

New York State Thoroughbred Racing

Memorandum of Understanding

This Memorandum of Understanding (“MOU”), dated as of September 4, 2007, is entered into by the State of New York (the “State”) and the New York Racing Association Inc. (“NYRA”).

Purpose

This MOU is a non-binding agreement that sets forth the expectations of the parties hereto with respect to thoroughbred racing in the State of New York and video lottery terminal gaming at Aqueduct Racetrack. This MOU has been approved by the Board of Trustees of NYRA. The State and NYRA each agree to make good faith efforts to seek any necessary approvals and to take all appropriate actions to fulfill the goals set forth herein. Subject to the enactment of legislation by the New York State legislature, the parties expect, at a later date, to enter into binding agreements memorializing the terms set forth herein and implementing the purposes herein.

Background

NYRA is a non profit racing association created in accordance with the New York State Racing, Pari-mutual Wagering and Breeding Law. NYRA is the present holder of the thoroughbred racing franchise in New York State and operates at Aqueduct Racetrack, Belmont Park and Saratoga Race Course. On November 2, 2006, NYRA filed for bankruptcy protection and, since then, has been operating under Chapter 11 of the United States Bankruptcy Code.

In 2004, the State authorized video lottery terminal (“VLT”) gaming at Aqueduct Racetrack as a means to support thoroughbred racing and to generate revenues for the benefit of the State, including public education.

In accordance with State law, the NYRA franchise is scheduled to expire on December 31, 2007. The State has requested proposals from entities interested in a new franchise for the operation of thoroughbred racing and VLT gaming in the State of New York. Based on the responses to the State proposal, the State is prepared to enter into a racing franchise agreement with the New NYRA (see below). At a later date, the State, in its sole discretion, but after consulting with NYRA, expects to select an entity to develop and operate VLT facilities at Aqueduct (such entity hereinafter referred to as the “Gaming Entity”).

The New NYRA

A New York State not-for-profit corporation (“New NYRA”) will be created by NYRA to operate the new thoroughbred racing franchise. The terms of the certificate of incorporation, by-laws, governance and operation of the New NYRA shall be acceptable to the State. As a New York State not-for-profit corporation, the New NYRA will be under the supervision of the Attorney General’s office. The certificate of incorporation of the New NYRA will provide for a nineteen member board of directors. Thirteen members are to be designated by NYRA, two members, are to be designated by the Governor; one member is to be designated by the Senate Majority Leader; one member is to be designated by the Assembly Speaker; one member is to be designated by the New York Thoroughbred Breeder’s Association; and one member is to be designated by the New York Thoroughbred Horsemen’s Association. Board members shall be subject to removal and replacement, for any reason, by the party making the original designation. The Board of the New NYRA will determine all officers of the corporation, which may, or may not, include existing NYRA employees. Initially, all non-executive employees of NYRA will be retained by the New NYRA. The New NYRA will honor and be bound by all existing collective bargaining agreements to which NYRA is a party.

NYRA Obligations

The State, with funds received from the Gaming Entity, or otherwise, shall provide NYRA with sufficient funds, not to exceed \$75 million, to fund a Plan of Reorganization to permit NYRA to satisfy all its bankruptcy obligations. In addition, until such time that VLT revenues are made available to New NYRA, the State, directly, or through the Gaming Entity, shall provide reasonable and necessary funds to meet New NYRA’s operating obligations. The State will forgive any existing obligations that NYRA currently has to the State, provided that the State may require the Gaming Entity to reimburse the State for such forgiven obligations.

NYRA Relinquishment of Claims

NYRA and New NYRA will irrevocably relinquish any present or future rights that it might have, or might claim, with respect to Aqueduct Racetrack, Belmont Park and Saratoga Race Course, including any property interest therein, and satisfy any liens, encumbrances and claims that may exist with respect to the same. NYRA and New NYRA will each take all appropriate action to ensure that the State is vested with unencumbered ownership in the real estate for the three racetracks, including all improvements thereon.

The Thoroughbred Racing Franchise

The State will award a thoroughbred racing franchise to the New NYRA effective as of January 1, 2008. The racing franchise will have a term of 30 years. The franchise agreement will provide that New NYRA, and its members, adopt a corporate governance code of conduct, on terms acceptable to the State, to ensure that the New NYRA is operated in a efficient and transparent manner, with the highest degree of integrity and is fully accountable to the People of the State. Material failure to operate in accordance with such code of conduct will be grounds for terminating the franchise. The New NYRA will establish (i) a compensation committee to fix salary guidelines, such guidelines to be consistent with the operation of other first class thoroughbred racing operations in the United States; (ii) a finance committee, to prepare annual operating and capital budgets for each of the three racetracks; and (iii) a nominating committee, to nominate any new directors to be designated by New NYRA to replace the existing directors designated by NYRA. Each of the compensation, finance and nominating committees will include at least one of the Directors designated by the Governor.

Thoroughbred Racing Revenues

In accordance with its franchise agreement, the New NYRA will remit to the State, on an annual basis, all net revenues received from racing operations, except that upon such payment New NYRA will be permitted to maintain an operating reserve fund in amount equal to projected operating expenses (including purses) for the subsequent 45 day period.

Racing Integrity

New NYRA will comply will all applicable laws and regulation and will continue the retention of an independent business integrity counsel, acceptable to the State, who, among other things, will act as an independent source of checks and balances to help New NYRA identify and counteract new and emerging threats to the sport of horse racing and transparency in pari-mutuel pools.

VLT Facilities at Aqueduct

It is expected that within 60 days of the date of this MOU, that the State, in consultation with NYRA, will select the Gaming Entity to develop VLT facilities at Aqueduct Racetrack. It is expected that the Gaming Entity will be granted by the State a license to operate not more than 4,500 VLTs at Aqueduct Racetrack. The Gaming Entity will be required, at its sole cost and expense, to construct and maintain the VLT facilities in proper repair comparable to other first class VLT facilities in the United States. The agreement with the Gaming Entity shall contain appropriate terms and conditions to address the joint use and occupancy of Aqueduct Racetrack by the Gaming Entity and

New NYRA. The State shall consult with New NYRA on the terms of the agreement with the Gaming Entity.

Ancillary Development

The State reserves the right to develop, or select a third party to develop, retail, hotel and entertainment facilities at Aqueduct Racetrack in conjunction with the development of VLT facilities, provided that the State determines that such ancillary developments will not have a material adverse impact on thoroughbred racing operations at Aqueduct and shall take into account existing community uses of open space at Aqueduct Racetrack and shall consult with the community regarding other community concerns.

VLT Operations at Aqueduct

It is expected that New NYRA and Gaming Entity will enter into arrangements, acceptable to the State, for the operation and future development of Aqueduct Racetrack. Such arrangements will include the following principles:

- (i) New NYRA and Gaming Entity will each cooperate with the other on design and construction of the VLT facilities at Aqueduct.
- (ii) The VLT facilities will be constructed and operated by the Gaming Entity. The Gaming Entity will ensure that construction of the VLT facilities will be performed in a manner to minimize disruption to racing operations, including horse training activities.
- (iii) Upon entry to the racetrack customers shall have the ability to access either the VLT facilities or racetrack facilities without undue restrictions or additional expense (i.e. one admission price).
- (iv) The Gaming Entity and the New NYRA will enter into an operating agreement and form an operating committee to ensure that the facilities are operated in a first class, customer-friendly, manner consistent with maximizing returns to each of the parties. Subject to governmental requirements, the operating agreement will address hours of operation, maintenance issues, capital improvements, etc. The parties shall agree on a cost sharing agreement for common costs. The cost sharing may included shared services and staffing, where appropriate.
- (v) The Gaming Entity and the New NYRA will agree on a mutually beneficial marketing plan and budget to support attendance at the racetracks and VLT facilities. Each entity may supplement the marketing plan with its own targeted marketing plan, provide that the same shall not be prejudicial to the marketing efforts of the other.
- (vi) The operating agreement will provide for the resolution of any disputes between the Gaming Entity and New NYRA. In the event the parties can not resolve any particular dispute, the agreement shall provide for binding arbitration under the rules of the American Arbitration Association or such other appropriate organization.

Additional Revenues for the New NYRA

The State acknowledges the importance of thoroughbred racing to the economy of the State of New York and that the racing industry directly, and indirectly, employs thousands of New York residents. Accordingly, the State expects to make available, or cause to be made available by the Gaming Entity, from VLT Revenues (hereinafter defined), the following sources of revenues to assist the New NYRA in its operations:

- (i) payments equal to 4% of VLT Revenues from the VLTs at the Aqueduct Racetrack facility for each year of the VLT license, such payments to be deposited into a segregated account dedicated for capital expenses in maintaining and upgrading Aqueduct Racetrack, Belmont Park and Saratoga Race Course;
- (ii) payments equal to 3% of VLT Revenues from VLTs at the Aqueduct Racetrack facility for each year of the VLT license, for general thoroughbred racing operations;
- (iii) for the first year of VLT operations, payments aggregating in the sum of 6.5% of VLT Revenues from VLTs at the Aqueduct Racetrack facility for such year, and thereafter, for each year of the VLT license, payments aggregating in the amount of 106% of the prior years payment, provided that in any given year such aggregate payments shall not exceed 6.5% of the current annual VLT Revenues from VTLs at the Aqueduct Racetrack facility, to be deposited into a segregated account and applied solely to fund racing purses; and
- (iv) for the first year of VLT operations, payments aggregating in the sum of 1% of VLT Revenues from VLTs at Aqueduct Racetrack facility for such year, and thereafter, for each year of the VTL license, payments aggregating in the amount of 103.5% of the prior years payment, provided that in any given year such aggregate payments shall not exceed 1% of the current annual VLT Revenues from VTLs at the Aqueduct Racetrack facility.

VLT Revenues shall mean VLT machine revenues as used for purposes of calculating statutory payments (revenues wagered less payments for prizes won).

Racing Operations at Aqueduct

The parties hereto agree that the thoroughbred racing schedule at Aqueduct Racetrack shall be substantially similar to the current racing schedule.

Saratoga Race Course

The parties hereto agree that the thoroughbred racing schedule at Saratoga Race Course shall be substantially similar to the current racing schedule. The State acknowledges that no VLT facilities will be installed at Saratoga Race Course and that the historic and unique character of the Saratoga Race Course will be preserved.

Belmont Park

The State and NYRA agree that the thoroughbred racing schedule at Belmont Park shall be substantially similar to the current racing schedule. The State may elect, in the future, to develop unused land at Belmont Park, provided that such development will not have a material adverse impact on thoroughbred racing at Belmont and will be otherwise consistent with Belmont Park's status as one of the premier thoroughbred racing venues in the United States.

Real Estate Structure

Upon issuance of the thoroughbred racing franchise to New NYRA, the State, as lessor, shall ground lease, for \$1 a year, each of Aqueduct Racetrack, Belmont Park and Saratoga Race Course to New NYRA, for a term coterminous with the racing franchise. Except as otherwise indicated herein, the New NYRA shall be solely responsible for each of the three racetracks, including, but not limited to, security for the premises, maintenance of the premises and any all capital improvements that may be required over the term of the franchise. The State shall retain title to the real estate and all improvements thereon. Without the approval of the State, the New NYRA shall not be permitted to mortgage or otherwise encumber the leases for the premises.

Definitive Documents

The parties acknowledge that this MOU is a non-binding agreement, subject to, among other things, the passage of State legislation, State regulatory approvals, approval of the U.S. Bankruptcy Court and the negotiation and execution of definitive documents. The parties agree to work cooperatively to implement the terms and intent of this MOU. The terms set forth herein are not exhaustive of the terms in the definitive documents. In the event appropriate State legislation is not signed into law and binding agreement are not entered into by December 31, 2007, then this MOU shall be deemed null and void.

State of New York

By:

New York Racing Association Inc.

By: