operate the Premises under the name "Tioga Country Club," any derivation thereof or any other name, brand or label. Tenant is further entitled, in its absolute discretion, to change the name(s) under which it operates the Premises from time to time.

**H. Expenses of Operation Prior to Commencement of Lease:** Landlord shall be responsible for payment of all of its expenses attributable to operation of the Premises prior to commencement of this Lease and indemnifies Tenant from any claims or obligations arising from operation of the Premises during that prior period. With the exception of honoring prepaid golf memberships for the balance of the current seasonal year (with respect to which Landlord and Tenant will allocate membership fees collected between the parties prorata), Tenant does not assume any obligations of Landlord under any agreements with suppliers or customers except to the extent Tenant expressly agrees to do so in writing. Landlord shall, not less than sixty (60) days prior to the effective date of this Lease, have provided Tenant with a schedule of contracts and agreements and will review with Landlord the purpose of those and the advisability of Tenant assuming such agreements.

**I. Operation of Premises:** Landlord, through its Board of Directors, intends to provide guidance to Tenant with respect to matters related to operation of the golf course during the Term in the form of advice or recommendations to Tenant with respect to same.

Notwithstanding such guidance and subject only to special provision as hereinbefore described with respect to Landlord's Legacy Members, Tenant shall operate the Premises and shall have the exclusive right to make all decisions with respect to the operation of the Premises including, without limitation, regulating availability of tee times for golfers, establishing daily and seasonal greens fee rates, establishing hours of operation, establishing prices for pro shop merchandise and food and beverages and any and all other matters related to the operation of the golf course, the clubhouse, the pro shop and any other aspect of the Premises. Without limiting the foregoing, Tenant intends to continue to hold annual men's, women's, junior and senior club championship tournaments; men's and women's member guest tournaments; a one day and a two day member/member event; president's cup, triangle tournament, TCGA and senior golf association events; and the Tuesday night men's member league, the Wednesday morning women's member league and the Thursday night men's member league; for so long as the course manager determines that such tournaments, events, or leagues are viable and effective. Tenant shall be entitled to all revenue of any nature derived from operation of the Premises during the term of this Lease, including, without limitation, revenue from membership fees, green fees, pro shop sales, driving range, concessions, banquets, events, marketing and all other sources.

Tenant shall have the right, at its expense, to place in or around the Premises any signs, subject to local permitting requirements, identifying or promoting the golf course or any of its operations at the Premises.

**J. Authority, Authorizations and Consents:** Landlord has all necessary power and authority to enter into this Lease and to perform its obligations hereunder. The execution, delivery and performance of this Lease has been duly and validly authorized by all necessary action and proceedings and no further action or authorization is necessary on the part of Landlord in order to authorize or validate the terms and conditions of this Lease. This Lease is a

legal, valid and binding obligation of Landlord, enforceable in accordance with its respective terms. Landlord has obtained all authorizations, consents or approvals of any governmental entity or other person or entity required to be obtained or given in connection with the execution and delivery of this Lease by Landlord or the performance of any of Landlord's obligations hereunder, including, without limitation, Supreme Court approval and Attorney General notice as may be required by the New York State Not-for-Profit Corporation Law.

**K. No Violation:** The execution and delivery of this Lease by Landlord, and the performance of its obligations hereunder, do not (i) violate or conflict with any of Landlord's obligations under any contract to which Landlord is a party or by which it is bound, or (ii) violate (and none of such obligations shall be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which Landlord is a party or to which it is subject.

**L. Litigation and Claims:** There is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or threatened that affects or would reasonably be expected to affect Landlord's ability to perform pursuant to this Lease or the consummation of the transactions contemplated by this Lease. Without limiting the foregoing, Landlord is not a party to or threatened with any litigation or judicial, administrative, arbitration or other proceeding that arises out of, is related to, or in any way involves a boundary dispute, employee claims, or unpaid taxes.

**M. Members:** Notwithstanding anything herein to the contrary, except for the specific rights granted to Landlord's Legacy Members pursuant to Section 3.H of this Lease, no member of Landlord, including, without limitation, any of Landlord's Legacy Members, has any right or claim against Landlord or Tenant with respect to golf course memberships or use of the Premises beyond the current calendar year.

**N. Inventory:** As of the date of this Lease, Landlord hereby transfers to Tenant all of Landlord's right, title and interest in and to any and all pro shop and food and beverage inventory owned by Landlord in connection with Landlord's operations of the Premises, subject, with respect to any alcoholic beverages, to compliance with applicable laws regarding such transfers, free and clear of any and all liens and encumbrances.

**O. Taxes:** Landlord has filed all tax returns required to be filed by Landlord as of the date of this Lease, all of which tax returns are correct and complete in all material respects. Any and all taxes owed by Landlord have been paid. Landlord has no knowledge of any delinquent taxes or any outstanding and unpaid assessments, general or special, that are due and payable by Landlord. Landlord has paid in full through the date of this Lease (or otherwise provided for) any and all withholding, sales, social security, unemployment insurance taxes, real property taxes and any other similar taxes of any kind that are due to the appropriate city, state and federal governments. There is no dispute or claim concerning any tax liability of Landlord. Landlord has not waived any statute of limitations in respect of taxes for any year.

**P. Employees:** Landlord is presently, and at all times since Landlord began operating Tioga Country Club has been, operating in compliance with all applicable governmental requirements or applicable laws, rules and regulations respecting employment, engagement of employees, employment practices, terms and conditions of employment, employment terminations and payment of compensation. Landlord has not received any notice of failure to comply with any such governmental requirement or applicable laws, rules or regulations.

**Q. Employee Benefit Plans:** Each "employee benefit plan" as such term is defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and any other employee benefit plan, program or arrangement of any kind (collectively, the

"Employee Benefit Plan(s)"), if any, that Landlord maintained or to which Landlord contributed has been maintained, funded and administered in accordance with the terms of such Employee Benefit Plan and complies in form and in operation with the requirements of applicable law, rules and regulations, including ERISA, the Internal Revenue Code (the "Code") and the Health Insurance Portability and Accountability Act of 1996, as it may be amended from time to time, and the regulations promulgated thereunder ("HIPAA"). All required reports and descriptions of an Employee Benefit Plan (including IRS Form 5500 Annual Reports, summary annual reports and summary plan descriptions, and summaries of material modifications) have been (to the extent required) timely filed with the IRS, the United States Department of Labor, or other governmental authority and distributed as required, and all notices required by ERISA or the Code or any other applicable law with respect to each Employee Benefit Plan have been appropriately given. All contributions (including all employer contributions and employee salary reduction contributions) premiums and/or other payments which are due have been made timely to each applicable Employee Benefit Plan. With respect to each Employee Benefit Plan that Landlord maintains or has maintained or to which Landlord contributes or has been required to contribute, no action, suit, proceeding, hearing, or investigation with respect to the administration or the investment of the assets of any such Employee Benefit Plan (other than routine claims for benefits) is pending or, to the knowledge of the Landlord, threatened.

**R. Compliance With Laws:** Landlord shall not, and shall not allow any officers, directors, employees, agents, affiliates or any other third party to, engage in any transactions or situations or maintain any conditions or activities which would result in a violation of New York gaming regulations, liquor regulations or any other regulations which govern Tenant or that could, during the Term of this Lease or at any time in the future, cause Tenant to lose its gaming, liquor or other license or which would result in Tenant being assessed penalties under any such license.

**S. Indemnification:** Landlord agrees to indemnify, defend and hold harmless Tenant and its affiliates, shareholders, officers, directors, representatives, employees, agents, successors and assigns from and against any and all losses, liabilities, taxes, damages or deficiencies (including interest, penalties and reasonable professional fees) (collectively, "Losses") arising out of or resulting from: (i) events and conditions existing and occurring at or with respect to the Premises or Landlord's operations at the Premises prior to the date of this Lease; and (ii) a breach of any representation, warranty, covenant or agreement of Landlord contained in this Lease or in any document or other writing delivered pursuant to this Lease. Landlord represents and warrants that, at all times prior to the date of this Lease, Landlord had sufficient liability insurance in place, on an occurrence basis, to insure against claims for personal injury, death or property damage occurring in, on or about the Premises and that Landlord has sufficient insurance in place, on an occurrence basis, to support its indemnification obligations set forth herein.

**T. Default by Landlord:** In the event of any default or breach by Landlord hereunder, Tenant shall give Landlord written notice of such default or breach and shall provide Landlord with thirty (30) days to cure the default or breach. Landlord shall have the obligation to cure any such default or breach at its own expense within such thirty (30) day period. If Landlord fails to cure the default or breach within such thirty (30) day period, Tenant may cure such default or breach at Landlord's expense and shall further be entitled to pursue any and all rights and remedies available to Tenant in law and in equity. Landlord (a) acknowledges that its failure to comply with any covenant in this Lease may cause irreparable harm and that a remedy at law for such failure would be an inadequate remedy for Tenant, and (b) consents to Tenant seeking from a court having jurisdiction specific performance, an injunction, a restraining order or any other equitable relief in order to enforce any such compliance without the necessity of proof of actual damages or the posting of a bond. Without limiting or affecting Landlord's indemnification obligations under Section 4.S. of this Lease or Landlord's obligation to cure any default or

breach pursuant to this Section 4.T., Landlord's maximum liability under this Lease for additional monetary damages over and above its indemnification obligations in Section 4.S. and any costs associated with curing a default or breach pursuant to this Section 4.T. shall not exceed [REDACTED]

**5. USE, ALTERATIONS AND TITLE TO IMPROVEMENTS:**

A. **Use:** Landlord represents that there is no presently existing prohibition to prevent or restrict Tenant from operating the Premises as a golf course and engaging in any related or associated uses of the Premises, such as food and beverage facilities, a pro shop and the like. Notwithstanding any other provision herein to the contrary, however, Tenant shall have the absolute right to use or occupy the Premises as a golf course and for any other lawful purpose or purposes.

B. **Alterations and Title to Improvements:** Tenant shall have the right to construct new buildings or other structures on the Premises (including but not limited to the aforementioned new clubhouse) and to make, or permit any subtenant to make, alterations, additions and improvements to the Premises from time to time (collectively, "Improvements"). All of such Improvements constructed by Tenant or any subtenant shall be and remain the property of Tenant or such subtenant, as the case may be, at all times during the Term. Landlord agrees to execute all applications, consents and other reasonable documents that may from time to time be required by Tenant to obtain any permits, variances, or other governmental approvals in connection with any construction or other use of the Premises by Tenant or any subtenant which may be permitted under this Lease. Tenant and any subtenant shall have the right to remove or alter any such Improvements at any time during the Term. Upon termination or expiration of the Term, Tenant's interest in and to any and all Improvements other than personal property and trade fixtures shall cease and title shall immediately vest in Landlord, free and clear of any and all liens and encumbrances. For a period of 30 days after the termination of this Lease, Tenant shall have the right to remove any personal property and/or trade fixtures and, for such purpose, to enter upon the Premises. However, Tenant shall not be required to remove any such personal property or trade fixtures, and Tenant's failure to do so after the expiration of such period of 30 days shall be deemed to be an abandonment and the same shall, at such time, become a part of the real estate with title vesting in the Landlord.

**6. ASSIGNMENT AND SUBLETTING:** Tenant may, without the consent of Landlord, sublease the Premises at any time. Tenant may assign this Lease or its rights under this Lease at any time (a) to an affiliate of Tenant without the consent of Landlord; or (b) to any third party with the prior written consent of Landlord, which consent shall not be unreasonably withheld. Without limiting the foregoing, Tenant shall provide Landlord with notice of any such assignment.

**7. MORTGAGING OF LEASEHOLD ESTATE:** Without limitation, it is agreed that Tenant shall have the right to mortgage or otherwise encumber its leasehold interest. If Tenant mortgages its leasehold estate and the mortgagee or holders of the indebtedness secured by the leasehold mortgage shall notify Landlord, in the manner provided for the giving of notice, of the execution of such mortgage and name the place for service of notice upon such mortgagee or holder of indebtedness, then, in such event, Landlord agrees that for the benefit of such mortgagees or holders of indebtedness from time to time:

A. Landlord will give to any such mortgagee or holder of indebtedness simultaneously with service on Tenant, a duplicate of any and all notices or demands given by Landlord to Tenant. Such notices shall be given in the manner and be subject to the terms of the notice provisions of this Lease.

B. Such mortgagee or holder of indebtedness shall have the privilege of performing any of Tenant's covenants under this Lease, of curing any default of Tenant or of exercising any election, option or privilege conferred upon Tenant by the terms of this Lease.

C. Landlord shall not terminate this Lease or Tenant's right of possession for any default of Tenant if, within a period of 90 days after the expiration of the period of time within which Tenant might cure such default under the provisions of this Lease, such mortgagee or holder of indebtedness commences to eliminate the cause of such default and proceeds diligently and with reasonable dispatch as provided.

D. No liability for the payment of rental or the performance of any of Tenant's covenants and agreements shall attach to or be imposed upon any mortgagee or holder of any indebtedness secured by any mortgage upon the leasehold estate, unless such mortgagee or holder of indebtedness forecloses its interest and becomes the Tenant under this Lease.

**8. LANDLORD'S EMPLOYEES:** Upon the commencement of this Lease, Landlord will terminate all of its employees except for any employee(s) that Landlord desires to retain as employees of Landlord to assist Landlord with Landlord's ongoing business, which employees will remain on Landlord's payroll and for which Landlord will be entirely responsible. Nothing herein does or is intended to create any rights assuring any of Landlord's employees of employment with Tenant nor any assurance that any employee hired by Tenant will be employed for any certain term. Landlord shall be responsible for all matters and expenses associated with its employees attributable to their employment with Landlord and/or the termination thereof. Tenant will have no obligations with respect to any employee(s) retained (or later hired) by Landlord. On and after the date of this Lease, employees hired by Tenant engaged in the operation of the Premises will be those of the Tenant and/or its contractors or subtenants. The parties acknowledge and understand that all employees must meet standards under New York law and regulations applicable to employees of gaming operations and cannot engage in any activity that would jeopardize Tenant's or its affiliates' gaming or liquor licenses.

**9. CONDEMNATION:** If the whole or any part of the Premises is taken or condemned by any competent authority for any public use or purpose during the Term, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for an award or damages for such taking based upon its leasehold interest, business and ownership of buildings, alterations and improvements. Landlord shall have the right to make a claim for the taking of or injury to the reversion.

**10. TRADE FIXTURES, MACHINERY AND EQUIPMENT:** Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed in the Premises by Tenant, Tenant's contractors or Tenant's subtenants shall not become the property of Landlord or a part of the realty no matter how affixed to the Premises and may be removed by Tenant, Tenant's contractors or Tenant's subtenants, in their discretion, at any time and from time to time during the Term. Upon request of Tenant or Tenant's contractors or any subtenant, Landlord shall execute and deliver any real estate consent or waiver forms submitted by any vendors, lessors, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed in the Premises setting forth the fact that Landlord waives, in favor of such vendors, lessors, chattel mortgagees or any holders or owners, any lien, claim, interest or other right superior to that of such vendors, lessors, chattel mortgagees, owners or holders. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed to it, and that such property may be removed from the Premises by the vendors, lessors, chattel

mortgagees, owners or holders at any time upon default in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

**11. RECORDING:** Tenant and Landlord agree to execute and record a short form or memorandum of this Lease. The cost of transfer taxes and recording fees shall be paid by the Tenant.

**12. MISCELLANEOUS PROVISIONS:**

**A. Severability:** In the event that any provision of this Lease, or the applicability of any such provision to any persons or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Lease, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law. Without limiting the foregoing, if this Lease or any provision hereof is determined to be in violation of the rule against perpetuities codified in New York Estates, Powers and Trusts Law § 9-1.1, the parties intend that this Lease remain valid and that it be modified to the minimum extent that may be necessary to comply with such law.

**B. Successors:** The terms, conditions and covenants of this Lease shall be binding upon and shall inure to the benefit of each of the parties, their heirs, personal representatives, successors or assigns, and shall run with the land.

**C. Writing:** No waivers, alterations or modifications of this Lease or any agreements in connection with this Lease shall be valid unless in writing duly executed by both Landlord and Tenant.

**D. Construction:** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs of this Lease or in any way affect this Lease. Any gender used shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular. The term "person" as used herein means an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof). Both parties to this Lease are represented by counsel and this Lease reflects input from both parties. Therefore, in the event of a dispute over, or any ambiguity of, any terms of this Lease, the parties agree that any common law rules of construction in favor of one party or against another party shall not apply.

**E. Notice:** If at any time after the execution of this Lease, it shall become necessary or convenient for one of the parties to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing signed by the party serving notice, served in person or sent by nationally recognized overnight carrier or registered or certified United States mail, return receipt requested and postage or other charges prepaid.

If intended for Landlord, the notice shall be addressed to:

Tioga Recreation Association, Inc.  
151 Ro-Ki Boulevard  
Nichols, New York 13812  
Attention: President

If intended for Tenant, the notice shall be addressed to :

Tioga Downs Racetrack, LLC  
2384 West River Road  
Nichols, New York 13812  
Attention: President and COO

With a copy to:

Newmark Knight Frank  
125 Park Ave.  
New York, NY 10017  
Attention: Jeff Gural

or such other address as either party may have furnished to the other in writing as a place for the service of notice.

**F. Waiver of Jury Trial:** Landlord and Tenant agree to waive any right to have a trial by jury with respect to any lawsuit based on, or arising under, this Lease or any course of conduct, course of dealing, statements or actions of Landlord or Tenant in connection with this Lease.

**G. No Partnership or Joint Venture:** It is mutually understood and agreed that nothing in this Lease is intended or shall be construed in any name or under any circumstances whatsoever as creating or establishing the relationship of a partnership or a joint venture between Landlord and Tenant or constituting Landlord as the agent or representative of Tenant for any purpose.

**H. Further Assurances:** Each of the parties shall execute such documents and other papers and perform such further acts as may be reasonably required or desirable to carry out the provisions of this Lease and the transactions contemplated by this Lease.

**I. Governing Law/Venue:** This Lease shall be construed in accordance with the laws of the State of New York, without regard to principles of conflict of laws. Any and all disputes, controversies, actions or suits arising out of or relating to this Lease or the interpretation, performance, breach, validity or enforcement thereof shall have their exclusive venue and jurisdiction in a state or federal court of competent jurisdiction located in New York County, New York. The Parties hereby irrevocably submit to the jurisdiction of such courts.

**J. Entire Agreement:** This Lease (including the exhibits and schedules hereto) contains the entire agreement among the parties with respect to matters set forth herein and supersedes all prior agreements, written or oral, with respect thereto.

**K. Counterparts:** This Lease may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

**13. AUTHORITY TO SIGN:** The parties executing this Lease on behalf of Landlord and Tenant represent that they respectively have authority and power to sign this Lease on behalf of Landlord and Tenant.

**14. BROKER COMMISSIONS:** Landlord and Tenant hereby warrant and represent to the other that no person or entity can properly claim a right to a commission, broker's fee, finder's fee or other similar compensation based on contacts or understandings between such claimant

and Landlord or Tenant with respect to this Lease. Landlord and Tenant agree to indemnify, defend and hold harmless the other from any claim, demand, loss, cost, liability, obligation or expense, including, without limitation, reasonable attorneys' fees and costs, resulting from any claim for a commission, broker's fee, finder's fee or other similar compensation by any person or entity, based on such contacts or understandings with the indemnifying party.

**[Signature Page Follows]**

**LANDLORD AND TENANT**, by their execution below, indicate their consent to the terms of this lease.

**LANDLORD:**  
**TIOGA RECREATION ASSOCIATION, INC.**

**TENANT:**  
**TIOGA DOWNS RACETRACK, LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF NEW YORK     )  
  ) SS.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_\_, 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 \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_\_ 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

**EXHIBIT A**

**“Leased Parcels”**

**PARCEL I**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Nichols, County of Tioga and State of New York, commencing at a point in the easterly line of Johnson Street at the southwesterly corner of lands now or formerly of Ockerman and running thence South 74° 35' East eighty-one (81) feet; thence South 15° 25' West three hundred thirty-nine (339) feet to an iron pin; thence North 86° 15' West twenty (20) feet; thence North 11° East two hundred fifteen (215) feet; thence North 79° West thirty (30) feet; thence North 11° East one hundred twenty-five (125) feet to the place of beginning, containing 0.42 acres of land, more or less. Being the same premises conveyed to Tioga Recreation Association, Inc. by Deed recorded in the Tioga County Clerk's Office on October 27, 1965, in Book 323 of Deeds at Page 211.

**PARCEL II**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Nichols, County of Tioga and State of New York, bounded and described as follows: Beginning in the center of the highway now or formerly known as the DeBolder Road at the southwest corner of lands conveyed to Francis Baxter and Lotie M. Baxter by Harvey E. Keener by deed recorded in Tioga County Clerk's Office March 14, 1947 in Book 240 of Deeds at Page 521, and running thence North 7° 45' East nine hundred fifty-eight (958) feet to the place of beginning; thence continuing on a course North 7° 45' East a distance of one thousand sixty (1,060) feet to an iron pin; thence South 73° 15' East four hundred forty-five (445) feet to an iron pin; thence South 7° 45' West seven hundred sixty (760) feet to an iron pin; thence South 69° 30' West five hundred eight (508) feet to the place of beginning. Being the same premises conveyed to Tioga Recreation Association, Inc. by Deed recorded in the Tioga County Clerk's Office on October 27, 1965, in Book 323 of Deeds at Page 213.

**PARCEL III**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town and Village of Nichols, County of Tioga and State of New York, bounded and described as follows: Commencing at a point on the easterly side of Johnson Street at the southwest corner of lands now or formerly owned by Douglas Jones which point is 235± feet southerly from the southerly line of River Street; thence South 66° 45' East 157.5 feet to a point; thence North 11° 35' East 44 feet to a point; thence North 27° 55' East 147.5 feet to a point in the southerly line of River Street; thence South 58° 20' East 50 feet to a point; thence South 14° 25' West 258 feet to a point; thence South 77° East 100 feet to a point; thence South 7° 25' West 63.5 feet to a point; thence South 73° 05' East 393.8 feet to a point; thence South 13° 15' West 124 feet to a point; thence South 87° 25' East 61.6 feet to a point; thence South 5° 20' West 88 feet to a point; thence in a northeasterly direction by the small brook or ravine 190± feet to the southwesterly corner of lands now or formerly owned by Leonard A. Stradley; thence South 69° 45' East 200 feet to a point; thence South 7° 45' West 160 feet to a point; thence South 72° 15' East 120 feet to a point; thence South 7° 45' West 224± feet to the southwest corner of lands now or formerly owned by Jesse L. Barton; thence South 81° 30' East 178 feet to a point in the westerly line of Bliven Street; thence South 7° East along the westerly line of Bliven Street 57± feet to the northeast corner of lands now or formerly owned by Charles Thetga; thence North 81° 30' West 178 feet along lands now or formerly of Charles Thetga to the northwest corner of said lands, thence South 7°

45' West 2,159 feet to a point; thence South 66° 45' West 528 feet to a point; thence North 7° 45' East 925 feet to a point; thence North 73° 15' West 445 feet to a point; thence South 7° 45' West 2,018 feet to a point in the center line of the Township Road; thence South 88° 45' West along the center line of said highway 100.6 feet to a point; thence North 7° 45' East 640 feet to a point; thence North 84° 30' West 529 feet to a point; thence North 7° 45' East 3,044 feet to a point; thence North 13° East 179 feet to a point; thence South 68° 15' East 307.7 feet to a point; thence North 15° 25' East 425 feet to a point; thence South 75° 45' East 37.5 feet to a point; thence North 14° 25' East 65.5 feet to a point; thence North 25° 30' East 74 feet to a point; thence North 70° West 135 feet to a point; thence North 14° 15' East along the easterly bounds of Johnson Street 88 feet to the place of beginning.

Excepting and reserving therefrom that parcel of land which was conveyed by a Deed recorded in Tioga County Clerk's Office April 23, 1906, in Book 147 of Deeds at Page 299, and all rights of way and easements of record.

ALSO excepting and reserving therefrom, a parcel conveyed to Deming by Deed recorded in the Tioga County Clerk's Office July 14, 1958, in Book 277 of Deeds at Page 597, and therein described as follows: Commencing at an iron pin set at the southwest corner of lands of Tioga Recreation Association, Inc., which point is S. 14° 25' W. two hundred fifty-eight (258) feet from the southerly line of River Street and also S. 70° E. two hundred thirty-five (235) feet from the easterly line of Johnson Street; running thence N. 14° 25' E. one hundred twenty-nine (129) feet to a point; thence southerly to a point ten (10) feet west of the place of beginning; thence S. 70° E. ten (10) feet to the place of beginning.

ALSO excepting and reserving therefrom a parcel conveyed to Humphreys by deed recorded in Tioga County Clerk's Office July 14, 1958, in Book 277 of Deeds at Page 600, and therein described as follows: Commencing on the southerly line of River Street in said Village of Nichols at an iron pin set at the northeast corner of lands now or formerly of R. Sexton; running thence S. 27° 55' W. one hundred forty-seven and five-tenths (147.5) feet to an iron pin; thence S. 11° 35' W. forty-four (44) feet to an iron pin; thence easterly eighty-four (84) feet to the westerly line of lands conveyed by JHIM Corporation to Herbert Deming and Isabel Deming; thence northerly along said line and along the easterly line of lands conveyed by Herbert W. Deming and Isabel Deming to JHIM Corporation, to the southerly line of River Street; thence westerly along the southerly line of River Street sixty (60) feet to the place of beginning.

ALSO excepting and reserving therefrom a parcel conveyed to Middleton by Deed recorded in Tioga County Clerk's Office April 1, 1952, in Book 204 of Deeds at Page 165, and therein described as follows: Commencing at a point on the easterly side of Johnson Street at the southwest corner of lands now or formerly owned by Douglas Jones, which point is 235± feet southerly from the southerly line of River Street; thence South 66° 45' East 231.5 feet to a point; thence South 14° 25' West 73 feet to a point; thence North 70° West 217 feet to a point on the easterly line of Johnson Street; thence North 14° 15' East along the easterly side of Johnson Street 88 feet to the place of beginning.

ALSO excepting and reserving a parcel conveyed to Stradley by Deed recorded in Tioga County Clerk's Office July 7, 1965, in Book 321 of Deeds at Page 764, and therein described as follows: Beginning at an iron pin located in the southerly boundary of River Street at the northwest corner of lands now or formerly owned by Chester Deming; thence S. 7° 45' W. 190 feet to the place of beginning; thence continuing on the same course 160 feet to an iron pin; thence N. 70° W. 331 feet to an iron pin; thence in a northeasterly direction along the center of the course of a small creek 176± feet to the southeast corner of lands of Leonard Stradley; thence S. 69° 45' E. 219 feet to the place of beginning.

ALSO excepting and reserving a parcel conveyed to Deming by Deed recorded in Tioga County Clerk's Office July 7, 1965, in Book 321 of Deeds at Page 766, and therein described as follows: Commencing at a point 135 feet east of Johnson Street at the northeast corner of premises owned by Tioga Recreation Association, Inc. and running thence S. 70° E. 100 feet to an iron pin; running thence S. 14° 25' W. 65 feet; running thence N. 76° 15' W. 87± feet to the southeast corner of premises owned by Tioga Recreation Association, Inc.; and running thence N. 25° 30' W. along the easterly line of premises of Tioga Recreation Association, Inc. 74± feet to the place of beginning.

Also all right, title and interest of Tioga Recreation Association, Inc. in and to part of a strip of land bounded and described as follows: Commencing in the center of the highway leading from Nichols to Windham Summit and running thence westerly along the southerly line of premises owned by the Nichols Water Company 407± feet to an iron pin; thence southerly 20± feet; thence easterly parallel with the first course herein and 20± feet distant therefrom to the center of the highway; thence northerly along the center line of said highway to the place of beginning.

Being the same premises conveyed to Tioga Recreation Association, Inc. by Deed recorded in the Tioga County Clerk's Office on October 27, 1965, in Book 323 of Deeds at Page 215.

#### PARCEL IV

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Nichols, County of Tioga and State of New York, commencing at a point in the center of the highway leading from Windham Summit Road to the Sacketts Creek Road at the southwest corner of lands formerly owned by Scott W. Johnson and running thence South 87° 15' West 351 feet along the center of said highway; thence North 7° 45' East 234 feet to a point; thence South 88° 45' West 179 feet to a point; thence North 7° 45' East 486 feet to an iron pin; thence South 84° 30' East 529 feet to an iron pin; thence South 7° 45' West 640 feet to the place of beginning. Being the same premises conveyed to Tioga Recreation Association, Inc. by Deed recorded in the Tioga County Clerk's Office on October 27, 1965, in Book 323 of Deeds at Page 218.

Parcels I, II, III and IV are more fully described as follows: ALL THAT TRACT OR PARCEL OF LAND, situate in the Village and Town of Nichols, County of Tioga, and State of New York, bounded and described as follows: Commencing at a point in the westerly line of premises now or formerly owned and occupied by John H. Middleton and running thence South 68 degrees and 15 minutes East a distance of 287.7 feet to a point; thence North 11 degrees East a distance of 215 feet to a point; thence North 79 degrees West a distance of 30 feet to a point; thence North 11 degrees East a distance of 125 feet to a point; thence South 74 degrees and 35 minutes East a distance of 81 feet to a point; thence North 15 degrees 25 minutes East a distance of 84 feet to a point; thence South 75 degrees and 45 minutes East a distance of 37.5 feet to a point; thence North 14 degrees and 25 minutes East a distance of 65.5 feet to a point; thence South 76 degrees and 15 minutes East a distance of 84 feet to a point; thence North 14 degrees and 25 minutes East a distance of 62.5 feet to a point; thence South 77 degrees East a distance of 100 feet to a point; thence South 7 degrees and 25 minutes West a distance of 63.5 feet to a point; thence South 73 degrees and 05 minutes East a distance of 393.8 feet to a point; thence South 13 degrees and 15 minutes West a distance of 124 feet to a point; thence South 87 degrees and 25 minutes East a distance of 61.6 feet to a point; thence South 5 degrees and 20 minutes West a distance of 98 feet to a point; thence South 70 degrees East a distance of 331 feet to a point; thence South 82 degrees and 15 minutes East a distance of 120 feet to a point; thence South 7 degrees and 45 minutes West a distance of 2,085 feet crossing a ten foot

right of way of the Nichols Water Company to a point; thence South 83 degrees East a distance of 407.7 feet to a point; thence South 37 degrees West a distance of 23 feet to a point; thence North 83 degrees West a distance of 398 feet to a point; thence South 7 degrees and 45 minutes West a distance of 335 feet to a point; thence South 66 degrees and 45 minutes West a distance of 528 feet to a point; thence North 7 degrees and 45 minutes West a distance of 165 feet to a point; thence South 69 degrees and 30 minutes West a distance of 508 feet to a point; thence South 7 degrees and 45 minutes West a distance of 775 feet to a point; thence South 86 degrees and 45 minutes West a distance of 450 feet to a point; thence South 88 degrees and 45 minutes West a distance of 179 feet to a point; thence North 7 degrees and 45 minutes East a distance of 3,530 feet to a point; thence North 13 degrees East a distance of 179 feet to the point or place of beginning, containing 118.97 acres of land.

SUBJECT to the rights of the Nichols Water Company in a water reservoir and a ten foot right of way in the southeasterly portion of the land described above, as shown on a map prepared by George K. Jones, Licensed Land Surveyor, under date of June 16, 1965.

EXCEPTING AND RESERVING from the above-described premises, ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Nichols, County of Tioga and State of New York, bounded and described as follows:

BEGINNING at a point in the centerline of DeBolder Road which lies 140 feet westerly from its intersection with the centerline of RoKi Boulevard; thence N. 89° 27' 43" W. 139.43 feet along the centerline of DeBolder Road to a point; thence S. 87° 59' 29" W. 237.66 feet along the centerline of DeBolder Road to a point; thence S. 82° 46' 32" W. 75.29 feet along the centerline of DeBolder Road to a point; thence N. 6° 53' 21" E. 238.62 feet to a 3/4" rebar set with a cap at the former location of a corner post and stones and an iron bolt; thence S. 81° 06' 12" E. 84.74 feet through lands of Tioga Recreation Association, Inc. to a 3/4" rebar set with a cap; thence N. 66° 25' 10" E. 433.55 feet through lands of Tioga Recreation Association, Inc. to a 3/4" rebar set with a cap; thence S. 8° 40' 17" W. passing through a 3/4" rebar set with a cap at 360.14 feet, a total distance of 385.14 feet to the point of beginning. CONTAINING 2.939 acres of land as shown as Parcel 1 and Parcel 2 on a map by Scott E. Edsall, L.S., No. 49784, dated May 29, 2003, Job No. 2003-045.

The properties described herein are intended to cover and include all of Town of Nichols Tax Map No. 170.00-1-6.10 and all of Village of Nichols Tax Map No. 159.18-2-2.

**SCHEDULE 1**

**Landlord Legacy Members**

See attached.

**SCHEDULE 2**

**2014 Legacy Members Rates**

	Prior to March 1 <sup>st</sup>	After March 1 <sup>st</sup>
Single	\$605.00	\$660.00
Husband and Wife	\$920.00	\$1,010.00
Family	\$990.00	\$1,150.00
Junior (under 18)	\$130.00	\$140.00
College (Full Time)	\$270.00	\$290.00
Under 26	\$405.00	\$435.00
Season Cart Pass	\$570.00	\$660.00

**SCHEDULE 3**

**Furniture, Fixtures, Equipment and Rolling Stock**

**SCHEDULE 4**

**Inventory**

**Memorandum of Lease Option Agreement**

**[See Attached]**

**Robert L. Woodburn, County Clerk**

16 Court Street

PO Box 307

Owego, NY 13827

(607) 687-8860

**Tioga County Clerk Recording Cover Sheet**

**Received From :**

Hinman Howard & Kattell  
700 Security Mutual Bld  
Binghamton, NY 13901

**Return To :**

Hinman Howard & Kattell  
700 SECURITY MUTUAL BLD  
BINGHAMTON, NY 13901

**Method Returned : PICK UP**

**First GRANTOR**

TIOGA RECREATION ASSOCIATION INC

**First GRANTEE**

TIOGA DOWNS RACETRACK LLC

**Index Type : Deeds**

**Deed Number : 2014-00001505**

**Book : Page :**

**Type of Instrument : Memorandum**

**Type of Transaction : Easement Lease**

**Recording Fee: \$85.00**

**Recording Pages : 8**

The Property affected by this instrument is situated in Nichols (Town), in the County of Tioga, New York

**Real Estate Transfer Tax**

**RETT # : 1038**

**Deed Amount : \$0.00**

**RETT Amount : \$0.00**

**Total Fees : \$85.00**

State of New York

County of Tioga

I hereby certify that the within and foregoing was recorded in the Clerk's office for Tioga County, New York

On (Recorded Date) : 04/14/2014

At (Recorded Time) : 3:50:39 PM



Doc ID - 007071660008

Robert L. Woodburn, County Clerk



WARNING - THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 319 & 316-A(5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH FROM THIS INSTRUMENT

**WHEN RECORDED RETURN TO:**

**HINMAN, HOWARD & KATTELL, LLP**  
700 Security Mutual Building  
80 Exchange Street  
P.O. Box 5250  
Binghamton, NY 13902-5250  
ATTN: James R. Franz

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**MEMORANDUM OF LEASE OPTION AGREEMENT**

STATE OF NEW YORK :

COUNTY OF TIOGA :

This Memorandum of Lease Option Agreement ("Memorandum") is executed as of the ~~14~~ day of April, 2014 by and between TIOGA RECREATION ASSOCIATION, INC., a New York State Not-for-Profit Corporation with an office at 151 Ro-Ki Boulevard, Nichols, New York 13812 ("Owner"), and TIOGA DOWNS RACETRACK, LLC, a New York State Limited Liability Company with an office at 2384 West River Road, Nichols, New York 13812 ("Optionee").

WHEREAS, Owner and Optionee have entered into that certain Lease Option Agreement dated the ~~14~~ day of April, 2014 (the "Agreement"), the terms, conditions and provisions of which are incorporated herein by reference, whereby Owner has granted to Optionee an option to lease certain property (the "Option"), which property is more particularly described on the attached Exhibit A (the "Property").

WHEREAS, Owner and Optionee have agreed to enter into and record this Memorandum.

1. **Option Term.** Optionee shall have a period of twelve (12) months from the date of the Agreement to exercise the Option (the "Option Term").

2. **Extended Terms.** The Option Term may be extended for additional successive twelve (12) month terms, provided, however, that the Option Term shall not, under any circumstances, extend for a period longer than twenty-one (21) years after the date of the Agreement. Notice of Optionee's intent to extend the Option Term must be provided to Owner prior to the expiration of the previous twelve (12) month term.

3. **Miscellaneous.** Optionee is not entitled to possession, use, or occupancy of the Property until the Option is exercised. This Memorandum is executed for the purpose of recordation in the Tioga County Clerk's Office in Owego, New York. If there is any conflict between the Memorandum and the Agreement, the Agreement shall take precedence.



**EXHIBIT A**  
**Legal Description**

**PARCEL I**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Nichols, County of Tioga and State of New York, commencing at a point in the easterly line of Johnson Street at the southwesterly corner of lands now or formerly of Ockerman and running thence South 74° 35' East eighty-one (81) feet; thence South 15° 25' West three hundred thirty-nine (339) feet to an iron pin; thence North 86° 15' West twenty (20) feet; thence North 11° East two hundred fifteen (215) feet; thence North 79° West thirty (30) feet; thence North 11° East one hundred twenty-five (125) feet to the place of beginning, containing 0.42 acres of land, more or less. Being the same premises conveyed to Tioga Recreation Association, Inc. by Deed recorded in the Tioga County Clerk's Office on October 27, 1965, in Book 323 of Deeds at Page 211.

**PARCEL II**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Nichols, County of Tioga and State of New York, bounded and described as follows: Beginning in the center of the highway now or formerly known as the DeBolder Road at the southwest corner of lands conveyed to Francis Baxter and Lotie M. Baxter by Harvey E. Keener by deed recorded in Tioga County Clerk's Office March 14, 1947 in Book 240 of Deeds at Page 521, and running thence North 7° 45' East nine hundred fifty-eight (958) feet to the place of beginning; thence continuing on a course North 7° 45' East a distance of one thousand sixty (1,060) feet to an iron pin; thence South 73° 15' East four hundred forty-five (445) feet to an iron pin; thence South 7° 45' West seven hundred sixty (760) feet to an iron pin; thence South 69° 30' West five hundred eight (508) feet to the place of beginning. Being the same premises conveyed to Tioga Recreation Association, Inc. by Deed recorded in the Tioga County Clerk's Office on October 27, 1965, in Book 323 of Deeds at Page 213.

**PARCEL III**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town and Village of Nichols, County of Tioga and State of New York, bounded and described as follows: Commencing at a point on the easterly side of Johnson Street at the southwest corner of lands now or formerly owned by Douglas Jones which point is 235± feet southerly from the southerly line of River Street; thence South 66° 45' East 157.5 feet to a point; thence North 11° 35' East 44 feet to a point; thence North 27° 55' East 147.5 feet to a point in the southerly line of River Street; thence South 58° 20' East 50 feet to a point; thence South 14° 25' West 258 feet to a point; thence South 77° East 100 feet to a point; thence South 7° 25' West 63.5 feet to a point; thence South 73° 05' East 393.8 feet to a point; thence South 13° 15' West 124 feet to a point; thence South 87° 25' East 61.6 feet to a point; thence South 5° 20' West 88 feet to a point; thence in a northeasterly direction by the small brook or ravine 190± feet to the southwesterly corner of lands now or formerly owned by Leonard A. Stradley; thence South 69° 45' East 200 feet to a point; thence South 7° 45' West 160 feet to a point; thence South 72° 15' East 120 feet to a point; thence South 7° 45' West 224± feet to the southwest corner of lands now or formerly owned by Jesse L. Barton; thence South 81° 30' East 178 feet to a point in the westerly line of Bliven Street; thence South 7° East along the westerly line of Bliven Street 57± feet to the

northeast corner of lands now or formerly owned by Charles Thetga; thence North 81° 30' West 178 feet along lands now or formerly of Charles Thetga to the northwest corner of said lands, thence South 7° 45' West 2,159 feet to a point; thence South 66° 45' West 528 feet to a point; thence North 7° 45' East 925 feet to a point; thence North 73° 15' West 445 feet to a point; thence South 7° 45' West 2,018 feet to a point in the center line of the Township Road; thence South 88° 45' West along the center line of said highway 100.6 feet to a point; thence North 7° 45' East 640 feet to a point; thence North 84° 30' West 529 feet to a point; thence North 7° 45' East 3,044 feet to a point; thence North 13° East 179 feet to a point; thence South 68° 15' East 307.7 feet to a point; thence North 15° 25' East 425 feet to a point; thence South 75° 45' East 37.5 feet to a point; thence North 14° 25' East 65.5 feet to a point; thence North 25° 30' East 74 feet to a point; thence North 70° West 135 feet to a point; thence North 14° 15' East along the easterly bounds of Johnson Street 88 feet to the place of beginning.

Excepting and reserving therefrom that parcel of land which was conveyed by a Deed recorded in Tioga County Clerk's Office April 23, 1906, in Book 147 of Deeds at Page 299, and all rights of way and easements of record.

ALSO excepting and reserving therefrom, a parcel conveyed to Deming by Deed recorded in the Tioga County Clerk's Office July 14, 1958, in Book 277 of Deeds at Page 597, and therein described as follows: Commencing at an iron pin set at the southwest corner of lands of Tioga Recreation Association, Inc., which point is S. 14° 25' W. two hundred fifty-eight (258) feet from the southerly line of River Street and also S. 70° E. two hundred thirty-five (235) feet from the easterly line of Johnson Street; running thence N. 14° 25' E. one hundred twenty-nine (129) feet to a point; thence southerly to a point ten (10) feet west of the place of beginning; thence S. 70° E. ten (10) feet to the place of beginning.

ALSO excepting and reserving therefrom a parcel conveyed to Humphreys by deed recorded in Tioga County Clerk's Office July 14, 1958, in Book 277 of Deeds at Page 600, and therein described as follows: Commencing on the southerly line of River Street in said Village of Nichols at an iron pin set at the northeast corner of lands now or formerly of R. Sexton; running thence S. 27° 55' W. one hundred forty-seven and five-tenths (147.5) feet to an iron pin; thence S. 11° 35' W. forty-four (44) feet to an iron pin; thence easterly eighty-four (84) feet to the westerly line of lands conveyed by JHIM Corporation to Herbert Deming and Isabel Deming; thence northerly along said line and along the easterly line of lands conveyed by Herbert W. Deming and Isabel Deming to JHIM Corporation, to the southerly line of River Street; thence westerly along the southerly line of River Street sixty (60) feet to the place of beginning.

ALSO excepting and reserving therefrom a parcel conveyed to Middleton by Deed recorded in Tioga County Clerk's Office April 1, 1952, in Book 204 of Deeds at Page 165, and therein described as follows: Commencing at a point on the easterly side of Johnson Street at the southwest corner of lands now or formerly owned by Douglas Jones, which point is 235± feet southerly from the southerly line of River Street; thence South 66° 45' East 231.5 feet to a point; thence South 14° 25' West 73 feet to a point; thence North 70° West 217 feet to a point on the easterly line of Johnson Street; thence North 14° 15' East along the easterly side of Johnson Street 88 feet to the place of beginning.

ALSO excepting and reserving a parcel conveyed to Stradley by Deed recorded in Tioga County Clerk's Office July 7, 1965, in Book 321 of Deeds at Page 764, and therein described as follows: Beginning at an iron pin located in the southerly boundary of River Street at the northwest corner of lands now or formerly owned by Chester Deming; thence S. 7° 45' W. 190 feet to the place of beginning; thence continuing on the same course 160 feet to an iron pin; thence N. 70° W. 331 feet to an iron pin; thence in a northeasterly direction along the center of the course of a small creek 176± feet to the southeast corner of lands of Leonard Stradley; thence S. 69° 45' E. 219 feet to the place of beginning.

ALSO excepting and reserving a parcel conveyed to Deming by Deed recorded in Tioga County Clerk's Office July 7, 1965, in Book 321 of Deeds at Page 766, and therein described as follows: Commencing at a point 135 feet east of Johnson Street at the northeast corner of premises owned by Tioga Recreation Association, Inc. and running thence S. 70° E. 100 feet to an iron pin; running thence S. 14° 25' W. 65 feet; running thence N. 76° 15' W. 87± feet to the southeast corner of premises owned by Tioga Recreation Association, Inc.; and running thence N. 25° 30' W. along the easterly line of premises of Tioga Recreation Association, Inc. 74± feet to the place of beginning.

Also all right, title and interest of Tioga Recreation Association, Inc. in and to part of a strip of land bounded and described as follows: Commencing in the center of the highway leading from Nichols to Windham Summit and running thence westerly along the southerly line of premises owned by the Nichols Water Company 407± feet to an iron pin; thence southerly 20± feet; thence easterly parallel with the first course herein and 20± feet distant therefrom to the center of the highway; thence northerly along the center line of said highway to the place of beginning.

Being the same premises conveyed to Tioga Recreation Association, Inc. by Deed recorded in the Tioga County Clerk's Office on October 27, 1965, in Book 323 of Deeds at Page 215.

#### PARCEL IV

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Nichols, County of Tioga and State of New York, commencing at a point in the center of the highway leading from Windham Summit Road to the Sacketts Creek Road at the southwest corner of lands formerly owned by Scott W. Johnson and running thence South 87° 15' West 351 feet along the center of said highway; thence North 7° 45' East 234 feet to a point; thence South 88° 45' West 179 feet to a point; thence North 7° 45' East 486 feet to an iron pin; thence South 84° 30' East 529 feet to an iron pin; thence South 7° 45' West 640 feet to the place of beginning. Being the same premises conveyed to Tioga Recreation Association, Inc. by Deed recorded in the Tioga County Clerk's Office on October 27, 1965, in Book 323 of Deeds at Page 218.

Parcels I, II, III and IV are more fully described as follows: ALL THAT TRACT OR PARCEL OF LAND, situate in the Village and Town of Nichols, County of Tioga, and State of New York, bounded and described as follows: Commencing at a point in the westerly line of premises now or formerly owned and occupied by John H. Middleton and running thence South 68 degrees and 15 minutes East a distance of 287.7 feet to a point; thence North 11 degrees East a distance of

215 feet to a point; thence North 79 degrees West a distance of 30 feet to a point; thence North 11 degrees East a distance of 125 feet to a point; thence South 74 degrees and 35 minutes East a distance of 81 feet to a point; thence North 15 degrees 25 minutes East a distance of 84 feet to a point; thence South 75 degrees and 45 minutes East a distance of 37.5 feet to a point; thence North 14 degrees and 25 minutes East a distance of 65.5 feet to a point; thence South 76 degrees and 15 minutes East a distance of 84 feet to a point; thence North 14 degrees and 25 minutes East a distance of 62.5 feet to a point; thence South 77 degrees East a distance of 100 feet to a point; thence South 7 degrees and 25 minutes West a distance of 63.5 feet to a point; thence South 73 degrees and 05 minutes East a distance of 393.8 feet to a point; thence South 13 degrees and 15 minutes West a distance of 124 feet to a point; thence South 87 degrees and 25 minutes East a distance of 61.6 feet to a point; thence South 5 degrees and 20 minutes West a distance of 98 feet to a point; thence South 70 degrees East a distance of 331 feet to a point; thence South 82 degrees and 15 minutes East a distance of 120 feet to a point; thence South 7 degrees and 45 minutes West a distance of 2,085 feet crossing a ten foot right of way of the Nichols Water Company to a point; thence South 83 degrees East a distance of 407.7 feet to a point; thence South 37 degrees West a distance of 23 feet to a point; thence North 83 degrees West a distance of 398 feet to a point; thence South 7 degrees and 45 minutes West a distance of 335 feet to a point; thence South 66 degrees and 45 minutes West a distance of 528 feet to a point; thence North 7 degrees and 45 minutes West a distance of 165 feet to a point; thence South 69 degrees and 30 minutes West a distance of 508 feet to a point; thence South 7 degrees and 45 minutes West a distance of 775 feet to a point; thence South 86 degrees and 45 minutes West a distance of 450 feet to a point; thence South 88 degrees and 45 minutes West a distance of 179 feet to a point; thence North 7 degrees and 45 minutes East a distance of 3,530 feet to a point; thence North 13 degrees East a distance of 179 feet to the point or place of beginning, containing 118.97 acres of land.

SUBJECT to the rights of the Nichols Water Company in a water reservoir and a ten foot right of way in the southeasterly portion of the land described above, as shown on a map prepared by George K. Jones, Licensed Land Surveyor, under date of June 16, 1965.

EXCEPTING AND RESERVING from the above-described premises, ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Nichols, County of Tioga and State of New York, bounded and described as follows:

BEGINNING at a point in the centerline of DeBolder Road which lies 140 feet westerly from its intersection with the centerline of RoKi Boulevard; thence N. 89° 27' 43" W. 139.43 feet along the centerline of DeBolder Road to a point; thence S. 87° 59' 29" W. 237.66 feet along the centerline of DeBolder Road to a point; thence S. 82° 46' 32" W. 75.29 feet along the centerline of DeBolder Road to a point; thence N. 6° 53' 21" E. 238.62 feet to a 3/4" rebar set with a cap at the former location of a corner post and stones and an iron bolt; thence S. 81° 06' 12" E. 84.74 feet through lands of Tioga Recreation Association, Inc. to a 3/4" rebar set with a cap; thence N. 66° 25' 10" E. 433.55 feet through lands of Tioga Recreation Association, Inc. to a 3/4" rebar set with a cap; thence S. 8° 40' 17" W. passing through a 3/4" rebar set with a cap at 360.14 feet, a total distance of 385.14 feet to the point of beginning. CONTAINING 2.939 acres of land as shown as Parcel 1 and Parcel 2 on a map by Scott E. Edsall, L.S., No. 49784, dated May 29, 2003, Job No. 2003-045.

**The properties described herein are intended to cover and include all of Town of Nichols Tax Map No. 170.00-1-6.10 and all of Village of Nichols Tax Map No. 159.18-2-2.**

