

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE NORTHERN DISTRICT OF ILLINOIS  
 EASTERN DIVISION**

In re:	)	Chapter 11
	)	
BALMORAL RACING CLUB, INC., <i>et al.</i> ,	)	Case No. 14-45711
	)	(Jointly Administered)
Debtors.	)	
	)	Honorable Donald R. Cassling
	)	
	)	<b>Hearing Date: May 4, 2016</b>
	)	<b>Hearing Time: 9:00 a.m.</b>

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**ORDER AUTHORIZING SALE OF REAL ESTATE AND  
 DEBTORS' RIGHT, TITLE AND INTEREST TO PERSONAL PROPERTY  
 ASSOCIATED WITH BALMORAL TRACK, FREE AND CLEAR OF  
 LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, AND RELATED RELIEF**

This matter having come before the Court on the amended motion of Balmoral Racing Club, Inc. ("Balmoral") and Maywood Park Trotting Association, Inc. ("Maywood"), debtors and debtors in possession herein (collectively, the "Debtors"), for entry of an order pursuant to section 363 of title 11 of the United States Code (the "Code") and Rules 2002, 6004, 9006 and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the Debtors to sell the real estate owned by Balmoral located in Crete, Illinois (the "Balmoral Track"), and the Debtors' tangible personal property located at and previously used in connection with its business operations at the Balmoral Track, and for shortened notice [Docket No. 489] (the "Sale Motion"); adequate and sufficient due written notice hereof having been given to all parties listed on the official service list herein, and creditors and other interested parties in this case under the circumstances; no further notice being required; an offer to buy the Sale Assets<sup>1</sup> having been submitted by HITS, Inc., a Delaware corporation ("Buyer") pursuant to that certain Asset Purchase Agreement dated April 26, 2016 (as modified), in the form that is

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning provided in the Sale Motion.

attached as Exhibit A hereto and made a part hereof (collectively, the “APA”); the Court having reviewed and considered (i) the Sale Motion, the APA and this Sale Order (ii) any objections thereto, (iii) the evidence proffered by counsel or adduced at the hearing held on May 4, 2016, before this Court on the Sale Motion (“Sale Hearing”); (iv) the representations set forth in the Sale Motion and this Sale Order, which were confirmed by counsel for the Debtors, their professionals and/or Buyer at the Sale Hearing; and (iv) the statements of counsel for the United States Trustee, the Judgment Creditors and other interested parties present at the Sale Hearing; and being otherwise fully advised in the premises; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates and creditors and other parties in interest; and after due deliberation thereon; and good cause appearing therefore;

**THE DEBTORS AND THE BUYER STIPULATE AS FOLLOWS:**

**Chapter 11 Case Background**

I. On December 24, 2014 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Code. These cases (the “Chapter 11 Cases”) are being jointly administered pursuant to that certain *Order Directing Joint Administration of Chapter 11 Cases* entered by the Court on January 5, 2015. [Docket No. 44]. Since the Petition Date, the Debtors have remained in possession of their assets and have continued to operate their businesses as debtors in possession in accordance with 11 U.S.C. §§ 1107 and 1108.

II. Neither a trustee nor a committee of unsecured creditors has been appointed in the Chapter 11 Cases. The first meeting of creditors under section 341(a) of the Code was held on February 4, 2015.

III. The nature of the Debtors’ businesses and the factual background relating to the commencement of the Chapter 11 Cases are set forth in more detail in the *Declaration of Randall*

*Olech in Support of Chapter 11 Petitions and First-Day Motions* [Docket No. 8], filed on the Petition Date and incorporated herein by reference.

IV. The Debtors had no secured financing either prior to or after the Petition Date. The Debtors did not list any creditors holding secured claims on their respective Schedule D filed in the Chapter 11 Cases [Balmoral Docket No. 102; Maywood Docket No. 35]. No creditor has filed a claim in the Chapter 11 Cases alleging a security interest or lien with respect to the Sale Assets.

V. Empress Casino Joliet Corporation, Des Plaines Development Limited Partnership, d/b/a Harrah's Joliet Casino Hotel, Hollywood Casino-Aurora, Inc., and Elgin Riverboat Resort Riverboat Casino, d/b/a Grand Victoria Casino (collectively, the "Judgment Creditors") hold the largest unsecured claims filed in each of the Chapter 11 Cases by virtue of a judgment (the "Judgment") entered in their favor against the Debtors in the case styled *Empress Casino Joliet Corporation et al. v. John Johnston et al.*, filed in the United States District Court for the Northern District of Illinois.

#### **The Going-Concern Marketing Process**

VI. Since the Petition Date the Judgment Creditors and Debtors discussed various potential resolutions of the Chapter 11 Cases and the Judgment, and memorialized an agreement on the terms set forth in that certain *Stipulation and Order* entered by this Court in the Chapter 11 Cases on May 12, 2015 [Docket No. 198] (as amended, the "Stipulation"), with two amendments respectively approved by this Court on June 30, 2015 [Docket No. 234], and July 21, 2015 [Docket No. 260]. Pursuant to the Stipulation, the Debtors had a period of time to conduct a marketing process themselves for a sale of the Judgment or their businesses before they obtained "pursuant to 11 U.S.C. §327, an Order of this Court approving the retention of a

sale broker/investment banker . . . to market and sell the [Debtors'] assets and businesses.”

Stipulation ¶ 2, at 3-4.

VII. Throughout May, June and July 2015, and pursuant to the Stipulation, the Debtors conducted a substantive marketing process by reaching out to dozens of known contacts in the gaming industry and providing interested parties with relevant information about the Debtors' finances and operations. The Debtors believe that interest in the racetracks would be enhanced by enactment of legislation pending in the Illinois Legislature that would allow casino-style gambling at their facilities. As of the date of this Sale Order, such a gaming law has not been passed.

VIII. After several months of marketing efforts, no offers for a purchase of the Debtors' assets as a going concern that were acceptable to the Debtors and the Judgment Creditors were received.

IX. Following the guidelines set forth in the Stipulation, by Order of the Court dated August 5, 2015, the Debtors retained the firm of Rossoff & Co. (“RCO”), as their investment bankers for the purposes of marketing and soliciting offers to purchase all or substantially all of the Debtors' assets and businesses [Docket No. 276].

#### **Loss of Race Dates and Applications for 2016**

X. The Illinois Racing Board (the “IRB”), formed under the Illinois Horse Racing Act, has jurisdiction and power over the Debtors and every person who holds or conducts any race meeting within the State of Illinois. It regulates and controls the procedures for all aspects of the racing and wagering process involved in the Debtors' business operations. As part of the process of allocating racing dates annually the IRB issues an Annual Dates Order, after a hearing.

XI. On July 31, 2015, the Debtors filed with the IRB an application for race dates in 2016. After conducting a hearing on September 29, 2015, the IRB issued an Annual Dates Order for 2016 that did not award any race dates for the Debtors. Pursuant to the 2015 Annual Dates Order, as modified with approval of the IRB, the Debtors' last race occurred on December 26, 2015, at the Balmoral Track.

XII. Immediately following the IRB decision, RCO reached out to the various interested parties who were conducting due diligence and pursuing a potential sale offer. Many of these parties expressed a continued interest in the purchase despite the failure to obtain 2016 race dates, and have continued their due diligence efforts, including visits to the racetracks.

#### **Initial Auction**

XIII. On November 25, 2015, the Debtors filed a motion for the entry of an order: (A) approving the sale process and bidding procedures with respect to the sale of substantially all of the assets of the estates as going concerns, (B) scheduling a public auction and authorizing the sale of the assets of the Debtors pursuant thereto free and clear of liens, claims, encumbrances and interests, and (C) authorizing the assumption and assignment of executory contracts and unexpired leases (the "Sale Process Motion"). As set forth above and in the Sale Process Motion, both the Debtors and RCO engaged in substantial marketing efforts continuing over eight months.

XIV. On December 1, 2015, the Bankruptcy Court entered that certain Order [Docket No. 348] (the "Bidding Procedures Order") granting the Sale Process Motion in part and thereby establishing the Sale Process, a deadline to submit Qualified Bids (the "Bid Deadline"), and Auction to be conducted in accordance with specific court-approved Bidding Procedures.

XV. As required by the Bidding Procedures Order, the Debtors (a) provided a court-approved Sale Notice and/or Bidding Procedures to all (i) creditors, (ii) non-debtor parties to executory contracts and unexpired leases, and (iii) all parties who expressed interest in the sale of assets during the marketing process; and (b) caused an advertisement of the Sale Process to be published in the Auction Mart section of the Chicago Tribune. [See Certificates of Service filed in the Chapter 11 Cases as Docket Nos. 351, 352, 353, 375 and 377 (the “Certificates of Service”)].

XVI. The Debtors initially conducted an Auction of substantially all of the assets of the estates in bulk or specific lots on December 14, 2015 at 10:00 a.m. at the offices of Debtors’ counsel. Prior to the Auction three parties submitted written Bids, only one of which was a Qualified Bid (and related solely to the Balmoral assets, the “Initial Balmoral Bidder”), which was not accepted at the Auction.

XVII. Based on the foregoing, the Debtors requested and the Court approved on December 15, 2015 [Docket No. 364], extensions of the Bid Deadline to December 28, 2015 and the Objection Deadline to December 29, 2015. The Auction was subsequently held and continued to December 30, 2015, and the Sale Hearing was continued to January 5, 2016 at 10:00 a.m. [Docket No. 385].

### **Liquidation Sale Process**

XVIII. Because the Debtors and their professional did not find a buyer for substantially all of the Debtors’ assets as a going concern, the Debtors pursued the Sale Process on a liquidation basis since December 2015. The Debtors’ operations have ceased completely, including without limitation Balmoral’s business operations at the Balmoral Track.

XIX. To date, with the consent of Judgment Creditors, the Debtors have pursued the liquidation Sale Process as follows:

a. Retained Keen-Summit Capital Partners, LLC as their real estate broker (the "Broker"), pursuant to court order entered February 23, 2016 [Docket No. 435] (the "Broker Order"), for the purpose of marketing and soliciting offers to purchase the Balmoral Track;

b. Sold and assigned Maywood's rights to the Commercial Lease Agreement and Sublease after presenting the underlying offer (including the purchase price of \$850,000.00) to the Court at a Sale Hearing held on January 5, 2016, and pursuant to the terms of the sale order entered on January 7, 2016 [Docket No. 395];

c. Sold Maywood's tangible personal property assets located at its Oakbrook Terrace, Illinois OTB parlor to Hawthorne pursuant to court order entered March 1, 2016 [Docket No. 439] for \$50,000.00;

d. Retained the auction firms of Yellen Partners, LLC, and Loeb Winternitz Industrial Auctioneers (collectively, the "Auctioneers") pursuant to court order entered March 15, 2016 [Docket No. 447] (the "Auctioneer Order"), to conduct public auctions of the Debtors' tangible personal property assets respectively located at the Balmoral Track and Maywood's racetrack, and a number of their OTB locations. The public auctions are conducted online only, commenced on April 20, 2016, and began closing on April 27, 2016 for the Balmoral assets and April 28, 2016 for the Maywood assets;

e. Through the Auctioneers, sold Maywood's tangible personal property assets located at its Niles, Illinois OTB to Hawthorne (Bill of Sale dated March 31, 2016) for \$30,000.00 and to the landlord of the Niles OTB (Bill of Sale dated April 25, 2016) for \$4,000.00 pursuant to the Auctioneer Order, and sold certain personal property at the Debtors' Champaign, Elk Grove, Lockport and Normal OTBs;

f. The personal property remaining at the Debtors other OTB locations was moved to the Maywood track for sale by the Auctioneers as part of the auction; and

g. Sold Balmoral's real estate and tangible personal property interests in Crestwood, Illinois pursuant to court order entered April 12, 2016 [Docket No. 70] for \$800,000.00.

**Results of Auction and Timing of Bulk Offer.**

XX. After retention, the Broker engaged in a substantive marketing process for the Balmoral Track as set forth in the original Sale Motion [Docket No. 485, ¶28].

XXI. Similarly, after entry of the Auctioneer Order the Auctioneers determined and implemented commercially reasonable advertising for the auction of the Debtors' personal property, including mailing of brochures, sending email notices and website listings.

XXII. The Broker did not receive any meaningful interest for the purchase of the Balmoral Track that did not include the Balmoral personal property. All offers received by Broker were contingent upon cancelling the Balmoral personal property auction so that such property could be included as part of the real estate sale. Further, given the amount of yearly real estate taxes for the Balmoral Track (approximately \$400,000.00) and its location, various



interested parties (including the Initial Balmoral Bidder) opined to the Broker and the Debtors that the real estate, without operations as a race track and without the tangible personal property located thereon, has very little to no value.

XXIII. The Buyer's initial offer for the Sale Assets was communicated to the Broker on April 26, 2016, one day prior to the scheduled completion of bidding in the Balmoral personal property auction. [Docket No. 485, ¶35]. On April 27, 2016, the Debtors received an executed purchase agreement for \$1,600,000.00, together with a wire for a \$200,000 non-refundable deposit, from the Buyer.

XXIV. Given the timing of the submission by the Buyer, that the auction had commenced nearly one week earlier, and because the proposed sale requires approval of the Court, which can only be obtained after notice and hearing, the Debtors requested that the Auctioneers continue processing and accepting the last bids for the Balmoral personal property auction on a lot by lot basis. At approximately 4:00 a.m. on April 28, 2016, the last lot closed, thereby completing the Balmoral personal property auction. The bidders submitting the highest bid for the various lots included in the Balmoral personal property auction were notified that: the Debtors received a bulk bid for the Balmoral assets on April 27, 2016, believe after consultation with interested parties that it is the highest and best bid and in the best interest of the Debtors' estates to present that bid to the Bankruptcy Court for approval, and intend to do so on May 3, 2016 at 9:30 a.m.

XXV. Collectively, the bidding price for all lots available during the Balmoral personal property totaled \$769,932 exclusive of the "Buyer's Premium" (the "Fixed Asset Value").

XXVI. Another offer for the Sale Assets was received by counsel for the Debtors on April 29, 2016 at approximately 5:45 (CDT), in the form of the executed APA from Balmoral Holdings, LLC, an Illinois limited liability company (the "BH Offer") with a purchase price for

\$1,800,000.00; a related wire for a \$300,000 non-refundable deposit was received on May 2, 2016. Neither the Initial Balmoral Bidder, nor any other parties that expressed interest in the Sale Assets to the Broker elected to submit a higher offer for the Sale Assets. At the Sale Hearing, Balmoral Holdings increased the purchase price under the BH Offer to \$1,900,000.00.

XXVII. Under the Bidding Procedures Order, the Auctioneer Order, and the Broker Order, the Judgment Creditors have a right to disapprove any bid for the Sale Assets. At the Sale Hearing, the Judgment Creditors represented that they do not approve the BH Offer and support the APA submitted by Buyer, including without limitation section 18(d), which the Debtors, the Buyer and the Judgment Creditors acknowledge and agree does not constitute an unreasonable or unenforceable restraint on alienation.

XXVIII. To make the Buyer's bid (\$1,600,000) economically neutral to the BH Offer (\$1,900,000.00), the Judgment Creditors agree to contribute, in the aggregate, the lesser of (i) the percentage distribution other creditors (*i.e.*, non-Judgment Creditors) receive on account of their allowed claims in the Chapter 11 Cases multiplied by \$300,000, or (ii) \$50,000 (the "Financial Accommodation"). The Financial Accommodation shall be deducted from distributions otherwise payable to the Judgment Creditors under a Plan confirmed in the Chapter 11 Cases or by a subsequently appointed Chapter 7 Trustee and shall be distributed to other creditors holding allowed unsecured claims. Payment of the Financial Accommodation shall not be an independent obligation of the Judgment Creditors (or any of them individually), but shall only be deducted from their future distributions as contemplated herein. Based on the Judgment Creditors' agreement to make the Financial Accommodation, the Debtors support the APA and sale to Buyer.

XXIX. At the Sale Hearing, counsel for Balmoral Holdings stated an objection to the purchase of the Sale Assets by Buyer (the "BH Objection"). Balmoral Holdings is not a creditor of either of the Debtors. For the reasons set forth on the record, the United States Trustee deferred to the business judgment of the Debtors, and the Judgment Creditors supported the sale to the Buyer.

XXX. The Buyer represents that it: (a) holds no claims against the Debtors or their estates, does not hold any equity interest in the Debtors, and is not a competitor of the Debtors; (b) is engaged in business operations dissimilar to those of the Debtors; (c) does not intend to employ any of the Debtors current or former employees, or management; and (d) does not intend to operate at the Balmoral Track for the same or similar purpose as the business previously conducted by the Debtors.

XXXI. The Debtors' remaining business operations shall terminate before the transactions under the APA are consummated, and the employment of all of the Debtors' employees not needed to wind down the Debtors' affairs shall likewise terminate before the transactions under the APA are consummated. Consequently, there shall be no continuation of the Debtors' business by the Buyer.

**Closing; Avoidance Actions**

XXXII. Under and subject to the terms of the APA and as affirmed in open court, Buyer has agreed to the terms and conditions of the sale as set forth in the APA and has agreed to make the necessary payments and deliveries required thereunder at the closing contemplated under the APA and authorized pursuant to this Sale Order (the "Transaction"), which is scheduled to occur no later than May 13, 2016 (the "Closing").

XXXIII. The Sale Assets do not include any claims of the Debtors or their estates arising under Chapter 5 of the Code (the “Avoidance Actions”).

**NOW, THEREFORE, THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW<sup>2</sup>:**

A. This Court has jurisdiction over the subject matter of this Sale Order pursuant to 28 U.S.C. §§ 157 and 1344(b) and (c), and applicable local rules regarding the referral to this Court of cases under title 11 of the United States Code. Venue of the Chapter 11 Cases in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. The entry of this Sale Order and all proceedings relating thereto collectively constitute a “core proceeding” pursuant to, without limitation, 28 U.S.C. §§ 157(b)(2)(A), (M), (N) and (O). The statutory bases for relief sought in the Sale Motion are Sections 105 and 363 of the Code and Bankruptcy Rules 2002, 6004, 9006, and 9008.

C. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

D. The Debtors are the legal and equitable owner of the Sale Assets, all of which are property of the Debtors’ estates.

E. As evidenced by, among other things, the certificates and affidavits of service on file with the Court (including without limitation, Docket Nos. 490 and 491, and the Certificates of Service), all interested and required parties had due, proper, timely, adequate and sufficient notice of the Sale Motion and the Sale Hearing; were given an adequate and reasonable opportunity to present objections to the relief sought herein, or otherwise appear and be heard on the date hereof; and have submitted to the jurisdiction of this Court and are bound by this Sale

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<sup>2</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate. Fed. R. Bankr. P. 7052

Order. Accordingly, no other or further notice of the Sale Motion or the Sale Hearing is necessary under the circumstances and no other or further notice shall be required. Other parties interested in bidding on the Sale Assets were provided, upon request, sufficient information to make an informed judgment on whether to bid on the Assets.

F. Upon entry of this Sale Order, the Debtors shall have full authority to consummate the Transaction. No consents or approvals, other than as may be expressly provided for in the APA, are required by the Debtors or Buyer to consummate the Transaction.

G. As demonstrated by the representations of counsel made on the record at the Sale Hearing, the Debtors and their professionals diligently and in good faith have adequately marketed the Sale Assets to secure the highest and best offer therefor under the circumstances of the Chapter 11 Cases. The Debtors afforded interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Sale Assets; provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Sale Assets; and considered all qualified bids timely submitted.

H. Consummation of the Transaction pursuant to the APA is in the best interests of the Debtors, their estates, creditors and other parties in interest. The Debtors have demonstrated good, sufficient and sound business purpose and justifications for the entry hereof pursuant to 11 U.S.C. § 363(b) prior to, and outside the context of, a plan of reorganization in that, among other things, certain of the Sale Assets are deteriorating in value; and the Debtors are unable to either secure a buyer for the purchase of substantially all assets as a going concern or fund a restructuring of their operations.

I. The consideration to be provided by Buyer for the Sale Assets pursuant to APA (i) is fair and reasonable, (ii) is the highest and best offer for the Sale Assets, (iii) will maximize the existing value of the Sale Assets, (iv) will provide a greater recovery for the Debtors' creditors and other interested parties than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Code, the Uniform Fraudulent Transfer Act and all other applicable laws.

J. The APA was not entered into for the purpose of hindering, delaying or defrauding creditors under the Code or under the law of the United States or the State of Illinois.

K. The sale of the Sale Assets pursuant to the APA will be and shall constitute a legal, valid, and effective transfer of the Sale Assets, and, except as provided in the APA, shall be free and clear of any and all liens, claims, interests, liabilities and encumbrances whatsoever to the fullest extent permitted by section 363(f) of the Code arising prior to the date of the Closing, known or unknown, whether arising under any employment, pension, environmental, advertising, products liability or other similar laws or successor liability claims or interests or otherwise, including, without limitation: (i) all "liens" as defined in Section 101(37) of the Code, and whether consensual, statutory, possessory, judicial or otherwise ("Liens"); (ii) all "claims" as defined in Section 101(5) of the Code, including without limitation any claims held or asserted by the Chicagoland Race Meet Operators and Local 134 I.B.E.W. Joint Pension Trust ("Claims"); (iii) all encumbrances of any kind in favor of any known creditors of the Debtors; and (iv) those interests (1) that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtors' interest in the Sale Assets, or any similar rights, and (2) relating to taxes arising under or out of, in connection with, or in any way relating to or arising under the operation of Debtors' businesses or the Sale Assets

prior to the consummation of Closing (collectively, with Liens and Claims, the “Interests”). Any and all valid Interests shall attach to the net proceeds of sale pursuant to Section 363(e) and (f) of the Code, to the same extent and with the same validity and priority that existed immediately prior to the Closing.

L. Buyer would not consummate the Transaction, thus adversely affecting the Debtors, their estates and creditors, if the sale of the Sale Assets to Buyer was not free and clear of all Interests of any kind or nature whatsoever, or if Buyer would, or in the future could, be liable for any of the Interests not expressly assumed by Buyer pursuant to the terms of the APA.

M. The Debtors may sell the Sale Assets free and clear of all Interests of any kind or nature whatsoever because, and as applicable, one or more of the standards set forth in 11 U.S.C. § 363(f) have been satisfied. Those holders of Interests who did not object to the Sale Motion are deemed to have consented pursuant to 11 U.S.C. § 363(f)(2).

N. Pursuant to Section 363(f) of the Code, the transfer of the Sale Assets to the Buyer will not cause Buyer to be a “successor,” or subject Buyer to any liability whatsoever with respect to, arising under, or on account of, the operation of the Debtors’ businesses or the Sale Assets prior to the Closing.

O. Sound business reasons exist for the Transaction. The Debtors have demonstrated that it is an exercise of their sound business judgment and it is in the best interests of their creditors, the estates, and other parties in interest to enter into the APA, consummate the Transaction.

P. The APA was negotiated, proposed and entered into by the Debtors and Buyer without collusion, in good faith, and at arm’s length bargaining positions with assistance of their respective advisors and choice of legal counsel. The Purchase Price for the Sale Assets set forth

in the APA was not controlled by any agreement among any potential or actual bidders, and neither the Debtors nor Buyer have engaged in any conduct that would cause or permit the APA to be avoided under 11 U.S.C. § 363(n). Buyer is not an “insider” of either Debtors as that term is defined in section 101(31) of the Code.

Q. Buyer negotiated the APA in good faith and Buyer is in all respects a good faith Buyer and, as such, is entitled to all of the protections afforded by Section 363(m) of the Code. Buyer will be acting in good faith within the meaning of Section 363(m) of the Code in consummating the Transaction.

R. The consummation of the Transaction will be a legal, valid, and effective transfer of the Sale Assets to Buyer, and will vest Buyer with all right, title, and interest in and to the Sale Assets, free and clear of all Interests, in accordance with 363(f) of the Code.

S. The APA shall be a valid and binding contract between the Debtors and Buyer, which is and shall be enforceable according to its terms. All of the provisions of the APA are non-severable and mutually dependent.

**NOW, THEREFORE, IT IS HEREBY ORDERED EFFECTIVE IMMEDIATELY,  
as follows:**

1. The Transaction is authorized and approved in all respects. The BH Objection to the Transaction is overruled.

2. The APA and all terms and conditions thereof are hereby approved, and the Debtors are hereby authorized to execute the APA for the purchase of the Sale Assets pursuant thereto.

3. Pursuant to sections 105, 363(b), and 363(f) of the Code, the Debtors are authorized and empowered to perform under, consummate, and implement the APA and close



the Transaction, together with all additional instruments and documents that are reasonably required by Buyer and may be reasonably necessary or desirable to implement the Transaction, and to take any and all action as the Debtors deem necessary, appropriate, or advisable for the purpose of assigning, transferring, granting, conveying, and conferring to Buyer or reducing to possession, the Sale Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the APA, including, without limitation, any and all actions reasonably requested by Buyer which are consistent with the APA.

4. Pursuant to Sections 105(a) and 363(f) of the Code, upon the Closing: (i) the transfer of the Sale Assets to Buyer pursuant to the APA shall constitute a legal, valid and effective transfer of the Sale Assets and shall vest Buyer with all right, title, and interest in and to the Sale Assets; (ii) the Sale Assets shall be transferred to Buyer free and clear of any and all Interests against such assets, in accordance with Section 363(f) of the Code, and with any and all such Interests to attach to the net proceeds of the Transaction with the same validity, force and effect held pre-petition and prior to this Sale Order, and pending further order of Court, subject to any rights, claims, and defenses the Debtors and all interested parties may have with respect thereto; and (iii) each and every obligation expressly assumed by Buyer under the APA shall be effective as of the Closing as provided and required by the APA.

5. This Sale Order is and shall be effective as a determination that all Interests shall be and are, without further action by any person or entity, released with respect to the Sale Assets as of the Closing. The only obligations of the Debtors assumed by the Buyer, if any, are expressly stated in the APA.

6. The sale of the Sale Assets to Buyer pursuant to the APA will constitute a transfer for reasonably equivalent value and fair consideration under the Code, the Uniform Fraudulent

Transfer Act and all other applicable laws, and may not be avoided under Section 363(n) of the Code.

7. Except as expressly provided in the APA, the Buyer is not assuming, nor shall it, in any way whatsoever, be deemed to be liable or responsible, as successor or otherwise, for any liabilities or Interests of the Debtors, or any liabilities or Interests in any way whatsoever relating to or arising from Debtors' assets, or by virtue of the conveyance of the Sale Assets to the Buyer.

**Additional Provisions**

8. The Transaction has been, and is undertaken by Debtors and Buyer in good faith, as that term is used in section 363(m) of the Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the sale of the Sale Assets to Buyer, unless such authorization is duly stayed by Court order pending such appeal. Buyer is hereby granted and is entitled to all the protections provided to good faith buyers section 363(m) of the Code, and is in all respects a good faith buyer. In the event of any stay, modification, reversal or vacation of this Sale Order, then notwithstanding any such stay modification, reversal or vacation, all obligations incurred by Debtors under this Sale Order and the APA prior to the effective date of such stay modification, reversal or vacation will be governed in all respects by the original provisions of this Sale Order, and Buyer shall be entitled to the rights, privileges and benefits granted in this Sale Order with respect to all such obligations.

9. This Court shall retain exclusive jurisdiction to: (a) implement, interpret and enforce the terms and provisions of this Sale Order and the APA, all amendments and revisions thereto, and any waivers and consents thereunder, and of each of the agreements executed in connection therewith, including without limitation, the Financial Accommodation; (b) enter

orders in aid or furtherance of the sale and the Transaction; and (c) adjudicate all issues concerning any actual or alleged Interests in and to the Sale Assets and the sale proceeds, including the extent, validity, enforceability, priority and nature of all such actual or alleged Interests; provided however, that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Transactions or this Sale Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

10. Nothing contained in any order entered in the Chapter 11 Cases or any related proceeding subsequent to entry of this Sale Order, nor in any chapter 11 plan confirmed in the Chapter 11 Cases, shall conflict with or derogate from the provisions for the APA or the terms of this Sale Order.

11. This Sale Order shall be binding in all respects upon all creditors (whether known or unknown) of the Debtors, all successors and assigns of Buyer, the Debtors, and their respective affiliates and subsidiaries, and the Sale Assets.

12. The terms and provisions of the APA, the ancillary agreements entered in connection therewith and upon Closing, and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of the Debtors and Buyer and their respective affiliates, successors and assigns, and any affected third parties, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Code or conversion of this case to a case under chapter 7, as to which trustee(s) such terms and provisions likewise shall be binding. The APA and the Transaction may be specifically enforced against, and shall not be subject to rejection or avoidance by, the Debtors or any chapter 7 or chapter 11 trustee of the Debtors.

13. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material effect on the sale.

14. To the extent of any inconsistency among the provisions of this Sale Order, the APA, and any document executed in connection therewith, the provisions contained in this Sale Order, the APA, and any documents executed or delivered in connection therewith shall govern, in that order.

15. Subject to the specific provisions and limitations of section 18 of the APA, Buyer shall have an ongoing obligation after the Closing to cooperate with Debtors, any trustee appointed under a plan in the Chapter 11 Case or any subsequently appointed chapter 7 trustee, and in making Debtors' records and other information available upon reasonable request to such parties to enable the orderly administration of the Debtors' estates.

16. In the event that the Chapter 11 Cases are dismissed or converted to a chapter 7 case, or a trustee is appointed (whether under chapter 11 or 7), neither the dismissal or conversion of the cases, nor the appointment of such a trustee, shall affect, in any manner the rights of the Buyer under the APA, this Sale Order or any other agreement executed by Debtors in conjunction with the Transaction, and all of the rights and remedies of the Buyer under this Sale Order, and such agreement shall remain in full force and effect as if the case had not been dismissed or converted or a trustee had not been appointed.

17. Each and every federal, state and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and this Sale Order.

18. Buyer has not assumed or is otherwise not obligated for any of Debtors' obligations or liabilities other than as set forth in the APA or this Sale Order. Consequently, all persons, Governmental Units (as defined in Code sections 101(27) and 101(41)) and all holders of Interests based upon or arising out of Excluded Liabilities (as defined in the APA, which definition is incorporated herein) or any other liabilities retained by Debtors are hereby prohibited from taking any action against the Buyer or the Sale Assets, including asserting any setoff, right of subrogation of any kind, to recover any Interests or on account of any Excluded Liabilities or any other liabilities of Debtors other than liabilities expressly assumed pursuant to the APA. Except as otherwise set forth in this Sale Order, all persons holding or asserting any Interests or cause of action in any assets excluded from the Sale Assets are hereby prohibited from asserting or prosecuting such Interests or cause of action against the Buyer or the Sale Assets for any liability associated with such excluded asset or any Excluded Liabilities or any other liabilities of the Debtors other than liabilities expressly assumed pursuant to the APA.

19. The failure specifically to include any particular provisions of the APA or any related agreements in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtors and the Buyer that the APA and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Sale Order prior to Closing.

20. This Sale Order shall modify the Broker Order and the Auctioneer Order as follows:

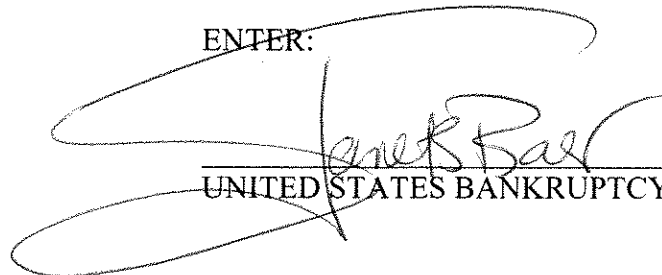
- a. Notwithstanding anything to the contrary in the Broker Order or the Retention Agreement, the Broker shall be entitled to receive at closing a Broker Fee of 4.5% of the Real Property Value (\$1.9 million less the Fixed Asset Value), and its expenses.

- b. Notwithstanding anything to the contrary in the Auctioneer Order or the Consulting Agreement, the Auctioneers shall be entitled to receive a 15% Buyer's Premium based on the Fixed Asset Value, and the full "Base Fee" of \$75,000.00.
- c. The Debtors shall indemnify and hold harmless the Broker and the Auctioneers for any claim, damages, liabilities or causes of actions arising out of or related to the Debtors' decision to sell the Fixed Assets to Buyer in one single lot as part of the APA.
- d. The Sale Order shall effectively modify the Broker Order and the Auctioneer Order to the extent the necessary to carry out the terms of the proposed sale as provided in the APA and the Sale Order, and shall supersede the authority granted to the Auctioneer to sell the Fixed Assets provided in the Auctioneer Order.

21. This Sale Order shall be effective and enforceable immediately upon entry and the 14-day stay period provided by Bankruptcy Rule 6004(h) shall not apply so that the sale may close immediately. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Buyer are free to close under the APA at any time. In the absence of any person or entity obtaining a stay pending appeal, if Debtors and the Buyer close under the APA, the Buyer shall be deemed to be acting in "good faith" and shall be entitled to the protections of Code section 363(m) as to all aspects of the transactions under and pursuant to the APA if this Sale Order or any authorization contained herein is reversed or modified on appeal.

Dated: May 9, 2016

ENTER:

  
UNITED STATES BANKRUPTCY JUDGE

**AGREED TO:**

**MAYWOOD PARK TROTTING  
ASSOCIATION, INC.**

-and-

**BALMORAL RACING CLUB, INC.,**

**DEBTORS**

By: /s/ Nathan Q. Rugg

One of Its Attorneys

Chad H. Gettleman, Esq. (ARDC #627969)

Nathan Q. Rugg, Esq. (ARDC #944858)

ADELMAN & GETTLEMAN, LTD.

Adelman & Gettleman, Ltd.

53 W. Jackson Blvd., Suite 1050

Chicago, IL 60604

**HITS, INC., A DELAWARE CORPORATION,**

**BUYER**

By: /s/ Steven B. Towbin

Steven B. Towbin, Esq. (ARDC# 2848546)

Peter J. Roberts, Esq. (ARDC# 6239025)

SHAW FISHMAN GLANTZ & TOWBIN LLC

321 N. Clark St., Suite 800

Chicago, IL 60654

**EMPRESS CASINO JOLIET CORPORATION; DES PLAINES DEVELOPMENT  
LIMITED PARTNERSHIP, D/B/A HARRAH'S JOLIET CASINO HOTEL ;  
HOLLYWOOD CASINO-AURORA, INC.; AND ELGIN RIVERBOAT RESORT  
RIVERBOAT CASINO, D/B/A GRAND VICTORIA CASINO**

By: /s/ Michael M. Eidelman

Michael M. Eidelman, Esq. (ARDC #6197788)

Stephanie Hor-Chen, Esq. (ARDC #6283105)

VEDDER PRICE P.C.

222 North LaSalle Street, Suite 2600

Chicago, Illinois 60601

**EXHIBIT A - APA**



## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (“**Agreement**”) is made and entered into as of this 26th day of April, 2016, (“**Effective Date**”) by and between BALMORAL RACING CLUB, INC. (“**Seller**”), and HITS, INC., a Delaware corporation, or its nominee (“**Buyer**”, and together with the Seller, the “**Parties**”).

### WITNESSETH:

**A. WHEREAS**, on December 24, 2014, Seller filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code (“**Bankruptcy Code**”) in the U.S. Bankruptcy Court for the Northern District of Illinois, Eastern Division (“**Bankruptcy Court**”), as Case No. 14-45711, and thereafter has continued to operate its business and manage its affairs as a debtor and debtor in possession under the supervision of the Bankruptcy Court (the “**Chapter 11 Case**”);

**B. WHEREAS**, for informational purposes, Seller’s affiliate, Maywood Park Trotting Association (“**Maywood**”), also commenced a Chapter 11 reorganization bankruptcy case in the Bankruptcy Court on December 24, 2014, as Case No. 14-45718 (“**Maywood Chapter 11 Case**”). The Chapter 11 Case and the Maywood Chapter 11 Case are being administered jointly under Lead Case No. 14-45711;

**C. WHEREAS**, through and including December 31, 2015, Seller was engaged in the horseracing industry and was a harness racing operators, which included, among other things, conducting pari-mutuel wagering on the races run at its and Maywood’s racetracks and the off-track betting systems (such businesses and all other businesses conducted by Seller, the “**Business**”);

**D. WHEREAS**, Seller’s racetrack facilities are located at 26435 S. Dixie Highway, Crete, IL 60417 (“**Real Property**”);

**E. WHEREAS**, Empress Casino Joliet Corporation, Des Plaines Development Limited Partnership d/b/a Harrah’s Joliet Casino Hotel, Hollywood Casino-Aurora, Inc., and Elgin Riverboat Resort-Riverboat Casino D/B/A Grand Victoria Casino (collectively, the “**Judgment Creditors**”) hold general unsecured claims against the Seller, among others, arising out of that certain judgment order entered in litigation pending in the U.S. District Court (N.D. IL, E.D.), Case No. 09-CV-03585, (the “**District Court Litigation**”), which judgment order is currently on appeal before the U.S. Seventh Circuit Court of Appeals (the “**Appeal**”);

**F. WHEREAS**, on March 15, 2016, the Debtors, with the support of the Judgment Creditors, obtained the entry of an order authorizing the Debtors’ retention of the auction firms of Yellen Partners, LLC, and Loeb Winternitz Industrial Auctioneers (collectively, the “**Auctioneers**”) to conduct an online public auctions (“**Public Auction**”) of the Seller’s “Fixed Assets”, as defined below. Bidding at the Public Auction for Seller’s Fixed Assets is scheduled

to begin closing at 9:30 a.m. (CDT), April 27, 2016. In light of the execution of this Agreement, the Debtors, Judgment Creditors and Auctioneers have agreed to adjourn the closing of Seller's Public Auction pending the execution of this Agreement by Buyer. However, the Debtors will know the amount of the highest and best bids received at the Public Auction for Balmoral's Fixed Assets (collectively, the "**Fixed Assets Value**"). The Fixed Assets Value will be used for purposes of allocation as set forth below;

**G. WHEREAS**, pursuant to terms and conditions of this Agreement, Sections 105 and 363 and all other applicable provisions of the Bankruptcy Code, and Bankruptcy Rule 6004 and all other applicable provisions of the Bankruptcy Rules, Seller desires to sell the "Purchased Assets", as defined below, in bulk, to Buyer, and Buyer desires to purchase from Seller the Purchased Assets, in bulk, upon the terms and conditions hereinafter set forth;

**H. WHEREAS**, Buyer represents that it: (a) holds no claims against Seller or its estate, does not hold any equity interest in Seller, and is not a competitor of Seller; (b) is engaged in business operations dissimilar to those of Seller; (c) does not intend to employ any of Seller's current or former employees, or management; and (d) does not intend to operate at the Real Property for the same or similar purpose as the business previously conducted by Seller;

**I. WHEREAS**, Seller's remaining business operations shall terminate before the transactions under this Agreement are consummated, and the employment of all of Seller's employees not needed to wind down Seller's affairs shall likewise terminate before the transactions under this Agreement are consummated. Consequently, there shall be no continuation of Seller's business by Buyer.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the Parties do hereby agree as follows:

**1. Purchase and Sale of Assets.** Subject to the terms and conditions of this Agreement and the "Sale Order", as defined below, and pursuant to Sections 105 and 363 and all other applicable provisions of the Bankruptcy Code, Seller shall sell to Buyer (or to its assignee), and Buyer shall purchase from Seller, at the "Closing", as defined below, all of Seller's right, title and interest in and to the following assets owned by Seller, free and clear of all interests, and related solely to the Real Property (collectively, the "**Purchased Assets**");

(a) All machinery, equipment, tools, parts, accessories, furniture, fixtures, artwork, memorabilia, computers, office equipment, furnishings, signage, displays, display equipment, concession equipment, wagering equipment, appliances, televisions, video and audio equipment, closed circuit televisions systems and equipment, food and beverage dispensing systems and equipment, shelving, storage equipment, telephone and fax equipment and systems, supplies and other tangible personal property located at and/or in and around the Real Property, together with all unexpired warranties of manufacturers, vendors or other third parties, if any, and if and to the extent assignable, including, without limitation of the generality of the foregoing, all HVAC, plumbing and electrical systems, including without limitation the assets

listed in Group Exhibit A, attached hereto and incorporated herein (collectively, the “**Fixed Assets**”);

(b) All of Seller’s right title and interest in and to the Real Property, together with all improvements and tangible personal property owned by Seller, and affixed to the Real Property, and all of Sellers’ right, title and interest in and to all easements, rights of way and appurtenances thereto. The legal description for the Real Property is set forth in the “Title Commitment”, as defined below; and

(c) All books, records, financial information, and documents pertaining solely to the Real Property, whether or not physically located in the Real Property, including, but not limited to, repair bills, records and information, utility bills, real estate tax bills and protests; supplier files, lists, records and literature; product literature and all marketing, advertising and promotional materials; personnel records for any former employees of the Seller as of the Closing who are employed by Buyer after the Closing; and existing hard copies of correspondence relating to any and all of the foregoing (collectively, the “**Books and Records**”), but excluding all books and records relating to the Seller’s Business, personnel files for any former employees of the Seller as of the Closing who are not employed by Buyer within five (5) days from and after the Closing; business organizational documents, corporate minute books, corporate seals, stock record books; financial records, income tax returns, checkbooks, cancelled checks, and any other documentation necessary for Seller to prepare and file final tax returns, and conclude the administration of the Chapter 11 Case (collectively, “**Excluded Books and Records**”).

2. **Excluded Assets.** Anything herein to the contrary notwithstanding, Seller shall retain and shall not sell, convey, transfer, assign or deliver to Buyer any interest in any assets and properties of Seller pertaining to the Business not expressly described in paragraph 1 above (the “**Excluded Assets**”). Without limiting the generality of the foregoing, the Excluded Assets expressly include all cash on hand and the Excluded Books and Records.

3. **Deposit; Purchase Price; Allocation.**

(a) **Deposit.** Upon execution hereof, Buyer shall remit to Seller the sum of \$200,000.00, by wire transfer to Seller, for deposit into the IOLTA account established by Seller’s counsel, Adelman & Gettleman, Ltd. at JPMorgan Chase Bank, N.A., representing a non-refundable earnest money deposit to be applied to the Purchase Price in accordance with paragraph 3(b) below (the “**Deposit**”). The Deposit shall be maintained in said trust account for the mutual benefit of the Parties pursuant to the terms and conditions of this Agreement.

(b) **Purchase Price.** The purchase price for the Purchased Assets (“**Purchase Price**”) shall be One Million Six Hundred Thousand Dollars and 00/100 (\$1,600,000.00). The Purchase Price, less only the Deposit, shall be paid at Closing, as adjusted by the following prorations (“**Prorations**”):

(i) Water, electricity, sewer, gas, telephone and other utility charges based, to the extent practicable, on final meter readings and final invoices;

(ii) All assessments, general or special, shall be prorated as of the Closing Date, with Seller being responsible for any installments of assessments which are due prior to the Closing Date and Buyer being responsible for any installments of assessments which are due on or after the Closing Date;

(iii) All general real estate taxes applicable to the Real Property shall be prorated as of the Closing based on 105% of the most recent ascertainable full year tax bill. Prior to or at Closing, Seller shall pay or have paid all tax bills that are due and payable prior to or on the Closing Date and shall furnish evidence of such payment to Buyer and the Title Company. In addition, Seller shall be liable for all costs and expenses associated with any attorney engaged by Seller to contest the real estate taxes; and

(iv) Such other items that are customarily prorated in transactions of this nature shall be ratably prorated. For purposes of calculating Prorations only, Buyer shall be deemed to be in title to the Real Property and responsible for the expenses thereof for the entire day upon which the Closing occurs.

(c) The Parties agree that the allocation of the Purchase Price shall be the Fixed Assets Value for all of the Fixed Assets, and the balance of the Purchase Price for all other Purchased Assets.

(d) The Parties agree that the allocation of the Fixed Assets Value among the Fixed Assets themselves shall be within the sole discretion of Buyer.

#### **4. Method of Sale; Bankruptcy Court Approval.**

(a) Sale Motion. Within two (2) business days of the execution of this Agreement by all Parties, Seller shall file a motion in the Chapter 11 Case seeking the entry of order authorizing the private sale by Seller to Buyer of the Purchased Assets free and clear of liens, claims, encumbrances and interests; and for such other relief as is necessary, reasonable and customary in connection therewith ("**Sale Motion**").

#### **5. Closing.**

(a) Closing Date. Subject to the terms and conditions of this Agreement and the Sale Order, the consummation of the transactions contemplated herein (the "**Closing**"), shall take place at the offices of Chicago Title Insurance Company ("**Title Company**") at 10:00

a.m. on May 13, 2016, or such other location, time and date as shall be mutually agreed upon by the Parties.

(b) **Seller's Deliveries at Closing.** In addition to the "**Title Policy**" (as hereafter defined and described), and the other deliverables set forth herein, at the Closing, Seller shall execute and deliver, cause to be executed and delivered, to Buyer, the following:

- (i) A recordable special warranty deed conveying good and merchantable title to the Real Property deed duly executed by Seller, and all state, county and municipal transfer tax forms which are legally or customarily required to be executed by Seller to effectuate the transfer of the Real Property;
- (ii) A duly executed bill of sale conveying to Buyer all of Seller's right, title and interest to the Fixed Assets and Books and Records free and clear of all liens, claims and encumbrances, in the form to be attached hereto prior to the entry of the Sale Order;
- (iii) A copy of the entered Sale Order;
- (iv) Copies or originals of all the Books and Records;
- (iv) Keys to all locks in the Real Property and all alarm codes;
- (vi) Such other instruments and documents as Buyer shall reasonably request to consummate the transactions contemplated in this Agreement.

(c) **Buyer's Deliveries at Closing.** At the Closing, Buyer shall execute and deliver, or cause to be executed and delivered, to Seller the following:

- (i) The Purchase Price in good and collected funds by wire transfer, less only the Deposit and as adjusted by the Prorations;
- (ii) Certified resolution of Buyer's Board of Directors authorizing the execution, delivery and performance of this Agreement; and
- (iii) Such other instruments and documents as Seller shall reasonably request to consummate the transactions contemplated in this Agreement.

**6. Transfer of the Real Property.** For purposes of the sale of the Real Property to Buyer:

(a) Buyer is in receipt of a title commitment no. 1401 880014702 dated as of January 13, 2015, which Seller shall obtain an update and provide to Buyer on or before April 28, 2016 (the "**Title Commitment**") for the Real Property from the Title Company to issue an

ALTA owner's extended coverage title policy of title insurance, insuring Buyer's fee interest in the Real Property in the amount of the Purchase Price allocated to the Real Property, and the most current land survey in possession of the Seller as of the date hereof, if any (the "**Survey**"). The Title Policy shall be dated as of the date the deed is recorded and shall contain such special endorsements as Buyer may reasonably require at Buyer's cost.

(b) Seller shall cause to be removed in the Title Policy, or have the Title Company insure against, Exceptions J, K, L, U, V and W from the Title Commitment prior to Closing ("**Unpermitted Title Exceptions**"). All other exceptions in the Title Policy shall be collectively referred to as the "**Allowed Exceptions**").

(c) If Seller has not had the Unpermitted Title Exceptions removed or insured against prior to Closing, then Buyer may elect, either:

(i) by written notice to Seller on or before Closing, to not consummate the transactions contemplated hereby, and this Agreement shall become null and void and of no legal effect whatsoever, the Deposit shall be returned to the Buyer forthwith and each of the Parties shall suffer their own losses, costs, expenses or damages arising out of, or related to this Agreement; or

(ii) To consummate the transactions contemplated hereby subject to the Unpermitted Title Exceptions and proceed to Closing without abatement of the Purchase Price;

(d) At the Closing, Seller shall convey good and merchantable fee simple title to the Real Property to Buyer, subject to no exceptions to title other than:

(i) Matters created by or with the written consent of Buyer;

(ii) Real estate taxes and assessments not yet due and payable at Closing;

(iii) Such Unpermitted Title Exceptions which Buyer elects to take subject to as hereinabove provided in Section 6(c)(ii); and

(iv) The Allowed Exceptions (items (i) - (iv) hereof collectively, the "**Permitted Exceptions**").

(e) The delivery of title of the Real Property in accordance with the foregoing shall be evidenced by the issuance at Closing of an ALTA owner's title policy of title insurance insuring Buyer's fee interest in such Real Property in the amount of the Purchase Price allocated to the Real Property subject to the Permitted Exceptions, along with such endorsements as Buyer may reasonably require (the "**Title Policy**"). Seller agrees to execute, acknowledge and deliver such documents or other customary title clearance documents as Title Company may

reasonably request to effect the transfer of the Real Property at Closing, including without limit, a GAP Undertaking and an ALTA Statement.

(f) At the Closing, Seller shall deliver to the Title Company the returns, questionnaires, certificates, affidavits and other documents required in connection with the payment (or non-payment) of any real property transfer taxes and other similar taxes and fees imposed by the state, county or municipality in which the Real Property is located in connection with the transactions contemplated hereby.

(h) Seller and Buyer shall enter into a closing statement at Closing setting forth all closing credits and Prorations and Seller and Buyer shall enter into any and all customary conveyance and closing documents as are reasonable and appropriate for the transactions contemplated hereby.

(i) The Closing shall be a "New York Style" deed and money escrow. Except as otherwise expressly provided in this Agreement, (i) Seller shall pay, at the Closing, the following: (A) the cost of the title work and the premium for the Title Policy and any endorsements needed to remove Unpermitted Exceptions, (B) any fee charged by the Title Company in connection with the GAP Undertaking, (C) one-half of the cost of the Escrow and the New York Style Closing, (d) the cost of all state and county documentary stamp and transfer taxes, and (ii) Buyer shall pay, at the Closing, the following: (A) the cost of the loan policy required by Buyer's lender, and (B) one-half of the cost of the Escrow and the New York Style Closing. Any transfer tax required by local ordinance shall be paid by the party made responsible thereunder or, if no responsibility is assigned, by Seller. Each party shall pay its own attorneys' fees.

#### **7. Delivery and Condition of the Purchased Assets.**

(a) Immediately upon completion of the Closing, Seller shall be deemed to have fully and completely turned over to Buyer the possession, custody and control of the Purchased Assets, in such a condition, consistent with past practices, as to be ready to open for business as an off-track betting parlor, and all keys and alarm codes to the Real Property which are in Seller's possession, custody or control. In connection therewith, Seller shall be deemed to have vacated the Real Property concurrently upon the Closing. Buyer agrees that from and after the Closing, Buyer shall be solely responsible and liable for any loss, cost, damages, expenses, or liabilities of any kind or nature whatsoever arising out of, under or related to Buyer's storage, use, removal, sale, transfer, conveyance, or other disposition of the Purchased Assets, and accordingly, Seller is not assuming and shall not be liable or responsible for any or all such liabilities or obligations. Legal title to, and all risk of loss for, the Purchased Assets shall be transferred to Buyer effective upon the Closing. Seller agrees that prior to the Closing, Seller shall be solely responsible and liable for any loss, cost, damages, expenses, or liabilities of any kind or nature whatsoever arising out of, under or related to Seller's storage, use, removal, sale, transfer, conveyance, or other disposition of the Purchased Assets, and accordingly, Buyer is not assuming and shall not be liable or responsible for any or all such liabilities or obligations.

(b) Except as expressly provided for herein, Buyer agrees that it is purchasing and shall take possession of the Purchased Assets in their **AS IS, WHERE IS** condition and acknowledges that it has previously been given the opportunity to and has conducted such investigations and inspections of the Purchased Assets as Buyer has deemed necessary or appropriate for the purposes of this Agreement.

(c) EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, BUYER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, AND HEREBY DOES NOT MAKE OR INTEND TO MAKE, ANY EXPRESS OR IMPLIED REPRESENTATIONS, STATEMENTS, WARRANTIES, OR CONDITIONS OF ANY KIND OR NATURE WHATSOEVER CONCERNING THE PURCHASED ASSETS, INCLUDING WITHOUT LIMITATION OF THE GENERALITY OF THE FOREGOING, THE CONDITION, WORKING ORDER, SUFFICIENCY, QUANTITY AND/OR QUALITY OF ANY OR ALL OF THE PURCHASED ASSETS; THE ASSIGNABILITY OF THE PERMITS OR ANY OF THEM; THE REAL PROPERTY'S ENVIRONMENTAL STATUS AND CONDITIONS, ROOF, HEATING, CENTRAL COOLING, VENTILATING, LIGHTING, PLUMBING AND ELECTRICAL FIXTURES AND SYSTEMS, BASEMENT FLOODING, LEAKS, SEEPAGE, INSECT INFESTATION; THE ABILITY TO USE THE TELEPHONE NUMBERS; SELLER'S CUSTOMERS, CREDITORS, EMPLOYEES, ASSETS, LIABILITIES, BUSINESS, OPERATIONS, PROFITABILITY OR LACK THEREOF, PROJECTIONS, ESTIMATES, BUDGETS, OR ANY OTHER MATTERS OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF, UNDER OR RELATED TO THE MATTERS LEADING UP TO THIS AGREEMENT; THE COMPLETENESS OR ACCURACY OF SELLER'S PAST OR PRESENT FINANCIAL STATEMENTS, BOOKS AND RECORDS AND OTHER FINANCIAL INFORMATION; OR ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**8. Conditions Precedent to the Obligations of Buyer.** All obligations of Buyer hereunder are subject to:

(a) The timely filing of the Sale Motion, and the timely entry of the Sale Order;

(b) The fulfillment, at or prior to the Closing, of each of the conditions precedent set forth below or otherwise contained herein:

(i) The representations and warranties of Seller contained herein shall be true and correct on and as of Closing, with the same force and effect as though made on and as of said date, except as affected by the transactions contemplated hereby.

(ii) Seller shall have performed all of its obligations and agreements, and complied with all of its covenants herein, to be performed and complied with by Seller, prior to Closing or such earlier date as herein specified. At the Closing, Seller shall deliver possession of the Purchased Assets to Buyer as set forth herein.



(iii) The Bankruptcy Court shall have entered an order, in form and substance acceptable to counsel for Seller, Buyer and the Judgment Creditors, which shall include the Court: (i) approving the sale, transfer, assignment and assumption, as appropriate, of the Purchased Assets to Buyer upon the terms and conditions set forth herein, free and clear of any and all liens, claims and encumbrances of any kind or nature whatsoever; and (ii) containing a finding that the Buyer is a good faith purchaser pursuant to Section 363(m) of the Bankruptcy Code ("**Sale Order**").

(iv) There shall have been no material and adverse change in the Purchased Assets from the date hereof until the Closing except as disclosed, and reasonably acceptable to, Buyer.

**9. Conditions Precedent to the Obligations of Seller.** All obligations of Seller hereunder is subject to the fulfillment, at or prior to the Closing, of each of the conditions set forth below or otherwise contained herein.

(a) The timely entry of the Sale Order.

(b) The representations and warranties of Buyer herein contained shall be true and correct on and as of the Closing, with the same force and effect as though made on and as of said date, except as affected by the transactions contemplated hereby.

(c) Buyer shall have performed all of its obligations and agreements, and complied with all of its covenants herein to be performed and complied with by Buyer, prior to the Closing or such earlier date as may be specified herein. At the Closing, Buyer shall take possession of the Purchased Assets as contemplated herein.

**10. Covenants.** Between the date hereof and the Closing, Seller and Buyer hereby covenant and agree, as the case may be, as follows:

(a) Seller shall not sell, lease, transfer, convey, assign or dispose of in any manner whatsoever, any of the Purchased Assets.

(b) Seller agrees to own, maintain and preserve the Purchased Assets, without encumbering same, prior to the Closing in their present state and condition in all material respects and maintain normal and customary casualty, liability and business interruption insurance thereon, subject only to ordinary wear and tear.

(c) Seller agrees to maintain the Books and Records in a complete and accurate manner on a basis consistent with past bookkeeping and accounting practices of Seller.

(d) Seller agrees to pay all taxes, costs and expenses of any kind and nature incurred or arising prior to Closing, as and when due, or as soon thereafter as is practicable, which may in any way affect or relate to the Purchased Assets.

(e) Each of the Parties agrees not to knowingly take, or fail to take, any action which by reason of taking or such failure to take would make any representations or warranties of each Party herein materially untrue, inaccurate or otherwise misleading.

(f) Each of the Parties agrees to take all corporate and other action necessary to consummate and carry out the transactions contemplated herein.

**11. Seller's Representations and Warranties.** Seller represents and warrants to Buyer as of the date of this Agreement and at Closing, with the intent and understanding that Buyer is expressly relying thereon as a material inducement to enter into this Agreement as follows:

(a) Seller is a corporation duly organized, validly existing, in good standing under the laws of the state of Ohio.

(b) Subject only to the prior approval of the Bankruptcy Court, Seller has full power and authority to execute and perform this Agreement and all documents and instruments to be executed by Seller pursuant to this Agreement. This Agreement, and all documents related hereto, have been, or will be, executed and delivered by duly authorized representatives of Seller. Upon the execution hereof by the Parties, this Agreement shall constitute a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms.

(c) Except for the approval of the Bankruptcy Court, to the best of Seller's knowledge, no consent, authorization, order or approval of, or filing or registration with, any governmental commission, board or other regulatory body of the United States or any state or political subdivision thereof is required for or in connection with the consummation by Seller of the transactions contemplated by this Agreement; provided, however, that Seller makes no representations or warranties as to Buyer's ability to obtain any licensing, approval, consent or order of such governing or regulatory body, including, without limitation, the Illinois Racing Board, necessary to operate the Real Property or other Purchased Assets for any purpose or use whatsoever.

(d) Neither the execution and delivery of this Agreement by Seller, nor the consummation by Seller of the transactions contemplated hereby, will conflict with or result in a breach of any of the terms, conditions or provisions of Seller's organizational documents, or of any order, writ, injunction, judgment or decree of any court or governmental authority or of any arbitration award to which Seller is a party or by which Seller is bound, or to the best of Seller's knowledge, of any statute or administrative regulation.

(e) Seller has good and marketable title to all of its Purchased Assets being sold, transferred, conveyed and assigned to Buyer.

(f) Any and all schedules attached hereto or to be provided to Buyer at closing are and shall be true and correct in all material respects as of the Closing.

(g) Excluding only the Chapter 11 Case, there are no legal proceedings pending or, to Seller's knowledge, threatened against Seller or relating to the Purchased Assets, before any governmental authority, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Seller or the Purchased Assets. Seller has not received written notice that the Real Property or the present use, occupancy and operation thereof are in violation of any applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to and affecting the Real Property, including, without limitation, environmental laws, ordinances, regulations, statutes, rules and restrictions. Other than recorded documents, there are no agreements, written or oral, entered into by Seller, with any municipality, county, other governmental agencies or any other party, which would materially affect the Real Property.

(h) Seller has no actual knowledge and Seller has not received any written notice, report or other written communication advising or alleging of the existence of (a) any structural or other physical defect or deficiency in the condition of the Real Property, or any component or portion thereof; including, without any limitation any leaks; and (b) any defect or deficiency in the improvements, the structural elements thereof, and the mechanical systems (including, without limitation, the roof; all HVAC system, plumbing, electrical, elevator, security, utility and sprinkler systems) therein.

(i) To the best of Seller's knowledge, all water, sewer, gas, electric, telephone, drainage and other utility equipment, facilities and services required by law or necessary for the operation of the Real Property as it is now being operated, and as required for operation of the building, are installed and connected pursuant to valid permits; are adequate to service the Property; and are in good operating condition. Seller has not received any written notice advising or alleging of the existence of any fact or condition that would or could result in the termination or impairment of the furnishing of service to the Real Property of water, sewer, gas, electric, telephone, drainage or other such utility services.

**12. Buyer's Representations and Warranties.** Buyer represents and warrants to Seller as of the date of this Agreement and at Closing, with the intent and understanding that the Seller is expressly relying thereon as a material inducement to enter into this Agreement as follows:

(a) Buyer is a corporation duly organized and validly existing under the laws of the State of Delaware.

(b) Subject only to the prior approval of the Bankruptcy Court, Buyer has full power and authority to execute and perform this Agreement and all documents and instruments to be executed by Buyer pursuant to this Agreement. This Agreement, and all documents related hereto, have been, or will be, executed and delivered by a duly authorized representative of Buyer. Upon the execution hereof by the Parties, this Agreement shall constitute a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms.

(c) Except for the approval of the Bankruptcy Court, no consent, authorization, order or approval of, or filing or registration with, any governmental commission, board or other regulatory body of the United States or any state or political subdivision thereof is required for or in connection with the consummation by Buyer of the transactions contemplated by this Agreement.

(d) Neither the execution and delivery of this Agreement by Buyer, nor the consummation by Buyer of the transactions contemplated hereby, will conflict with or result in a breach of any of the terms, conditions or provisions of Buyer's organizational documents, or of any statute or administrative regulation, or of any order, writ, injunction, judgment or decree of any court or governmental authority or of any arbitration award to which Buyer is a party or by which Buyer is bound.

(e) Buyer agrees that as of the Effective Date, it has or shall be deemed to have completed all of its due diligence efforts regarding the Purchased Assets, and/or has waived any further due diligence.

### **13. Liabilities Assumed/Not Assumed.**

(a) Effective upon, and from and after Closing, in addition to those liabilities of Seller expressly assumed by Buyer hereunder, if any, Buyer shall be solely liable and responsible for: (i) the obligations specified in section 7(a) hereof; (ii) any damage caused to the Real Property by Buyer's representatives in connection with the use, storage and/or removal of the Purchased Assets, including any and all costs of repair required as a result thereof; and (iii) the costs to be paid by Buyer from and after the Closing for Buyer's use and occupancy of the Real Property (collectively, the "**Assumed Liabilities**").

(b) Except as is expressly provided above concerning the Assumed Liabilities, and notwithstanding anything to the contrary contained in this Agreement or otherwise, Buyer is not assuming, nor shall it in any way be liable or responsible for, any liabilities, obligations or debts of Seller relating to the Business, the Purchased Assets, the Real Property, or otherwise, whenever arising and whether known or unknown, primary or secondary, direct or indirect, absolute or contingent, contractual, tortious or otherwise (collectively, the "**Excluded Liabilities**"). For the avoidance of doubt, Excluded Liabilities shall include: (i) any obligations or liabilities under any and all executory contracts that are not assumed by and assigned to Buyer ("**Excluded Contracts**"), and any obligations under the Excluded Contracts not identified in the Sale Order; (ii) all operating costs and expenses incurred and unpaid by Seller arising out of, under or related to its Business, including, without limitation, all unpaid costs, expenses and fees related to the Chapter 11 Case; (iii) any claims or pending litigation or proceedings relating to any action with respect to the operation of the Seller's business; (iv) any obligations or liabilities of Seller under any employee pension, retirement, or other benefit plans or collective bargaining agreements, including, any liabilities under any existing multi-employer pension plan or existing health and welfare and disability plans for occurrences or conditions; (v) any obligations or claims for withdrawal liability under applicable federal law, including the Employee Retirement Income Security Act of 1974, the Multi-Employer Pension Plan Amendments Act, and other

amendments thereto; (vi) any obligations or liabilities of Seller to the Chicagoland Race Meet Operators and Local 134 I.B.E.W. Joint Pension Trust; (vii) any liability of Seller for income, transfer, sales, use, unemployment and other tax, fee, or assessment arising in connection with the consummation of the transactions contemplated hereby; (viii) any obligations or liabilities caused by, arising out of, or resulting from any action or omission of Seller or Maywood; (ix) any obligations or liabilities of any kind or nature whatsoever, whether oral or written, to any current or former employee, representative, agent, insider, shareholder, officer or director of Seller for any employee benefit plans and/or any employment related matters of any kind or nature whatsoever, including, without limitation, salesmen commissions, the employment (or the termination of employment) of any employees of Seller including WARN Act obligations wages, severance or similar termination benefits, vacation, sick leave and/or health insurance matters to any and all of Seller's employees; (x) any obligations, losses, liabilities, damages, costs and expenses arising out of or relating to any and all environmental matters of any kind or nature whatsoever, including, without limitation, any and all site assessments, remedial investigations and feasibility studies, fines, penalties, sanctions and interest incurred as a result of or arising under any federal, state or local environmental law, statute, regulation or ordinance, or involving any release and/or transportation and receipt of any hazardous materials; (xi) all obligations of Seller under any federal state or local laws, statutes by-laws, regulations or ordinances relating to occupational safety, health, product liability and transportation; (xii) all obligations of any kind or nature whatsoever owing from Seller to Maywood; (xiii) all taxes, costs and expenses of any kind and nature incurred or based on events arising prior to Closing; (xiv) all liabilities relating to or arising out of the Excluded Assets; and (xv) any other obligations of Seller not expressly assumed by Buyer under this Agreement; it being expressly understood and agreed to that any and all Excluded Liabilities shall remain and be obligations and liabilities solely of Seller, as the case may be.

(c) Notwithstanding anything to the contrary contained in this Agreement or otherwise, Buyer shall have right, in its sole and absolute discretion, but not the obligation to, make offers of employment to any or all of Seller's former and/or current employees upon such terms as Buyer sees fit, in its sole and absolute discretion. Any and all such offers of employment, if any, shall commence only after the Closing.

**14. Termination and Remedies.** This Agreement and the transactions contemplated herein may be terminated prior to Closing pursuant to any of the following:

(a) By the mutual written consent of Seller and Buyer, in which case, this Agreement shall be null and void and of no legal effect whatsoever upon Seller's return to Buyer of the Deposit to Buyer, and each of the Parties shall suffer their own losses, costs, expenses or damages arising out of, or related to this Agreement;

(b) By either of the Parties: (i) if the other Party materially defaults under this Agreement; or (ii) the Closing of this Agreement, if approved by the Bankruptcy Court pursuant to the terms of the Sale Order, shall not have occurred at or before 5:00 p.m. on May 24, 2016; provided, however, that the right to terminate this Agreement under this subparagraph shall not be available to any Party whose failure to fulfill any of its obligations under this Agreement has

been the cause of or resulted in the failure of the Closing to occur on or prior to the aforesaid date, provided however, that:

(i) If Buyer is not in default hereunder and Seller fails to make the required deliveries at the Closing or materially defaults under this Agreement with no fault of Buyer, then Buyer shall have the right to: (1) terminate this Agreement and thereupon this Agreement shall be null and void and of no legal effect whatsoever upon Seller's return of the Deposit to Buyer; (2) pursue the remedy of specific performance of this Agreement in the Bankruptcy Court, in which case, if successful, Buyer shall be entitled to offset from the Purchase Price at Closing all of its reasonable costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees); or (3) waive or agree to modify, in Buyer's sole and absolute discretion, the occurrences causing Seller's inability to consummate the transactions contemplated herein, after which Buyer shall be required to consummate the transactions contemplated herein; and

(ii) If Seller is not in default hereunder, and Buyer in default hereunder fails to pay the balance of the Purchase Price at the Closing as set forth above, or refuses to close for any reason not condoned by this Agreement, then Seller, as their sole remedy, shall be entitled to retain the Deposit as liquidated damages for Buyer's default.

**16. Brokers.** Excluding only Seller's prior retention of the Auctioneers and Keen-Summit Capital Partners, LLC (collectively, the "**Brokers**"), the Parties warrant to each other that they have not engaged, consented to, or authorized any other broker, investment banker, or other third party to act on their behalf, directly or indirectly, as a broker or finder in connection with the transactions contemplated by this Agreement, and that no such other third party is entitled to any fee or compensation in connection with this Agreement or the transactions contemplated hereby by reason of any action of it. Seller shall have the sole responsibility for the payment of any and all compensation to Brokers, if any, in accordance with existing and further orders of the Bankruptcy Court and shall indemnify Buyer therefrom. Buyer shall have no obligation to the Brokers of any kind. Excluding only Seller's obligations owing to the Brokers, Seller and Buyer shall otherwise indemnify, defend and hold harmless the other from any and all claims of any broker, investment banker, or other broker or finder, arising by, through or under either of them in connection with this transaction.

**17. Damage Destruction or Condemnation/Risk of Loss.** In the event of any casualty which results in the damage or destruction of ten per cent (10%) or more of the floor space of the Real Property, or the Seller receives notice of the condemnation of the Real Property by any governmental authority, Seller shall so advise Buyer within three (3) days of such event and Buyer may elect, by written notice to Seller, to terminate this Agreement in which event the Deposit shall be immediately returned to Buyer and this Agreement shall be of no further force and effect except for those obligations expressly surviving termination. If Buyer does not so elect, then this transaction shall close as scheduled, and at the Closing, Buyer shall receive a credit equal to (i) all insurance proceeds (or an assignment of all rights to receive such proceeds) plus the deductible, or (ii) all condemnation proceeds (or an assignment of all rights to receive such proceeds), as applicable. In the event of any casualty subsequent to the Effective Date

which results in the damage or destruction of less than ten per cent (10%) of the floor space of the Real Property, Seller shall be responsible for the repair of any such casualty prior to the Closing, or to provide a mutually agreed upon credit to the Buyer as part of the Prorations, and conditioned upon the completion of such repair in a mutually satisfactory manner or the confirmation of the credit, this transaction shall close as scheduled.

**18. Further Assurances; Post-Closing Obligations.**

(a) Seller and Buyer shall each make their respective books and records (including work papers in the possession of their respective accountants) with respect to the Purchased Assets available for inspection by either Party, or by its duly accredited representatives (including any subsequently appointed Trustee), for reasonable business purposes at all reasonable times during normal business hours, for a one (1) year period after the Closing, with respect to all transactions of Seller occurring prior to and relating to the Closing, and the historical financial condition, assets, liabilities, operations, and cash flows of Seller. As used in this section, the right of inspection includes the right to make extracts or copies.

(b) For a period of one hundred twenty (120) days after the Closing, at no cost to Seller, and for purposes of assisting Seller in completing the administration of Seller's estate in the Chapter 11 Case, Buyer shall: (i) make the office building located on the Real Property ("**Office Building**") and all reasonably necessary office equipment, furniture, fixtures, computers, telephone system and other tangible personal property located therein ("**Necessary Office Equipment**"), reasonably available to Seller's representatives; (ii) make all administrative and clerical employees of Seller that Buyer hires, if any, reasonably available to Seller; and (iii) allow representatives of Seller access to the Office Building, workspaces therein, and use of the Necessary Office Equipment, during normal business hours and upon reasonable notification.

(c) From and after the Closing, the Parties shall execute such further documents, and perform such further acts, as may be necessary to transfer and convey the Purchased Assets to Buyer on the terms herein contained and to otherwise comply with the terms of this Agreement and consummate the transactions contemplated hereby.

(d) For a period of ten (10) years following the recording of the deed to the Real Property, at no time shall any portion of the Real Property be used or operated in connection with any government-regulated gambling-related activities or uses, including, without limitation, the use or operation of any casinos, horse racetracks, slot machines, video gaming terminals, video lottery terminals, pari-mutuel wagering and any activities or uses incidental thereto.

**19. Entire Agreement.** This Agreement, including those documents identified herein or to be appended hereto as Exhibits constitutes the entire contract between the Parties relating to the subject matter hereof and is the final and complete expression of their intent. No prior or contemporaneous negotiations, promises, agreements, covenants, or representations of any kind or nature, whether made orally or in writing, have been made by the Parties, or any of

them, in negotiations leading to this Agreement or relating to the subject matter hereof, which are not expressly contained herein, or which have not become merged and finally integrated into this Agreement; it being the intention of the Parties hereto that in the event of any subsequent litigation, controversy, or dispute concerning the terms and provisions of this Agreement, no Party shall be permitted to offer to introduce oral or extrinsic evidence concerning the terms and conditions hereof that are not included or referred to herein and not reflected in writing. This Agreement can be changed, modified or amended only by a writing executed by the Parties. Except as expressly provided herein, no conditions of any kind or nature exist to the legal effectiveness of this Agreement which shall be in full force and effect immediately upon execution and delivery by the Parties hereto.

**20. Survival.** The covenants, agreements, indemnities, warranties and representations of the Parties hereto as expressed herein shall survive the Closing for a period of one (1) year from the Closing and shall not be merged into any deed or any other conveyancing document delivered at the Closing.

**21. Notices.** All notices required or permitted to be given hereunder shall be in writing and may be delivered by hand, electronically, by nationally recognized private courier, or by United States mail. Notices delivered by mail shall be deemed given five (5) business days after being deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested. Notices delivered by hand, electronically, or by nationally recognized private courier shall be deemed given on the first business day following receipt; provided, however, that a notice delivered by facsimile shall only be effective if such notice is also delivered by hand, or deposited in the United States mail, postage prepaid, registered or certified mail, on or before two (2) business days after its delivery electronically. All notices shall be addressed as follows (or to such other address as any party shall have advised the others in writing):

If to Seller addressed to:

Balmoral Racing Club, Inc.  
8600 W. North Ave.  
Melrose Park, IL 60160  
Attn: John A. Johnston ([jjbal@aol.com](mailto:jjbal@aol.com))  
William H. Johnston III ([duke@maywoodpark.com](mailto:duke@maywoodpark.com))

With copies to:

Chad H. Gettleman, Esq. ([chg@ag-ltd.com](mailto:chg@ag-ltd.com))  
Nathan Q. Rugg, Esq. ([nqr@ag-ltd.com](mailto:nqr@ag-ltd.com))  
Adelman & Gettleman, Ltd.  
53 W. Jackson Blvd., Suite 1050  
Chicago, IL 60604  
Tel. 312-435-1050  
Fax 312-435-1059



If to Buyer addressed to:

HITS, Inc.  
319 Main Street  
Saugerties, NY 12477  
Attn: Thomas G Struzzieri ([tom@hitsshows.com](mailto:tom@hitsshows.com))  
John A. Eickman ([john@hitsendurance.com](mailto:john@hitsendurance.com))  
Marc Nagelberg ([marc@hitsshows.com](mailto:marc@hitsshows.com))  
Tel. 845-247-7275  
Fax 845-247-7285

and/or to such other respective addresses and/or addressees as may be designated by notice given in accordance with the provisions of this paragraph.

**22. No Contract until Execution.** This Agreement shall become valid and binding only after it is executed and delivered by the Parties. Until execution hereof, it is the intention of the Parties that: (a) no agreement, contract, offer of agreement or proposal arises; and (b) no estoppel is created by the submission of any draft hereof or any other conduct of the Parties.

**23. Expenses.** Each Party hereto shall bear all fees and expenses incurred by such Party in connection with, relating to or arising out of the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including, without limitation, attorneys', accountants' and other professional fees and expenses.

**24. Non-Waiver.** The failure in any one or more instances of a Party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred, or the waiver by said Party of any breach of any of the terms, covenants or conditions of this Agreement, shall not be construed as a subsequent waiver of any such terms, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving Party.

**25. Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto, and their successors (including any successor bankruptcy trustee or successor chapter 11 plan trustee) and permitted assigns. Nothing in this Agreement, express or implied, is intended to convey on any person other than the Parties hereto, and their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, including, without limitation, third party beneficiary rights.

**26. Amendments.** This Agreement and all of the terms and conditions herein shall in no way be altered, amended or modified by: (a) the dismissal of the Chapter 11 Case; (b) the conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code after Closing; (c) the confirmation of any plan(s) of reorganization or liquidation in the Chapter 11

Case after Closing; (d) the outcome of the Appeal or any subsequent proceedings in the District Court Litigation; or (e) the dissolution of Seller; except pursuant to written agreement of Buyer and Seller.

27. **Assignability.** This Agreement shall not be assignable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the parties hereto agree Buyer shall have the right, prior to the Closing and without the consent of Seller, to assign this Agreement or to designate a nominee(s) or a designee(s).

28. **Jurisdiction.** The parties acknowledge and agree that the Bankruptcy Court shall have exclusive jurisdiction to enforce each and every term and condition of this Agreement, including but not limited to hearing and determining claims or disputes among the Parties arising as a result of this Agreement or arising as a result of any claimed breach of this Agreement.

29. **Applicable Law.** This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws of the State of Illinois applicable to contracts made in that State.

30. **Severability.** If any provision of this Agreement shall be judicially determined to be unenforceable or invalid, the remainder of this Agreement shall be unaffected to the greatest extent possible.

31. **Headings.** The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

32. **Time of Essence.** Time is of the essence to this Agreement.

33. **Counterparts.** This Agreement, and any document or instrument executed pursuant hereto, may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A signature transmitted via email shall constitute and be deemed to be an original signature for all purposes and in all respects.

34. **Construction of Terms.** This Agreement has been drafted jointly by the Parties in full consultation with their respective attorneys, and no ambiguity in this Agreement shall be interpreted or construed against any of the Parties.

35. **Recitals.** The recitals hereinbefore set forth constitute an integral part of this Agreement, evidencing the intent of the Parties in executing this Agreement, and describing the circumstances surrounding its execution. Accordingly, said recitals, are by express reference made a part hereof, and this Agreement shall be construed in the light thereof.

*Signature page follows*


IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

**SELLER:**

**BUYER:**

BALMORAL RACING CLUB, INC.

HITS, INC.

  
\_\_\_\_\_  
**By:** William Johnson  
**Its:** Vice President

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

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

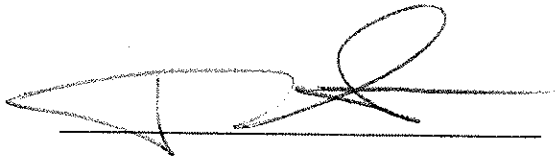
**SELLER:**

**BUYER:**

BALMORAL RACING CLUB, INC.

HITS, INC.

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

  
By: THOMAS G. STRUZZI

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

Its: PRESIDENT

# **GROUP EXHIBIT A**