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Betting Corporation*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re NEW YORK CITY OFF-TRACK BETTING CORPORATION, Debtor. ¹	Chapter 9 Case No. 09-____(____)
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**DECLARATION OF RAYMOND CASEY IN SUPPORT OF THE CHAPTER 9
PETITION AND THE STATEMENT OF QUALIFICATIONS**

I, Raymond Casey, declare as follows:

Background

1. I am the President and Chief Executive Officer of the New York City Off-Track Betting Corporation (“**NYC OTB**”). I make this declaration in support of NYC OTB’s voluntary petition under chapter 9 of the Bankruptcy Code initiating this chapter 9 case and the statement of qualifications under section 109(c) of the Bankruptcy Code filed concurrently herewith. Except as to those matters set forth on information and

¹ NYC OTB’s address is 1501 Broadway, New York, NY 10036. The Debtor’s tax identification number is 13-2664509.

belief, I have personal knowledge of the facts set forth herein and if called as a witness herein I could testify competently to such facts.

2. I attended the State University of New York at Stony Brook where I obtained a Bachelors of Science Degree in Psychology in 1985. I obtained my Juris Doctorate from St. John’s University School of Law. I have 21 years of professional experience, with seven years experience in the horse racing industry. I have worked as the Chief Executive Officer of NYC OTB since March 2002. Prior to working for NYC OTB, I was the Chairman of the Trade Waste Commission, which later became the Business Integrity Commission. This agency regulated the private sanitation industry and gambling boats licensed to operate from New York City.

3. I am familiar with the historical situation that NYC OTB has faced, and I have personal knowledge of NYC OTB’s operations, NYC OTB’s negotiations with stakeholders and NYC OTB’s efforts to petition the New York State Legislature to alter the legislative distribution scheme.

A. The History and Structure of NYC OTB

A Brief Introduction to NYC OTB

4. NYC OTB is a public benefit corporation, which operates an off-track pari-mutuel betting system on thoroughbred and harness horse races held at all 11 race tracks located in New York State (the “**State**” or “**New York**”) and certain race tracks located outside of the State.

5. On April 22, 1970, the State enacted legislation that created NYC OTB and established the structure of off-track wagering on thoroughbred and harness horse races. NYC OTB was designated to operate as a public benefit corporation with a three-

fold mission: (1) to raise revenue for the State and certain local municipalities; (2) to combat organized crime's hold on horse-race related gambling by providing a legal alternative; and (3) to operate in a manner compatible with the well being of the New York horse racing industry.

6. On April 8, 1971, NYC OTB opened its doors and became the first legal off-track pari-mutuel betting system in the country. Originally, NYC OTB accepted transactions through a handful of manually supported branches with limited services. As of November 30, 2009, NYC OTB was accepting wagering transactions at 66 locations, including 55 branch offices, 8 restaurants and 3 teletheaters, in addition to accepting such transactions over the phone and the Internet.

7. Since its inception, NYC OTB has strived to provide excellent services to its customers. In August 1971, all of the NYC OTB branches were online with an all-betting and all-cashing computer system and, by 1980, live race calls from the New York Racing Association Inc. ("**NYRA**") tracks were heard in some branches. Beginning in 1981, NYC OTB began to show telecasts of live racing, called simulcasts, in many locations. In 1993, NYC OTB began installing self-service betting terminals in its branches and also began upgrading customer amenities. NYC OTB opened its first teletheater, the Inside Track, in Manhattan in 1986, and in 1997, NYC OTB opened its first restaurant location.

8. In-home simulcasting began in March 1995 on the public access channels of New York City Cable TV, and broadcasting of the first NYC OTB-produced television show began in 1997. In February 2000, the NYC OTB Racing Network was born, with a number of different shows airing throughout the year. By 1997, NYC OTB customers

could utilize a touch-tone activated Automated Telephone Account Betting system. A new chapter in NYC OTB's history was opened on August 24, 2007 when Internet wagering was launched on the ibetOTB.com website.

9. In 2007, thoroughbred racing contributed \$1.7 billion annually to the State's economy. It employs 35,000 people across the State, supports a large variety of small businesses, and supports the existence of more than 400 New York State breeding farms. Since NYC OTB's inception in 1971, it has made payments of nearly \$2 billion to the State horse racing industry, over \$1.4 billion to New York City (the "**City**") and nearly \$600 million to the State. In 2008 alone, NYC OTB made statutory contributions in an aggregate amount of \$128.6 million to the State horse racing industry, the State, the City, and other local municipalities.

The Corporate Structure of NYC OTB

10. NYC OTB was created by and operates under Articles V and VI of the New York Racing, Pari-Mutuel Wagering and Breeding Law (the "**Racing Law**"). It is a public benefit corporation administered by a board of directors (the "**Board**") consisting of five members appointed by the Governor. The Governor designates one of the Board members to be the Chairman of the Board (the "**Chairman**"). Board members receive no salary, but are authorized to be reimbursed for their actual and necessary expenses incurred during the performance of their official duties.

11. NYC OTB's operations are regulated by the State. In accordance with the Racing Law, the New York State Racing and Wagering Board (the "**Racing and Wagering Board**") exercises extensive oversight and regulatory authority over NYC OTB. The Racing and Wagering Board was established in 1973 to combine the functions

of the various then-existing racing commissions and centralize regulatory authority. The Racing and Wagering Board has general jurisdiction over all off-track and on-track pari-mutuel wagering in the State, on-track horse racing in the State, and the corporations, associations, and persons engaged in such activities.

Employees

12. As of November 1, 2009, NYC OTB employed in the aggregate approximately 1,343 employees, of whom approximately 1,216 were members of unions. Of the union members, approximately 1,027 were represented by Local 2021 of District Council 37, approximately 167 were represented by Local 858 of the International Brotherhood of Teamsters, approximately 20 were represented by Local 3 of the International Brotherhood of Electrical Workers, and approximately six were represented by the Organization of Staff Analysts. Before the date hereof, NYC OTB had entered into labor-related collective bargaining agreements (collectively, the “**CBAs**”) with respect to its union represented employees. As of the date hereof, the CBAs continue in full force and effect.

B. NYC OTB Exhausted Efforts to Prevent Insolvency

NYC OTB’s Prepetition Business Operations

13. Pari-mutuel wagering is a betting system in which all bets of a particular type on a particular race are placed together into a commingled pool, a certain amount (the “**Wagering Commission**”) is removed for the benefit of the “house”—in this case, the State’s tracks and the State’s off-track betting corporations (the “**OTBs**”)—and the payoff is calculated by allocating the remaining pool among all winning wagers. In the pari-mutuel system, wagering customers determine the payoff odds; moreover, the bettors

are not wagering against the house, as is the case with most fixed-odds gambling, in which the final payout is determined before the wager is placed.

14. NYC OTB receives a percentage (the “**Wagering Commission Rate**”) of the total dollars wagered on a race through its services (the “**Handle**”), as well as a statutorily imposed surcharge on certain bets. While the Wagering Commission Rate varies for different types of bets, it does not vary based on the number of wagers placed or the number of winning or losing customers. The winning bettors receive approximately 80% of the amounts wagered on each race before consideration of the surcharge. In addition, NYC OTB must distribute certain percentages of the Handle to certain local governments, the State and the State horse racing industry, comprising various horse race tracks and horse breeding funds. NYC OTB also makes payments to certain horse race tracks, both in- and out-of-state, under its negotiated simulcast contracts. All mandatory distributions made to these various entities, based on a percentage of the higher Handle figure, come from the Wagering Commission actually received by NYC OTB. In addition, payments are made to local governments from the surcharge.

15. For the last audited 12-month period, ended June 30, 2008, NYC OTB processed a total Handle of \$998.2 million. The winning bettors received \$760.7 million of this amount, leaving NYC OTB with \$244.7 million in Wagering Commission as its actual revenue after including \$7.2 million for surcharge, uncashed tickets and other operating revenues. NYC OTB made the following mandatory distributions for the same period: \$93.2 million to the State horse racing industry, \$20.2 million to the City and other local governments, and \$15.2 million to the State. This left \$116.1 million for

NYC OTB to cover \$133.9 million in operating expenses (excluding certain non-cash expenses). Consequently, it incurred an operating deficit of \$17.8 million for the year, despite an operating profit margin of approximately 45%.

Issues with Operational Model

16. In 1970, New York was a pioneer of government-sponsored pari-mutuel off-track betting on horse races. In 2008, approximately 90% of all wagers placed on horse racing in the United States were made off-track. However, three structural decisions made during the creation of the State's off-track betting system have not been replicated in other states and have resulted in severe financial problems for NYC OTB.

17. First, when NYC OTB was created, five other OTBs were also established to operate in different geographic regions of the State as separate entities. This created an environment in which the OTBs fractionalized the horse race customer base and competed with each other for customers of New York horse racing. This situation worsened with the inception of telephone betting and online wagering, which could be accessed from anywhere in the State. Second, as structured, the OTBs are also in competition with the race tracks that host the horse races. Third, as discussed above, NYC OTB makes large, mandatory distributions to the State horse racing industry, the State, and the City and other local governments each year based on the amount of gross Handle, rather than on the actual net revenue (the Wagering Commissions) received by NYC OTB. This requires NYC OTB to pay its statutory beneficiaries before making allowance for its own operating expenses. No other state has replicated any of these three features in its off-track betting system.

NYC OTB's Growing Financial Troubles

18. Over time, the State Legislature imposed new distribution requirements while raising existing mandatory distributions from the OTBs, including NYC OTB. NYC OTB also faced increased operating costs, due mostly to steep increases in the costs of health coverage for its employees and increases in wages for unionized employees. Additionally, because NYC OTB operates in one of the highest cost markets in the world, it experienced significant increases in its rent and utilities costs, which already were higher than those of the other regional OTBs.

19. At first, the increases in the payments that NYC OTB made to the tracks under a progression of amendments to the Racing Law and the increases in operating expenses came at the expense of the City, which was entitled only to any residual monies after NYC OTB made its mandatory distributions and paid its own expenses. The City's share of the mandatory distributions paid by NYC OTB went from a high of 47% in 1980 to a low of 10% by 2007, while the State horse racing industry's share went from 32% to 76% during the same period.

20. Over time, higher mandatory distributions required by the State Legislature, combined with increases in the cost of operating in New York City, left NYC OTB with no residual income to turn over to the City. In 2001, the Legislature reduced the Wagering Commission Rate for races conducted at racetracks operated by NYRA, reducing NYC OTB's Wagering Commissions by \$5.5 million annually. Between 2003 and 2005, additional legislatively imposed payment obligations increased NYC OTB's mandatory distributions by an average of \$7.8 million annually. These additional payment obligations included the introduction of a regulatory fee (2003) and an increase

in the regulatory fee (2005) to support the operations of the New York State Racing and Wagering Board and “maintenance of effort” payments (also known as “hold harmless” payments) (2003) to support and protect the harness racing industry from new competition created by the nighttime simulcasting of out-of-state thoroughbred races.

21. NYC OTB’s financial difficulties were exacerbated because the statutory scheme also prevented NYC OTB from retaining sufficient capital to reinvest in its business. The lack of capital reinvestment has forced NYC OTB to operate with outdated technology and a business model still dependent on a bricks and mortar distribution network of aging parlors.

NYC OTB’s Attempts to Prevent Insolvency

22. NYC OTB looked both inward and outward in its attempt to prevent insolvency. As discussed in the Declaration of Robert J. Garry in Support of the Chapter 9 Petition and the Statement of Qualifications filed concurrently herewith, NYC OTB laid off 17% of its management, closed underperforming branches, reduced employees’ overtime hours, surrendered a quarter of its headquarters space, reduced supply purchases, decreased security expenses and reduced energy costs—resulting in nearly \$45 million of savings during the five-year period through the end of the 2008 fiscal year. While making the difficult decisions needed to reduce operational costs, NYC OTB also launched a campaign seeking to have the State Legislature rationalize the flawed and burdensome legislative distribution scheme.

23. NYC OTB repeatedly petitioned the State Legislature to modify the legislative distribution scheme to permit NYC OTB to return to profitability. On May 17, 2005, I appeared before a joint hearing of the Senate Standing Committee on Racing,

Gaming and Wagering (the “**Senate Standing Committee**”) and the Assembly Standing Committee on Racing and Wagering. After describing the structural problems inherent in the legislative distribution scheme, I explained that over the two prior years, managerial cuts and branch closings had yielded over \$10 million in operational savings. However, I emphasized that further expense-cutting actions would eventually result in lower Handle for NYC OTB and, consequently, lower mandatory distributions. I argued that the imbalance of the legislative distribution scheme, which does not account for operating costs incurred by NYC OTB to generate the Handle on which the mandatory distributions are based, must be fixed to return NYC OTB to profitability.

24. During 2006, the City retained the Boston Consulting Group (“**BCG**”) to conduct an in-depth study of NYC OTB, and the horse racing industry in general, to identify ways to maximize NYC OTB’s value to the City. When the BCG study was completed in April 2007, a 70-page report was issued entitled “New York City Off-Track Betting Corporation: A Plan For Transformation and Growth” (the “**BCG Report**”). The BCG Report concluded that the success of any proposals or initiatives its study developed to increase the value of NYC OTB depended on first revising the legislative distribution scheme. The BCG report consistently emphasized “the immediate need to enact legislation to reform the current statutory distribution scheme.” BCG warned:

“While there are significant expansion opportunities for NYCOTB (and the racing industry in New York), the only way to ensure operational and financial stability for NYCOTB is through a legislative restructuring of NYCOTB’s mandatory distribution payments. Without an alignment of economic interests among various racing entities in the State, not only will NYCOTB be unable to invest in the initiatives that support future growth but, more urgently, it will likely be forced to curb its operations or even discontinue them altogether. Suspending NYCOTB’s operations would not only moot this study’s recommendations but would quite probably set in motion an economic chain reaction of diminished

revenue and other distributions generated through NYCOTB's acceptance of more than \$1 billion in wagers each year. The prolonged interruption of existing distributions from this substantial volume of off-track wagering would be devastating to New York's entire horseracing and breeding industry. There would simply be no means of instantly replacing such a large gap in the State's OTB network."

BCG's conclusion had been presented to the State Legislature earlier, in November 2006, in a position paper on horse racing issued out of the Office of Daniel L. Doctoroff, the Deputy Mayor for Economic Development and Rebuilding.

25. On May 21, 2007, I once again appeared before the Senate Standing Committee seeking reform of the Racing Law to revise the legislative distribution scheme. I explained that despite recording the highest cumulative Handle in its history that year, NYC OTB still lost \$7 million due to the legislative distribution scheme. I testified that both the Deputy Mayor and BCG believed the State horse racing industry could be revitalized, but it required help from the State Legislature.

26. I further outlined to the Senate Standing Committee the specific legislation NYC OTB had proposed to keep the regional OTBs solvent, which, among other things, limited mandatory distributions to fixed percentages of each OTB's net earnings, eliminated the hold-harmless obligations of the OTBs to the harness tracks and phased out statutory payments from OTBs to any track that received video lottery terminal revenues from a video lottery racino operated on its site. While NYC OTB was petitioning the State Legislature for Racing Law reform that would prevent NYC OTB's economic failure and help to breathe new life into the State horse racing industry, it enlisted the aid of the New York City Council to persuade the State Legislature to effect the proposed reforms. On October 28, 2005, I first appeared before the City Council's

Finance Committee (the “**Finance Committee**”). On December 4, 2007, I once again appeared in front of the Finance Committee, this time alongside the Deputy Mayor. The Deputy Mayor emphasized to the Finance Committee that despite a substantial operating profit for the 2007 fiscal year, the payment of the mandatory distributions under the legislative distribution scheme resulted in a \$9 million deficit—the fourth consecutive year of deficits. The Deputy Mayor reiterated that despite successful reductions in operating costs, NYC OTB still projected deficits into the future and would exhaust unrestricted cash in June 2008. He also stressed that the City would not spend any taxpayer funds to ensure NYC OTB’s continued operation. At the same meeting, I informed the Finance Committee that because the broken legislative scheme assured the insolvency of NYC OTB, NYC OTB had begun to formulate a plan to cease operations.

27. The presentation of, and lobbying for, the omnibus racing bills described above remained unsuccessful, and on April 9, 2008, I made my third appearance before the Senate Standing Committee. At the meeting I advised that preparatory steps to our shutdown process had already begun and could only be averted by state legislative action. Following the April 9, 2008 hearing, the City Council passed a Resolution (No. 1235) entitled: “Resolution calling upon the Legislature of the State of New York to amend the New York State Racing, Pari-Mutuel Wagering and Breeding Law to Reduce State-imposed financial mandates on off-track betting corporations which have recently been absorbing a growing portion of the New York City-Off Track Betting Corporation’s revenues, driving the corporation into insolvency, and yielding no residual revenues for the City of New York.” Nevertheless, the structural difficulties with the legislative distribution scheme remain.

The Management's Plan for Closure of NYC OTB

28. NYC OTB's management developed a plan (the "**2008 Closure Plan**") to serve as a roadmap for the complete shutdown and winding up of all aspects of NYC OTB's operations. The 2008 Closure Plan dealt with the closing of all branches, all teletheaters, all restaurant wagering facilities, the Advance Deposit Wagering operations, NYC OTB's headquarters at 1501 Broadway and the satellite warehouse facility. The 2008 Closure Plan also contemplated the layoff of all 1,466 NYC OTB employees, the winding up of NYC OTB's real estate interests, the liquidation of NYC OTB's personal property and the disposition of claims against NYC OTB.

29. The 2008 Closure Plan called for the last day of wagering operations to be Sunday, June 15, 2008, with nearly all the personnel layoffs and the complete dismantling of the branch system and the telephone call center to begin the next day. Owing to certain collective bargaining obligations and in compliance with the Worker Adjustment and Retraining Notification Act, NYC OTB had made all required "at risk" and layoff notifications to its employees. In addition, the required notifications had been distributed to government officials. The 2008 Closure Plan contemplated that removal of all equipment would be completed within 60 days following the commencement of the shutdown. The 2008 Closure Plan also made provisions for the accounting closeouts of the locations in the branch system and the shutdown security requirements.

C. The State Takeover of NYC OTB

30. Even when, on June 16, 2008, the management of NYC OTB began shutting down operations by having an armored car service start to collect the cash in the branch locations, last minute negotiations between representatives of the State

Legislature and the City to avert NYC OTB's closure were still continuing. That afternoon, Governor David A. Paterson announced the takeover of NYC OTB by the State and instructed the NYC OTB workforce to report to work the next day. Within 24 hours, Chapter 115 of the Laws of 2008 was passed by the State Legislature, ratifying the State's takeover and making certain limited changes to the Racing Law in an effort to provide NYC OTB with additional sources of revenue for its operations, including increasing the amount of the surcharge that NYC OTB could retain on winning bets and raising the Wagering Commission on NYRA bets. On June 17, 2008, Governor Paterson signed the new legislation into law.

31. Though Chapter 115 transferred control of NYC OTB from the City to the State, most business operations remained unaffected. NYC OTB retained its status as a public benefit corporation with the same name and authorization to operate an off-track pari-mutuel betting system on thoroughbred and harness horse races. Its employees were permitted to continue to be members of the New York City Employees Retirement System for pension purposes, and the rights of retired employees to participate in, and receive benefits from, any City-authorized health insurance or welfare benefit program were unaltered, provided that NYC OTB reimbursed the City for the actual cost of such benefits. All obligations of NYC OTB under any contracts, memoranda of understanding or leases were continued in full force and effect, any unions that had collective bargaining agreements with NYC OTB at the time of the effective date of Chapter 115 continued their representation rights for NYC OTB employees who were members of their unions, and the collective bargaining agreements continued in full force and effect until such time as new ones could be negotiated and become effective.

32. Shortly after the enactment of Chapter 115, Governor Paterson reappointed the previous Chairman, David B. Cornstein, to NYC OTB's new Board and continued him in the position of Chairman. He did not reappoint the other four members of the previous Board. The new Board, working with senior management and with the assistance of personnel from a variety of State agencies, conducted a comprehensive assessment of the operations of NYC OTB. Following the assessment, Governor Paterson appointed Meyer S. Frucher as the new Chairman in June 2009. Mr. Cornstein continues as a regular member of the Board. Mr. Frucher was charged by the Governor with the responsibility to work with the Board and management to develop a plan not only to assure the survival of the NYC OTB, but also to serve as a blueprint for future growth and prosperity.

D. Status Quo is Unsustainable

33. In enacting Chapter 115, the State Legislature found that NYC OTB was insolvent, that its continued operation is of paramount importance to the public interest and that the "static statutory framework has caused economic distress among the regional off-track betting corporations". However, after years of mandatory distributions based on percentages of the Handle instead of percentages of the Wagering Commission revenue it actually receives or of monies remaining after allowance for NYC OTB's costs and expenses, NYC OTB has been unable to reinvest in its own business and has debts substantially greater than its current ability to repay. It has not had the resources to modernize, expand or adequately maintain its facilities, nor has it been able to invest in new technologies to create operating efficiencies to substantially lower costs. NYC OTB

is currently not paying its debts as they come due, and it expects to exhaust its cash by the end of December 2009, assuming current obligations are paid when due.

34. NYC OTB is pursuing protection under chapter 9 of the Bankruptcy Code only after an extensive review of the two principal other available alternatives, including:

- **Continuation of the current model or a scaled-back version thereof.** If NYC OTB continues to operate under the current business and statutory models, it projects that its Handle is likely to continue to decline, from approximately \$900 million to just over \$800 million in 2010, with further declines thereafter, and that NYC OTB would continue to operate at a loss for the foreseeable future, taking into account mandatory distributions to the State horse racing industry and the State and local governments, making any reinvestment in the growth of the business infeasible. NYC OTB expects that losses would increase from about \$24 million in fiscal year 2009 to almost \$40 million in fiscal year 2010, growing steadily thereafter. NYC OTB expects to run out of cash by the end of December 2009 if all current obligations are paid when due. Additional cost cuts, while providing some short-term liquidity benefits, would ultimately result in a decrease in the Handle and thus not make any meaningful difference to the sustainability of the current operating model. In addition, the associated costs of early retirement incentives and severance payment arrangements made to decrease the workforce voluntarily likely would, in the short run, overwhelm any savings from a reduced payroll, leading to a further depletion of cash.
- **Shutdown:** Based on NYC OTB's analysis of the business-as-usual option described above, the only legitimate alternative to the implementation of a new business plan, which NYC OTB is currently developing in connection with this chapter 9 case, would be a complete shutdown of NYC OTB. A shutdown would be expected to cost the State and the City approximately \$600 million for NYC OTB liabilities, such as

pension and employee welfare benefits for which the State or the City would ultimately be liable. In addition, the knock-on and multiplier effects throughout the State horse racing industry and the State would likely be much larger, as the \$600 million estimate includes only existing NYC OTB liabilities and does not take into account the annual loss of revenue generation from NYC OTB to the State and local governments and the State horse racing industry participants.

E. A Clear Imperative and Unique Opportunity

35. In my view and in the view of the NYC OTB Board, the further development and implementation of a new business plan for NYC OTB is critical to NYC OTB's ability to adjust its debts under chapter 9 and to any broader plan to save the New York horse racing industry and help maintain its long-term health. The development and implementation of a new strategy in conjunction with the implementation of such a business plan are essential to salvage NYC OTB. Moreover, this chapter 9 case represents a unique opportunity for the State Legislature to create an environment where NYC OTB can implement the changes necessary to transform NYC OTB into a successful, cost-effective business operation and position it as a catalyst for revitalization of the entire New York horse racing industry.

36. However, a business plan for NYC OTB cannot be successful without an overhaul of the current legislative distribution scheme to align NYC OTB's economic interests with those of the various State horse racing industry participants and to help stabilize NYC OTB's operational and financial results. Without such an overhaul, NYC OTB will likely be unable to invest in the initiatives that will support its future growth and be forced to cease operations altogether.

37. As described in more detail below, NYC OTB is in the process of developing a business plan to help revitalize the company. This business plan assumes legislative restructuring of NYC OTB's mandatory distribution payments. While a number of other aspects of NYC OTB's business plan are still under consideration, we expect that the business plan, when finalized, will (i) reduce costs and provide for improved operational efficiencies, (ii) lay out a compelling strategy to expand the business by attracting new consumers, improving the NYC OTB experience for existing customers, and accessing other new sources of revenue, (iii) address the detrimental features of mandatory distributions and other matters and (iv) contemplate the receipt of approximately \$250 million in new debt financing to pay its existing obligations and to fund current operations and the plans for growth. As part of NYC OTB's continuing development of the business plan, it has already conducted careful analysis of industry trends and reports, research regarding best practices from several racing and gaming operators in domestic and international markets including France, Australia and the United Kingdom, and benchmarking against competitors. NYC OTB will continue to conduct such analysis and research as it finalizes the business plan, but its preliminary analysis indicates that investment, innovation and the removal of legal and regulatory constraints that inhibit execution can result in a financially viable off-track betting enterprise. As a result, NYC OTB believes that there is a real opportunity to return its business to overall profitability and growth.

F. The Business Plan for NYC OTB's Turnaround

Reducing NYC OTB's Cost Structure

38. The cost structure of NYC OTB has grown larger than necessary given available technology. Although NYC OTB has implemented approximately \$45 million in costs cut over the last five years (which have been focused on staff reductions and reductions in overhead, including marketing), they have been insufficient to relieve NYC OTB's financial difficulties. To bring its costs down further, NYC OTB expects to implement a technology-driven business model, allowing it to significantly streamline internal operations.

39. The business plan will likely implement necessary cost cuts across NYC OTB operations, building on those rolled out over the last several years.

a) *A Reduced Bricks & Mortar Plan for the 21st Century*

40. NYC OTB currently operates 58 full-service locations and wagering facilities in eight privately-owned restaurants that require 791 employee positions and demand a significant amount of capital. The business plan is currently expected to call for the elimination of a number of full-service locations, based on overall Handle. Taking advantage of modern technology, a number of the remaining branches may transition from full-service to self-service locales, allowing for a significant reduction in costs, while also retaining a large portion of Handle.

b) *A More Efficient Account Wagering Program*

41. NYC OTB has also considered options to increase the efficiency of the NYC OTB account wagering program in order to better compete in the future. Using modern technology, NYC OTB believes that it could reduce account wagering related head count substantially, by prioritizing telephone agent support to the 30% of clients who make up 90% of NYC OTB's Handle. NYC OTB would direct all other telephone

customers to an automated telephone system as well as its online wagering platform, www.ibetotb.com.

c) *Head Count Reduction*

42. NYC OTB currently believes that the steps outlined above would result in a significant head count reduction that would reduce operating expenses. In such an event, following the receipt of financing NYC OTB would provide severance arrangements or early retirement packages to all eligible employees. All such employees would be eligible for a buyout that would be determined by their respective employment levels. NYC OTB would then expect a substantial reduction by year-end 2011 in the number of branch operations employees, telephone, Account Deposit Wagering (“ADW”) and Customer Service operations employees and headquarters employees.

43. Labor unions representing the majority of unionized NYC OTB employees, including Local 2021 of District Council 37 which represents more than one thousand NYC OTB unionized employees, have expressed their recognition of the necessity for the labor reductions outlined above. NYC OTB will work closely with Local 2021 of District Council 37, Local 858 of the International Brotherhood of Teamsters, and Local 3 of the International Brotherhood of Electrical Workers to implement these changes or such other changes as are ultimately contemplated by the business plan.

44. NYC OTB currently expects to roll out the cost cuts in two phases, with the first phase being completed at year-end 2010 and the second phase being completed at year-end 2011, allowing NYC OTB to retain the Handle from existing operations while capitalizing on new sources of revenue growth.

Investing to Drive Growth and Revitalize Racing

45. For NYC OTB to succeed in the long-term, it must invest in its own growth. NYC OTB has been hobbled by the distribution scheme and its own increasing costs, which have left it with no funds to upgrade its technology, facilities or services. In developing its new business plan, NYC OTB has considered a number of different options which are focused on building new revenue streams and re-energizing the NYC OTB brand to attract a broader demographic to off-track betting, while also better servicing the existing customer base. The specific elements that NYC OTB has considered, each of which may be included as part of NYC OTB's new business plan after further research and analysis have been conducted, include:

a) Branch Revitalization

46. To recapture some of the Handle that will be lost as a result of the branch closings, NYC OTB has identified the possibility of opening five new flagship locations, each with an expected per/branch square footage of between 15,000 and 20,000 square feet (compared to the average of 4,000 square feet of current NYC OTB locations). This business strategy would entail one flagship location being opened in each of New York City's five boroughs. NYC OTB expects that these new, modern structures would not only cater to the existing client base, but they would also help to draw a younger demographic with more disposable income by offering improved amenities (such as a bar and grill) and superior customer service. NYC OTB would position these flagship locations as social destinations, attractive both to first-time bettors and existing customers.

47. In addition, NYC OTB may implement a capital improvement plan for the benefit of the remaining smaller full-service NYC OTB branches, which would upgrade current facilities and improve services. These full service branches will be complemented by a number of more technologically advanced and less labor intensive branches in existing key strategic locations. In self-service branches, patrons would not have access to a betting clerk and would have to place their own bets, but there would be personnel on hand to cash winnings for patrons. Self-service facilities would generally have less square footage than full-service branches but would still provide the same general level of race simulcasting.

b) Marketing Efforts

48. Given its capital constraints over the last several years, NYC OTB made no material investment in its brand or marketing efforts during that time. In conjunction with the rollout of new business initiatives, NYC OTB plans to develop a new marketing strategy and brand campaign to enhance its image and attract active gamblers outside of its traditional customer base. These efforts are intended to target a younger, more affluent demographic, including women, and position horse-race wagering as an exciting entertainment alternative.

c) Service Company

49. NYC OTB is also considering the establishment of a service company in partnership with the New York horse racing industry. This service company would centralize many redundant back-office and technology functions and consolidate them with those of participating New York race tracks and the five other regional OTBs.

50. Preliminary indications of interest to NYC OTB from the State horse racing industry for implementing this service company is high, as it would allow participants in the venture to realize efficiencies from warehousing technology, ADW functions and television and marketing efforts, among other things. This would significantly reduce the aggregate costs required to service horse-wagering in New York.

51. Cost savings from the use of the service company would allow the service company to re-invest in operational improvements to enhance customer service and deliver a higher-quality product. One such service improvement would be facilitating easier transfers of funds in and out of the account wagering system and allowing bettors without accounts to use debit cards to place wagers. This improvement in access to funds could be further leveraged within the framework of the service company to allow bettors to access their accounts statewide at any OTB or track, which is currently not possible. As it continues to research this possibility, NYC OTB intends to pursue a partnership with a major bank in relation to these initiatives.

52. In conjunction with this effort and as NYC OTB pursues a future business plan that will be technology-centric, it will also consider the acquisition or development of a “totalizator”, a system that runs pari-mutuel betting, calculates payoff odds, displays them, and produces tickets based on incoming bets. NYC OTB believes that being able to drive its technology agenda aggressively will be vital for its long term success.

d) New Content

53. NYC OTB may also attempt to grow revenues by offering additional wagering content by extending the wagering hours to encompass international simulcast signals from countries such as Hong Kong, France and Australia.

54. To reach new customer demographics, NYC OTB will need to educate a new customer base on horse racing. NYC OTB intends to explore the introduction of new types of wagers that make the initial wagering experience easier and quicker for the beginner and more streamlined and efficient for the seasoned veteran.

55. These new content areas represent important growth opportunities and would serve to expand the wagering choices to meet the demands of a more diverse customer base. However, the economic benefit of these additional opportunities have yet to be fully assessed.

e) Rebate/Rewards Program

56. NYC OTB may implement a rebate strategy to reward high-wagering clients, similar to those programs found at tracks and other regional OTBs throughout New York and consistent with what is available through out-of-state online horse-wagering sites.

Decisive Action Required from the State Legislature

57. A business plan for NYC OTB cannot succeed unless the State Legislature acts swiftly and decisively. The most critical legislative change required to secure NYC OTB's viability is a modification to the legislative distribution scheme to allow NYC OTB to meet the cost of NYC OTB's functions *before* calculation of mandatory distributions to the State horse racing industry (tracks, breeding funds, etc) and State and local governments. This could be accomplished by permitting NYC OTB to make mandatory distributions based on percentages of the Wagering Commission revenue it actually receives after allowance for costs of NYC OTB's functions, instead of based on its Handle.

58. Other legislative changes needed include:

- Repealing payments for “dark days” and repealing maintenance-of-effort and hold-harmless requirements to harness tracks. Maintenance-of-effort and hold-harmless requirements compel NYC OTB to pay its regional harness tracks at least the same amount it paid them in 2002, to protect them from competition from NYC OTB simulcasts of nighttime, out-of-state thoroughbred races, which NYC OTB was first permitted to do in 2003. “Dark days” occur when the NYRA is not conducting a thoroughbred race meeting, and no licensed harness track is accepting wagers on or displaying the signal of any thoroughbred track. On dark days, simulcast licensees such as NYC OTB can broadcast out-of-state thoroughbred races, but still must make payments to the harness tracks in accordance with a statutory formula.
- Enacting a statutory structure of licensing and regulation for out-of-state ADW operators who accept account wagering from within New York.
- Allowing unclaimed winnings to be retained by pari-mutuel operators where the wager is placed, instead of being paid to the State.
- Authorizing NYC OTB to waive surcharges, in whole or in part, in discrete wagering channels.
- Enacting specific authorization for licensed pari-mutuel entities to offer rebates and similar alternative forms of cash and non-cash consideration.

59. NYC OTB is also pursuing a number of legislative changes that would support the future growth of the organization, and the New York horse racing industry

more generally, by allowing NYC OTB to pursue new sources of revenue. These legislative changes include expanding the number of special-demonstration simulcast-theater projects authorized within New York City, adding to NYC OTB's enumerated powers to allow establishment and operation of a limited-purpose bank that would not have lending authority and broadening NYC OTB's ability to engage in in-home simulcasting, including simulcasting races in partnership with out-of-state tracks.

60. There are also a number of burdensome legacy issues within the existing legislation which NYC OTB is seeking to address by removing provisions which detract from the alignment of interests of the State horse racing industry with those of NYC OTB. These legacy issues are included in the summary of legislation that is attached to this Declaration as Exhibit A.

61. Because a move to a legislative distribution scheme in which mandatory distributions are based on percentages of the Wagering Commission revenue NYC OTB actually receives after allowance for costs and expenses represents a significant change, NYC OTB expects to work closely with the New York horse racing industry to make this transition in a responsible manner. NYC OTB appreciates the importance of protecting the viability of its horse racing industry partners and is focused on implementing changes in a manner that will ultimately serve to protect the economic health of all horse racing industry participants.

62. In order to implement a more balanced protocol for the distribution to applicable New York horse racing industry participants of retained commissions from the wagering accepted by NYC OTB, NYC OTB proposes to depart from and alter the current legislative distribution scheme in the following principal respects:

- Statutory commissions as presently codified in the Racing Law would be superseded by a model predicated upon market-based, negotiated contractual “host fee” arrangements. In replacement of a legislatively established statutory commission payment, applicable New York horse racing industry participants (tracks, horsemen and breeding funds) would receive host fees from NYC OTB attributable to wagers accepted by NYC OTB on the races run at the in-state tracks. Much as is the case today with out-of-state tracks, host fees would be negotiated between each track and NYC OTB and would extend to both the right to accept wagers on the races run at the track and access the on-track wagering pools, as well as the display of simulcast signals of races run at such track.
- The in-state host fee recipients would no longer be statutorily entitled to receive commissions or other forms of payment (e.g., dark day and maintenance-of-effort payments) with respect to the wagering accepted by NYC OTB on races run at tracks located outside of the State. Instead, the applicable New York horse racing industry participants would become eligible to receive “dividends” or “participation shares” of NYC OTB’s available net revenue after allowance for the costs of NYC OTB’s functions. For these purposes, host fees to in-state tracks, regulatory fees to the Racing and Wagering Board, pari-mutuel tax and surcharge payable to local governmental entities—all formerly in the category of mandated payments set by statute—would be treated as costs of NYC OTB’s functions, along with other ordinary costs of its functions. The participation shares of net revenue would be

determined in significant part by the relative levels of statutory payments received from NYC OTB by each applicable New York horse racing industry participant historically, as well as the Handle levels achieved by NYC OTB, the in-state racetracks or both in the future.

- In the event NYC OTB and one or more of the in-state tracks were unable to come to agreement on host-fee terms, such terms would be established through a process of compulsory, binding arbitration.

63. NYC OTB believes that following a changeover to the legislative distribution protocol described above, a closer alignment of the in-state, on-track interests and those of NYC OTB will be achieved and a stable equilibrium point assuring NYC OTB's future financial well-being will result.

F. Financing the Business Plan

64. To pay for many of the initiatives and cost reductions described above, the business plan currently under development contemplates that NYC OTB would obtain debt financing of approximately \$250 million. The source of such financing will depend on a variety of factors, such as the condition of financial markets at the time NYC OTB plans to obtain such financing. The proceeds generated from such financing would be used to fund the severance arrangements and early retirement incentives that would allow NYC OTB to reduce its work force, pay obligations that are subject to adjustment in the chapter 9 case, potentially fund the building of the new flagship locations and upgrade the technology platform underpinning NYC OTB. Some of the proceeds would also provide working capital to fund continued short-term losses while the various aspects of the restructuring plan take hold and return NYC OTB to profitability.

Executed this 3rd day of December 2009, at New York, New York.

I declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

s/ Raymond Casey

Raymond Casey