

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM403040

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	Intellectual Property Security Agreement		
SEQUENCE:	2		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Mid-State Raceway, Inc.		10/21/2016	Corporation: NEW YORK
RECEIVING PARTY DATA			
Name:	Wells Fargo Bank, National Association, as Collateral Agent		
Street Address:	1525 W WT Harris Blvd		
Internal Address:	c/o Wholesale Loan Services		
City:	Charlotte		
State/Country:	NORTH CAROLINA		
Postal Code:	28262		
Entity Type:	national association: UNITED STATES		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	4086952	VERNON DOWNS CASINO · HOTEL RACING & ENT	
CORRESPONDENCE DATA			
Fax Number:	2138918763		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Email:	rhonda.deleon@lw.com		
Correspondent Name:	Latham & Watkins LLP		
Address Line 1:	355 South Grand Avenue		
Address Line 4:	Los Angeles, CALIFORNIA 90071-1560		
ATTORNEY DOCKET NUMBER:	049275-0119		
NAME OF SUBMITTER:	Rhonda DeLeon		
SIGNATURE:	/Rhonda DeLeon/		
DATE SIGNED:	10/24/2016		
Total Attachments: 9			
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INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT, dated as of October 21, 2016 (as amended, supplemented or otherwise modified from time to time, this “**Agreement**”), is made by EACH OF THE SIGNATORIES HERETO (collectively, the “**Grantors**”) in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as collateral agent for the ratable benefit of the Secured Parties (as defined in the Credit Agreement referred to below) (together with its successors and assigns in such capacity, the “**Collateral Agent**”).

WHEREAS, American Racing and Entertainment, LLC, a New York limited liability company (the “**Borrower**”), has entered into that certain Revolving Credit and Project Term Loan Agreement, dated as of October 21, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among the Borrower, the banks, financial institutions and other entities from time to time party thereto in the capacity of lenders and Wells Fargo Bank, National Association, in its capacity as administrative agent;

WHEREAS, the Grantors have executed and delivered that certain Project Loan Pledge and Security Agreement, dated as of the date hereof, in favor of the Collateral Agent for the ratable benefit of the Secured Parties (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”). All capitalized terms used herein without definition shall have the meaning given in the Security Agreement and, if not defined therein, shall have the meaning given in the Credit Agreement;

WHEREAS, under the terms of the Security Agreement, the Grantors have granted a security interest in certain Collateral, including, without limitation, certain Intellectual Property of the Grantors, to the Collateral Agent for the ratable benefit of the Secured Parties, and have agreed to execute and deliver to the Collateral Agent any document required to acknowledge, confirm, register, record or perfect the Collateral Agent’s interest in any part of such Intellectual Property; and

WHEREAS, the Grantors have agreed as a condition precedent to the extensions of credit under the Credit Agreement to execute this Agreement for recording with the United States Patent and Trademark Office, the United States Copyright Office and other applicable Governmental Authorities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor hereby agrees as follows:

SECTION 1. GRANT OF SECURITY. Each Grantor hereby assigns as collateral security to the Collateral Agent (for the ratable benefit of the Secured Parties), and grants to the Collateral Agent (for the ratable benefit of the Secured Parties) a security interest in and continuing lien on, all of such Grantor’s right, title and interest in, to and under all intellectual property of such Grantor including, without limitation, the following property, in each case whether now owned or existing or hereafter acquired or arising and wherever located and whether arising under United States, state, multinational or foreign laws or otherwise

(collectively, but exclusive of any Excluded Collateral, the “**Intellectual Property Collateral**”), for the prompt and complete payment and performance in full when due and with all rights and remedies under the UCC and other applicable law (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) of the Secured Obligations:

1.1 Trademarks. All United States and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, all registrations, recordings and applications for any of the foregoing including, but not limited to: (i) any of the foregoing referred to in Schedule 1; (ii) all extensions and renewals, and any right to obtain any extensions and renewals, of any of the foregoing; (iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing; (iv) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill; and (v) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages and proceeds of suit (collectively, the “**Trademarks**”);

1.2 Trademark Licenses. Any and all agreements providing for the granting of any right in or to Trademarks (whether any Grantor is licensee or licensor thereunder) including, without limitation, any of the foregoing referred to in Schedule 1 (collectively, the “**Trademark Licenses**”);

1.3 Patents. All United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) any of the foregoing referred to in Schedule 1; (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations, and any right to obtain any reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations, thereof; (iii) all rights corresponding thereto throughout the world; (iv) all inventions and improvements described therein; (v) all rights to sue for past, present and future infringements thereof; (vi) all licenses, claims, damages, and proceeds of suit arising therefrom; and (vii) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit (collectively, the “**Patents**”);

1.4 Patent Licenses. All agreements providing for the granting of any right in or to Patents (whether any Grantor is licensee or licensor thereunder) including, without limitation, any of the foregoing referred to in Schedule 1 (collectively, the “**Patent Licenses**”);

1.5 Copyrights. All United States and foreign copyrights (including community designs), including but not limited to copyrights in software and databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, and, with respect to any and all of the foregoing: (i) all registrations, recordings and applications therefor including, without limitation, any of the foregoing referred to in Schedule 1; (ii) all extensions and renewals, and any right to obtain any extensions and renewals, thereof; (iii) all rights corresponding thereto throughout the world; (iv) all rights to sue for past, present and future infringements thereof; and (v) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages and proceeds of suit (collectively, the “**Copyrights**”);

1.6 Copyright Licenses. Any and all agreements providing for the granting of any right in or to Copyrights (whether any Grantor is licensee or licensor thereunder) including, without limitation, any of the foregoing referred to in Schedule 1 (collectively, the “**Copyright Licenses**”);

1.7 Trade Secrets. All trade secrets and all other confidential or proprietary information and know-how whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret, including but not limited to: (i) the right to sue for past, present and future misappropriation or other violation of any Trade Secret and (ii) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit (collectively, the “**Trade Secrets**”);

1.8 Trade Secret Licenses. Any and all agreements providing for the granting of any right in or to Trade Secrets (whether any Grantor is licensee or licensor thereunder) including, without limitation, any of the foregoing referred to in Schedule 1 (collectively, the “**Trade Secret Licenses**”);

1.9 Intellectual Property. All rights, priorities and privileges with respect to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets, and the Trade Secret Licenses, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom (collectively, “**Intellectual Property**”); and

1.10 Proceeds. (i) All “proceeds” as defined in Article 9 of the UCC; and (ii) shall include whatever is receivable or received when Intellectual Property or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary (in each case, regardless of whether characterized as proceeds under the UCC), and any and all proceeds of the foregoing described in this Section 1.

SECTION 2. RECORDATION. Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner of Patents and Trademarks and any other applicable government officer record this Agreement.

SECTION 3. EXECUTION IN COUNTERPARTS. This Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 4. SEVERABILITY. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 5. CONFLICT PROVISION. This Agreement has been entered into in conjunction with the provisions of the Security Agreement. The rights and remedies of each

party hereto with respect to the security interest granted herein are without prejudice to, and are in addition to those set forth in the Security Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Agreement are in conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

SECTION 6. CONSENT TO JURISDICTION.

6.1 Each Grantor hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or for recognition or enforcement of any judgment, and each Grantor hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each Grantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any Secured Party may otherwise have to bring any action or proceeding relating to this Agreement against any Grantor or their properties in the courts of any jurisdiction.

6.2 Each Grantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or for recognition or enforcement of any judgment in any New York State court or Federal court of the United States of America sitting in New York City, Borough of Manhattan or other New York jurisdiction as set forth in Section 6.1 above. Each Grantor hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

6.3 Each Grantor irrevocably consents to service of process in the manner provided for notices in the Security Agreement. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 7. WAIVER OF JURY TRIAL. EACH GRANTOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH GRANTOR (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY SECURED PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH SECURED PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT THE SECURED PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.

SECTION 8. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN

ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK).

SECTION 9. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the Collateral Agent and each Grantor and their respective successors and assigns. No Grantor shall, without the prior written consent of the Collateral Agent given in accordance with the Credit Agreement, assign any right, duty or obligation hereunder.

SECTION 10. INTERCREDITOR AGREEMENT. All rights and remedies of the Collateral Agent hereunder are, as between the Administrative Agents (as defined in the Intercreditor Agreement) and the Collateral Agents (as defined in the Intercreditor Agreement), subject to the terms of the Intercreditor Agreement. This provision is for the benefit of, and may be enforced exclusively by, the Administrative Agents and the Collateral Agents only. For the avoidance of doubt, this provision is not for the benefit of any Grantor and may not, under any circumstances, be enforced by any Grantor.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered as of the date first above written.

GRANTORS:

TIOGA DOWNS RACETRACK, LLC,
a New York limited liability company

By: _____

Name: Jeffrey R. Gural

Title: Chairman and Chief Executive Officer

MID-STATE RACEWAY, INC.,
a New York corporation

By: _____

Name: Jeffrey R. Gural

Title: Chairman and Chief Executive Officer

[Signature page to Project Loan Intellectual Property Security Agreement]

TRADEMARK
REEL: 005908 FRAME: 0202

COLLATERAL AGENT:

**WELLS FARGO BANK, NATIONAL
ASSOCIATION,**
as the Collateral Agent

By: Sue Fuller
Name: Sue Fuller
Title: Managing Director

**SCHEDULE 1
to Intellectual Property
Security Agreement**

COPYRIGHTS

None.

COPYRIGHT LICENSES

None.

PATENTS


None.

PATENT LICENSES

None.

TRADEMARKS

Serial Number	Word Mark	Status
87170514	T TIOGA DOWNS CASINO & RESORT	Application Pending
87131793	TIOGA DOWNS CASINO	Application Pending
87102139	TIOGA DOWNS CASINO & RESORT	Application Pending
87084509	TIOGA DOWNS	Application Pending
87084502	TIOGA DOWNS CASINO	Application Pending

<u>Mark</u>	<u>International Class(es)</u>	<u>Application No. Filing Date</u>	<u>Registration No. Registration Date</u>	<u>Comments</u>
	41, 43	85316895 10-May-2011	4086952 17-JAN-2012	Registered <u>Owner:</u> Mid-State Raceway, Inc.

TRADEMARK LICENSES

None, other than off-the-shelf, non-proprietary software obtained in the ordinary course.

TRADE SECRET LICENSES

None.