

**ASSET PURCHASE AGREEMENT**

dated as of April [ ], 2009

by and among

**ADAMAR OF NEW JERSEY, INC.,**

**MANCHESTER MALL, INC.,**

**THE HONORABLE GARY S. STEIN,**

**TROPICANA ENTERTAINMENT, LLC,**

**RAMADA NEW JERSEY HOLDINGS CORPORATION,**

**ATLANTIC-DEAUVILLE, INC.,**

**ADAMAR GARAGE CORPORATION,**

**RAMADA NEW JERSEY, INC.**

and

**CREDIT SUISSE**

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (together with the Disclosure Letters and Exhibits hereto, this “**Agreement**”), dated as of April [ ], 2009, is by and among (i) Adamar of New Jersey, Inc., a New Jersey corporation (the “**Company**”), (ii) Manchester Mall, Inc., a New Jersey corporation and the wholly owned subsidiary of the Company (the “**Company Subsidiary**”), (iii) the Honorable Gary S. Stein (“**Justice Stein**”), exclusively in his roles, on behalf of the Company and the Company Subsidiary, as trustee (the “**Trustee**”) and conservator (the “**Conservator**” and, together with the Trustee, the “**Trustee/Conservator**”) of the Trust Assets and the Company under applicable Gaming Laws, (iv) Tropicana Entertainment, LLC, a Delaware limited liability company (“**Tropicana Entertainment**”), (v) Ramada New Jersey Holdings Corporation, a New Jersey corporation and an indirect wholly owned subsidiary of Tropicana Entertainment (“**Holdings**”), (vi) Atlantic-Deauville, Inc., a New Jersey corporation and a direct wholly owned subsidiary of Holdings (“**Atlantic-Deauville**”), (vii) Adamar Garage Corporation, a New Jersey corporation and a direct wholly owned subsidiary of Atlantic-Deauville (the “**Atlantic-Deauville Subsidiary**”), (viii) Ramada New Jersey, Inc., a New Jersey corporation and a direct wholly owned subsidiary of Holdings (“**Ramada**” and, together with Holdings, Atlantic-Deauville and the Atlantic-Deauville Subsidiary, the “**Non-Conservatorship Sellers**”, the Non-Conservatorship Sellers and Tropicana Entertainment collectively being the “**Tropicana Parties**” and the Non-Conservatorship Sellers and the Company and Company Subsidiary, the “**Sellers**”) and (ix) Credit Suisse, exclusively in its capacity as Administrative Agent and Collateral Agent for the Lenders under the Original Credit Agreement (the “**Administrative Agent**”). For purposes hereof, “**Buyer**” will be a Person designated by the Administrative Agent, upon the direction of the Required Lenders and on behalf of the Secured Parties to receive the Acquired Assets and the Business, as promptly as practicable after the end of the Auction Period and in accordance with **Section 6.19**. Except as provided otherwise, capitalized terms used herein but not otherwise defined have the respective meanings set forth in **Section 1.1 of Article I**. In respect of Buyer, all references to the “date hereof” or the “date of this Agreement” shall refer to the Joinder Date, unless the context otherwise requires or as specifically provided otherwise.

WHEREAS, on January 3, 2007 (the “**Aztar Acquisition Date**”), Tropicana Casinos and Resorts, Inc., a Delaware corporation (“**TCR**”), and certain of its Affiliates acquired all of the issued and outstanding equity interests of Aztar (the “**Aztar Acquisition**”);

WHEREAS, in connection with the Aztar Acquisition, TCR, certain of TCR’s direct and indirect subsidiaries (the “**Tropicana Trust Agreement Parties**”) and the Trustee entered into the Trust Agreement, dated October 16, 2006 (the “**Trust Agreement**”), pursuant to which, among other things, the Trustee was designated to hold in trust (the “**NJ Trust**”) all of the Tropicana Trust Agreement Parties’ present and future right, title and interest, including all voting rights, in the securities of the Company;

WHEREAS, on December 12, 2007 (the “**Trust Trigger Date**”), the New Jersey Casino Control Commission (the “**Commission**”), pursuant to Order Nos. 07-12-12-27 and 07-12-12-27-A (the “**Trust Orders**”), among other things, determined not to renew the Company’s casino and casino hotel alcoholic beverage licenses in respect of the Tropicana Casino and Resort—Atlantic City (the “**Tropicana Atlantic City**” and, the business of the Tropicana Atlantic City, the “**Business**”), denied the application of TCR for plenary qualification as a holding company of the Company and declared the NJ Trust operative in accordance with the terms of the Trust Agreement and applicable Gaming Laws;

WHEREAS, on December 19, 2007, pursuant to Order No. 07-12-19 (the “**Conservator Order**” and, together with the Trust Orders and the other orders and resolutions issued by the Commission relating to the Business, the “**Commission Orders**”), the Commission appointed Justice Stein the Conservator of the Company and, among other things, authorized the conservator to dispose of the capital stock or the assets of the Company, to conduct the business of the Company pursuant to the New Jersey Casino Control Act pending such disposal, and to undertake certain other actions, in his discretion, in respect of the Company and the Business;

WHEREAS, the Trustee/Conservator has been authorized by the Commission to direct certain operations of the Company since the issuance of the Commission Orders and is expected to continue to direct certain operations of the Company, including the Sale, until such time as the transactions contemplated by this Agreement and the Ancillary Agreements are consummated or as otherwise required by the Commission or Gaming Authorities;

WHEREAS, as of the date hereof, certain assets of the Business are held by the Non-Conservatorship Sellers and are not subject to the NJ Trust;

WHEREAS, in each case subject to the Gaming Laws and the Commission Orders, the Trustee owns, of record, and the beneficial ownership of Holdings has been converted into the right to receive certain proceeds of the Sale of, 100 shares of the common stock, no par value, of the Company, which shares constitute all of the issued and outstanding shares of capital stock of the Company (such shares, the “**Company Shares**”);

WHEREAS, Tropicana Entertainment is the borrower under the Original Credit Agreement, and the other Sellers are guarantors of, inter alia, its obligations thereunder;

WHEREAS, on May 5, 2008, the Tropicana Parties and certain of their Affiliates (not including the Company or the Company Subsidiary) filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §101 et seq. (as amended, the



“**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Delaware Bankruptcy Court**” and, such case, the “**Tropicana Bankruptcy Case**”);

WHEREAS, the Company and the Company Subsidiary will file as promptly as practicable, but in no event later than five (5) Business Days, after the date hereof, a voluntary petition (the “**Petition**”) for relief pursuant to the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the “**NJ Bankruptcy Court**” and, together with the Delaware Bankruptcy Court, the “**Bankruptcy Courts**”) (such case, the “**Company Bankruptcy Case**” and, together with the Tropicana Bankruptcy Case, the “**Bankruptcy Cases**”);

WHEREAS, the Administrative Agent, on behalf of the Secured Parties and acting at the direction of the Required Lenders, desires to credit bid a portion of the obligations secured by the Original Collateral Agreement and, upon acceptance of such bid (but prior to the consummation thereof), shall assign to Buyer the right to receive the assets and Liabilities to be conveyed hereunder upon the terms and subject to the conditions set forth herein and as authorized under Sections 105, 363, 365 and 1113 of the Bankruptcy Code; and

WHEREAS, upon the terms and subject to the conditions set forth herein and as authorized under Sections 105, 363, 365 and 1113 of the Bankruptcy Code, Buyer desires to purchase and assume, upon the acceptance of the Administrative Agent’s credit bid by the Trustee/Conservator and the Non-Conservatorship Sellers, and the Trustee/Conservator and the Non-Conservatorship Sellers desire to sell, transfer, assign, convey and deliver, substantially all of the assets comprising the Business, together with certain obligations and Liabilities relating thereto (together with the other transactions contemplated by this Agreement and the Ancillary Agreements, the “**Sale**”).

NOW, THEREFORE, the parties hereto, in consideration of the premises and of the mutual representations, warranties and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

## ARTICLE I

### DEFINITIONS

#### **Section 1.1 Definitions**

(a) As used in this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement, the following terms shall have the following respective meanings.

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such first-mentioned Person, except that for the purposes of construing this Agreement and the Ancillary Agreements, (i) the Company and the Company Subsidiary, on the one hand, and the Trustee/Conservator, on the other hand, shall be deemed not to be Affiliates of each other and (ii) the Administrative Agent and the Buyer shall be deemed not to be Affiliates of each other.

“**Affiliate Agreement**” means any Contract between any Seller, on the one hand, and Columbia Sussex Corporation, TCR or any of their Subsidiaries or Affiliates (other than any Seller), on the other hand, other than this Agreement and any Ancillary Agreement.

“**Ancillary Agreements**” means the Bill of Sale, Assignment and Assumption Agreements, the Owned Property Lease Assignments and the License Agreement, and any instruments in connection therewith.

“**Atlantic Assets**” means the assets, properties, rights, claims, Contracts and businesses of every kind, character and description, whether tangible or intangible (including goodwill), whether real, personal or mixed, whether accrued, contingent or otherwise, and wherever located, held by Atlantic-Deauville or the Atlantic-Deauville Subsidiary and either (i) primarily used or held for use in the Business or (ii) otherwise necessary for or beneficial to the conduct of the Business as of the date hereof.

“**Atlantic City Customer Database**” means the customer database used by the Company in connection with its efforts to market and promote the Tropicana Atlantic City, which database includes the names and “consumption” through complimentaries, coin, special events and “giveaways” of customers listed in the database as having visited the Tropicana Atlantic City and was used or maintained by the Company on the Aztar Acquisition Date in connection with the Aztar Acquisition, as updated by the Company under the supervision of (i) Tropicana

Entertainment through the date immediately preceding the Trust Trigger Date and (ii) the Trustee/Conservator from the Trust Trigger Date to the Closing Date.

“**Aztar**” means Aztar Corporation, a Delaware corporation and an Affiliate of Tropicana Entertainment.

“**Business Day**” means any day, other than a (i) Saturday or a Sunday or (ii) day on which banking and savings and loan institutions in New York, New York are authorized or required by Law to be closed.

“**Business Employee**” means each current employee of any Seller whose name is set forth in **Section 4.12(c)** of the applicable AC Disclosure Letter and who is engaged primarily in the Business, including such current employees who are not actively at work because of an authorized leave of absence for vacation, holiday, illness, jury duty, military leave, bereavement leave, short-term or long-term disability leave, workers compensation, or other authorized leave of absence.

“**Buyer**” means the Person designated as such by the Administrative Agent pursuant to **Section 6.19**.

“**COBRA Liability**” means all Liabilities arising on or prior to the Closing Date under Section 4980B of the Code or Section 601 et seq. of ERISA with respect to any current or former Business Employees and/or any beneficiaries or dependents thereof.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Columbia Sussex Corporation**” means Columbia Sussex Corporation, a Kentucky corporation and an Affiliate of Tropicana Entertainment.

“**Company Assets**” means the assets, properties, rights, claims, Contracts and businesses of every kind, character and description, whether tangible or intangible (including goodwill), whether real, personal or mixed, whether accrued, contingent or otherwise, and wherever located, held by the Company or the Company Subsidiary and either (i) primarily used or held for use in the Business or (ii) otherwise necessary for or beneficial to the conduct of the Business as of the date hereof.

“**Contract**” means any agreement, arrangement or understanding, whether or not in writing.

“**Credit Agreements**” means collectively (i) that certain Credit Agreement, dated as of January 3, 2007 (as amended, supplemented or otherwise modified from time to time, the “Original Credit Agreement”), entered into by and among Tropicana Entertainment, Tropicana Entertainment Intermediate Holdings, CP Laughlin Realty, LLC, Columbia Properties Vicksburg, LLC, JMBS Casino LLC, the Lenders and the Administrative Agent, as administrative agent and collateral agent for the Lenders, (ii) each Loan Document (as defined in Article I of the Original Credit Agreement) and (iii) that certain Senior Secured Superpriority Debtor in Possession Credit Agreement, dated as of May 5, 2008, among Tropicana Entertainment, Tropicana Entertainment Intermediate Holdings, CP Laughlin Realty, LLC, JMBS Casino LLC, the lenders party thereto and Silver Point Finance, LLC, as administrative agent, collateral agent, sole bookrunner and sole lead arranger (each as defined in the Senior Secured Superpriority Debtor in Possession Credit Agreement).

“**Cure Amount**” means, with respect to each Acquired Contract and CBA, the amount necessary to cure all defaults of the Sellers under such Acquired Contract or CBA to the extent required by Sections 365 and 1113 of the Bankruptcy Code.

“**Damage Threshold**” means damage caused by fire or other casualty at the Property of severity sufficient such that the cost to repair any such damage is reasonably likely to be equal to or in excess of \$250,000,000 as determined by an independent contractor licensed to do business in New Jersey and reasonably acceptable to the Trustee/Conservator.

“**Debt Service Payment**” means any distribution, intercompany loan, dividend, transfer, disbursement or similar payment made by any Seller to any Affiliates of Tropicana Entertainment in order to fund, in part, the debt service obligations of Tropicana Entertainment and certain of its Subsidiaries and Affiliates (which Subsidiaries and Affiliates guarantee such debt service obligations) pursuant to the Original Credit Agreement; provided, however, that any such distribution, intercompany loan, dividend, transfer, disbursement or similar payment made by the Company or its Subsidiary shall be made in accordance with a formula acceptable to the Trustee/Conservator and approved by the Commission allocating debt service obligations to the Tropicana Atlantic City.

“**Disclosure Letters**” means the Buyer Disclosure Letter and the AC Disclosure Letters.

“**Encumbrance**” means any lien, pledge, mortgage or security interest.

**“ERISA Affiliate”** means, with respect to any entity, any trade or business, whether or not incorporated, that together with such entity and its Subsidiaries would be deemed a “single employer” within the meaning of Section 4001 of ERISA.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended.

**“Excluded Intellectual Property”** means (i) any Intellectual Property listed in **Section 2.1(b)(iii)** of either of the AC Disclosure Letters under the caption “Excluded Intellectual Property,” and (ii) any Intellectual Property licensed to any Seller by Tropicana Entertainment or its Affiliates (other than any Seller) under the License Agreement (it being understood that any such licensed rights owned by such Seller shall not constitute Excluded Intellectual Property), including the words “Tropicana” “Trop” and “Trop Park”.

**“GAAP”** means, with respect to a specified date or period, generally accepted accounting principles promulgated or adopted by the United States Financial Accounting Standards Board and its predecessors in effect for such date or period.

**“Gaming Approvals”** means all licenses, permits, orders, approvals, authorizations, registrations, findings of qualification or suitability, franchises, entitlements, waivers and exemptions issued by any Gaming Authority that are either (y) required to permit the parties hereto to consummate the transactions contemplated by this Agreement or (z) necessary to permit Buyer to own and operate the Property after the Closing in substantially the same manner as owned and operated by the Tropicana Parties and their Subsidiaries on the date immediately preceding the Trust Trigger Date, including all of those set forth on **Exhibit A**.

**“Gaming Authorities”** means any governmental authority or agency with regulatory control or jurisdiction over the conduct of lawful gaming or gambling, including the Commission and the New Jersey Division of Gaming Enforcement.

**“Gaming Law”** means any applicable federal or state statute, ordinance, rule, regulation, permit, consent, registration, finding of qualification or suitability, approval, license, judgment, order, decree, injunction or other authorization, including any condition or limitation placed thereon, governing or relating to the casino and gaming activities and operations of the Business.

**“Governmental Entity”** means any court, administrative agency, commission, regulatory authority, Gaming Authority or other governmental authority or instrumentality.

“**Holdings Assets**” means the assets, properties, rights, claims, Contracts and businesses of every kind, character and description, whether tangible or intangible (including goodwill), whether real, personal or mixed, whether accrued, contingent or otherwise, and wherever located, held by Holdings and either (i) primarily used or held for use in the Business or (ii) otherwise necessary for or beneficial to the conduct of the Business as of the date hereof.

“**Indenture**” means that certain Indenture, dated as of December 28, 2006 (as amended supplemented or otherwise modified from time to time), entered into by and among Tropicana Entertainment, Tropicana Finance Corp. (f/k/a/ Wimar OpCo Finance Corp.) and U.S. Bank National Association, as Trustee.

“**Intellectual Property**” means all intellectual property and proprietary rights, foreign or domestic, including all patents, patent rights and patent applications (together with all reissuances, continuations, continuations-in-part, divisions, revisions, extensions, and reexaminations thereof), inventions (whether or not patentable), processes, technologies, discoveries, trade secrets, trademarks, trademark rights, trademark registrations and applications, internal controls, domain names (including all website content associated therewith), service marks, service mark rights, service mark registrations and applications, trade names, trade name rights, trade secrets, service names, service name rights, brandmarks, brand names, logos, trade dress, know-how, copyrights, copyright rights, copyright registrations and applications, marketing and customer information (including customer lists and customer databases, confidential business information, licenses, technical information (including confidential information), formulae, business and product names, slogans, industrial models, designs, methodologies, computer programs (including all source code and object code), all goodwill associated with the foregoing, all documentation, copies and tangible embodiments of the foregoing (in whatever form or medium), and all past, present or future claims and causes of actions arising out of or related to any infringement, dilution, misappropriation or other violation of any of the foregoing.

“**IRS**” means the Internal Revenue Service, a division of the United States Treasury Department, or any successor agency thereto performing substantially the same regulatory function.

“**knowledge**” means (a) when used in the phrase “knowledge of the Tropicana Parties” or “the Tropicana Parties’ knowledge” or words of similar import, the actual knowledge of Scott Butera and Marc Rubinstein, (b) when used in the phrase “knowledge of Buyer” or “Buyer’s knowledge” or words of similar import, the actual knowledge of the three most senior officers of Buyer and (c) when used in the phrase “knowledge of the Company” or words of similar import, the actual knowledge of Mark Giannantonio, Ed Garruto and Tama Hughes. For the avoidance

of doubt, “actual knowledge” shall not include constructive knowledge or imputed knowledge, nor shall it imply any duty of inquiry.

“**Land**” means those certain parcels of or interests in real property which are owned in fee by the Sellers, as more particularly described in **Section 4.6(a)** of either of the AC Disclosure Letters.

“**Law**” means any foreign or domestic law, statute, code, ordinance, rule, regulation, order, judgment, writ, stipulation, award, injunction, decree or arbitration award, policies, guidance, court decision, rule of common law or finding, including any Gaming Law.

“**Leased Properties**” means those certain parcels of or interests in real property which are leased, subleased or otherwise licensed for use or occupancy by the Sellers, including, without limitation, pursuant to an Affiliate Agreement, as more particularly described in **Section 4.6(b)** of either of the AC Disclosure Letters.

“**Leased Property Leases**” means all lease, sublease, occupancy and concession agreements under which a Seller has the right to use or occupy the Leased Properties.

“**Lenders**” means the Lenders, as defined in Article I of the Original Credit Agreement.

“**Liability**” means any direct or indirect liability, indebtedness, obligation, commitment, fee, expense, claim, deficiency, disbursement, guaranty or endorsement of or by any Person of any type, whether accrued, absolute, contingent, matured, unmatured, liquidated, unliquidated, known or unknown.

“**Management Agreement**” means each Benefit Plan identified as a Management Agreement in **Section 4.13(a)** of the Company Disclosure Letter.

“**Material Adverse Effect**” means (a) any change, condition, circumstance, event or effect that has had or is reasonably likely to have a material adverse effect on the assets, financial condition or results of operations of the Business taken as a whole; provided, however, that none of the following, individually or in the aggregate, shall be deemed to have a Material Adverse Effect itself or be considered in any determination as to whether a Material Adverse Effect has occurred or is continuing in connection with any other change, condition, circumstance, event or effect: (i) any change, condition, circumstance, event or effect arising out of or resulting from changes in or affecting the (x) travel, hospitality or gaming industries generally, (y) travel,

hospitality or gaming industries in the markets or jurisdictions where the Business is located or in adjacent markets or jurisdictions in which it competes, including the Commonwealth of Pennsylvania or (z) the financial, banking, currency or capital markets in general, (ii) any change, condition, circumstance, event or effect resulting from the entering into or public announcement of the transactions contemplated by this Agreement (including any facts or circumstances relating to Buyer, its equity owners or investors or their respective Affiliates (including their respective identities)), (iii) any change, condition, circumstance, event or effect resulting from any act of terrorism, commencement, escalation, continuation or cessation of armed hostilities in the United States or internationally or declaration of war by or against or otherwise involving the United States, (iv) any change, condition, circumstance, event or effect resulting from any existing event or occurrence or circumstance which has been made publicly available as of the date hereof, including the denial by the Commission of the gaming license renewal application of the Company or the refusal of the Commission to grant plenary authorization to Affiliates of Tropicana Entertainment, (v) any change, condition, circumstance, event or effect resulting from a change in Law, including the commencement of any ban or expansion of restrictions on smoking at the Property, (vi) any change, condition, circumstance, event or effect relating to or arising from any of the Excluded Assets or Excluded Liabilities, (vii) any default or event of default under indebtedness of the Company or Tropicana Entertainment or any of their respective Affiliates or the commencement or conduct of the Bankruptcy Cases, and any event or condition that results from such defaults or events, including any actions taken by any Gaming Authority as a result of the matters described in clause (iv) and (b) a material adverse effect on the ability of the Tropicana Parties, the Trustee/Conservator or the Company to perform its obligations under, or to consummate the transactions contemplated by, this Agreement.

**“Material Contract”** means any Contract primarily relating to the Business (other than this Agreement, the Leased Property Leases, the Owned Property Leases, and Contracts set forth in **Section 4.12** or **Section 4.13** of either of the AC Disclosure Letters, and Affiliate Agreements other than those set forth in **Section 2.1(a)(iv)(D)** of either of the AC Disclosure Letters) to which any Seller is a party that (i) (a) has a remaining obligation for payment or services by or to the such Seller in an amount exceeding \$5,000,000 per annum and (b) is not cancelable by such Seller upon notice of 60 days or less; (ii) provides for a commitment of employment or consultation services to a current officer or director of any Seller for a specified or unspecified term or otherwise relates to the employment or the termination of employment of any such person; (iii) contains any provision or covenant materially limiting the ability of a Seller to engage in any business activity or compete with any Person or materially limiting the ability of any Person to compete with a Seller; (iv) provides for a material partnership or joint venture arrangement; (v) are agreements relating to indebtedness (a) for borrowed money, (b) evidenced by notes, loans, mortgages, bonds, debentures or other similar debt securities or agreements, (c) for reimbursement in respect of letters of credit that are drawn prior to Closing, (d) under instruments or agreements upon which interest charges are customarily paid (other than trade payables incurred in the ordinary course of business), or (e) under conditional sale or other title



retention agreements, in each case whether incurred, assumed, guaranteed or secured by any asset of any Seller and representing an obligation of in excess of \$10,000,000 or (vi) except for this Agreement or as contemplated by this Agreement, provides for (a) the future disposition or acquisition of any assets that are, individually or in the aggregate, material to the business or financial condition of the Sellers, taken as a whole, other than dispositions or acquisitions in the ordinary course of business or (b) any merger or other business combination. In no event shall any Contract governing the lease of equipment or gaming devices be deemed a Material Contract.

“**Order**” means any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Entity or by any arbitrator.

“**ordinary course of business**” or phrases of similar import, when used to describe the actions of a Seller relating to the Business, refer to actions taken in the ordinary course of normal day-to-day operations in a manner consistent with past practice as in effect (i) in the case of Gaming Approvals, between the Aztar Acquisition Date and the date immediately preceding the Trust Trigger Date and (ii) in all other cases, since the Aztar Acquisition Date.

“**Original Collateral Agreement**” means the Guarantee and Collateral Agreement as defined in Article I of the Original Credit Agreement.

“**Outside Date**” means December 31, 2009, or such date resulting from an extension of such Outside Date pursuant to **Section 9.1(b)**.

“**Owned Property Leases**” means all lease, occupancy and concession agreements affecting the Owned Property, including Affiliate Agreements.

“**Permitted Encumbrances**” means:

(i) to the extent in respect of an Assumed Liability, encumbrances for mechanics’ and materialmen’s liens or Encumbrances not filed of record and charges, assessments and other governmental charges not delinquent or which are currently being contested in good faith by appropriate Proceedings (which Proceedings are listed in **Section 1.1** of either of the AC Disclosure Letters) or for which Tropicana Entertainment or one or more of its Affiliates shall have provided irrevocable bond or other security;

- (ii) Encumbrances created by Buyer;
- (iii) easements, conditions, declarations, reservations or similar rights of others in property or assets of the Sellers that do not, individually or in the aggregate, materially impair the current use of such property or assets for the purposes for which they are held;
- (iv) officially mapped riparian, littoral and other rights created by the fact that any portion of the Property formerly comprised, or currently comprises, shores or bottoms of navigable waters;
- (v) zoning and subdivision ordinances;
- (vi) the terms and conditions of Laws of any Governmental Entity having jurisdiction over the Property or Permits that constitute Acquired Assets;
- (vii) Encumbrances created by or arising from (A) any Owned Property Lease or Leased Property Lease or (B) any Material Contract disclosed in **Section 4.8(a)** of either of the AC Disclosure Letters, in each case to the extent such Owned Property Lease, Leased Property Lease or Material Contract is an Acquired Contract;
- (viii) rights of tenants under leases that are Acquired Contracts and rights of guests in possession or holding reservations for future use or occupancy of the Property;
- (ix) rights of the public in public ways;
- (x) any matter disclosed on surveys delivered to the Administrative Agent prior to the date hereof; and
- (xi) any Encumbrances disclosed in **Section 1.1** of either of the AC Disclosure Letters;

“**Person**” means an individual, corporation, limited liability company, partnership, association, trust, unincorporated organization, other entity or “group” (as defined in Rule 13d-5(b)(1) under the Exchange Act).

**“Proceeding”** means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal, at law or in equity) commenced, brought, conducted, or heard by or before or otherwise involving any Governmental Entity or arbitrator.

**“Property”** means the Land and all personal property, fixtures, and improvements owned, leased, licensed or otherwise held by any Seller and placed on, attached to, or located at and used in connection with the operation of the Business, in each case other than the Excluded Intellectual Property.

**“Property Taxes”** means all real property Taxes, personal property Taxes and similar ad valorem Taxes.

**“Ramada Assets”** means the assets, properties, rights, claims, Contracts and businesses of every kind, character and description, whether tangible or intangible (including goodwill), whether real, personal or mixed, whether accrued, contingent or otherwise, and wherever located, held by Ramada and either (i) primarily used or held for use in the Business or (ii) otherwise necessary for or beneficial to the conduct of the Business as of the date hereof.

**“Required Lenders”** means the Required Lenders, as defined in Article I of the Original Credit Agreement.

**“Retained 401(k) Plan”** means the Columbia Sussex Corporation 401(k) Plan.

**“SEC”** means the Securities and Exchange Commission and any successor thereto.

**“Secured Parties”** means the Secured Parties, as defined in the Original Collateral Agreement.

**“Securities Act”** means the Securities Act of 1933, as amended.

**“Shares”** means the Company Shares and the Subsidiary Shares.

**“Subsidiary”** means, with respect to any party (other than the Trustee/Conservator and the Administrative Agent), any corporation or other organization, whether incorporated or unincorporated, of which such party or any other Subsidiary of such party (i) is a general partner

or managing member or (ii) holds at least 50% of the equity interests in, or equity securities having voting power to elect a majority of the board of directors or other body performing similar functions with respect to, such corporation or other organization.

“**Subsidiary Shares**” means the issued and outstanding capital stock of each of Holdings, Atlantic-Deauville, Atlantic-Deauville Subsidiary and Ramada.

“**Superior Transaction**” means one or more proposals made by one or more third parties in accordance with the Bidding Procedures for one or more Alternative Transactions for consideration consisting solely of cash and that represent, alone or in the aggregate, in the Trustee/Conservator’s discretion, exercised in accordance with the Bidding Procedures, a higher or better offer for the Acquired Assets and Assumed Liabilities or portions thereof and/or other assets/liabilities of the Sellers than the offer made by Buyer pursuant to the terms of this Agreement.

“**Tax Period**” means any period prescribed by any Governmental Entity for which a Tax Return is required to be filed or a Tax is required to be paid.

“**Tax Return**” means any report, return (including any information return), claim for refund, election, estimated Tax filing or payment, request for extension, document, declaration or other information or filing required to be supplied to any Governmental Entity with respect to Taxes, including attachments or schedules thereto and amendments thereof.

“**Taxes**” means any and all taxes, charges, fees, levies, tariffs, duties, liabilities, impositions or other assessments of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Tax authority or other Governmental Entity, including, income, gross receipts, profits, gaming, excise, real or personal property, environmental, sales, use, value-added, ad valorem, parking, luxury, hotel, withholding, social security, retirement, employment, unemployment, workers’ compensation, occupation, service, license, net worth, capital stock, payroll, franchise, gains, stamp, transfer and recording taxes, and shall include any liability for the Taxes of any Person under Treasury Regulation section 1.1502-6 (or any similar provision of state, local or foreign Law), or as a transferee or successor.

“**Transferring Employee**” means each Business Employee who is offered and who accepts employment with Buyer as of the Closing Date.

“**Tropicana Entertainment Intermediate Holdings**” means Tropicana Entertainment Intermediate Holdings, LLC (f/k/a Wimar OpCo Intermediate Holdings LLC), a Delaware limited liability company and the immediate parent of Tropicana Entertainment.

“**Trust Assets**” means the Trust Property (as such term is defined in the Trust Agreement), including, without limitation, all of the issued and outstanding capital stock of the Company.

“**WARN Act**” means the Worker Adjustment and Retraining Notification Act of 1988 and any applicable analogous state and/or local Law.

“**Withdrawal Liability**” means liability to a Multiemployer Plan as a result of a “complete withdrawal” or “partial withdrawal” from such Multiemployer Plan, as those terms are defined in Part I of Subtitle E of Title IV of ERISA.

(b) The following capitalized terms are defined elsewhere in this Agreement, as indicated below:

<b>Terms</b>	<b>Cross Reference Section in Agreement</b>
2008 Financial Information	Section 4.3
AC Disclosure Letters	Article IV
Accounting Firm	Section 2.3
Acquired Assets	Section 2.1(a)(xvii)
Acquired Accounts Receivable	Section 2.1(a)(v)
Acquired Books and Records	Section 2.1(a)(viii)
Acquired Cash	Section 2.1(a)(xii)
Acquired Claims	Section 2.1(a)(vi)
Acquired Contracts	Section 2.1(a)(iv)
Acquired Intellectual Property	Section 2.1(a)(iii)
Administrative Agent	Preamble
Agreement	Preamble
Approval Payment	Section 6.7(a)
Alternative Transaction	Section 7.2(a)
Assumed Benefit Plans	Section 6.3(b)
Assumed Liabilities	Section 2.1(c)(v)
Assumed Tax Liabilities	Section 2.1(c)(vi)
Atlantic-Deauville	Preamble
Atlantic-Deauville Subsidiary	Preamble

<b>Terms</b>	<b>Cross Reference Section in Agreement</b>
Auction Period	Section 7.2(a)
Audited Financial Information	Section 4.3
Available Post-Closing Cash	Section 3.2(a)
Aztar Acquisition	Recitals
Aztar Acquisition Date	Recitals
Back-up Bidder	Section 7.2(b)
Bankruptcy Cases	Recitals
Bankruptcy Code	Recitals
Bankruptcy Courts	Recitals
Benefit Plans	Section 4.13(a)
Bidding Procedures	Section 7.1(a)
Bidding Procedure Filing Deadline	Section 7.1(a)
Bidding Procedures Hearing Deadline	Section 7.1(a)
Bidding Procedures Motion	Section 7.1(a)
Bidding Procedures Order	Section 7.1(a)
Bill of Sale, Assignment and Assumption Agreement	Section 3.2(b)
Broker	Section 4.14
Business	Recitals
Business Permits	Section 4.11(a)
Buyer 401(k) Plan	Section 6.3(e)
Buyer Advisor Fees	Section 3.2(a)
Buyer Disclosure Letter	Article V
Buyer Permits	Section 5.5(a)
Buyer Plans	Section 6.3(d)
Buyer Recipients	Section 6.4(b)
Buyer Representatives	Section 6.4(a)
Cage Cash	Section 3.2(a)(i)
Cap	Section 9.2(b)
CBA	Section 6.3(f)
Closing	Section 3.1
Closing Certificate	Section 3.2(a)
Closing Date	Section 3.1
Commission	Recitals
Commission Orders	Recitals
Company	Preamble
Company Bankruptcy Case	Recitals
Company Disclosure Letter	Article IV
Company Shares	Recitals
Company Subsidiary	Preamble

<b>Terms</b>	<b>Cross Reference Section in Agreement</b>
Confidential Information	Section 6.4(b)
Conservator	Preamble
Conservator Order	Recitals
CRDA	Section 2.1(a)(xv)
Deeds	Section 3.2(c)
Delaware Bankruptcy Court	Recitals
Delaware Sale Order	Section 7.1(d)
Engagement Letter	Section 4.15
Environmental Laws	Section 4.10
ERISA	Section 4.13(a)
Excluded Assets	Section 2.1(b)
Excluded Claims	Section 2.1(b)(vi)
Excluded Contracts	Section 2.1(b)(ii)
Excluded Liabilities	Section 2.1(d)
Financial Information	Section 4.3
HSR Act	Section 6.5(a)
Holdings	Preamble
Insurance Policies	Section 4.16
Joinder Date	Section 6.19
Justice Stein	Preamble
Leased Personal Property	Section 2.1(a)(ii)
License Agreement	Section 3.2(h)
Miscellaneous Closing Payments	Section 3.2(a)
Modifying Order	Section 9.1(f)
Multiemployer Plan	Section 4.13(d)
Non-Foreign Affidavit	Section 3.2(g)
NJ Bankruptcy Court	Recitals
NJ Sale Order	Section 7.1(a)
NJ Trust	Recitals
Non-Conservatorship Sellers	Preamble
Non-Seller Business Assets	Section 4.18
Original Credit Agreement	Section 1.1 (Credit Agreements)
Owned Personal Property	Section 2.1(a)(ii)
Owned Properties	Section 4.6(a)
Owned Property Lease Assignment	Section 3.2(d)
Permits	Section 4.11(a)
Petition	Recitals
Personal Property	Section 2.1(a)(ii)
Pre-Closing Payments	Section 3.2(a)

<b>Terms</b>	<b>Cross Reference Section in Agreement</b>
Purchase Price	Section 2.2
Prevailing Bidder	Section 7.2(b)
Ramada	Preamble
Real Property	Section 4.6(a)
Regulatory Approvals	Section 6.5(a)
Required Reserve Cash	Section 3.2(a)(iii)
Retained Benefit Plan	Section 6.3(b)
Sale	Recitals
Sale Motion	Section 7.1(a)
Sale Orders	Section 7.1(a)
Sale Order Hearing Deadline	Section 7.1(a)
Sellers	Preamble
Seller Licensed Intellectual Property	Section 3.2(i)
Severance Policy	Section 3.2(a)(iii)
Specified Original Credit Agreement Obligations	Section 2.2
Specified Pre-Petition Operating Liabilities	Section 2.1(c)(v)
Tax Contest	Section 6.8(d)
TCR	Recitals
TCR Affiliated Group	Section 6.8(i)
Title Policy	Section 8.2(f)
Transfer Taxes	Section 6.8
Tropicana Atlantic City	Recitals
Tropicana Bankruptcy Case	Recitals
Tropicana Disclosure Letter	Article IV
Tropicana Entertainment	Preamble
Tropicana Parties	Preamble
Tropicana Trust Agreement Parties	Recitals
Trust Agreement	Recitals
Trust Orders	Recitals
Trustee/Conservator	Preamble
Trustee	Preamble
Trust Trigger Date	Recitals
Unaudited Financial Information	Section 4.3
Unpaid Advisor Fees	Section 3.2(a)
Written Direction	Section 5.9



## **Section 1.2 Interpretation**

For all purposes of this Agreement, except as otherwise expressly provided,

(a) the terms defined in this **Article I** have the meanings assigned to them in this **Article I** and include the plural as well as the singular;

(b) all accounting terms not otherwise defined herein have the meanings assigned under GAAP, as in effect on the date hereof, unless otherwise stated;

(c) all references in this Agreement to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement;

(d) all references in this Agreement to designated Exhibits or Schedules are to the designated Exhibit or Schedule to this Agreement, unless otherwise indicated, and all Exhibits and Schedules to this Agreement are incorporated herein by reference;

(e) pronouns of either gender or neuter shall include, as appropriate, the other pronoun forms;

(f) the words “**herein**,” “**hereof**,” “**herewith**,” “**hereunder**” and “**hereto**” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision, unless the context otherwise requires;

(g) the words “**include**,” “**including**” and other words of similar import mean “**include, without limitation**,” or “**including, without limitation**,” regardless of whether any reference to “without limitation” or words of similar import is made;

(h) the phrase “**made available**” in this Agreement shall mean that the information referred to has been made available (i) in the electronic data room or (ii) directly to a party that has requested such information to be made available;

(i) each of the Trustee/Conservator, the Company, the Company Subsidiary, Tropicana Entertainment, Holdings, Atlantic-Deauville, the Atlantic-Deauville Subsidiary, Ramada, the Administrative Agent and, on and after the Joinder Date, Buyer, shall be referred to

herein individually as a “**party**” and collectively as the “**parties**” (except where the context otherwise requires); and

(j) “**reasonable best efforts**” when used in this Agreement shall not include efforts which require the performing party (A) to do any act that is unreasonable under the circumstances, (B) to make any capital expenditures not expressly contemplated hereunder, (C) to amend or waive any rights under this Agreement or (D) to incur or expend any funds other than reasonable expenses incurred in satisfying its obligations hereunder, including the fees, expenses and disbursements of its accountants, actuaries, counsel and other professionals.

## **ARTICLE II**

### **PURCHASE AND SALE OF ASSETS; LIABILITIES; PURCHASE PRICE**

#### **Section 2.1 Purchase and Sale of Assets**

(a) Pursuant to Sections 105, 363, 365 and 1113 of the Bankruptcy Code, on the terms and subject to the conditions set forth in this Agreement, the Sale Orders and the Commission Orders and to the extent permitted and transferable by Law, at the Closing, (i) each of the Company and the Company Subsidiary agrees to sell, transfer, assign, convey and deliver to Buyer, and Buyer, directly and as assignee of the Administrative Agent, agrees to accept all of the Company’s and the Company Subsidiary’s right, title and interest in and to the Company Assets, (ii) Holdings agrees to sell, transfer, assign, convey and deliver to Buyer, and Buyer, directly and as assignee of the Administrative Agent, agrees to accept all of Holdings’ right, title and interest in and to the Holdings Assets, (iii) each of Atlantic-Deauville and the Atlantic Deauville Subsidiary agrees to sell, transfer, assign, convey and deliver to Buyer, and Buyer, directly and as assignee of the Administrative Agent, agrees to accept all of Atlantic-Deauville’s and the Atlantic Deauville Subsidiary’s right, title and interest in and to the Atlantic Assets and (iv) Ramada agrees to sell, transfer, assign, convey and deliver to Buyer, and Buyer, directly and as assignee of the Administrative Agent, agrees to accept all of Ramada’s right, title and interest in and to the Ramada Assets, in each case other than any Excluded Assets held by such Seller and free and clear of all Encumbrances except for Permitted Encumbrances, and including the following such assets, as applicable:

(i) all of its right, title and interests in and to the Owned Property, including that set forth in **Section 4.6(a)** of the AC Disclosure Letter covering such Seller, together with the buildings, improvements, fixtures, easements and other attachments or appurtenances thereto;

(ii) all of its office, hotel, casino, showroom, restaurant, bar, convention, meeting and other furniture, furnishings, appliances, equipment, equipment manuals, slot machines, gaming tables and gaming equipment and paraphernalia (including parts or inventories thereof), vehicles (passenger, delivery and other), software, point of sale equipment, telephone numbers, two-way security radios and base station, maintenance equipment, tools, signs and signage, supplies, linens (sheets, towels, blankets, napkins), uniforms, silverware, glassware, chinaware, pots, pans and utensils, and food, beverage and alcoholic beverage inventories owned by such Seller (the “**Owned Personal Property**”) or leased by such Seller (the “**Leased Personal Property**”) immediately prior to the Closing, including all personal property set forth in **Section 4.17** of the AC Disclosure Letter covering such Seller (the Owned Personal Property and Leased Personal Property, collectively, the “**Personal Property**”);

(iii) all of its rights in and to Intellectual Property (other than the Excluded Intellectual Property) that is either owned by or licensed to any Seller, including the Intellectual Property set forth in **Section 4.7** of the AC Disclosure Letter covering such Seller, and including rights to sue, causes of action and other claims for and/or remedies against past, present and future infringements, dilutions, misappropriations, and other violations thereof, rights of priority and protection of interests therein under the laws of any jurisdiction worldwide and all tangible embodiments thereof (collectively, the “**Acquired Intellectual Property**”);

(iv) all of its rights in and to (A) distribution agreements, vendor and supplier agreements, customer agreements, junket agreements, consignment agreements, agency agreements, license or use agreements, leases (including Owned Property Leases and Leased Property Leases), broker agreements and confidentiality agreements, (B) purchase orders for the sale or purchase of goods and services, or both, and (C) other Contracts, in each case as set forth in **Section 2.1(a)(iv)** of the AC Disclosure Letter covering such Seller (collectively, the “**Acquired Contracts**”);

(v) all of its accounts and notes receivable, unpaid drafts or checks (markers), letters of credit and other rights to receive payments, including accounts receivable of registered guests who have not checked out and who are occupying rooms at the Tropicana Atlantic City on the evening of the Closing Date (collectively, the “**Acquired Accounts Receivable**”);

(vi) all of its rights, privileges, claims, causes of action and demands in respect of prepayments, refunds, warranty claims, indemnification agreements in favor

of any Seller with, and indemnification and similar rights against, third parties (the “**Acquired Claims**”);

(vii) all insurance benefits, including rights and proceeds, arising from or relating to the Business and the Insurance Policies prior to the Closing (other than such benefits, rights and proceeds which are specifically related to the funding or reimbursement of any Excluded Liability), including, for the sake of clarity, benefits, rights and proceeds arising from or under policies relating to the Assumed Benefits Plans and any short-term or long-term disability insurance benefits for Transferring Employees who are entitled to such insurance benefits on the Closing Date;

(viii) all of its sales and business records, files, databases, books of account, customer and supplier lists (including the Atlantic City Customer Database), books and records related to Taxes, correspondence, architecture, engineering, maintenance, operating records, advertising materials, cost and pricing information, business plans, quality control records and manuals, blueprints, research and development files, credit records of customers and other books and records, manuals and other materials (in any form or medium), other than any materials that such Seller is required by Law to maintain in its possession (collectively, the “**Acquired Books and Records**”);

(ix) all of its goodwill other than goodwill arising out of or related to the Excluded Assets;

(x) all of its Permits (it being understood that any Permits that may not be assigned or transferred under applicable law shall be governed by **Section 6.17** below);

(xi) all of its computers and automatic machinery, application systems, servers, and systems hardware and networking and communications equipment and assets;

(xii) all cash, negotiable instruments, gaming value and non-value chips and plaques and cash equivalents, including sums located in cages, countrooms, kiosks, slot machines, drop boxes and other gaming equipment;

(xiii) subject to **Section 6.12**, all of its rebates, discounts and credits performance and other bonds, security and other deposits, advance payments, prepaid

expenses and prepaid rents in favor of such Seller to the extent relating to the Acquired Assets or the Assumed Liabilities;

(xiv) all rights or assets of such Seller relating to the Assumed Benefit Plans and all assets of the Assumed Benefit Plans, including, any assets held in trust (including any rabbi trust and/or secular trust), as corporate-owned life insurance, trust-owned life insurance or otherwise;

(xv) all of its rights and entitlements to (x) any payment made to, (y) investments made with the approval of or (z) notes or bonds purchased from the New Jersey Casino Reinvestment Development Authority (“**CRDA**”), any sums held by the CRDA or any other agency or department of the State of New Jersey for the account of or benefit of or attributable to such Seller and any credits accrued or due such Seller related to its obligations to the CRDA;

(xvi) all refunds for Taxes arising out of or related to the Acquired Assets or the Business (whether in the form of cash, or in the case of real property Taxes, credits that can be transferred, conveyed or otherwise made available to Buyer, it being understood Sellers shall cooperate with Buyer, as reasonably requested, to effect the foregoing); and

(xvii) all of its other tangible and intangible assets owned by such Seller and, in the case of the Non-Conservatorship Sellers, primarily used or held for use in the Business (other than any Excluded Assets) (the assets described in this **Section 2.1(a)** being collectively the “**Acquired Assets**”).

For the sake of clarity, and notwithstanding anything to the contrary in this Agreement, the transfer of the Acquired Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Acquired Assets unless Buyer expressly assumes that Liability pursuant to **Section 2.1(c)**.

(b) Excluded Assets. Notwithstanding anything to the contrary herein, the Acquired Assets shall not include the Excluded Assets, which are to be retained by the current owner thereof and not sold or assigned to Buyer. “**Excluded Assets**” shall mean all assets, properties, rights, claims, contracts and businesses of every kind, character and description, whether tangible or intangible (including goodwill), whether real, personal or mixed, whether accrued, contingent or otherwise and wherever located, in each case not including cash or cash equivalents, that are:

(i) owned by the Non-Conservatorship Sellers and neither (y) primarily used or held for use in the Business or (z) otherwise necessary for the conduct of the Business as of the date of this Agreement, as set forth in **Section 2.1(b)(i)** of the Tropicana Disclosure Letter;

(ii) Contracts of any Seller other than the Acquired Contracts (collectively, the “**Excluded Contracts**”);

(iii) Excluded Intellectual Property;

(iv) Acquired Contracts which cannot be assumed and assigned pursuant to the terms of Bankruptcy Code Section 365, by virtue of their being non-executory in nature or non-assignable under the terms of such Bankruptcy Code Section;

(v) claims by any Seller under this Agreement or agreements to be entered into by a Seller pursuant to this Agreement;

(vi) claims and causes of action in respect of any Seller set forth on **Section 2.1(b)(vi)** of the AC Disclosure Letter covering such Seller (the “**Excluded Claims**”);

(vii) minute books, stock books and corporate seals;

(viii) rights to loss carryforwards of any Seller;

(ix) the Shares;

(x) subject to **Section 2.1(a)(vi), (a)(vii) and Section 6.12**, insurance policies; and

(xi) assets or rights relating to an Excluded Liability and set forth in **Section 2.1(b)(xi)** of either of the AC Disclosure Letters.

(c) Assumed Liabilities. Subject to the terms and conditions set forth in this Agreement, immediately after the Closing, Buyer shall assume and thereafter pay, perform and

discharge when due the following Liabilities of the Sellers that have not been paid, performed or discharged as of the Closing:

(i) any and all Liabilities to the extent first arising after the Closing Date, which Liabilities arise out of or are related to Acquired Contracts after the Closing Date (other than any Liability arising out of or related to any breach, default, act or omission that occurred prior to the Closing Date), in each case to the extent that such Acquired Contracts are validly assigned to Buyer or, until so assigned, subject to **Section 6.17(a)**;

(ii) any and all Liabilities under any lease covering Leased Personal Property arising after the Closing Date (other than any Liability arising out of or related to any breach, default, act or omission that occurred prior to the Closing Date);

(iii) any and all Liabilities for post-petition ordinary course obligations and trade payables of the Business as of the Closing Date (excluding any expenses incurred with respect to the administration of the Sellers' bankruptcy cases) that would qualify as allowed administrative expenses under Section 503(b) of the Bankruptcy Code;

(iv) any Liabilities incurred by any of the Sellers and, in the case of the Non-Conservatorship Sellers, any Liabilities primarily related to the Property, that constitute or are allowed as administrative expenses under Section 503(b)(9) of the Bankruptcy Code, which allowed claims shall be paid by Buyer within one hundred twenty (120) days after the later of the Closing Date and the date such claims are allowed by the NJ Bankruptcy Court or the Delaware Bankruptcy Court;

(v) pre-petition operating Liabilities with respect to the Business in the amounts thereof set forth for such items in the Closing Certificate (the "**Specified Pre-Petition Operating Liabilities**"); and

(vi) all Liabilities for Taxes (y) set forth on **Exhibit B** to the extent that such Liabilities constitute administrative expense claims arising out of or related to the Acquired Assets or the Business and (z) to the extent provided in **Section 6.8(a)**, **Section 6.8(c)** and **Section 6.8(d)** ("**Assumed Tax Liabilities**"); and

(vii) Liabilities relating to the Business Employees or arising under Benefit Plans, but in each case only to the extent expressly assumed by Buyer under

**Section 6.3**, it being understood by the parties hereto that, notwithstanding anything contained in this Agreement or otherwise, in no event shall Buyer assume, pay, perform or discharge (y) any COBRA Liability or (z) any Withdrawal Liability

(all Liabilities described in this **Section 2.1(c)** being collectively the “**Assumed Liabilities**”, it being understood and agreed that the term Assumed Liabilities shall in no event include any of those Liabilities referenced in **Sections 2.1(d)(i)-(vii)**).

(d) Excluded Liabilities. Notwithstanding anything to the contrary herein, Buyer shall not assume and the applicable Seller shall retain any and all Liabilities of such Seller other than the Assumed Liabilities, whether or not relating to or arising out of the operation of the Business prior to the Closing, including:

(i) any and all Liabilities of any Seller arising out of the Excluded Assets or not arising out of, relating to or in respect of the Business;

(ii) any and all Liabilities of any Seller relating to or arising out of the Credit Agreements or the Indenture;

(iii) any and all Liabilities of a Seller relating to or arising out of any debt incurred or owed by any Seller to Columbia Sussex Corporation, TCR or any of their Subsidiaries or Affiliates (other than any Seller), other than any such debt relating to any Acquired Contract;

(iv) any and all Liabilities (other than Buyer Advisor Fees) that could have been (but were not) included as Miscellaneous Closing Payments on the Closing Certificate;

(v) all Liabilities for Taxes other than Assumed Tax Liabilities;

(vi) all other Liabilities which Buyer does not in writing (including under this Agreement) expressly assume, including but not limited to environmental liabilities; and

(vii) any and all COBRA Liabilities and any and all Withdrawal Liabilities,



(the Liabilities described in this **Section 2.1(d)** being collectively the “**Excluded Liabilities**”).

(e) Assignments; Cure Amounts. Each Seller shall assume and assign to Buyer as of the Closing Date all Acquired Contracts and CBAs to which such Seller is a party pursuant to Sections 365 and 1113, as applicable, of the Bankruptcy Code and the Sale Orders. Sellers shall pay all cure costs arising from the assumption and assignment of the Acquired Contracts and CBAs, as and when required by the Sale Orders. Sellers’ good faith estimate of the Cure Amounts for each Acquired Contract and CBA, as of February 28, 2009, are as set forth in **Section 2.1(e)** of the AC Disclosure Letter applicable to such Seller. Sellers will update such section of the applicable AC Disclosure Letter, and deliver such update to Buyer (or the Administrative Agent) within two (2) weeks after the filing of the Petition.

## **Section 2.2 Purchase Price**

At the Closing, (i) the Administrative Agent, on behalf of the Secured Parties, shall surrender a portion of the obligations secured by the Original Collateral Agreement in the aggregate principal amount of \$200,000,000, no portion of which shall constitute interest or the right to receive interest, which shall be retained by the Secured Parties (the “**Specified Original Credit Agreement Obligations**”) pursuant to the Sale Orders in exchange for the right to receive the Acquired Assets; (ii) concurrently therewith and prior to Sellers’ transfer of title to, control of and possession of such Acquired Assets, (a) the Administrative Agent shall assign to Buyer, and Buyer shall assume, all of the Administrative Agent’s rights to receive such Acquired Assets and (b) each Seller shall transfer directly to Buyer as transferee of record, all of its right, title and interest in and to such Acquired Assets and (iii) Buyer shall assume the Assumed Liabilities. As of the Closing, the aggregate amount of the Specified Original Credit Agreement Obligations shall be deemed fully satisfied and discharged. Each of the Tropicana Parties acknowledge and agree that all of their rights to receive the proceeds of any disposition of the assets of the Company or the Company Shares under the Commission Orders and the laws of the State of New Jersey shall be fully satisfied by such satisfaction and discharge and Buyer’s assumption of the Assumed Liabilities. The sum of the Specified Original Credit Agreement Obligations shall be the “**Purchase Price**”. To the extent required by the Commission and solely related to the Administrative Agent acquiring the right to receive the Acquired Assets and the Administrative Agent’s obligation to assign all of its rights to receive such Acquired Assets to Buyer, the Trustee/Conservator shall, at the time the Trustee/Conservator seeks the approval of the Commission to enter into this Agreement, seek a declaratory ruling from the Commission that the Administrative Agent need not obtain its own interim authorization, obtain a casino license, or otherwise be found qualified as a consequence of either acquiring the right to receive the Acquired Assets or as a consequence of the obligation to assign all of its rights to receive the Acquired Assets to Buyer.

### **Section 2.3 Allocation of Purchase Price**

No later than thirty (30) days following the Closing Date, Tropicana Entertainment shall deliver to Buyer a proposed allocation (for U.S. federal income Tax purposes) of the consideration among the Acquired Assets (which shall, to the extent consistent with the Code, be consistent with the allocation determined in accordance with **Section 3.2(a)(i)(B)**). If Buyer does not object in writing to such allocation within thirty (30) days of such delivery, such proposed allocation shall be the final allocation. If Buyer does object within such thirty- (30-) day period, Buyer and Tropicana Entertainment shall use good faith efforts to agree on an allocation and, if they cannot agree within thirty (30) days, such allocation shall be determined by a mutually agreed upon nationally recognized accounting firm (the “**Accounting Firm**”), which shall act as an arbitrator to make a determination as to the issues that are disputed between Buyer and Tropicana Entertainment. Buyer and Tropicana Entertainment shall use their reasonable best efforts to cause the Accounting Firm to issue its determination regarding such disputed issues within thirty (30) days after such items are submitted for review. The Accounting Firm’s determination shall be limited to those issues that remain in dispute. Each of Buyer and Tropicana Entertainment shall use its reasonable best efforts to furnish to the Accounting Firm such work papers and other documents and information pertaining to such remaining disputed items as the Accounting Firm may reasonably request. The determination of the Accounting Firm shall be final and binding on Buyer and Tropicana Entertainment absent manifest error. The fees, expenses and costs of the Accounting Firm shall be borne equally by Buyer and Tropicana Entertainment. Tropicana Entertainment and Buyer shall file (and cause their respective Affiliates to file) all Tax Returns (including Internal Revenue Service Form 8594) consistent with the final allocation and not take any position contrary to such allocation with any Governmental Entity without the express written consent of the other unless required by a final determination under Section 1313 of the Code. Not later than thirty (30) days prior to the filing of their respective IRS Forms 8594 relating to the Sale, each of Buyer and Tropicana Entertainment shall deliver to each other a copy of its IRS Form 8594. For the sake of clarity, notwithstanding the allocation contemplated in this **Section 2.3 (i)** the transfer of the Acquired Assets and assumption of the Assumed Liabilities shall be final as of the Closing notwithstanding the pendency of such allocation and **(ii)** the transfer of the Acquired Assets and assumption of the Assumed Liabilities is an indivisible transaction.

## ARTICLE III

### CLOSING

#### **Section 3.1 Closing Date**

The closing of the Sale (the “**Closing**”) shall take place at the offices of Debevoise & Plimpton LLP located at 919 Third Avenue, New York, New York 10022, on a date (the “**Closing Date**”) to be specified by the Trustee/Conservator and Buyer, in consultation with Tropicana Entertainment, which date shall be the fourth (4th) Business Day (or such earlier date as may be agreed by the Trustee/Conservator and Buyer) following the date on which all conditions to Closing set forth in **Article VIII** have been satisfied or, if permissible, waived by the party entitled to make such a waiver (other than conditions that by their terms are to be satisfied at the Closing but subject to the satisfaction or waiver of such conditions), or at such other time as the Trustee/Conservator and Buyer may agree. It is understood, however, that, unless otherwise allowed by the Commission, the Closing Date will not be scheduled earlier than the 121<sup>st</sup> day after the submission of a completed application for licensure or qualification by Buyer, which application should include a fully executed and approved trust agreement in accordance with N.J.S.A. 5:12-95.14. Subject to **Article IX**, failure to consummate the Sale provided for in this Agreement on the date and at the time and place determined pursuant to this **Section 3.1** shall not result in termination of this Agreement and shall not relieve any party of any obligations under this Agreement.

#### **Section 3.2 Deliveries at Closing**

The following deliverables shall be executed and delivered or delivered, as applicable, by the Trustee/Conservator, Buyer or the Tropicana Parties, as described below, at or prior to the Closing:

(a) Closing Certificate; Closing Payments; Required Working Capital.

(i) Not more than six Business Days (but at least four Business Days) prior to the Closing Date, the Company and Buyer (or a Buyer Representative designated by the Administrative Agent) shall prepare (A) a good faith estimate of each Specified Pre-Petition Operating Liability (if any) that is required to be paid at the Closing and (B) an allocation of the consideration as between the Owned Property, on the one hand, and the other Acquired Assets, on the other hand. The parties acknowledge and agree that the amount of consideration allocated to the Owned Property is intended to represent the fair market value of the Owned Property;

(ii) Not later than the finalization of the estimate set forth in **Section 3.2(a)(i)**, Buyer shall deliver a certificate to the Company, which certificate shall be subject to the approval of the Trustee/Conservator (which approval shall not be unreasonably withheld or delayed), setting forth the amount of all unpaid fees and expenses as of the Closing for the Administrative Agent and for professionals retained by Buyer, the Administrative Agent or the Steering Committee of the Secured Lenders, in each case solely to the extent such fees and expenses were incurred in connection with the transactions effected through this Agreement and the Ancillary Agreements (“**Buyer Advisor Fees**”);

(iii) Not more than one (1) Business Day following the finalization of the estimate set forth in **Section 3.2(a)(i)**, the Company will prepare and deliver to the Buyer a certificate (the “**Closing Certificate**”), which certificate shall (i) be subject to review and approval by the Buyer (which approval shall not be unreasonably withheld or delayed), (ii) be finalized by Buyer and the Company at least two (2) Business Days prior to the Closing and (iii) set forth (A) an amount equal to all Buyer Advisor Fees paid by the Company up to the Closing Date<sup>1</sup> plus the amount of Company’s good faith estimate of the aggregate amount of cash, cash equivalents and other items to be included in the Acquired Assets under **Section 2.1(a)(xii)** (B) each Specified Pre-Petition Operating Liability included in the estimate set forth in **Section 3.2(a)(i)**, together with wiring or other instructions for the payment of such Liability, (C) the amount of each Transfer Tax required to be paid in connection with the Sale, together with the name of the Governmental Entity to which such Transfer Tax is to be paid and wiring or other instructions for the payment of each such Transfer Tax, (D) the amount of all unpaid fees and expenses as of the Closing for the Trustee/Conservator and professionals (including the Broker) retained by the Trustee/Conservator and the Sellers, together with wiring or other instructions for the payment of such fees and expenses to each such professional (“**Unpaid Advisor Fees**”), (E) the amount of Buyer Advisor Fees determined pursuant to the certificate delivered and approved under **Section 3.2(a)(ii)**, (F) the amount that becomes due and payable at Closing under the Management Agreements and for severance obligations under the Tropicana Atlantic City Severance Pay Policy, as in effect on February 20, 2009 (the “**Severance Policy**”), each as are assumed in accordance with **Section 6.3(b)** hereof, together with wiring or other instructions for the payment of each such obligation, (G) the amount due and payable of each unpaid Approval Payment required to be made at or as a result of the Closing, together with wiring or other instructions for the payment of each such Approval Payment, (H) the amount of each priority claim and the statutory fees payable pursuant to United States Code Section 1930, together with wiring or other instructions for the payment of each such claim and fee, (I) the aggregate amount of other administrative expense claims under Sections 503(b) and 507(a) of the

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<sup>1</sup> To be included if Buyer Advisor Fees are payable prior to Closing under the Cash Collateral Order.

Bankruptcy Code not assumed pursuant to **Section 2.1(c)(iii)** and not constituting Unpaid Advisor Fees, Buyer Advisor Fees or obligations pursuant to clause (F), together with wiring or other instructions for the payment of each such claim and fee, (J) the aggregate amount of fines, penalties and fees due and payable by the Company to the Commission as of the Closing Date (including the aggregate amounts of deferred fees disclosed on Item 2 in **Section 4.4** of the Company Disclosure Letter), together with wiring or other instructions for the payment of such fines and penalties, (K) the cost of the Title Policy, (L) any other payments to be made at Closing as agreed by Buyer and the Company (the sum of the amounts in (B) through (L) immediately above is referred to in this Agreement as the “**Miscellaneous Closing Payments**”, (M) the Cure Amounts for each Acquired Contract and CBA, (N) a good faith estimate of the cash and cash equivalents that constitute “cage cash” required to be held in the Business pursuant to applicable Gaming Laws (“Cage Cash”) and (O) the aggregate amount of any and all other cash reserves required to be maintained by the Business pursuant to applicable Gaming Laws, as determined by the Commission (“Required Reserve Cash”). The positive difference (if any) between the amount set forth in clause (A) and the sum of the amounts of the Miscellaneous Closing Payments and the Cure Amounts for each Acquired Contract and CBA shall be the “**Available Post-Closing Cash**”. It is understood and agreed that (1) Buyer shall, and shall cause its Affiliates who are Lenders to, use each of their reasonable best efforts to cause all fees and expenses of the Administrative Agent and professionals retained by Buyer, the Administrative Agent or the Steering Committee of the Secured Lenders in connection with the transactions to be paid in or through the Tropicana Bankruptcy Case, (2) Buyer Advisor Fees shall only be included in the calculation of Miscellaneous Closing Payments to the extent that such fees have not been and will not be paid in or through the Tropicana Bankruptcy Case as of the Closing and (3) Buyer Advisor Fees shall be deemed Miscellaneous Closing Payments only to the extent that payment of such Buyer Advisor Fees do not and would not, after accounting for the payment of all other Miscellaneous Closing Payments and the Cure Amounts for each Acquired Contract and CBA, result in the aggregate amount of Available Post-Closing Cash being less than the sum of Cage Cash and Required Reserve Cash.

(iv) At the Closing, Buyer shall cause to be paid in full by wire transfer of immediately available funds or such other means as specified in the Closing Certificate, each of the Miscellaneous Closing Payments and, to the extent not included therein, the Buyer Advisor Fees.

(b) Transfer of Assets. The Company and the Company Subsidiary (each, at the direction of the Trustee/Conservator) and each other Non-Conservatorship Seller, on the one hand, and Buyer, on the other hand, shall deliver to the other one or more duly executed, bills of sale and assignment and assumption agreements substantially in the form of **Exhibit C** (each, a “**Bill of Sale, Assignment and Assumption Agreement**”), to effect the sale, transfer,

assignment, conveyance and delivery of the Acquired Assets (including any Seller's interests as lessor, lessee, sublessor or sublessee under any Leased Property Lease or Owned Property Lease, other than the Owned Property Leases between and among the Sellers) and the Assumed Liabilities to Buyer.

(c) Transfer of Owned Property. The Company (subject to the direction of the Trustee/Conservator) and each other Non-Conservatorship Seller shall deliver to Buyer bargain and sale deeds with covenants against grantor's acts in form and substance as is customary for similar transactions in the State of New Jersey in respect of such Seller's Owned Property, and executed and acknowledged by the applicable Seller (the "**Deeds**"), conveying title to the Owned Property to Buyer, subject to Permitted Encumbrances (it being understood that any or all of the Permitted Encumbrances may be omitted by such Seller in the applicable Deed without giving rise to any liability of such Seller, irrespective of any covenant or warranty of such Seller contained in such Deed), together with any transfer declarations or other filings required by Law.

(d) Assignment of Affiliate Agreement Leases. The Company and the Company Subsidiary (each, subject to the direction of the Trustee/Conservator) and each other Non-Conservatorship Seller, on the one hand, and Buyer, on the other hand, shall deliver to the other one or more duly executed, assignment and assumption agreements substantially in the form of **Exhibit D** (each, an "**Owned Property Lease Assignment**"), to effect the sale, transfer, assignment, conveyance and delivery to Buyer of each Seller's interests as lessor, lessee, sublessor or sublessee under the Owned Property Leases between and among the Sellers set forth on **Schedule 1 of Exhibit D**.

(e) Transfer of Acquired Intellectual Property. Each of the Company and the Company Subsidiary (each, subject to the direction of the Trustee/Conservator) and the Non-Conservatorship Sellers, as applicable, shall deliver duly executed customary instruments of assignment or transfer, in form suitable for recording in the appropriate registry, office or bureau, including the United States Patent & Trademark Office and the United States Copyright Office, as applicable, to effectuate and record the transfer of the Acquired Intellectual Property to Buyer and register the same in the name of a Buyer or designee thereof.

(f) Buyer Certificates. Buyer shall have delivered to the Trustee/Conservator and the Sellers the certificates required by **Sections 8.3(a) and 8.3(b)**.

(g) Tropicana Parties' and Company Certificates. Each of the Tropicana Parties and the Company shall have delivered to Buyer the certificates required by **Sections 8.2(a) and (b)**.

(h) Non-Foreign Affidavit. Each of the Company and the Company Subsidiary (each, subject to the direction of the Trustee/Conservator) and the Non-Conservatorship Sellers shall have executed and delivered to Buyer an affidavit (the “**Non-Foreign Affidavit**”) substantially in the form attached hereto as **Exhibit E**.

(i) License Agreement. Tropicana Entertainment (or an Affiliate of Tropicana Entertainment as agreed between Tropicana Entertainment and Buyer) and Buyer shall have executed and delivered a license agreement substantially in the form attached hereto as **Exhibit F** (the “**License Agreement**”) in respect of the Intellectual Property set forth therein (the “**Seller Licensed Intellectual Property**”).

(j) Gaming Approvals. Buyer shall cause to have been delivered to the Trustee/Conservator evidence reasonably satisfactory to the Trustee/Conservator that all Gaming Approvals required to be obtained by Buyer or any of its holding companies, intermediary companies, financial sources, directors, officers, key employees, owners or other qualifiers as a condition to the consummation of the Sale and to the extent necessary to operate the Business after Closing without interruption of casino operations, have been obtained and are in full force and effect, including either interim authorization from the Commission allowing Buyer to close the Sale or a determination by the Commission of plenary qualification and issuance of a casino license, Casino Hotel Alcoholic Beverage license and certificate of operation to Buyer allowing Buyer to own and operate Tropicana Atlantic City pursuant to applicable Gaming Laws.

(k) Other Documents. The Company and the Company Subsidiary (each, subject to the direction of the Trustee/Conservator), Buyer and the Tropicana Parties shall deliver any other documents, instruments or agreements required to be delivered by such party pursuant to **Article VIII** or which are reasonably requested by any other party that are reasonably necessary to consummate the Sale and have not previously been delivered.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES AS TO THE TROPICANA PARTIES, THE COMPANY AND THE COMPANY SUBSIDIARY**

Except as set forth in the disclosure letter delivered by Tropicana Entertainment with respect to the representations and warranties of Tropicana Entertainment and the Sellers covered thereby (the “**Tropicana Disclosure Letter**”) and the Company with respect to the representations and warranties of the Company and the Sellers covered thereby (the “**Company Disclosure Letter**” and, together with the Tropicana Disclosure Letter, the “**AC Disclosure Letters**”) to Buyer on the date of this Agreement, whether or not the representation or warranty

or any portion thereof refers to the Tropicana Disclosure Letter or the Company Disclosure Letter by use of the phrase “except as set forth in” such Disclosure Letter or words of similar import, each of (i) Tropicana Entertainment (in respect of itself and the Non-Conservatorship Sellers and, in respect of the Company and the Company Subsidiary, only to the extent relating to events, circumstances and conditions arising as of or prior to the Trust Trigger Date, it being understood that Tropicana Entertainment (and the Non-Conservatorship Sellers) makes no representation or warranty in respect of the Financial Information, **Section 4.4**, **Section 4.10** or the first sentence of **Section 4.18** and (ii) the Company (other than with respect to **Section 4.3**, **Section 4.4**, **Section 4.10** and the first sentence of **Section 4.18**, only in respect of the Company and the Company Subsidiary and only in respect of events, circumstances and conditions arising following the Trust Trigger Date; provided, however, that the temporal qualification in this parenthetical shall not apply in respect of the Financial Information or **Section 4.10**), represents and warrants to Buyer, as of the date hereof and as of the Closing Date, as follows:

#### **Section 4.1 Organization and Qualification**

Each Seller (i) is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, (ii) has the requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now conducted and (iii) is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except in the case of clauses (ii) and (iii), where the failure to be so qualified or licensed and in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### **Section 4.2 Authority; No Conflict; Required Filings and Consents**

(a) Subject to the entry of the Sale Orders and, if applicable, the approval of the Commission, each of the Tropicana Parties, the Company and the Company Subsidiary has the requisite power and authority to execute and deliver this Agreement and any Ancillary Agreement to which it is a party and to consummate the transactions to which it is a party that are contemplated by this Agreement and such Ancillary Agreements. Subject to the entry of the Sale Orders, the execution and delivery by each of the Tropicana Parties, the Company and the Company Subsidiary of this Agreement and any Ancillary Agreement to which it is a party, the performance of such party’s obligations hereunder and thereunder and the consummation by each of the Tropicana Parties, the Company and the Company Subsidiary of the transactions to which it is a party that are contemplated by this Agreement and such Ancillary Agreements have been duly authorized by all necessary action on the part of each of the Tropicana Parties, the Company and the Company Subsidiary, respectively. This Agreement has been, and each applicable Ancillary Agreement when executed and delivered by such applicable party will be,



duly executed and delivered by each of the Tropicana Parties, the Company and the Company Subsidiary, and subject to the entry of the Sale Orders and assuming that this Agreement and, as applicable, each Ancillary Agreement constitutes the valid and binding obligation of the other parties hereto and thereto, this Agreement and each Ancillary Agreement to which it is a party constitutes the valid and binding obligation of each of the Tropicana Parties, the Company and the Company Subsidiary, enforceable against such party in accordance with its terms.

(b) The execution and delivery of this Agreement by each of the Tropicana Parties, the Company and the Company Subsidiary do not, and the consummation by each of the Tropicana Parties, the Company and the Company Subsidiary of the transactions to which it is a party that are contemplated by this Agreement and each Ancillary Agreement to which a Tropicana Party, the Company or the Company Subsidiary, as applicable, is a party, as and when contemplated by the terms hereof and thereof, will not, (i) conflict with, or result in any violation or breach of, any provision of the organizational documents of any Tropicana Party or any Seller or (ii) subject to the entry of the Sale Orders and the governmental filings and other matters referred to in **Section 4.2(c)** hereof, contravene, conflict with, or result in a violation of any of the terms or requirements of, or give any Governmental Entity or any other Person the right to revoke, withdraw, suspend, cancel, terminate, or modify any permit, concession, franchise, license, judgment, or Law applicable to any Tropicana Party, the Company or the Company Subsidiary, except in the case of clause (ii) for any such breaches, contraventions, rights, conflicts, violations, defaults, terminations, cancellations, accelerations, losses or failures to obtain any such consent or waiver that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with any Governmental Entity is required by or with respect to any Tropicana Party, the Company or the Company Subsidiary in connection with the execution and delivery of this Agreement or the Ancillary Agreements, the performance of such party's obligations or its consummation of the transactions to which it is a party that are contemplated hereby and thereby, except for (i) any approvals or filing of notices required under the Gaming Laws, (ii) such consents, approvals, orders, authorizations, permits, filings, declarations or registrations related to, or arising out of, compliance with statutes, rules or regulations regulating the consumption, sale or serving of alcoholic beverages, (iii) the approval and the entry of the Bidding Procedures Orders and the Sale Orders by the Bankruptcy Courts, (iv) such other filings, consents, approvals, orders, authorizations, permits, registrations and declarations as may be required under the Laws of any jurisdiction in which any Tropicana Party, the Company or the Company Subsidiary conducts any business or owns any assets, the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (v) the consents, approvals, orders, authorizations, registrations, permits, declarations or filings listed in **Section 4.2(c)** of either of the AC Disclosure Letters, and (vi) any consents, approvals, orders, authorizations, registrations, permits, declarations or filings required to be

obtained or made by Buyer or any of its Subsidiaries, Affiliates or key employees (including under the Gaming Laws) solely as a result of the identity of Buyer.

### **Section 4.3 Financial Statements**

**Section 4.3** of the Company Disclosure Letter contains a true and complete copy of: (i) the audited balance sheets as of, and statements of income and cash flow for the 12-month periods ending, December 31, 2008 (the “**Balance Sheet Date**”) and December 31, 2007 (the “**Audited Financial Information**”) of the Company and the Company Subsidiary presented on a consolidated basis and (ii) the unaudited trial balance sheets as of, and statements of income (if any) for the 12-month periods ending December 31, 2008 and December 31, 2007 of the Non-Conservatorship Sellers (the “**Unaudited Financial Information**” and, collectively with the Audited Financial Information, the “**Financial Information**”). Except as set forth in the notes to the Audited Financial Information, the Audited Financial Information was prepared in accordance with GAAP as in effect at the time of such preparation applied on a consistent basis throughout the periods involved, and the Financial Information presents fairly, in all material respects, the consolidated financial position, results of operations and cash flows of the Company and the Company Subsidiary, and the financial position of the Non-Conservatorship Sellers, at and for such periods.

### **Section 4.4 No Undisclosed Liabilities**

None of the Company, any Company Subsidiary or, to the extent related to the Business, any Non-Conservatorship Seller, has any liabilities of any nature, except for (i) liabilities that are reflected in, reserved against or disclosed in the applicable Financial Information or any of the notes thereto, (ii) liabilities that were incurred after the Balance Sheet Date in the ordinary course of business of such Seller, (iii) liabilities that are set forth in **Section 4.4** of the Company Disclosure Letter or (iv) liabilities that would not reasonably be expected to exceed, in the aggregate, \$500,000.

### **Section 4.5 Absence of Material Adverse Effect**

Since the Balance Sheet Date, there has not been any event that (i) individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect or (ii) if such event occurred between the date of this Agreement and the Closing Date, would be a breach of **Section 6.1(b)** below.

**Section 4.6 Real Property**

(a) **Section 4.6(a)** of each AC Disclosure Letter sets forth a list of all real property and interests in real property owned as of the date hereof by any Seller covered by such Disclosure Letter (the “**Owned Properties**” and together with the Leased Properties, the “**Real Property**”). The owner set forth in **Section 4.6(a)** of the AC Disclosure Letters has good and valid fee title to the Owned Properties, free and clear of all Encumbrances, except for Permitted Encumbrances. None of such owner or Tropicana Entertainment has received any written notices that any condemnation, eminent domain or similar Proceeding affecting all or any material portion of the Owned Property is pending or threatened.

(b) **Section 4.6(b)** of each AC Disclosure Letter sets forth a list of all Leased Properties leased by any Seller covered by such Disclosure Letter as of the date of this Agreement. Each of the Sellers has a valid leasehold, license or other interest in its applicable Leased Property, free and clear of all Encumbrances, except for Permitted Encumbrances.

(c) **Section 4.6(c)** of the applicable AC Disclosure Schedule sets forth a list of all Owned Property Leases in effect as of the date hereof.

(d) No Real Property is dependent for its access, operation or utility on any land, building or other improvement owned or controlled by Tropicana Party or their Affiliates (other than the Sellers) that is not included in the Acquired Assets.

(e) To each applicable Seller’s knowledge, the current use of the Real Property is in material compliance with all applicable zoning, subdivision or other land use Laws, including all necessary certificates of occupancy or other similar rights to occupy the Real Property, and such applicable Seller has not, to such Seller’s knowledge, received any notice, oral or written, of any material violation thereof.

(f) To each applicable Seller’s knowledge, the current use of the Real Property does not violate, in any material respect, any building, fire or life safety Laws, and such applicable Seller has not, to such Seller’s knowledge, received any notice, oral or written, of any material violation thereof.

## **Section 4.7 Intellectual Property**

(a) **Section 4.7(a)** of each AC Disclosure Letter sets forth each item of Intellectual Property registered with or issued by the United States Patent and Trademark Office, the United States Copyright Office, or any similar state or foreign registry, and applications therefor, in each case, that are owned by any Seller covered by such Disclosure Letter. Except as disclosed in **Section 4.7** of such AC Disclosure Letters, (i) the applicable Seller owns or possesses adequate and enforceable rights to use all Acquired Intellectual Property that is material to the Business, (ii) there are no restrictions on the direct or indirect transfer of any interest held by any Seller in respect of any of the Acquired Intellectual Property that is material to the Business, and (iii) none of the Sellers is in default under any Contract to use any Acquired Intellectual Property that is material to the Business. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the operation of the Business does not infringe, dilute, misappropriate, or otherwise violate any Intellectual Property rights of any other Person and no Proceeding to adjudicate a claim to the effect that any Seller is infringing, diluting, misappropriating, or otherwise violating any Intellectual Property rights of any other Person is currently pending or, to the knowledge of Tropicana Entertainment or the Company, as applicable, is threatened. To the knowledge of Tropicana Entertainment or the Company, as applicable, no Person is infringing, diluting, misappropriating, or otherwise violating any of the Intellectual Property rights that constitute Acquired Assets or Seller Licensed Intellectual Property.

(b) Set forth in **Section 4.7(b)** of each AC Disclosure Letter is a complete and accurate list of all Contracts pursuant to which any Seller covered by such Disclosure Letter uses, or is licensed under, the Intellectual Property of third parties in the conduct of the Business (other than shrink wrap and click wrap software, off-the-shelf software, and software licenses with license, maintenance, support, or other fees of less than \$50,000 in any 12 month period) (the “Licensed Intellectual Property”). Except as set forth in **Section 4.7(b)** of the applicable AC Disclosure Letter, the consummation of the transactions contemplated hereunder will not result in the loss or impairment of the right to use the Licensed Intellectual Property in connection with the Business, nor require the consent of any party to the applicable Contracts.

(c) The Sellers are taking and have taken all actions required to maintain, and all actions that they reasonably believe are required to protect, each item of Intellectual Property that is material to the Business. To the knowledge of Tropicana Entertainment or the Company, as applicable, there has been no unauthorized use or disclosure of any Intellectual Property that constitutes Acquired Assets.

(d) The collection and use by Company of the data and information included in the Atlantic City Customer Database is in material compliance with all applicable Laws, and

subject to applicable Laws, there are no restrictions on the transfer, sale, use or dissemination of such data and information.

#### **Section 4.8 Agreements, Contracts and Commitments**

(a) All Material Contracts that are Acquired Contracts to which any of the Sellers is a party are listed in **Section 4.8(a)** of the AC Disclosure Letter covering such Seller.

(b) Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, each Acquired Contract is a valid and binding obligation of the Seller party thereto (assuming that each such Acquired Contract constitutes the valid and binding obligation of the other parties thereto), enforceable by the applicable Seller in accordance with its respective terms, except as (i) the enforceability thereof may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) the availability of equitable remedies may be limited by equitable principles of general applicability.

(c) Except for breaches or defaults of the type referred to in Section 365(b)(2) of the Bankruptcy Code, neither the applicable Seller nor, to the knowledge of Tropicana Entertainment or the Company, as applicable, any other party thereto is (with or without the lapse of time or the giving of notice, or both) in default or breach under any Acquired Contract, except in each case, for such breaches or defaults that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

#### **Section 4.9 Litigation; Orders**

There is no (a) Proceeding pending or, to the knowledge of Tropicana Entertainment or the Company, as applicable, threatened against any Seller, its properties or assets or any other Acquired Assets before any Governmental Entity that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (and **Section 4.9** of each AC Disclosure Letter sets forth a list of all such Proceedings in respect of the Sellers covered by such Disclosure Letter where the amount in dispute or purported damages exceeds \$200,000 or where equitable relief is sought that would reasonably be expected to materially adversely affect the Business or any of the Acquired Assets) or (b) Order outstanding against any Seller that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, except, in each case, the Commission Orders and any Proceedings pending before the Commission or the Bankruptcy Courts. No Seller has received written notice of, or is in, default under any Order of any Governmental Entity, in each case except (i) for any such default or

defaults that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) any default under any Commission Order.

#### **Section 4.10    Environmental Matters**

(i) Each Seller is in material compliance with all applicable federal, state, and local laws governing pollution or the protection of the environment (“**Environmental Laws**”), (ii) no Seller has received any material written notice with respect to its business, or any property owned or leased by it, from any Governmental Entity or third party alleging that such Seller is not in material compliance with any Environmental Law, other than with respect to such issues that have been resolved with no outstanding obligations, (iii) to the knowledge of the Company, no Seller has caused any material “release” of a “hazardous substance,” as such terms are defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended, on any Real Property that requires remediation or investigation under Environmental Laws, (iv) each Seller is in possession of and in material compliance with all material Permits required under applicable Environmental Laws necessary to conduct the business and operations currently conducted at the Property, and all such Permits are in good standing and (v) there are no material Proceedings pending, or to the knowledge of the Company, threatened against any Seller under any Environmental Law.

#### **Section 4.11    Permits; Compliance with Laws**

(a) The Sellers hold all permits, registrations, licenses, variances, exemptions, certificates of occupancy, orders and approvals of all Governmental Entities (other than Gaming Approvals required under applicable Gaming Laws, which are expressly excepted from the terms of this **Section 4.11(a)**) (collectively, “**Permits**”), necessary to conduct the Business, except for such Permits, the failure of which to hold, would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (the “**Business Permits**”), each of which Business Permit is in full force and effect in all material respects, and, to the knowledge of Tropicana Entertainment or the Company, as applicable, no event has occurred which permits, or upon the giving of notice or passage of time or both, would permit, revocation, non-renewal, modification, suspension, limitation or termination of any Business Permit that currently is in effect, the loss of which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The Sellers are in compliance with the terms of the Business Permits held by them, except for such failures to comply which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. **Section 4.11(a)** of each AC Disclosure Letter sets forth all Permits which, to the knowledge of the Sellers covered by such Disclosure Letter, are non-assignable or non-transferable.

(b) The Business is not being conducted in violation of any applicable Law of any Governmental Entity, except for violations which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries has received a notice of any investigation or review by any Governmental Entity (other than the Commission, all action of which is expressly excepted from the terms of this **Section 4.11(b)**) with respect to the Sellers or the Property that is pending, and, to the knowledge of Tropicana Entertainment or the Company, as applicable, no investigation or review is threatened, nor has any Governmental Entity indicated any intention to conduct the same, other than those the outcome of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### **Section 4.12 Labor Matters**

(a) Except as set forth in **Section 4.12(a)** of the applicable AC Disclosure Letter for Sellers covered by such Disclosure Letter, (i) there are no collective bargaining agreements to which Sellers covered by such Disclosure Letter is a party or by which any such Seller is bound applicable to employees of the Business, (ii) there is no labor strike, slowdown, work stoppage or lockout pending, or to the knowledge of the Tropicana Parties or the Company, as applicable, threatened against any such Seller which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (iii) there is no unfair labor practice charge or complaint pending or, to the knowledge of the Tropicana Parties or the Company, as applicable, threatened against any such Seller in respect of the Business, before the National Labor Relations Board which, if determined adversely to such Seller, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (iv) no collective bargaining agreement to which any such Seller is bound applicable to employees of the Business requires any such Seller to bargain with or obtain the approval or consent of any employee or employee representative in order to undertake any of action or to consummate the transactions contemplated by this Agreement.

(b) Each Seller is in compliance with all Laws in respect of the Business relating to employment, including Laws relating to wages, hours, collective bargaining, discrimination, civil rights, safety and health, worker notification requirements, immigration, workers' compensation, and layoffs, except for such noncompliance which would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) **Section 4.12(c)** of the applicable AC Disclosure Letter lists the names and positions of the Business Employees employed by Sellers covered by such Disclosure Letter as of the date hereof, and shall be updated to accurately reflect any changes thereto occurring after the date of this Agreement five days prior to the Closing Date.

**Section 4.13    Employee Benefits**

(a)        **Section 4.13(a)** of the applicable AC Disclosure Letter sets forth for Sellers covered by such Disclosure Letter an accurate and complete list of all (i) “employee welfare benefit plans,” within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations thereunder (“**ERISA**”); (ii) “employee pension benefit plans,” within the meaning of Section 3(2) of ERISA; and (iii) all employment, consulting, retention, severance, change-in-control and retirement agreements, plans, programs and policies, and any other bonus, stock option, stock purchase, restricted stock, other compensatory equity or equity-based, incentive, fringe benefit, profit-sharing, pension or retirement, deferred compensation, medical, life insurance, disability, accident, cafeteria, salary continuation, severance, accrued leave, vacation, sick pay, sick leave, supplemental retirement, unemployment and other compensation or employee benefit plans, programs, policies, agreements and arrangements (whether or not insured), in each case, maintained or contributed to or required to be contributed to by such Sellers for the benefit of current or former Business Employees or their dependents or beneficiaries (the “**Benefit Plans**”); provided that there is no obligation to list any immaterial Benefit Plan.

(b)        With respect to each Benefit Plan that is not a Multiemployer Plan, a complete copy has been made available to Buyer by Sellers of: (i) all documents constituting such Benefit Plan (including without limitation, plan documents, adoption agreements, service agreements and written descriptions of any unwritten Benefit Plans); (ii) the two most recent Annual Report (Form 5500 Series) documents and schedules and amendments thereto, if any; (iii) the current summary plan description and any material modifications thereto, if any; (iv) the two most recent annual financial and/or actuarial reports, if any; (v) each trust agreement, group annuity contract, insurance contract and other funding vehicle relating to any Benefit Plan, and (vi) the most recent determination letter from the IRS, if applicable.

(c)        Each Benefit Plan that is intended to be a “qualified plan” within the meaning of Section 401(a) of the Code and the trust forming part thereof has received a favorable determination letter from the IRS as to its qualification under the Code, and to the knowledge of the Tropicana Parties or the Company, there are no existing circumstances or events that could reasonably be expected to result in the revocation of such qualification. Except for any Multiemployer Plan, each Benefit Plan has been administered in material compliance with all laws and regulations applicable to such Benefit Plan and its terms.

(d)        **Section 4.13(d)** of the applicable AC Disclosure Letter identifies, for Sellers covered by such Disclosure Letter, each Benefit Plan that is a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA (each, a “**Multiemployer Plan**”). None of the Sellers or any ERISA Affiliate of any Seller has incurred any Withdrawal Liability that has not been satisfied



in full. To the knowledge of the Tropicana Parties or the Company, except for the transactions contemplated by this Agreement, there does not now exist, nor do any circumstances exist which may reasonably be expected to give rise to, a Withdrawal Liability.

(e) (i) Other than Multiemployer Plans, no Benefit Plan is subject to Title IV of ERISA, Section 302 of ERISA, Section 412 of the Code or Section 4971 of the Code, and neither any Seller nor, to the knowledge of the Tropicana Parties or the Company, any ERISA Affiliate of any Seller has, during the past six years, sponsored, maintained, participated in, contributed to, or had any obligation to participate in or contribute to any plan that is subject to Title IV of ERISA, Section 302 of ERISA, Section 412 of the Code or Section 4971 of the Code, (ii) none of the Sellers, any officer of the Sellers or any Benefit Plans which are subject to ERISA, any trust created thereunder or, to the knowledge of the Tropicana Parties or the Company, any fiduciary or administrator thereof, has engaged in a “prohibited transaction” (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) or any other breach of fiduciary responsibility that could subject any of the Sellers or any officer of the Sellers to any material Tax or penalty on prohibited transactions imposed by the Code, ERISA or other applicable Law, (iii) no Benefit Plans that are “employee pension benefit plans” (as defined in Section 3(2) of ERISA) or trusts associated therewith have been terminated during the past six years, nor, to the knowledge of the Tropicana Parties or the Company, is there any intention or expectation to terminate any such Benefit Plans or trusts, (iv) no Benefit Plans or trusts are, to the knowledge of Tropicana Parties or the Company, the subject of any proceeding by any Person, including any Governmental Entity, that could reasonably be expected to result in a termination of any Benefit Plan or trust, and (v) neither any Seller nor, to the knowledge of the Tropicana Parties or the Company, any ERISA Affiliate of any Seller has, or within the past six years had, contributed to, been required to contribute to, or has any material liability, whether actual or contingent, with respect to, any “multiple employer plan” (within the meaning of Section 413(c) of the Code) or any multiple employer welfare arrangement (within the meaning of Section 3(40) of ERISA). There are no pending or, to the knowledge of Sellers, threatened material claims by or on behalf of any participant in any of the Benefit Plans, or otherwise involving any such Benefit Plan or the assets of any Benefit Plan, other than routine claims for benefits.

(f) Except as set forth in **Section 4.13(f)** of the applicable AC Disclosure Letter, for Sellers covered by such Disclosure Letter, or as contemplated expressly by this Agreement, neither the execution and delivery of this Agreement nor the consummation of the Sale will (either alone or in conjunction with any other event) (i) result in, cause the accelerated vesting, funding or delivery of, or increase the amount or value of, any payment or benefit to any Business Employee or (ii) result in any breach or violation of, default under or limit any Seller’s right to amend, modify or terminate any Benefit Plan.

(g) The consummation of the Sale by the Sellers and the Trustee/Conservator will not (either alone or in conjunction with any other event) result in any payment or benefit to any

Business Employee under that would constitute an “excess parachute payment” for purposes of Section 280G or 4999 of the Code.

(h) Except as set forth in **Section 4.13(h)** of the applicable AC Disclosure Letter, none of the Sellers covered by such Disclosure Letter, or to the knowledge of the Tropicana Parties or the Company, their respective ERISA Affiliates, has incurred or would reasonably be expected to incur any material Liability under Title IV of ERISA. No property or assets of any Seller or to the knowledge of the Tropicana Parties or the Company, any ERISA Affiliate of any Seller is, or would reasonably be expected to become, the subject of any lien arising under ERISA or the Code with respect to any Assumed Benefit Plan.

(i) Except for continuation coverage as required by Section 4980B of the Code and Section 601 et seq. of ERISA, or as required by applicable Law, no Assumed Benefit Plan provides, and no Seller has any obligation to provide, post-retirement, life, health, medical or other welfare or insurance benefits to Business Employees or their beneficiaries or dependents.

(j) All contributions required to be made by any Seller to any Benefit Plan by applicable Law, regulation, any plan document or other contractual undertaking, and all premiums due or payable by any Seller with respect to insurance policies funding any Benefit Plan, for any period through the date hereof have been timely made or paid in full or, to the extent not required to be made or paid on or before the date hereof, have been reflected in the Financial Information. Each Benefit Plan that is an employee welfare benefit plan under Section 3(1) of ERISA and is not a Multiemployer Plan is either is funded through an insurance company contract or is unfunded.

#### **Section 4.14   Brokers**

Except for Moelis & Company LLC (the “**Broker**”), pursuant to the engagement letter, dated as of September 17, 2008, among the Trustee/Conservator, the Company and the Broker (as amended, the “**Engagement Letter**”), none of the Tropicana Parties, the Company or the Company Subsidiary, nor any of their respective Affiliates or representatives nor the Trustee/Conservator has employed any broker, financial advisor or finder or incurred any Liability for any brokerage fees, commissions or finder’s fees in connection with the transactions contemplated by this Agreement. The Company has delivered to the Administrative Agent, and will deliver to Buyer on the Joinder Date, true and complete copies of all agreements between the Trustee/Conservator and the Broker relating to the transactions contemplated by this Agreement. The provisions of this **Section 4.14** shall survive the Closing or earlier termination of this Agreement.

**Section 4.15    Taxes**

Except as set for in **Section 4.15** of the AC Disclosure Letters:

(a) Each Seller has timely filed (taking into account any extensions of time for such filings that have been properly and timely requested by Seller) all material Tax Returns that were required to be filed by each Seller. All such Tax Returns were complete and accurate in all material respects. All material Taxes owed by each Seller (whether or not shown on such Tax Returns) relating to the Acquired Assets or the Business have been paid. Seller is not currently the beneficiary of any extension of time within which to file any such Tax Return relating to the Acquired Assets or the Business. Each of the Sellers has been a member of Aztar's consolidated federal income Tax group for 2007 and prior years. To the knowledge of Tropicana Entertainment, each of the Sellers will join in TCR's consolidated federal income Tax Return for 2008. To the knowledge of Tropicana Entertainment, Aztar has timely filed such federal income Tax Returns relating to the Acquired Assets or the Business that were required to be filed (or requests for extensions have been timely filed and any such extensions have been granted and have not expired). To the knowledge of Tropicana Entertainment, all such Tax Returns were complete and accurate in all material respects, and all material federal Taxes owed by each Seller (whether or not shown on such Tax Returns) relating to the Acquired Assets or the Business have been paid. Each of the Sellers has fully cooperated with and surrendered requisite information to Aztar or TCR, as appropriate, for them to file all Tax Returns relating to the Business.

(b) There is no Proceeding, audit, written claim pending or, to the knowledge of Tropicana Entertainment or the Company, as applicable, proposed with respect to any Taxes of any Seller relating to the Business or Acquired Assets. No Seller has received any written notice from any taxing authority to the effect that such agency intends to conduct an audit or investigation of any Taxes relating to the Business or Acquired Assets. There are no waivers or extensions of, or agreements that have the effect of waiving or extending, any applicable statute of limitations for the assessment or collection of Taxes with respect to the Business that remain in effect as of the date hereof.

(c) There are no Encumbrances for Taxes upon the Acquired Assets, except for Taxes not yet assessed or not yet due and payable or which are being contested in good faith and by appropriate Proceedings.

(d) The Sellers, and Aztar with respect to the Sellers, have each complied in all material respects with all Laws relating to the payment and withholding of Taxes relating to the Business and such Taxes have been duly and timely paid to the Governmental Entity responsible for the collection of such Taxes.

(e) No taxing authority has asserted in writing any deficiency, claim or issue with respect to Taxes or any adjustment to or assessment of Taxes relating to the Acquired Assets or the Business that is currently unresolved.

#### **Section 4.16    Insurance**

**Section 4.16** of each AC Disclosure Letter contains, for Sellers covered by such Disclosure Letter, a true and complete list of all material insurance policies currently in effect that insure the Business and that have been issued to (i) any Seller or (ii) any Person (other than a Seller) that directly or indirectly benefits any Seller (collectively, the “**Insurance Policies**”). To the knowledge of Tropicana Entertainment or the Company, as applicable, each policy set forth in **Section 4.16** of such AC Disclosure Letters is valid and binding and in full force and effect as of the date hereof. None of the Tropicana Parties or their Affiliates (including the Sellers) has received any written notice of cancellation or termination in respect of any such policy or is in default thereunder in any material respect.

#### **Section 4.17    Personal Property**

Except for Permitted Encumbrances and excluding the Excluded Intellectual Property, one or more of the Sellers has good and valid title to, or an adequate leasehold interest in, or other legal right to use, all personal property included in the Acquired Assets, except to the extent that the failure to possess such title, interest or right would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. **Section 4.17** of the AC Disclosure Letters set forth a list of all personal property held by the Sellers covered by such Disclosure Letter, other than the Excluded Intellectual Property, whether owned, leased or licensed by a Seller or (in the case of the Tropicana Disclosure Letter) any other Affiliate of any Tropicana Party, that is material to the operation of the Business.

#### **Section 4.18    Sufficiency of Assets**

The Acquired Assets (together with the Permits required to be obtained by Buyer under applicable Gaming Laws and the Seller Licensed Intellectual Property) include all the tangible and intangible assets, property and rights reasonably necessary for the operation of the Business as conducted immediately prior to the date hereof (determined without regard to any limitation on the Business imposed by the Commission Orders). Neither Tropicana Entertainment nor any of its Affiliates (other than the Non-Conservatorship Sellers and Columbia Sussex Corporation) owns any assets, properties, rights, claims, contracts and businesses of any kind, character and description, whether tangible or intangible (including goodwill), whether real, personal or mixed,

whether accrued, contingent or otherwise, or wherever located, that are primarily used or held for use in, or otherwise necessary or beneficial to the operation of, the Business and which are not included in the Acquired Assets and are not Excluded Assets, except as set forth on **Section 4.18** of the AC Disclosure Letter covering such Seller (any such assets or other items, “**Non-Seller Business Assets**”). None of the Sellers, on the one hand, nor Tropicana Entertainment, on the other hand, is aware of any assets, properties, rights, claims, contracts and businesses of any kind, character and description, whether tangible or intangible (including goodwill), whether real, personal or mixed, whether accrued, contingent or otherwise, or wherever located, that are (i) owned, leased or controlled by Columbia Sussex Corporation, (ii) primarily used or held for use in, or otherwise necessary or beneficial to the operation of, the Business and (iii) which are not included in the Acquired Assets and are not Excluded Assets.

#### **Section 4.19    No Other Representations**

Except for the representations and warranties contained in this **Article IV** and the AC Disclosure Letters, none of the Tropicana Parties or their Affiliates (including the Sellers) or the Trustee/Conservator (or any other Person or entity acting on behalf of any of the foregoing) makes any representation or warranty, express or implied, and the Tropicana Parties, the Company, the Company Subsidiary and the Trustee/Conservator hereby disclaim any other representations and warranties made by them, or any of their respective officers, directors, employees, shareholders, controlling persons, Affiliates, agents, advisors or other representatives, with respect to the execution and delivery of this Agreement or the transactions contemplated hereby, notwithstanding the delivery or disclosure by any of them or their respective representatives of any documentation or other information, including any documentation or other information furnished in the form of management presentations, management reports or other financial information, information memoranda and supplements, data room materials, due diligence materials, and information and materials conveyed, provided or made available by or on behalf of any of the foregoing persons or their respective representatives in connection with any due diligence, sale or auction process.

### **ARTICLE V**

#### **REPRESENTATIONS AND WARRANTIES OF BUYER**

Except as set forth herein and in the disclosure letter delivered by Buyer to the Trustee/Conservator and the Company on Joinder Date (the “**Buyer Disclosure Letter**”), whether or not the representation or warranty or any portion thereof refers to the Buyer Disclosure Letter by use of the phrase “except as set forth in the Buyer Disclosure Letter” or words of similar import, Buyer represents and warrants to the Trustee/Conservator and the Company, as of the Joinder Date and as of the Closing Date, as follows:

### **Section 5.1 Organization and Qualification of Buyer**

Buyer (i) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New Jersey, (ii) has the requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as now conducted and (iii) is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except in the case of clauses (ii) and (iii), where the failure to be so qualified or licensed and in good standing would not, individually or in the aggregate, reasonably be expected to materially delay or impair the ability of Buyer to consummate the Closing. Notwithstanding the foregoing qualification, Buyer is in good standing in each jurisdiction in which such party owns or operates any gaming business.

### **Section 5.2 Authority; No Conflict; Required Filings and Consents**

(a) Subject to Gaming Approvals, Buyer has the requisite power and authority to execute and deliver this Agreement and each Ancillary Agreement to which it is a party and to consummate the transactions to which it is a party that are contemplated by this Agreement and such Ancillary Agreements. The execution and delivery by Buyer of this Agreement and any Ancillary Agreement to which it is a party, the performance of Buyer's obligations hereunder and thereunder, and the consummation by Buyer of the transactions to which it is a party that are contemplated by this Agreement and each Ancillary Agreement to which it is a party have been duly authorized by all necessary action on the part of Buyer. This Agreement has been, and each Ancillary Agreement to which Buyer is a party (when executed and delivered by Buyer) will be, duly executed and delivered by Buyer, and assuming this Agreement and, as applicable, each Ancillary Agreement, constitutes the valid and binding obligation of the other parties hereto and thereto, this Agreement and each Ancillary Agreement to which it is a party constitutes the valid and binding obligation of Buyer, enforceable against Buyer, in accordance with its terms, except as (i) the enforceability hereof and thereof may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) the availability of equitable remedies may be limited by equitable principles of general applicability.

(b) The execution and delivery of this Agreement by Buyer do not, and the consummation by Buyer of the transactions to which it is a party that are contemplated by this Agreement and each Ancillary Agreement to which Buyer is a party, as and when contemplated by the terms hereof and thereof, will not, (i) conflict with, or result in any violation or breach of, any provision of the organizational documents of Buyer, (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of

termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture or other agreement to which Buyer is a party or otherwise bound, or (iii) subject to the governmental filings and other matters referred to in **Section 5.2(c)** of the Buyer Disclosure Letter, contravene, conflict with, or result in a violation of any of the terms or requirements of, or give any Governmental Entity or any other Person the right to revoke, withdraw, suspend, cancel, terminate, or modify any permit, concession, franchise, license, judgment, or Law applicable to Buyer, respectively, or any of its properties or assets, except in the case of clauses (ii) and (iii) for any such breaches, contraventions, rights, conflicts, violations, defaults, terminations, cancellations, accelerations, losses or failures to obtain any such consent or waiver that would not, individually or in the aggregate, reasonably be expected to materially delay or impair the ability of Buyer to consummate the Closing.

(c) Other than the approvals set forth in **Section 5.2(c)** of the Buyer Disclosure Letter, no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to Buyer in connection with the execution, delivery and performance of this Agreement or the Ancillary Agreements to which Buyer is a party, or the consummation of the transactions contemplated hereby or thereby.

### **Section 5.3 Brokers**

Except as set forth in **Section 5.3** of the Buyer Disclosure Letter, as of the date hereof, none of Buyer or any of its representatives has employed any broker, financial advisor or finder or incurred any Liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement. Buyer is solely responsible for any payment, fee, commission or indemnification obligation that may be due to any broker, financial advisor or finder set forth in **Section 5.3** of the Buyer Disclosure Letter or subsequently engaged by Buyer or any of its Affiliates or representatives in connection with the transactions contemplated by this Agreement. The provisions of this **Section 5.3** shall survive the Closing or earlier termination of this Agreement.

### **Section 5.4 Licensability of Buyer and Principals**

Neither Buyer nor any of its directors, officers, key employees, or Persons performing management functions similar to officers and partners has ever been denied or had revoked an application for a Gaming Approval by any Governmental Entity or Gaming Authority. To the best of Buyer's knowledge and belief, there are no facts, which if known to any Gaming Authority, could (i) reasonably be expected to result in the denial, revocation, limitation, suspension or material delay of a Gaming Approval currently held, or which may be sought

pursuant to this Agreement, by Buyer or any of its Affiliates or (ii) result in a negative outcome in connection with any finding of qualification or suitability proceedings currently pending, any applications for Gaming Approval currently pending, or under any future qualification or suitability proceedings necessary for the consummation of this Agreement or the transactions contemplated hereby or by any Ancillary Agreement, with respect to Buyer or any of its directors, officers, key employees and Persons performing management functions similar to officers and partners.

## **Section 5.5 Compliance with Laws**

(a) Buyer and each of its respective directors, officers, key employees and Persons performing management functions similar to officers and partners hold or will hold on or prior to the Closing all Permits necessary to conduct the business and operations of Buyer (the “**Buyer Permits**”), each of which Buyer Permit is in full force and effect in all material respects and no event has occurred which permits or with or without the giving of notice or passage of time or both, would permit, revocation, non-renewal, modification, suspension, limitation or termination of any Buyer Permit. Buyer and each of its directors, officers, key employees and Persons performing management functions similar to officers and partners are in compliance with the terms of the Buyer Permits. Buyer has not received notice of any investigation or review by any Governmental Entity under any Gaming Law (other than in connection with interim authorization or plenary licensure under the New Jersey Gaming Laws in connection with the Sale) or other Law with respect to Buyer that is pending, and, to the knowledge of Buyer, no investigation or review is threatened, which, if known to any Gaming Authority, would reasonably be expected to result in the denial, limitation or material delay of Gaming Approval determinations to be made by the Commission or other Gaming Authorities in connection with the transactions contemplated hereby.

(b) Neither Buyer nor any director, officer, key employee, partner or Person performing management functions similar to officers, directors, key employees or partners of Buyer has received any written claim, demand, notice, complaint, court order or administrative order from any Governmental Entity under, or relating to, any violation or possible violation of any Gaming Laws or other Laws which did or would be reasonably likely to result in fines or penalties, individually or in the aggregate, of \$15,000 or more. To the best of Buyer’s knowledge and belief, there are no facts which, if known to the Gaming Authorities, will or could reasonably be expected to result in the revocation, limitation or suspension of an existing material license, finding of suitability, registration, permit or approval of Buyer, or any of its officers, directors, key employees or Persons performing management functions similar to an officer or partner, or limited partner, under any Gaming Laws or other Laws. None of Buyer or any officer, director, key employee or Person performing any management functions similar to an officer or partner has suffered a suspension or revocation of any Buyer Permit held under Gaming Laws or other Laws.



### **Section 5.6 Investigation by Buyer**

Buyer acknowledges and agrees that it has conducted its own independent investigation, review and analysis of the business, operations, assets, liabilities, results of operations, financial condition, software, technology and prospects of the Business and the Property, which investigation, review and analysis was done by Buyer and its Affiliates and, to the extent Buyer deemed appropriate, by representatives of Buyer. Buyer (i) has been furnished with and has had access to all such information concerning the Business and the Property, as Buyer considers relevant in connection with its determination to enter into this Agreement and the transactions contemplated hereby and (ii) has had all questions which have been asked by Buyer or any of its representatives satisfactorily answered. Without limitation of the foregoing, Buyer acknowledges that the Purchase Price and other consideration payable by Buyer under this Agreement and the Ancillary Agreements have been negotiated based on Buyer's express agreement that there would be no contingencies (financial or otherwise) to Closing other than the conditions set forth in **Article VIII**. Buyer acknowledges that, should the Closing occur, at the Closing Buyer will acquire the Acquired Assets and assume the Assumed Liabilities as set forth in **Section 10.2**, without any representation or warranty of any kind, express or implied, except such representations and warranties as are expressly set forth in **Article IV**. Further, without limiting any representation, warranty or covenant of Tropicana Entertainment or the Company expressly set forth herein, Buyer acknowledges that it has waived and hereby waives as a condition to Closing any further due diligence reviews, inspections or examinations with respect to the Acquired Assets, Assumed Liabilities and the Business, including, without limitation, with respect to financial, operational, engineering, environmental, title, survey, regulatory and legal compliance matters.

### **Section 5.7 Litigation; Orders**

With the exception of Gaming Approval determinations to be made by the Commission or other Gaming Authorities, there are no Proceedings pending or, to Buyer's knowledge, threatened against Buyer before any Governmental Entity, which, if determined adversely to such party, would, individually or in the aggregate, reasonably be expected to materially delay or impair the ability of Buyer to consummate the Closing. Buyer has not received written notice of and, to the knowledge of Buyer, Buyer is not in default under any Order of any Governmental Entity, in each case except for any such default or defaults that would not, individually or in the aggregate, reasonably be expected to materially delay or impair the ability of Buyer to consummate the Closing.

### **Section 5.8 No Vote Required**

Other than the approval by the Required Lenders of (x) the ultimate organization, equity structure and corporate governance provisions concerning Buyer and any of its related parent companies, (y) the financing to be obtained by Buyer, or the absence thereof, and (z)(i) the identity of the directors to be selected by Buyer and (ii) to the extent applicable, the identity of any replacement conservator(s) and the written instructions with respect thereto, no vote of the members of Buyer is required by Law, Buyer's organizational documents or otherwise in order for Buyer to duly consummate the transactions contemplated by this Agreement or the Ancillary Agreements.

### **Section 5.9 Credit Bid Authorization**

Buyer has received and delivered to the Trustee/Conservator a written direction from the Required Lenders directing the Administrative Agent to credit bid for the Acquired Assets in accordance with the terms hereof (the "**Written Direction**"), and (subject to receipt of the approval by the Required Lenders referred to in **Section 5.8** above) such Written Direction has not been withdrawn or terminated and is in full force and effect in accordance with its terms.

## **ARTICLE VI**

### **COVENANTS**

### **Section 6.1 Conduct of Business of the Company**

(a) During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement and the Closing (and, in the case of the Non-Conservatorship Sellers, only to the extent relating to the Acquired Assets, Seller Licensed Intellectual Property, and Assumed Liabilities of such Non-Conservatorship Sellers), subject to the Bankruptcy Code and as required by the Bankruptcy Courts and subject to the limitations set forth below, (i) the Company shall, and shall cause the Company Subsidiary to, and (ii) Tropicana Entertainment shall cause the Non-Conservatorship Sellers to carry on the Business in the ordinary course.

(b) Without limiting the generality of the foregoing, except (i) as expressly permitted or required by this Agreement or the Ancillary Agreements, (ii) as is reasonably required for the Company to maintain the viability and marketability of the Property and to prevent the destruction, removal, wasting, deterioration, or impairment of the Property (including

regular repair and maintenance efforts, continuation of any planned capital expenditures, and marketing and promotional programs, but subject in any event to the terms of **Section 6.1(c)** below), (iii) as disclosed in **Section 6.1(b)** of either of the AC Disclosure Letters, (iv) as required by Gaming Authorities or (v) for the Sellers' obligations under the Bankruptcy Code or as required by the Bankruptcy Courts, during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement and the Closing (and, in the case of the Non-Conservatorship Sellers, only to the extent relating to the Acquired Assets, Seller Intellectual Property, and Assumed Liabilities), without the written consent of Buyer or, prior to the Joinder Date, the Administrative Agent (in each case, acting at the direction of the Required Lenders), (x) other than with respect to any Tax election or Tax accounting determination made by a party other than the Company in respect of consolidated Tax Returns, the Company shall, and shall cause the Company Subsidiary, and (y) Tropicana Entertainment shall cause the Non-Conservatorship Sellers, in each case, not to take any of the following actions in respect of the Business:

(i) sell, pledge, lease, license, cancel, abandon, permit to lapse, dispose of, grant or otherwise authorize the sale, disposition or grant of the Property (or any portion thereof) except, in each case, in the ordinary course of business in connection with the operation of the Property;

(ii) voluntarily incur any material Liabilities, except in the ordinary course of business, or make or agree to make any capital expenditures, other than capital expenditures as may be required pursuant to any contractual obligations as of the date hereof or in accordance with the aggregate amount of capital expenditures set forth in the capital expenditure budget attached hereto as **Exhibit G**;

(iii) modify, amend, terminate or assume any material Acquired Contracts, enter into any Material Contracts or waive, release or assign any material rights or claims, except in the ordinary course of business, as required by applicable Law, as otherwise contemplated by this Agreement or the Ancillary Agreements or (with the consent of Buyer or the Administrative Agent, which shall not be unreasonably withheld or delayed), as the Company determines may be advisable to provide for services and products comparable to any services or products under Contracts covered by **Section 6.7(a)** for which payments have not been approved pursuant to **Section 6.7(a)(x)**;

(iv) subject the Property (or any constituent portion thereof) to any Encumbrance, other than a Permitted Encumbrance;

(v) except for breaches and defaults of the type referred to in Section 365(b)(2) of the Bankruptcy Code, fail to use commercially reasonable efforts to perform in all material respects its obligations under all Acquired Contracts and other agreements and instruments relating to the Acquired Assets;

(vi) except as may be required by applicable law or by any Contract or pursuant to any Benefit Plan in effect on the date hereof (including any collective bargaining agreement or any Confidential Incentive, Bonus and Severance Agreement set forth in **Section 4.13(a)** of the Company Disclosure Letter), (1) establish, adopt, materially amend, enter into or terminate any Benefit Plan (including any employment, severance or material compensatory agreements), (2) make any material increase in the compensation or benefits payable or to become payable to any Business Employees (except for annual base salary or hourly wage increases for non-officer Business Employees made in the ordinary course of business consistent with past practice), (3) pay any severance, termination, incentive, or retirement benefits, except for such severance, termination, incentive, or retirement payments made to non-officer Business Employees in the ordinary course of business consistent with past practice, provided that the aggregate of all such payments shall not exceed \$100,000, or (4) hire any employee or consultant (other than non-officer employees hired in the ordinary course of business);

(vii) other than as set forth in **Section 6.1(b)(vii)** of either of the AC Disclosure Letters, enter into any collective bargaining agreement or modify or amend any existing collective bargaining agreement;

(viii) pay or declare or set aside for payment any dividend or other distribution, payable in cash, stock or property, with respect to any shares of any class or series of their respective capital stock, or purchase, redeem or otherwise acquire any shares of any class or series of their respective capital stock;

(ix) in a single transaction or through a series of similar or related transactions, consolidate with or merge with or into any other Person;

(x) in a single transaction or through a series of similar or related transactions, acquire any material real property;

(xi) consummate any acquisition of the capital stock, any line of business or any material assets of any other Person, in a single transaction or series of

similar or related transactions (other than any acquisition of inventory and equipment in the ordinary course of business);

(xii) create any material liability other than a current liability or create any material post-Closing obligation of Buyer, in each case, unless otherwise permitted by the provisions of this Agreement or any Ancillary Agreement;

(xiii) settle or compromise any material Proceeding other than any Proceeding set forth in **Section 6.1(b)(xiii)** of the AC Disclosure Letters;

(xiv) make any change in any method of accounting or accounting principles or practices except as required by GAAP or any pronouncement of any applicable accounting regulatory or self-regulatory body;

(xv) except as set forth in **Section 6.1(b)(xv)** of either of the AC Disclosure Letters, file any amended Tax Return, make any material change in any method of Tax accounting, make any material change in any Tax election, settle or compromise any Tax audit or Proceeding, settle or compromise any Tax claim or assessment, or consent to any extension or waiver of the limitation period applicable to any claim or assessment with respect to Taxes, in each case which will affect the Business during any Tax Period subsequent to the Closing Date; or

(xvi) enter into a Contract, commitment or arrangement (oral or written) to do any of the foregoing, or authorize, recommend, propose or publicly announce an intention to do any of the foregoing actions.

(c) Notwithstanding anything contained in this Agreement to the contrary (including the restrictions set forth in **Sections 6.1(a)** and **(b)**), nothing contained in this **Article VI** shall preclude the Trustee/Conservator or Tropicana Entertainment, as applicable, from directing the Company and the Company Subsidiary (each, in the case of the Trustee/Conservator) or the Non-Conservatorship Sellers (in the case of Tropicana Entertainment) from making any Debt Service Payment.

## **Section 6.2 Cooperation; Notice; Cure**

From the date hereof until the Closing, and subject to the last sentence of **Section 6.5(b)**, the parties (other than the Administrative Agent) shall promptly notify each other in writing of,

and shall use their reasonable best efforts to cure before the Closing Date, any fact, event, transaction, circumstance or action the existence, occurrence or taking of which, in each case as soon as practicable after it becomes known to such party, that (i) causes, or is reasonably likely to cause, any covenant or agreement of such party under this Agreement or any Ancillary Agreement to which it is a party to be breached in any material respect, (ii) renders or would reasonably be expected to render untrue in any material respect any representation or warranty of such party contained in this Agreement or any Ancillary Agreement to which it is a party or (iii) will result, or is reasonably likely to result, in the failure of such party to timely satisfy any of the closing conditions specified in **Article VIII**. Nothing contained in **Section 6.1** shall prevent the Trustee/Conservator from giving such notice, using such efforts or taking any action to cure any such event, transaction, circumstance or action. No notice given pursuant to this **Section 6.2** shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein, although corrective action taken pursuant to any such notice may have such an effect.

### **Section 6.3 Employee Matters**

(a) Buyer shall make offers of employment to be effective as of the Closing Date to each Business Employee (x) who is covered by a CBA or (y) whose name is set forth on **Section 6.3(a)** of the Buyer Disclosure Letter on such terms and conditions as Buyer shall determine, in its sole discretion, subject to the terms of any CBA or Management Agreement that is applicable to such Business Employee, the selection of such Business Employees set forth in clause (y) and all such offers of employment in each case shall be made in accordance with applicable Law. The Sellers and Buyer intend and shall each use commercially reasonable efforts to ensure that (i) the Transferring Employees shall have continuous and uninterrupted employment immediately before and immediately after the Closing and (ii) for purposes of any severance or termination benefit plan, program, policy, agreement or arrangement of Buyer or any Seller (or their respective Affiliates), the transactions contemplated by this Agreement shall not constitute a termination of employment of any Transferring Employee prior to or upon the consummation of such transactions. The parties acknowledge and agree that (A) the consummation of the transactions contemplated by this Agreement, including without limitation, the transfer of employment of Transferring Employees from Seller to Buyer or its Affiliates, shall not constitute a “separation from service” (within the meaning of Code Section 409A) with respect to any Transferring Employee, and (B) except with respect to Liabilities assumed under **Section 6.3(b)**, Buyer shall not bear or have any responsibility for, the Liability for any severance payments or termination benefits with respect to any Business Employee who (1) terminates employment (or whose employment is terminated) prior to the Closing Date or (2) accepts Buyer’s offer but is nevertheless entitled to severance payments or termination benefits upon Closing under any Benefit Plan or applicable Law.

(b) Effective immediately after the Closing, Buyer shall assume and honor all Liabilities of Sellers as of the Closing Date under (i) each Management Agreement<sup>2</sup> (to the extent not paid prior to Closing), and (ii) each other Benefit Plan set forth in **Section 6.3(b)** of the Company Disclosure Letter; provided, however, that Buyer shall not, in any event, be obligated to pay severance benefits under the Severance Policy (A) to or in respect of any employee who terminates employment with (or whose employment is terminated by) Sellers prior to the Closing Date (other than any employees terminated at the request or direction of Buyer) or (B) in excess of an aggregate of \$3,670,000 (the items described in clauses (i) and (ii) of this **Section 6.3(b)**, together, the “**Assumed Benefit Plans**”). Each Transferring Employee shall cease to be an active participant in any Benefit Plan that is not an Assumed Benefit Plan (each, a “**Retained Benefit Plan**”) (except as otherwise provided under an applicable CBA) effective as of the Closing Date; provided, however, that each such Transferring Employee shall be entitled to any benefits accrued under such Retained Benefit Plan prior to the Closing Date, as determined under the terms and conditions of such Retained Benefit Plan. With respect to each Retained Benefit Plan, Buyer shall assume and honor those Liabilities described in **Section 2.1(c)(iii)** or **Section 2.1(c)(v)** hereof, and Sellers shall retain and Buyers shall not assume any and all other Liabilities arising from or relating to such Retained Benefit Plan.

(c) With respect to any Buyer Plan, for all purposes of determining vesting and eligibility to participate and, with respect only to any severance plans, programs or arrangements, for purposes of benefit accrual, a Transferring Employee’s service with the Tropicana Parties or any Seller shall be treated as service with Buyer; provided, however, that such service need not be recognized to the extent that such recognition would result in any duplication of benefits.

(d) To the extent permitted under the terms of applicable benefit plans, programs and arrangements adopted or maintained by Buyer for the benefit of Transferring Employees (collectively, “**Buyer Plans**”), Buyer shall waive, or use commercially reasonable efforts to cause to be waived any pre-existing condition limitation under any Buyer Plan that is an “employee welfare benefit plan” within the meaning of Section 3(1) of ERISA in which Transferring Employees (and their eligible dependents) will be eligible to participate from and after the Closing, except to the extent such pre-existing condition limitation or exclusion would have been applicable under a comparable Benefit Plan immediately prior to the Closing. Buyer shall cause appropriate Buyer Plans to recognize the dollar amount of all expenses incurred by each Transferring Employee (and his or her eligible dependents) during the calendar year in which the Closing occurs to the extent recognized by a comparable Benefit Plan for purposes of

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<sup>2</sup> Buyer’s execution of this Agreement will be subject to and conditioned upon Sellers having entered into amendments with each of the affected employees, in the forms agreed to by Buyer and Sellers, to each such employee’s (a) Confidential Incentive Bonus Agreement, (b) Confidential Bonus and Severance Agreement, or (c) employment agreement, as applicable.

satisfying such year's deductible and co-payment limitations or exclusions prior to Closing, to the extent that recognition of such deductibles and co-payment credits are permitted by the applicable Buyer Plan. Effective as of the Closing, Buyer shall make available a group health plan to those Transferred Employees who, immediately prior to the Closing Date, participate in the Company's group health plan.

(e) Effective not later than the Closing Date, Buyer shall, or shall cause its Affiliates to, have in effect one or more defined contribution plans that include a qualified cash or deferred arrangement within the meaning of Section 401(k) of the Code (and a related trust exempt from tax under Section 501(a) of the Code) (as applicable, the “**Buyer 401(k) Plan**”). Prior to the Closing Date, Tropicana Entertainment shall use its best efforts to provide, or to cause its Affiliates to provide that Transferring Employees who are participants in the Retained 401(k) Plan shall be fully vested in their account balances under the Retained 401(k) Plan. Each Transferring Employee who is eligible to participate in the Retained 401(k) Plan immediately prior to the Closing Date shall be eligible to participate in a Buyer 401(k) Plan as of the Closing Date. Buyer shall cause the Buyer 401(k) Plan to accept a “direct rollover” to such Buyer 401(k) Plan of the account balances of each Transferring Employee (including promissory notes evidencing outstanding loans) under the Retained 401(k) Plan, if such direct rollover is elected in accordance with applicable Law by such Transferring Employee.

(f) From and after the Closing Date, Buyer shall assume and honor, in accordance with their respective terms, the collective bargaining agreements listed in **Section 6.3(f)** of the Company Disclosure Letters and all collective bargaining agreements entered into by any Seller after the date of this Agreement in compliance with **Section 6.1(b)(vii)** (including all obligations to provide employee benefits and/or to contribute to any pension plans) that cover one or more Business Employees (each, a “**CBA**”) as in effect immediately prior to the Closing Date, it being understood by the parties hereto that, notwithstanding the foregoing or anything herein to the contrary, in no event shall Buyer assume (i) any COBRA Liability or (ii) any Withdrawal Liability. Buyer acknowledges and agrees that, notwithstanding anything to the contrary in this **Section 6.3**, the provisions of this **Section 6.3** shall be subject to any applicable provision of a CBA in respect of Transferring Employees, to the extent such provision is inconsistent with or otherwise in conflict with the provisions of any such CBA. For avoidance of doubt, it is the intention of the parties hereto that Sellers' contribution history with respect to any Multiemployer Plan prior to the Closing Date shall not be taken into account in determining Buyer's “contribution base units” (as defined in Section 4001(a)(11) of ERISA) for purposes of (i) determining whether Buyer incurs a complete or partial withdrawal from any Multiemployer Plan after the Closing Date or (ii) determining the amount of any Withdrawal Liability incurred by Buyer in connection with Buyer's complete or partial withdrawal from any Multiemployer Plan after the Closing Date, and no party hereto shall take any position contrary to such intention.



(g) Sellers agree to notify Buyer of any layoffs of any Business Employees in the 90-day period prior to the Closing Date, and Buyer agrees to provide any required notice under the WARN Act and any similar federal, state or local Law, and each party agrees to take such actions as are necessary for it to otherwise comply with the WARN Act and any such other similar Law with respect to any “plant closing” or “mass layoff” (as defined in the WARN Act) or group termination or similar event affecting Business Employees (including as a result of the consummation of the transactions contemplated by this Agreement), or affecting Transferring Employees from and after the Closing. Buyer shall be solely liable for any and all liabilities and related costs and expenses arising from or relating to any claim brought as a result of the breach by Buyer of this Agreement that results in a termination of employment of any employees by Sellers or their Affiliates that occurs prior to Closing to constitute a “plant closing,” “mass layoff” or group termination or similar event under the WARN Act or any similar federal, state or local Law.

(h) Following the date of this Agreement, the Sellers and Buyer shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this **Section 6.3**, including but not limited to (i) exchanging information regarding the employment terms and conditions of current Business Employees that is reasonably requested by Buyer for purposes of making offers of employment pursuant to **Section 6.3(a)**, (ii) exchanging data relating to workers compensation, employee benefits and employee benefit plan coverage (except to the extent prohibited by applicable Law), (iii) obtaining, at the Company’s cost, any governmental approvals in connection with the establishment and registration and qualification of any Buyer Plan, (iv) obtaining a work permit or employment pass or other approval required for a Transferring Employee’s employment to continue with Buyer following the Closing and (v) complying with all applicable Laws relating to notification of unions and relevant governmental bodies and at the Company’s cost negotiations with unions in respect of the transactions contemplated hereby.

(i) The provisions of this **Section 6.3** are for the sole benefit of the parties to this Agreement and nothing herein, expressed or implied, is intended, shall or shall be construed to confer upon or give to any Person (including, for the avoidance of doubt, any employees of any Seller (including the Business Employees and Transferring Employees)), other than the parties hereto and their respective permitted heirs, executors, administrators, successors and assigns, any legal or equitable or other rights or remedies (with respect to the matters provided for in this **Section 6.3**) under or by reason of any provision of this Agreement.

(j) Except as provided in this **Section 6.3**, Buyer shall have no obligation to extend offers of employment to any employee(s) of any Seller or to enter or continue any employment or other service relationship with any Business Employee or Transferring Employee or other service provider. Nothing contained herein, whether express or implied, shall (i) be treated as an amendment or other modification of any employee benefit plan, program or

arrangement or the establishment of any employee benefit plan, program or arrangement, (ii) except with respect to Management Agreements, limit the rights of any of Buyer or any of its Affiliates to amend, terminate or otherwise modify (or cause to be amended, terminated or otherwise modified) any Buyer Plan, Assumed Benefit Plan or other employment benefit or compensation plan, program, policy or arrangement from and after the Closing Date or (iii) create any rights to continued employment with any of the Sellers, Buyer, or any of their respective Affiliates or rights to continued participation in any Buyer Plan, Assumed Benefit Plan or other employment benefit or compensation plan, program, policies or arrangements, it being agreed that all provisions contained in this Agreement with respect to employee benefit plans or employee compensation are included for the sole benefit of the respective parties hereto and shall not create any third-party beneficiary or other right in any other Person.

(k) Except as expressly provided in this **Section 6.3**, **Section 2.1(c)(iii)** or **Section 2.1(c)(v)**, Sellers shall be solely liable for all wages, remuneration and other obligations and Liabilities, whether actual or contingent, (A) that arise in connection with any Transferring Employee (or any dependent or beneficiary thereof) on or prior to the Closing Date, (B) associated with any employee or other service provider of any Seller who does not become a Transferring Employee (or any dependent or beneficiary thereof), including in connection with any termination of any such service relationship, and/or (C) that arise at any time with respect to any Benefit Plan, or any other severance, retention, employment, change-of-control, pension, retirement, equity or other plan, program, policy or agreement of or with any Seller. Buyer shall not be liable for any (i) COBRA Liabilities or (ii) Withdrawal Liabilities (other than any Withdrawal Liabilities that may arise in connection with contributions to Multiemployer Plans by Buyer (or Buyer's Affiliate(s)) occurring after the Closing Date).

#### **Section 6.4 Access to Information and the Property**

(a) Upon reasonable notice, subject to applicable Law, including competition Laws, Gaming Laws and the Bankruptcy Code, during the period from the date hereof to the Closing, the Company and the Company Subsidiary, at the direction of the Trustee/Conservator, shall provide Buyer and its representatives (or, prior to the Joinder Date, representatives of the Lenders (as designated by the Administrative Agent acting at the direction of the Required Lenders) who have duly executed and delivered to the other parties thereto a confidentiality agreement substantially in the form attached as **Exhibit H** hereto) (collectively, the "**Buyer Representatives**") with reasonable access, during normal business hours, to the Property, the general manager and other senior managers of the Property and the financial books and records (other than the Atlantic City Customer Database and personnel files) of the Business, but only to the extent that such access is reasonably related to the requesting party's obligations and rights hereunder (it being understood that the foregoing provisions shall apply to each of (y) the Company and the Company Subsidiary and (z) the Non-Conservatorship Sellers, in respect of which Tropicana Entertainment hereby authorizes the Company and the Company Subsidiary, at

the direction of the Trustee/Conservator, to provide Buyer Representatives access pursuant to the foregoing terms, except where employees or officers of the Company and the Company Subsidiary do not have access in the ordinary course of business, in which case Tropicana Entertainment shall, upon the request of the Trustee/Conservator, promptly arrange to provide such access to the Trustee/Conservator and his representatives, who will subsequently provide access to Buyer Representatives in accordance with the foregoing terms); provided, however, that (i) if the Trustee/Conservator so requests, Buyer Representatives shall be accompanied by a representative of the Trustee/Conservator; (ii) Buyer Representatives shall not initiate contact with employees or other representatives of any Seller other than the President and senior managers of the Company specified by the Trustee/Conservator without the prior written consent of the Trustee/Conservator; (iii) Buyer Representatives shall not be entitled to perform any physical testing of any nature with respect to any portion of the Property without the Trustee/Conservator's prior written consent; (iv) Buyer Representatives shall not unreasonably interfere with the operation of the Business; (v) Buyer Representatives shall, at Buyer's sole cost and expense, promptly repair any damage to the Property or any other property owned by a Person other than Buyer arising from or caused by such inspection, and shall reimburse the applicable Seller for any loss arising from or caused by any inspection, and restore the Property or such other third-party property to substantially the same condition as existed prior to such inspection, and shall indemnify, defend and hold harmless the other parties hereto and their respective Affiliates from and against any personal injury or property damage claims, liabilities, judgments or expenses (including reasonable attorneys' fees) incurred by any of them arising or resulting therefrom; and (vi) in no event shall the results of any such inspection or Buyer's satisfaction therewith be a condition to Buyer's obligations hereunder, it being the intent of Buyer to purchase the Property in an "As Is" condition and on a "Where Is" basis, and "with all faults" as set forth in **Section 10.2**, subject only to the representations and warranties contained in **Article IV** of this Agreement.

(b) The parties hereby agree that any information relating to the Business (including any information learned as a result of inspections described in **Section 6.4(a)**) furnished to Buyer, the Administrative Agent or any Buyer Representative (collectively, "**Buyer Recipients**") by on or behalf of Tropicana Entertainment or any of the Sellers or any of their respective attorneys or other advisers or agents, including all analyses, compilations, forecasts, studies or other documents prepared by any Buyer Recipient in connection therewith that contain or reflect such information, is "**Confidential Information**". Prior to Buyer's due execution and delivery to the Trustee/Conservator of the Joinder, Buyer Recipients shall be governed by any confidentiality agreement signed by such recipient pursuant to **Section 6.4(a)**. Following such execution and delivery, Buyer shall cause Buyer Recipients to disclose and use such Confidential Information only in connection with the evaluation and consummation of the transactions contemplated hereby and shall (and shall cause Buyer Recipients to) maintain the confidentiality of the Confidential Information, except that Confidential Information may be disclosed (i) to such Buyer Recipient's Affiliates and its Affiliates' officers, directors, trustees, employees and agents, including accountants, legal counsel and other advisors (it being understood that the

persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential), (ii) to the extent requested by any regulatory authority or quasi-regulatory authority (such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) in connection with the exercise of any remedies under the Loan Documents (as defined in the Original Credit Agreement) or any suit, action or proceeding relating to the enforcement of its rights hereunder or thereunder or (v) with the consent of the applicable Sellers and the Trustee/Conservator. Confidential Information does not include information which (a) becomes publicly available other than as a result of a disclosure by a Buyer Recipient or any of its representatives in violation of this **Section 6.4**, (b) is or becomes available to such Buyer Recipient on a non-confidential basis from a source other than the Sellers, but only if the source of such information, to the best of Buyer Recipient's knowledge, is not prohibited from disclosing such information to Buyer Recipient by a legal, contractual or fiduciary obligation to any of the Sellers, (c) the Trustee/Conservator, on behalf of the Company, specifically states in writing is not Confidential Information, (d) was within Buyer Recipient's possession prior to the Trustee/Conservator, on behalf of the Company, furnishing or making it available to Buyer Recipient or (e) is independently developed by Buyer Recipient without use of or reference to any Confidential Information.

(c) Following the Closing, upon reasonable notice, Buyer and Tropicana Entertainment shall (and shall cause their respective Affiliates (other than Columbia Sussex Corporation) and representatives to) provide the other parties hereto and their respective Affiliates (other than Columbia Sussex Corporation) and representatives with reasonable access and duplicating rights, during normal business hours, to all of Buyer's and the Sellers' personnel, properties, books, Tax Returns, insurance records, Benefit Plans, contracts, commitments and records included in or related to the Business, the Property or any employees of the Business and shall cooperate with the requesting party, as reasonably necessary for such requesting party to pursue any Proceeding relating to claims in connection with this Agreement and the transactions contemplated hereby including, without limitation, any Proceeding related to the Excluded Intellectual Property or any current or former employees of the Business. Notwithstanding the foregoing, no party shall be required to provide any information which it reasonably believes (i) it may not provide to the requesting party or its respective Affiliates or representatives by reason of applicable Law or a confidentiality agreement with a third party, and if, in the case of a confidentiality agreement, the non-requesting party has used its reasonable best efforts to obtain the consent of the counter-party to any such confidentiality agreement to such disclosure or (ii) constitutes information protected by the attorney/client and/or attorney work product privilege. If any material is withheld by the non-requesting party pursuant to the immediately preceding sentence, such non-requesting party shall inform the requesting party that it is withholding requested information and identify the general nature of the material which is being withheld and the grounds on which such material is being withheld.

## **Section 6.5 Regulatory Approvals**

(a) Buyer, the Company, the Company Subsidiary and the Tropicana Parties shall cooperate with each other, subject to the last sentence of **Section 6.5(b)**, and use their respective reasonable best efforts to, (i) as promptly as practicable, take, or cause to be taken, all appropriate action, and do or cause to be done, all things necessary, proper or advisable under applicable Law in order for such party to fulfill and perform its respective obligations in respect of this Agreement and the Ancillary Agreements to which it is a party, including to cause the conditions to their respective obligations set forth in **Article VIII** to be fulfilled and otherwise to consummate and make effective the transactions governed by this Agreement and the Ancillary Agreements and to permit Buyer to own and operate the Property, in each case, after the Closing in substantially the same manner as owned and operated by the Sellers (A) in the case of Gaming Approvals (other than with respect to any requirement of the Gaming Authorities that a conservatorship be in place for the Business after Closing in accordance with the terms of **Section 6.18(a)**), between the Aztar Acquisition Date and the date immediately preceding the Trust Trigger Date and (B) in all other cases, since the Aztar Acquisition Date, (ii) obtain the Gaming Approvals, (iii) obtain from any Governmental Entities any consents, licenses (including any liquor licenses), permits, waivers, approvals, authorizations or orders required (A) to be obtained or made by such parties or any of their respective Affiliates or representatives and (B) to avoid any action or Proceeding by any Governmental Entity, in connection with the authorization, execution and delivery of this Agreement and the Ancillary Agreements to which such party is a party and the consummation of the transactions contemplated hereby and thereby and (iv) make all necessary filings, and thereafter make any other required submissions with respect to this Agreement and the Ancillary Agreements to which such party is a party, as required under (A) any applicable federal or state securities Laws, (B) Gaming Laws, (C) competition Laws, including the Hart-Scott-Rodino Improvements Act of 1976 (the “**HSR Act**”), and (D) any other applicable Law (the Gaming Approvals and the other consents, licenses, permits, waivers, approvals, authorizations, orders, filings and other submissions referred to in clauses (ii) through (iv) shall not include the Bankruptcy Cases and are, collectively, the “**Regulatory Approvals**”), and to comply with the terms and conditions of all such Regulatory Approvals. Buyer shall file, as promptly as reasonably practicable but in no event later than twenty-one (21) days after the date of the entry of the Sale Orders, a petition seeking from the Commission declaratory relief (x) identifying those persons required to establish their qualification pursuant to the Gaming Laws, including N.J.S.A. 5:12-84 and 85, (y) approving the direct and indirect organizational structure of Buyer and (z) approving the governance structure of Buyer set forth in its organizational documents and the organizational documents of its owners who are required by the Commission to establish their qualification pursuant to the Gaming Laws or as otherwise required by the Commission (the “**Commission Ownership Qualification Ruling**”). Thereafter, Buyer, the Company, the Tropicana Parties and their respective representatives and applicable Affiliates shall file, as promptly as reasonably practicable but in no event later than thirty (30) days following the Commission Ownership Qualification Ruling, all required initial applications and documents to be filed by such party in

connection with obtaining the Regulatory Approvals (including a completed application for interim authorization from the Commission allowing Buyer to close the Sale) and shall act diligently and promptly to pursue the Regulatory Approvals (including promptly making any additional filings and giving such reasonable undertakings as may be requested in connection therewith) and shall cooperate in connection with the making of all filings referenced in the preceding sentence, including providing reasonable assistance to another party and copies (through outside counsel and subject to the last sentence of **Section 6.5(b)**) of all such documents (other than business entity and personal history disclosure forms provided to the Gaming Authorities and information generally treated confidentially under the Gaming Laws, including Section 74(d) and Section 74(e) of the Casino Control Act), if requested, to the (x) Trustee/Conservator, in the case of filings made by Buyer, (y) Buyer and the Trustee/Conservator, in the case of filings made by the Tropicana Parties in respect of the Business or the transactions contemplated hereby and (z) Buyer, in the case of filings made by the Company or Company Subsidiary, in each case sufficiently in advance of such filing to allow reasonable opportunity for the receiving party to comment thereon. Buyer and, to the extent requested by the Trustee/Conservator, the Tropicana Parties and their Affiliates, shall use their reasonable best efforts to schedule and attend any hearings or meetings with Governmental Entities to obtain the Regulatory Approvals as promptly as possible. Buyer, the Tropicana Parties (in respect of the Business or the transactions contemplated hereby), the Company or the Company Subsidiary shall keep the other parties reasonably informed on a constant basis of substantive discussions and formal meetings with any Governmental Entity. All filing fees incurred in connection with obtaining Regulatory Approvals and other consents in accordance with this **Section 6.5(a)** shall be paid by the Company.<sup>3</sup>

(b) Subject to applicable Laws relating to the exchange of information (including competition Laws and Gaming Laws, including Section 74(d) and 74(e) of the Casino Control Act) and excluding business entity and personal history disclosure forms provided to the Gaming Authorities, to the extent practicable, each of Buyer, the Company and the Tropicana Parties shall consult each other and the Trustee/Conservator on all submissions made to any Governmental Entity in connection with seeking approval for the transactions contemplated by this Agreement and the Ancillary Agreements. Without limiting the foregoing, subject to the last sentence of this **Section 6.5(b)** and excluding business entity and personal history disclosure forms provided to the Gaming Authorities, Buyer, Tropicana Entertainment and the Company shall notify each other and the Trustee/Conservator promptly of the receipt of comments or requests from Governmental Entities relating to Gaming Approval determinations made or to be made by the Commission or other Gaming Authorities in connection with seeking approval for the transactions contemplated hereby regarding the timing of such approvals and any comments or requests that would reasonably be expected to materially delay, prevent or hinder the consummation of such transactions, and shall cause to be supplied (including through the Trustee/Conservator) to each other and the Trustee/Conservator copies of all correspondence

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<sup>3</sup> The parties understand that an HSR filing will not be required pursuant to the current terms of the agreement.

between the notifying party or any of its representatives and Governmental Entities relating to any of the foregoing. Notwithstanding the foregoing, in any Proceedings before (i) the Commission or other Gaming Authorities, or relating to any Gaming Approval determinations to be made by the Commission or other Gaming Authorities in connection with the transactions contemplated hereby and (ii) non-New Jersey Gaming Authorities not relating primarily to the Business or approval of the transactions contemplated hereby, the Trustee/Conservator (in the case of clause (i)) and Tropicana Entertainment (in the case of clause (ii)) shall have no obligation under this **Section 6.5(b)** or any other provisions of this Agreement to notify or provide any information to the other parties hereto or any of their Affiliates relating to any preparation of filings or other written materials, testimony, oral argument, consultation, advice, notice or otherwise. Notwithstanding anything to the contrary in this Agreement, until the Closing, except as prohibited by applicable Law or required by the Bankruptcy Courts, any consultation, communication or exchange of information between the Company and the Company Subsidiary, on the one hand, and any Tropicana Party or Affiliate thereof (other than the Company and the Company Subsidiary), on the other hand, shall be undertaken exclusively through and at the discretion of the Trustee/Conservator or with his prior written authorization.

(c) Without limiting **Section 6.5(a)** or **Section 6.5(b)** (and subject to each of them), from the date of this Agreement until the Closing, the Company and the Tropicana Parties (except as otherwise required under the Bankruptcy Code or by the Bankruptcy Courts), on the one hand, and Buyer, on the other hand, shall:

(i) each use its reasonable best efforts to avoid the entry of, or to have vacated or terminated, any decree, Order, or judgment challenging this Agreement or the transactions contemplated hereby that would restrain, prevent or delay the Closing, on or before the Outside Date, including defending through litigation on the merits any claim asserted in any court by any Person;

(ii) each use its reasonable best efforts to avoid or eliminate each and every impediment under any antitrust, competition or trade regulation Law that may be asserted by any Governmental Entity with respect to the Closing so as to enable the Closing to occur as soon as reasonably practicable (and in any event no later than the Outside Date), including implementing, contesting, resisting or appealing any litigation under such Laws before any court or quasi-judicial administrative tribunal seeking to restrain or enjoin the Closing; and

(iii) cooperate with each other and each use its reasonable best efforts to, as promptly as practicable, take, or cause to be taken, all appropriate action, and to do or cause to be done, all things required by, or necessary, proper or advisable under applicable Law or otherwise.

(d) From the date of this Agreement until the Closing, the Company, the Tropicana Parties and Buyer shall (subject to **Section 6.5(b)**) promptly notify each other and the Trustee/Conservator in writing of any pending or, to the knowledge of the Company, the Tropicana Parties or Buyer, as appropriate, threatened Proceeding by any Governmental Entity (other than, in the case of the Company, any such Proceeding initiated by or involving the Commission or other Gaming Authority) or any other Person (i) challenging or seeking damages in connection with the Closing or any other transaction governed by this Agreement or the Ancillary Agreements or (ii) seeking to restrain or prohibit the consummation of the Closing.

### **Section 6.6 Publicity**

Subject to the last sentence of **Section 6.5(b)**, the Trustee/Conservator, Tropicana Entertainment, the Administrative Agent and Buyer (or, prior to the Joinder Date, the Administrative Agent acting at the direction of the Required Lenders) shall reasonably cooperate to agree on the form and content of the initial press release regarding the transactions contemplated hereby, thereafter shall consult with each other before issuing, and shall provide each other the opportunity to review and comment upon and use all reasonable efforts to agree upon, any press release with respect to any of the transactions contemplated hereby or by the Ancillary Agreements, in each case through the Closing. Between the date hereof and the Closing, none of the parties or their respective Affiliates shall issue any such press release prior to such consultation and prior to considering in good faith any such comments, except as may be required by applicable Law (including, without limitation, the Securities Act, the Exchange Act, any rules and regulations of the Financial Industry Regulatory Authority and any Gaming Laws), any listing agreement with the New York Stock Exchange or the NASDAQ Stock Market or by the Bankruptcy Courts. Notwithstanding anything to the contrary herein, except as may otherwise be proscribed by applicable Law, between the date hereof and the Closing, the parties or their respective Affiliates may make any public statement in response to specific questions by the press, analysts, investors or those attending industry conferences or financial analyst conference calls, so long as any such statements are not inconsistent with previous press releases, public disclosures or public statements made by such Persons and do not reveal non-public information regarding the Sale, the Business, the Sellers, the Trustee/Conservator, Buyer or any Lender. Except as required by applicable Law, the Bankruptcy Courts or the Indenture (to the extent of SEC reporting obligations of the Tropicana Parties or their Affiliates required under the Indenture), between the date hereof and the Closing, any press release or similar publicly available written communication to be issued, or public filing to be made by the Tropicana Parties or their Affiliates relating to, or containing information with respect to, the Sale (other than filings with the SEC or any other Governmental Entity containing, with respect to the Sale, only previously publicly available information), shall be subject, as to form, content and timing, to the prior approval of the Trustee/Conservator and Buyer (or, prior to the Joinder Date, the Administrative Agent acting at the direction of the Required Lenders).



## **Section 6.7 Other Assurances and Actions**

(a) Subject to the terms and conditions set forth in this Agreement (including the limitations contained in **Section 7.2** and the last two sentences of **Section 6.5(b)**), each of Buyer, Tropicana Entertainment and the Sellers agree to use its reasonable best efforts to take, or cause to be taken, all appropriate action, and to do or cause to be done, all things reasonably necessary, proper or advisable under applicable Laws and regulations to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements, including using its reasonable best efforts to (i) obtain all licenses, permits, consents, approvals, authorizations, qualifications and Orders of Governmental Entities and parties to Contracts with each party hereto as are necessary for consummation of the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party; provided, that any payments required to be made to any to any Governmental Entity or Contract counter party in order to obtain any such license, permit, consent, approval, authorization, qualification or Order (x) shall be approved in advance by each of the Trustee/Conservator and Buyer and (y) unless otherwise explicitly required by this Agreement, shall be borne solely by the Company (any such payments, “**Approval Payments**”), and (ii) perform and fulfill all obligations and conditions precedent applicable to such party pursuant to this Agreement and the Ancillary Agreements.

(b) Subject to applicable Law and **Section 6.17(a)** of this Agreement, to the extent that any of the Acquired Assets shall not have been actually delivered and turned over by the applicable Seller(s) to Buyer on the Closing Date (i) until such time as the Bankruptcy Case of a Seller is closed or dismissed, such Acquired Assets shall be held by such Seller in trust for Buyer and shall be turned over and delivered to Buyer at any time and from time to time upon demand therefor and (ii) Buyer shall nevertheless obtain sole and exclusive title thereto and all right, title and interest therein, and Seller shall have no right, title or interest in and to any such Acquired Assets or property or proceeds arising therefrom. Without limiting the foregoing, in case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement or to vest Buyer with full title to the Acquired Assets or Assumed Liabilities, Buyer, Tropicana Entertainment and the Sellers shall take, and cause their respective Affiliates to take, all action reasonably necessary (including executing and delivering further notices, assumptions, releases and acquisition instruments); provided, however, that if such action is necessary due to events or circumstances particular to Buyer, Buyer shall bear the cost of any such action.

(c) Following the Closing, to the extent permitted by Law, Buyer, Tropicana Entertainment, the Sellers and each of their Affiliates shall afford the other, its counsel, accountants and other representatives, during normal business hours, reasonable access to the employees, books, records and other data (including Tax Returns, insurance records, Benefit Plans, contracts or commitments) relating to the Business in its possession with respect to periods prior to the Closing, and the right to make copies and extracts therefrom, to the extent that such access may be required by the requesting party in connection with (i) the administration

of the Bankruptcy Cases, (ii) compliance with the requirements of applicable Law or any Governmental Entity, (iii) the determination or enforcement of the rights and obligations of any party to this Agreement or any of the Ancillary Agreements or (iv) any actual or threatened Proceeding (including any Proceeding related to the Excluded Intellectual Property or any current or former employees of the Business) involving the requesting party, in which case any such other party hereto shall cooperate with the requesting party as reasonably necessary for such requesting party to pursue or defend against any such Proceeding. In addition, Buyer shall furnish or cause to be furnished to Tropicana Entertainment trial balances of the Business in Microsoft Corporation's Excel format and such other materials as Tropicana Entertainment shall reasonably request to enable Tropicana Entertainment to prepare the Sellers' federal income Tax Returns. Further, Buyer and Tropicana Entertainment agree that, for a period ending on the sixth (6<sup>th</sup>) anniversary of the Closing Date, it will not, and will cause its Affiliates not to, destroy or otherwise dispose of any such books, records and other data unless such party shall first offer in writing to surrender such books, records and other data to the other and such other party shall not agree in writing to take possession thereof during the 30-day period after such offer is made. In furtherance of the foregoing, a requesting party pursuant to this **Section 6.7(c)** shall be provided with reasonable access to the personnel of any other party subject to the obligations of this **Section 6.7(c)** upon reasonable advance notice so long as such requesting party reasonably believes that such access will assist it in carrying out any of the matters specified in **Section 6.7(c)(i)-(iv)**.

(d) Following the Closing, if, in order properly to (i) prepare or verify its Tax Returns or other documents or reports required to be filed with any Governmental Entity, (ii) prepare or verify its financial statements or (iii) fulfill its obligations hereunder, it is necessary that Buyer or Tropicana Entertainment be furnished with additional information, documents or records relating to the Business or condition of any Seller not referred to in paragraph (c) above, and such information, documents or records are in the possession or control of the other, such other party agrees to use its reasonable best efforts to furnish or make available such information, documents or records (or copies thereof) at the recipient's request, cost and expense. Any information obtained by Buyer or Tropicana Entertainment in accordance with this paragraph shall be held in strict confidence by such party.

(e) Notwithstanding anything to the contrary in this Agreement, if at any time prior to or after the Closing, Buyer or the Tropicana Parties discover that there exist any Non-Seller Business Assets which were not identified on **Section 4.18** of the AC Disclosure Letters as of the date of this Agreement, then, (i) the discovering party promptly shall inform the other party in writing of the existence of such Non-Seller Business Assets and (ii) at Buyer's request, the Tropicana Parties shall take such steps as are necessary to cause such Non-Seller Business Assets to be transferred to Buyer. No additional consideration will be paid for such Non-Seller Business Assets. Any amounts or payments required to effectuate such transfer shall be borne by the applicable Tropicana Party(ies), except in the case of any contracts which, had they been included in the Acquired Contracts transferred at the Closing, would have given rise to cure costs

to be borne by the Buyer pursuant to **Section 2.1(e)**, in which case Buyer shall bear such cure costs as are required by the Sale Orders or the Bankruptcy Courts.

### **Section 6.8 Taxes; HSR Filing Fees**

(a) All transfer, documentary, sales, use, stamp, recording, filing, registration and other similar Taxes (including all applicable real estate transfer or gains Taxes and gross income tax estimated payments required by P.L. 2004, C.55) and related fees (including any penalties, interest and additions to such Tax) (collectively, “**Transfer Taxes**”) incurred with respect to the transfer of the Acquired Assets or the Business pursuant to this Agreement shall be borne by the Company, provided that to the extent such Transfer Taxes are set forth on the Closing Certificate, the Company shall pay any such amounts due and payable at Closing, and Buyer shall timely pay any amounts due and payable thereafter, it being agreed that the Company’s obligation in respect of any Transfer Tax set forth on the Closing Certificate shall have been fully discharged upon payment by the Company at the Closing of such Transfer Taxes as are due and payable at the Closing and that, subject to **Section 2.1(d)(iv)**, Buyer shall thereafter bear such Transfer Taxes and related fees.

(b) Except as required by applicable Law, Buyer shall prepare, execute and file all Tax Returns and other documentation on a timely basis as may be required to comply with the provisions of any Laws governing the payment of Transfer Taxes. All filing fees pursuant to pre-merger notifications under the HSR Act shall be borne by the Company.

(c) To the extent not otherwise provided in this Agreement, Buyer shall be responsible for and shall promptly pay when due all Property Taxes levied with respect to the Acquired Assets and the Business.

(d) Buyer shall assume and be responsible for any Liabilities for U.S. withholding Taxes in connection with the transactions contemplated in this Agreement.

(e) Buyer, Sellers and Tropicana Entertainment shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of any Tax Returns and any audit, other administrative proceeding or inquiry or judicial proceeding involving Taxes (a “**Tax Contest**”). Such cooperation shall include the retention and (upon the other party’s request) the provision of records and information which are reasonably relevant to any such Tax Returns or Tax Contest and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Buyer, Sellers and Tropicana Entertainment agree (A) to retain all books and records with respect to Tax matters pertinent to the Acquired Assets or the Business relating to any Taxable

period beginning before the Closing Date until the expiration of the statute of limitations of the respective Taxable periods (and any extensions thereof), and to abide by all record retention agreements entered into with any Taxing authority, and (B) to give the other party reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other party so requests, Buyer, Sellers and Tropicana Entertainment, as the case may be, shall allow the other party to take possession of such books and records at such other party's expense.

(f) Sellers shall prepare or cause to be prepared and file or cause to be filed all Tax Returns with respect to Assumed Tax Liabilities for all periods ending on or prior to the Closing Date that are filed after the Closing Date. All such Tax Returns shall be submitted to Buyer no later than ten (10) Business Days prior to the due date for filing thereof for the Buyer's review and written approval, which shall not be unreasonably withheld.

(g) If, subsequent to the Closing, Sellers receive notice of a Tax Contest with respect to any Assumed Tax Liability, then within five (5) days after receipt of such notice, Sellers shall notify Buyer of such notice. Buyer shall control the conduct and resolution of such Tax Contest.

(h) All refunds for Taxes arising out of or related to the Acquired Assets or the Business received by Sellers shall be for the benefit of Buyer and shall be paid to Buyer within ten (10) days after receipt or crediting of such refunds..

(i) Each Seller shall consent, pursuant to Treasury Regulations section 1.1502-75(b), to filing a consolidated federal income Tax Return with TCR and the other members of TCR's affiliated group (the "**TCR Affiliated Group**") for 2008 and subsequent periods except to the extent furnishing such consent is not permitted pursuant to a court order or closing agreement with the IRS, except as required by a change in Law taking place after the date of this Agreement and except as provided in the last sentence of this **Section 6.8(i)**. The consent shall in no way constitute a representation on the part of the Company, the Company Subsidiary or the Trustee/Conservator that the Company or Company Subsidiary is eligible to file a consolidated return with any member of the TCR Affiliated Group for such periods. The Tropicana Parties shall provide written notice to the Trustee/Conservator by August 1, 2009, as to whether TCR will include the Company and Company Subsidiary in the consolidated federal income Tax Return of the TCR Affiliated Group for 2008. If the Tropicana Parties state in such written notice that TCR will not include the Company and the Company Subsidiary in the consolidated federal income Tax Return of the TCR Affiliated Group for 2008, or if the Tropicana Parties fail to provide written notice pursuant to this **Section 6.8(i)**, no Seller shall be required to consent to such inclusion or provide any IRS Form 1122.

### **Section 6.9 Reservations**

Following the Closing, Buyer shall honor the terms and rates of all pre-Closing reservations (in accordance with their terms) at the Property by customers, including advance reservation cash deposits, for services confirmed by the Company for any time subsequent to the Closing, to the extent that such reservations were made in the ordinary course of business consistent with past practices of the Company. From the date of this Agreement until the Closing, the Company may continue to accept reservations for periods after the Closing in the ordinary course of business in operating the Property, consistent with past practices of the Company. Buyer recognizes that such reservations may include discounts or other benefits, including benefits extended under the Company's player loyalty program or any other frequent player or casino awards programs, group discounts, other discounts or requirements that food, beverage or other benefits be delivered by Buyer to the guest or guests, as the case may be, holding such reservations. Buyer shall honor all banquet facility and service agreements which have been granted to groups, persons or other customers for periods after the Closing Date at the rates and on the terms provided in such agreements, to the extent that such agreements were made in the ordinary course of business consistent with the past practices of the Company. Buyer agrees that none of the Company, the Trustee/Conservator or the Tropicana Parties make any representation or warranty that any party holding a reservation or agreement for facilities or services shall utilize such reservation or honor such agreement. Buyer, by the execution hereof, solely assumes the risk of non-utilization of reservations and non-performance of such agreements from and after the Closing.

### **Section 6.10 Insurance Policies**

Buyer acknowledges that, from and after the Closing Date, it shall be solely responsible for acquiring and placing its casualty insurance, business interruption insurance, liability insurance and other insurance policies with respect to the Business for periods after the Closing. The foregoing acknowledgment, however, shall in no way adversely affect the Buyer's rights to the insurance benefits, rights and proceeds included in the Acquired Assets.

### **Section 6.11 Certain Transactions**

(a) Prior to the Closing, Buyer shall not, and shall cause its Affiliates not to, take, or agree to commit to take, any fraudulent, criminal or other action that (or fail to take, or agree to fail to take, any action, which failure to take) would or would reasonably be expected to delay the receipt of, or to adversely impact the ability of Buyer to obtain, any Governmental Approval necessary for the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements, or necessary to permit Buyer to purchase the Acquired Assets, license the

Seller Licensed Intellectual Property, assume the Assumed Liabilities or operate the Business, in each case, after the Closing in substantially the same manner as owned and operated (i) in the case of Gaming Approvals, between the Aztar Acquisition Date and the date immediately preceding the Trust Trigger Date and (ii) in all other cases, since the Aztar Acquisition Date.

(b) Without limiting the foregoing:

(i) Buyer and its holding companies, intermediary companies, financial sources, directors, officers, key employees, owners and other qualifiers shall not withdraw, rescind, revoke or otherwise terminate or cancel any applications, filings or other submissions made in connection with obtaining any Regulatory Approvals if such withdrawal, rescission, revocation, termination or cancellation would be reasonably expected to delay or prevent Buyer from obtaining any needed Regulatory Approvals (or permit any of the foregoing to occur); and

(ii) if (y) any Governmental Entity has issued an Order, decree or ruling or taken any other action, in each case, denying Buyer any necessary Regulatory Approvals or determining or indicating that such Governmental Entity will not issue to Buyer all necessary Regulatory Approvals, or (z) a court of competent jurisdiction or other Governmental Entity shall have issued an Order, decree or ruling or taken any other action having the effect of permanently restraining, enjoining or otherwise prohibiting the Closing and the transactions contemplated hereby, Buyer shall, and shall cause its holding companies, intermediary companies, financial sources, directors, officers, key employees, owners and other qualifiers to, use their respective reasonable best efforts to have vacated, lifted, reversed or overturned any such order, decree, ruling or action and to have issued such Regulatory Approvals (including exhausting all available remedies, challenges and appeals).

## **Section 6.12 Insurance; Casualty and Condemnation**

(a) If, before the Closing, the Property is damaged by fire or other casualty, and such damage does not exceed the Damage Threshold, the Closing shall proceed as scheduled and the Sellers, Tropicana Entertainment and their respective Affiliates, as the case may be, shall, as of the Closing Date, (i) promptly pay to Buyer all insurance proceeds actually received by them with respect to such damage, destruction or other loss, less any proceeds applied to the physical restoration of the Property and (ii) assign to Buyer (to the extent not prohibited by Law or Contract) all of their rights against third parties (other than against such Person's insurance carriers) with respect to any causes of action, whether or not litigation has commenced as of the Closing Date, in connection with such damage, destruction or other loss; provided, however, that

the proceeds of such insurance shall be subject to (and recovery thereon shall be reduced by the amount of) any applicable deductibles or co-payment provisions or any payment or reimbursement, which proceeds (as so reduced, if applicable), shall constitute full compensation for the damage to the Property, and neither the Trustee/Conservator, the Sellers, Tropicana Entertainment or any of their respective Affiliates shall have any responsibility for restoration or repair of the Property or any resultant loss, directly, by subrogation, or otherwise.

(b) In the event that a condemnation proceeding or payment in lieu of condemnation occurs in relation to any part of the Property prior to the Closing Date, and such proceeding does not result in a Material Adverse Effect, Tropicana Entertainment and the Sellers shall, and shall cause their Affiliates to, assign and turn over to Buyer effective as of the Closing, and Buyer shall be entitled to receive and keep, all awards for the taking by condemnation and Buyer shall be deemed to have accepted the Property subject to the taking without reduction in the Purchase Price.

(c) In the event that a casualty resulting in damage exceeding the Damage Threshold occurs or a condemnation occurs that results in a Material Adverse Effect, in each case, prior to the Closing Date, Buyer shall have the option, by written notice to the Trustee/Conservator and Tropicana Entertainment within thirty (30) days of the date of such casualty (but in no event within fewer than fifteen (15) days prior to the Closing Date unless such casualty has occurred within such period, in which case such notice shall be provided within five (5) days of such casualty), to either (i) proceed with the Closing, whereupon the provisions of this **Section 6.12** shall govern as if the casualty did not result in damage exceeding the Damage Threshold or the condemnation did not result in a Material Adverse Effect, or (ii) terminate this Agreement, whereupon no party shall have any further liability or obligations hereunder, other than in respect of **Section 4.4**, **Section 5.3**, clauses (ii) and (v) of the proviso to **Section 6.4(a)**, the confidentiality provisions contained in **Section 6.4**, **Section 6.6**, the last two sentences of **Section 9.2(a)** and **Article XI**.

### **Section 6.13    Customer Data**

Nothing contained in this Agreement shall prohibit the Tropicana Parties or any of their Affiliates from marketing to any customer in the Atlantic City Customer Database so long as neither Tropicana Entertainment nor any of its post-closing Affiliates operates a gaming facility within one-hundred-and-seventy-five (175) miles of Atlantic City, New Jersey. For the avoidance of doubt, neither the Tropicana Parties nor any of their Affiliates shall have any right, title, or interest in, or right to access or use, the Atlantic City Customer Database following the Closing. The Tropicana Parties agree not to (and not to permit any of their Affiliates to) access or use any information in the Atlantic City Customer Database following the Closing, except as permitted in the first sentence of this **Section 6.13**.

**Section 6.14    No Control**

Except as expressly provided by the terms of this Agreement, prior to the Closing, Buyer shall not directly or indirectly control, supervise, direct or interfere with, or attempt to control, supervise, direct or interfere with, the Business or employees of any Seller. Until the Closing, the operations and affairs of the Business, to the extent related to assets held by (i) the Company or the Company Subsidiary, are the sole responsibility of and under the control of the Trustee/Conservator and (ii) the Non-Conservatorship Sellers, are the sole responsibility of and under the Tropicana Parties' control, each except as otherwise provided in this Agreement, by applicable Law or required by the Bankruptcy Courts.

**Section 6.15    Employee Solicitation**

(a) Beginning on the date of this Agreement and ending on the date that is the first anniversary of the Closing, none of the Tropicana Parties or any of their Affiliates shall, directly or indirectly, solicit, entice, or encourage any person who shall have been an employee of the Business during such time to leave such person's employment with such person's employer; provided, however, that the foregoing prohibitions shall not apply to (i) any persons who are no longer employed by the Business, (ii) general solicitations of employment not specifically directed at employees of the Business and (iii) any person who contacts the Tropicana Parties or their Affiliates on his or her own initiative without any direct or indirect solicitation (other than general solicitations described in the foregoing clause (ii)) by or encouragement from the Tropicana Parties or any of their Affiliates.

(b) Beginning on the date of this Agreement and ending on the date that is the first anniversary of the earlier of the termination of this Agreement and the Closing, none of Buyer or any of its Affiliates shall, directly or indirectly, solicit, entice, or encourage any person who shall be (i) an employee of the Tropicana Parties or their Affiliates (other than Business Employees) or (ii) until the Closing occurs, a Business Employee, in each case provided that the foregoing prohibitions shall not apply to (x) any persons who are no longer so employed at the time of Buyer's or its Affiliates' first contact with them, (y) general solicitations of employment not specifically directed at such employees or (z) any person (other than a person who becomes known to Buyer or its Affiliates in connection with the transactions contemplated hereby) who contacts Buyer or its Affiliates on his or her own initiative without any direct or indirect solicitation (other than general solicitations described in the foregoing clause (y)) by or encouragement from Buyer or any of its Affiliates.



**Section 6.16    Refunds and Remittances**

(a) After the Closing, if Buyer or any of its Affiliates receives any refund or other amount that is an Excluded Asset or is otherwise properly due and owing to a Seller or any of Sellers' Affiliates, in accordance with the terms of this Agreement, Buyer shall promptly remit, or shall cause to be remitted, such amount to the applicable Seller at the address set forth in Section 11.2 or to such Affiliate.

(b) After the Closing, if Tropicana Entertainment, any Seller or any of their Affiliates, receives any refund or other amount that (i) is an Acquired Asset, (ii) is related to claims, litigation, insurance or other matters for which Buyer is responsible hereunder or (iii) is otherwise properly due and owing to Buyer in accordance with the terms of this Agreement, Tropicana Entertainment shall promptly remit, or shall cause to be remitted, such amount to Buyer at the address set forth in **Section 11.2**. Notwithstanding anything to the contrary in this Agreement, the parties agree that (i) all such refunds and other amounts shall be and shall be treated in all respects as Acquired Assets transferred to Buyer at the Closing and (ii) Tropicana Entertainment and its Affiliates shall hold such refunds and amounts (and rights in respect thereof) in trust for the benefit of Buyer, free and clear of all Encumbrances other than Buyer's interest therein.

**Section 6.17    Assignability of Certain Contracts; Adequate Assurance**

(a) Notwithstanding anything to the contrary in this Agreement, to the extent the assignment to Buyer of any Acquired Asset, including any unexpired Contract, agreement, lease, license, Permit, instrument, Gaming Approval or other agreement or arrangement, or any claim (including any warranty claim), right or benefit arising thereunder or resulting therefrom pursuant to this Agreement, is not permitted by Law or is not permitted without the consent of another Person and such restriction cannot be effectively overridden or canceled by the Sale Orders, or other related Order of the Bankruptcy Courts, then this Agreement will not be deemed to constitute an assignment or an undertaking or attempt to assign the same or any right or interest therein if such consent is not given; provided, however, that the parties hereto (other than the Administrative Agent) will use their commercially reasonable efforts, before the Closing, to obtain any such consents; provided, further, that if any such consents are not obtained prior to the Closing Date, the Tropicana Parties and Buyer will continue to use their commercially reasonable efforts to obtain any such consents and will reasonably cooperate with each other in any lawful and feasible arrangement designed to provide Buyer (such arrangement to be at the sole cost and expense of Buyer and in effect for so long as the parties hereto agree) with the benefits and obligations of any such Acquired Asset.

(b) With respect to each Acquired Contract assumable and assignable under Bankruptcy Code Section 365 or Section 1113, to the extent requested by the Bankruptcy Courts, the Sellers or the counterparty to such Acquired Contract, Buyer will promptly provide the Bankruptcy Courts, the Sellers or such counterparty to the Acquired Contract, as the case may be, adequate assurance of the future performance of such Acquired Contract by Buyer.

### **Section 6.18    Conservatorship Matters**

(a) If required by the Commission for the Tropicana Atlantic City to continue to be deemed a licensed casino operation and to operate as such between the time that (i) the Commission grants interim authorization allowing Buyer to close the Sale and (ii) the Commission issues a casino license to Buyer and such other approvals necessary for Buyer to operate the Business, a conservatorship shall continue. In connection with the continuation of such conservatorship, the Conservator will at Closing resign his position upon approval by the Commission of a replacement conservator selected by Buyer and approved by the Commission. In connection with the appointment of the replacement conservator, Buyer shall have the right to seek from the Commission (y) written instructions which enumerate the specific powers and duties conferred by the Commission on the replacement conservator with respect to the conservatorship which are acceptable to Buyer and (z) the termination of the Conservator Order, except for the obligation to indemnify and hold harmless the Trustee/Conservator and his advisors, as set forth therein. The replacement conservator, and any other replacement conservator selected by Buyer and appointed by the Commission shall serve as the conservator only until such time as the Commission issues a casino license to Buyer and/or the Commission directs the discontinuation of the conservatorship.

(b) At or prior to such time as the Buyer seeks interim authorization from the Commission allowing Buyer to close the Sale, Buyer shall also seek a declaratory ruling from the Commission that (i) for purposes of N.J.S.A. 5:12-130.2(c) and consistent with N.J.S.A. 5:12-95.14(e), the Trustee/Conservator shall be authorized to sell, transfer, assign, convey and deliver the Acquired Assets, and Buyer shall be authorized to acquire the Acquired Assets and assume the Assumed Liabilities, upon the grant by the Commission to Buyer of interim authorization to acquire the Acquired Assets and assume the Assumed Liabilities without interruption of casino operations, (ii) if Buyer is granted interim authorization by the Commission to acquire the Acquired Assets and assume the Assumed Liabilities without interruption of casino operations, solely for purposes of N.J.S.A. 5:12-130.2(c), Buyer shall be considered to be eligible to apply for and qualify as a casino licensee, (iii) the Trustee/Conservator or any replacement conservator shall not be obligated to endeavor to sell, assign, convey or otherwise dispose of the Acquired Assets and (iv) following the grant by the Commission to Buyer of interim authorization to acquire the Acquired Assets and assume the Assumed Liabilities without interruption of casino operations, notwithstanding N.J.S.A. 5:12-130.8(a), the Commission will not direct the

discontinuation of the conservatorship upon the acquisition by Buyer of the Acquired Assets and Buyer's assumption of the Assumed Liabilities.

### **Section 6.19    Formation and Joinder of Buyer**

As promptly as practicable after the end of the Auction Period, the Administrative Agent, upon the direction of the Required Lenders and on behalf of the Secured Parties, will designate Buyer under this Agreement to directly receive the Acquired Assets and the Business from the Sellers, and Buyer will as promptly as practicable thereafter execute and deliver a joinder to this Agreement in the form attached as **Exhibit I** (such date of designation and joinder, the "**Joinder Date**"), at which time Buyer will be deemed to have made all of the representations and warranties of "Buyer" set forth in **Article V** and become subject to and have assumed all of the rights, agreements and obligations of "Buyer" set forth in this Agreement and the Ancillary Agreements. For the avoidance of doubt, (i) Buyer shall not make, be bound by or have any liability for any of the agreements, covenants and obligations of "Buyer" set forth in this Agreement and the Ancillary Agreements prior to the Joinder Date and (ii) the entity designated as Buyer shall be an entity able to make the representations of Buyer set forth in **Article V** without scheduled exceptions other than those contemplated by **Section 5.2(c)** and those, the substance of which would not, individually or in the aggregate, reasonably be expected to materially delay or impair the ability of Buyer to consummate the Closing.

## **ARTICLE VII**

### **BANKRUPTCY COURT MATTERS**

#### **Section 7.1    Bankruptcy Court Approvals**

(a)        Bankruptcy Petition. No later than three (3) Business Days after the date of filing of the Petition (the "**Bidding Procedures Filing Deadline**"), the Company and the Company Subsidiary (subject to the direction of the Trustee/Conservator) shall file a motion or motions (the "**Bidding Procedures Motion**" and the "**Sale Motion**") with the NJ Bankruptcy Court seeking entry of (i) an order of the NJ Bankruptcy Court, substantially in the form attached hereto as **Exhibit J** (the "**Bidding Procedures Order**") approving this Agreement as a "stalking horse" agreement regarding the Sale, establishing notice and service requirements to creditors and parties in interest with respect to the Sale, and approving the bidding procedures substantially in the form attached as **Exhibit K** hereto (the "**Bidding Procedures**") and (ii) an order of the NJ Bankruptcy Court, in form and substance reasonably satisfactory to the Company, the Company Subsidiary and the Administrative Agent (the "**NJ Sale Order**" and, together with the Delaware Sale Order, the "**Sale Orders**") approving the sale of the Acquired

Assets to Buyer free and clear of all Encumbrances pursuant to the terms of this Agreement and approving in all material respects all of the other terms and provisions of and transactions contemplated by this Agreement. The Company and the Company Subsidiary (each, subject to the direction of the Trustee/Conservator) shall use their reasonable best efforts to obtain a hearing for entry of the Bidding Procedures Order within twenty (20) days after the date of filing of the Petition (the “**Bidding Procedures Hearing Deadline**”) and a hearing for entry of the NJ Sale Order within sixty (60) days after the date of filing of the Petition (the “**Sale Order Hearing Deadline**”).

(b) The Bidding Procedures Order. The Bidding Procedures Order shall be in a form reasonably satisfactory to the parties hereto, and shall, among other matters:

(i) approve the Bidding Procedures; and

(ii) schedule a hearing to consider entry of the NJ Sale Order and provide that notice of such hearing be given to the Company’s and the Company Subsidiary’s creditors, interest holders of record and potential other purchasers identified by the Company and Company Subsidiary and otherwise in accordance with Bankruptcy Rule 2002.

(c) The NJ Sale Order. The NJ Sale Order shall be in a form reasonably satisfactory to the parties hereto, and shall, among other matters:

(i) approve this Agreement and the transactions contemplated hereby in all material respects;

(ii) find that, on the Closing Date, and immediately prior to (but subject to the occurrence of) the Closing, pursuant to Section 543(b) of the Bankruptcy Code, all right, title and interest of the Trustee/Conservator in the Acquired Assets of the Company shall be transferred to the Company;

(iii) find that, as of the Closing Date, the transactions contemplated by this Agreement effect a legal, valid, enforceable and effective sale and transfer of the Acquired Assets of the Company and Company Subsidiary required to be sold on the Closing Date to Buyer and shall vest Buyer with title to such Acquired Assets free and clear of all Encumbrances pursuant to Sections 363(b), (f) and (k) of the Bankruptcy Code;

(iv) find that the consideration provided to the Company and Company Subsidiary constitutes reasonably equivalent value and fair consideration for the Acquired Assets of the Company and Company Subsidiary;

(v) find that Buyer is a good-faith purchaser of the Acquired Assets of the Company and Company Subsidiary pursuant to Section 363(m) of the Bankruptcy Code;

(vi) approve, in all material respects, any other agreement to the extent provided by this Agreement;

(vii) find that the Company and Company Subsidiary gave due and proper notice of the Sale to each party entitled thereto;

(viii) enjoin and forever bar the non-debtor party or parties to each Acquired Contract of the Company and Company Subsidiary from asserting against Buyer or any of the Acquired Assets any objection to the assumption and assignment of such non-debtor party's Acquired Contract;

(ix) authorize the assumption and assignment by the Company and Company Subsidiary of Acquired Contracts of the Company and Company Subsidiary; and

(x) specify that the transfer by the Sellers of the Acquired Assets is in exchange for \$200,000,000 principal amount of the obligations secured by the Original Collateral Agreement (no portion of which shall constitute interest or the right to receive interest) and accordingly that no withholding of US federal income tax pursuant to sections 1441 or 1442 of the Code is required in connection with such transfer.

(d) The Delaware Sale Order. As soon as practicable after the filing of the Petition, the Non-Conservatorship Sellers shall file a motion or motions with the Delaware Bankruptcy Court seeking entry of an order of the Delaware Bankruptcy Court, in form and substance reasonably satisfactory to the parties hereto (the "**Delaware Sale Order**"), which shall, among other matters:

(i) approve this Agreement and the transactions contemplated hereby in all material respects, to the extent such approval is required by the Delaware Bankruptcy Court;

(ii) find that, as of the Closing Date, the transactions contemplated by this Agreement effect a legal, valid, enforceable and effective sale and transfer of the Acquired Assets of the Non-Conservatorship Sellers required to be sold on the Closing Date to Buyer and shall vest Buyer with title to such Acquired Assets free and clear of all Encumbrances pursuant to Sections 363(b), (f) and (k) of the Bankruptcy Code;

(iii) find that the consideration provided to the Non-Conservatorship Sellers constitutes reasonably equivalent value and fair consideration for the Acquired Assets of the Non-Conservatorship Sellers;

(iv) find that Buyer is a good-faith purchaser of the Acquired Assets of the Non-Conservatorship Sellers pursuant to Section 363(m) of the Bankruptcy Code;

(v) enjoin and forever bar the non-debtor party or parties to each Acquired Contract of the Non-Conservatorship Sellers from asserting against Buyer or any of the Acquired Assets any objection to the assumption and assignment of such non-debtor party's Acquired Contract;

(vi) authorize the assumption and assignment by the Non-Conservatorship Sellers of Acquired Contracts of the Non-Conservatorship Sellers; and

(vii) specify that the transfer by the Sellers of the Acquired Assets is in exchange for \$200,000,000 principal amount of the obligations secured by the Original Collateral Agreement (no portion of which shall constitute interest or the right to receive interest) and accordingly that no withholding of US federal income tax pursuant to sections 1441 or 1442 of the Code is required in connection with such transfer.

The Non-Conservatorship Sellers shall use their reasonable best efforts to obtain a hearing for entry of the Delaware Sale Order within forty-five (45) days after the date of filing of the Petition.

(e) Notices to Parties to Acquired Contracts. If they are a counterparty to such contracts and leases, the Sellers shall provide timely and proper written notice of the motions seeking entry of the Sale Orders to all parties to Acquired Contracts to be assumed by such Sellers and assigned to Buyer pursuant to this Agreement and to take all other actions reasonably necessary to cause such executory contracts and unexpired leases to be assumed by such Sellers and assigned to Buyer pursuant to Sections 365 and 1113 of the Bankruptcy Code.

## **Section 7.2 Auction Process**

(a) The parties hereto acknowledge and agree that during the period commencing on the date hereof and ending on the date that any auction contemplated by the Bidding Procedures Orders is declared closed by the Seller (the “**Auction Period**”), the Company, the Trustee/Conservator, Tropicana Entertainment and their respective officers, directors, employees, attorneys, investment bankers, accountants and other agents and representatives shall be permitted, only in accordance with the Bidding Procedures, to (i) market and solicit offers for the Acquired Assets and may issue press releases, place advertisements or make other releases or disclosures in connection therewith, (ii) solicit inquiries, proposals, offers or bids from, and negotiate with, any third party other than Buyer relating to the direct or indirect purchase, in one or more transactions, of all or substantially all of the Acquired Assets or the equity interests of the Sellers (each, an “**Alternative Transaction**” and together, the “**Alternative Transactions**”), and (iii) take any other affirmative action (including entering into any agreement or letter-of-intent with respect thereto) to cause, promote or assist with any such transaction with a third party; provided, however, that the Sellers, the Trustee/Conservator, Tropicana Entertainment and their Affiliates may enter into, and seek Bankruptcy Court approval of, a definitive agreement with respect to an Alternative Transaction only if such Alternative Transaction is a Superior Transaction. Without limiting the foregoing, during the Auction Period, the Company, the Trustee/Conservator, and their officers, directors, employees, attorneys, investment bankers, accountants and other agents and representatives shall be permitted to supply information relating to the Sellers and the Acquired Assets to prospective purchasers. Except as set forth in **Section 9.2(b)**, neither the Sellers or the Trustee/Conservator nor any of their Affiliates shall have any liability to Buyer, either under or relating to this Agreement or any Applicable Law, by virtue of entering into or seeking Bankruptcy Court approval of such definitive agreement for an Alternative Transaction pursuant to this **Section 7.2** or for failure to comply with the obligations in **Section 7.1**. The Sellers, Tropicana Entertainment and Buyer agree to comply in all material respects with the terms of the Bidding Procedures Orders and agree that to the extent there is a conflict between this Agreement and the Bidding Procedures Orders, the Bidding Procedures Orders shall govern in all respects.

(b) If the Auction is conducted, and Buyer is not the prevailing party at the conclusion of such Auction (the “**Prevailing Bidder**”) but Buyer is the second highest bidder and notwithstanding the termination of this Agreement pursuant to **Section 9.1(i)**, Buyer shall be

required to serve as a back-up bidder (the “**Back-up Bidder**”) and keep such bid open and irrevocable until the closing of the sale transaction with the Prevailing Bidder. Following the sale hearing, if the Prevailing Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Prevailing Bidder, the Back-up Bidder will be deemed to have the new prevailing bid, and the Sellers and the Trustee/Conservator will be authorized and required, without further order of the Court, to consummate the Sale with the Back-up Bidder.

## **ARTICLE VIII**

### **CONDITIONS TO CLOSING**

#### **Section 8.1 Conditions to Certain Parties’ Obligations to Effect the Closing**

The respective obligations of each party to this Agreement to effect the Closing are subject to the satisfaction or waiver of each of the following conditions on or prior to the Closing Date:

(a) No Injunctions. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any Order, executive order, stay, decree, judgment or injunction or statute, rule, regulation which is in effect (whether temporary, preliminary or permanent) and which prevents or prohibits the consummation of any of the transactions contemplated by this Agreement or the Ancillary Agreements or that makes it illegal for any party hereto to perform its obligations hereunder or thereunder.

(b) Regulatory and Other Consents. (a) Any waiting period under the HSR Act applicable to the transactions contemplated by this Agreement shall have expired, or early termination shall have been granted with respect to the same, and (b) Buyer and the Company shall have obtained all material Regulatory Approvals required to (i) be obtained in connection with the consummation of the transactions contemplated by this Agreement and (ii) operate the Business in substantially the manner in which it was operated immediately prior to the Trust Trigger Date including, in each case, all Gaming Approvals set forth on **Exhibit A**.

(c) Bankruptcy Court Approval. The Bankruptcy Courts shall have entered the Sale Orders (which shall include authorization and approval of the credit bid for the Acquired Assets) in the Bankruptcy Cases and such Sale Orders shall not have been reversed, stayed or modified in any material respect prior to the Closing Date.



**Section 8.2 Additional Conditions to Obligations of Buyer**

The obligation of Buyer to effect the Closing is subject to the satisfaction of each of the following conditions on or prior to the Closing Date, any of which may be waived in whole or in part in writing exclusively by Buyer:

(a) Representations and Warranties. The representations and warranties of each of Tropicana Entertainment and the Company contained in this Agreement, disregarding all qualifications contained therein relating to materiality or Material Adverse Effect, shall be true and correct at and as of the Closing as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case such representations shall be true and correct as of such earlier date), except where the failure of such representations and warranties to be true and correct has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Buyer shall have received a certificate signed on behalf of each of Tropicana Entertainment and the Company by a duly authorized officer of each of them to such effect, in each case solely with respect to the representations and warranties contained in this Agreement which each such entity made.

(b) Performance of Obligations of the Tropicana Parties and the Company. The Tropicana Parties, the Company and the Company Subsidiary shall have performed in all material respects all covenants, agreements and obligations required to be performed by each of them under this Agreement at or prior to the Closing. Buyer shall have received certificates to such effect as follows: (i) one certificate on behalf of the Tropicana Parties, signed by a duly authorized officer of each such party and (ii) one certificate on behalf of the Company and the Company Subsidiary, signed by a duly authorized officer of each such party, in each case with respect to the parties in (i) and (ii), solely with respect to the covenants, agreements and obligations of such party.

(c) Ancillary Agreements. Each Ancillary Agreement, substantially in the form attached as an Exhibit to this Agreement, shall have been executed and delivered by the parties thereto (other than Buyer).

(d) Deeds. Buyer shall have received duly executed Deeds from the applicable Seller, together with any transfer declarations or filings required by Law.

(e) Available Post-Closing Cash. The aggregate amount of Available Post-Closing Cash shall not be less than the sum of Cage Cash and Required Reserve Cash.

(f) Title Insurance. One or more title companies reasonably satisfactory to Buyer (it being agreed that First American Title Insurance Company of New York is a reasonably satisfactory title company) shall be prepared and irrevocably committed to issue to Buyer (with an effective date not earlier than the Closing Date), as to the Owned Property, an American Land Title Association extended coverage owner's policy of title insurance in favor of Buyer for the Owned Property (the "**Title Policy**") which insures fee title to the Owned Property in an amount, as Buyer shall elect in its sole and absolute discretion, up to \$665 million or such lesser amount that does not exceed the amount permitted by applicable title insurance regulations, provided that any costs of such policy shall be paid in accordance with **Section 3.2(a)**, (i) showing fee title to the Owned Property vested in Buyer or its nominee, (ii) including those endorsements reasonably requested by Buyer (provided that such endorsements are available in the State of New Jersey), and (iii) containing no exceptions other than the applicable Permitted Encumbrances and any matter that would be disclosed by a current, accurate and correct survey of the Owned Property. As used in this **Section 8.2(f)** above, "extended coverage" shall mean the deletion of general exceptions (as opposed to any specific exceptions that are otherwise Permitted Encumbrances) for unrecorded easements, mechanics liens, unrecorded liens for taxes and assessments (provided, that such Title Policy may except "taxes and assessments not yet a lien due and payable"), rights of parties in possession and, to the extent available if an updated survey is obtained or the issuing title company otherwise agrees, survey matters. Notwithstanding anything to the contrary set forth in this **Section 8.2(f)** above, Buyer shall have the right to obtain an as-built survey (or an update of an existing survey) of the Owned Property as well as a zoning endorsement to such Title Policy, provided that the receipt of such survey (or any requested modifications to the Title Policy based thereon) or such zoning endorsement, shall not be a condition to Closing, Buyer shall not have the right to extend the Closing Date in order to obtain such survey or zoning endorsement, and the costs of such survey are paid by Buyer.

### **Section 8.3 Additional Conditions to Obligations of the Trustee/Conservator and the Company**

The obligation of the Company and the Trustee/Conservator to effect the Closing is subject to the satisfaction of each of the following conditions on or prior to the Closing Date, any of which may be waived in whole or in part in writing exclusively by the Trustee/Conservator:

(a) Representations and Warranties. The representations and warranties of Buyer contained in this Agreement shall be true and correct at and as of the Closing as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case such representations shall be true and correct as of such earlier date), and the Trustee/Conservator shall have received a certificate to such effect signed on behalf of Buyer by a duly authorized officer of Buyer.

(b) Performance of Obligations. Buyer shall have performed in all material respects all covenants, agreements and obligations required to be performed by them under this Agreement at or prior to the Closing and the Trustee/Conservator and the Sellers shall have received a certificate to such effect signed on behalf of Buyer by a duly authorized officer of Buyer.

(c) Ancillary Agreements. Each Ancillary Agreement, substantially in the form attached as an Exhibit to this Agreement, shall have been executed and delivered by the parties thereto (other than the Company or the Company Subsidiary, as applicable).

#### **Section 8.4 Additional Conditions to Obligations of the Tropicana Parties**

The obligation of the Tropicana Parties to effect the Closing is subject to the satisfaction of the following condition on or prior to the Closing Date, which may be waived in whole or in part in writing exclusively by the Tropicana Parties: Subject to the exceptions set forth in **Section 6.8(i)**, each of the Company and the Company Subsidiary shall have delivered to Tropicana Entertainment a properly executed IRS Form 1122 giving its consent, pursuant to Treasury Regulations section 1.1502-75(b), to filing a consolidated federal income Tax Return with TCR and the other members of TCR's affiliated group for 2008 and subsequent periods.

#### **Section 8.5 Waiver of Conditions**

Notwithstanding anything to the contrary set forth in this Agreement, Buyer shall not waive any condition to Closing that would be material and adverse to the interests of the Secured Parties under the Original Collateral Agreement without the consent of the Administrative Agent, acting on behalf of the Secured Parties and at the direction of the Required Lenders.

#### **Section 8.6 Frustration of Closing Conditions**

None of the parties hereto may rely on the failure of any condition set forth in this **Article VIII** to be satisfied if such failure was caused by such party's failure to act in good faith or to use its reasonable best efforts to cause the Closing to occur.

## ARTICLE IX

### TERMINATION AND AMENDMENT

#### **Section 9.1 Termination**

This Agreement may be terminated at any time prior to the Closing (with respect to **Section 9.1(b)** through **(l)**), upon written notice of the terminating party to the other parties, which notice shall specify in reasonable detail the grounds for termination and the section hereof pursuant to which the Agreement is being terminated):

(a) by mutual written agreement of the Sellers, the Trustee/Conservator and Buyer;

(b) by either Buyer or the Trustee/Conservator, if the transactions contemplated hereby shall not have been consummated on or prior to the Outside Date; provided, however, that in the event that each of the conditions set forth in **Section 8.1** has been satisfied by the Outside Date and the condition set forth in **Section 8.2(e)** has not been satisfied by the Outside Date, the Trustee/Conservator may by written notice to Buyer and Tropicana Entertainment extend the Outside Date on one occasion by up to an additional six months; provided, further, that the right to terminate this Agreement under this **Section 9.1(b)** shall not be available to any party whose failure to fulfill any obligation under this Agreement was the direct or indirect cause of, or otherwise resulted in, the failure of the Closing to occur on or before the Outside Date; provided, further, that Buyer's right to terminate this Agreement under this **Section 9.1(b)** shall not be available if the failure of the Closing to occur on or before the Outside Date is the direct or indirect result of the Administrative Agent's failure to fulfill any of its obligations under this Agreement;

(c) by either Buyer, the Trustee/Conservator or the Tropicana Parties, if there shall be any applicable Law that makes the consummation of the Sale illegal or otherwise prohibited (and such applicable Law is not overturned or otherwise made inapplicable to the Sale within a period of one hundred (100) days after enactment of such applicable Law) or if a court of competent jurisdiction or other Governmental Entity shall have issued a nonappealable final Order, decree or ruling or taken any other nonappealable final action, in each case, other than any Law relating to the action of a Gaming Authority in respect of any Gaming Approval, and having the effect of permanently restraining, enjoining or otherwise prohibiting the Closing and the transactions contemplated hereby; provided, however, that the right to terminate this Agreement under this **Section 9.1(c)** shall not be available to any party whose failure to fulfill

any obligation under this Agreement has been the direct or indirect cause of, or contributed to, such action;

(d) by Buyer, if the Company or a Tropicana Party has breached any representation, warranty, covenant or agreement on the part of the Company or a Tropicana Party, respectively, set forth in this Agreement which (i) would result in a failure of a condition set forth in **Section 8.2(a)** or **(b)** to be satisfied and (ii) is not cured in all material respects within thirty (30) days after written notice thereof is provided by Buyer to the Trustee/Conservator and the Sellers; provided, however, that if such breach cannot be so cured within such thirty-day period but can be cured prior to the Outside Date, and the breaching party is diligently proceeding to cure such breach, this Agreement may not be terminated pursuant to this **Section 9.1(d)**; provided, further, that Buyer's right to terminate this Agreement under this **Section 9.1(d)** shall not be available if, at the time of such intended termination, Buyer is in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement;

(e) by the Trustee/Conservator, if Buyer has breached any representation, warranty, covenant or agreement on the part of such party set forth in this Agreement which (i) would result in a failure of a condition set forth in **Section 8.3(a)** or **(b)** to be satisfied and (ii) is not cured in all material respects within thirty (30) days after written notice thereof to Buyer and the Tropicana Parties; provided, however, that if such breach cannot be so cured within such thirty-day period but can be so cured prior to the Outside Date, and Buyer is diligently proceeding to cure such breach, this Agreement may not be terminated pursuant to this **Section 9.1(e)**; provided, further, that the Trustee/Conservator's right to terminate this Agreement under this **Section 9.1(e)** shall not be available if, at the time of such intended termination, the Trustee/Conservator or any Seller is in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement;

(f) by Buyer, if (i) the Company does not file with the Bankruptcy Courts on or before the Bidding Procedures Filing Deadline the Bidding Procedures Motion; (ii) the Bidding Procedures Orders shall not have been entered on or before the tenth (10<sup>th</sup>) day after the Bidding Procedures Hearing Deadline, provided, however, that Buyer shall not be entitled to exercise its rights under this clause if the Bidding Procedures Orders have been entered by the Bankruptcy Courts prior to Buyer exercising such rights; or (iii) following entry of the Bidding Procedures Orders, the Bidding Procedures Orders are revoked, vacated, modified or stayed by an Order of any Governmental Authority in any manner that is adverse to Buyer in any material respect (a "**Modifying Order**") and such Modifying Order is not reversed, revoked, vacated, stayed or further modified within thirty (30) days thereafter such that the Bidding Procedures Orders are in full force and effect; provided, however, that in the case of each of (i), (ii) and (iii), if Buyer does not exercise its right to terminate this Agreement pursuant to this **Section 9.1(f)** within fifteen

(15) days after the occurrence of (i), (ii) or (iii), then Buyer shall be deemed to have irrevocably waived its right to terminate this Agreement pursuant to this **Section 9.1(f)**;

(g) by Buyer if (i) the Sale Orders have not been entered by the Bankruptcy Courts on or before the tenth (10<sup>th</sup>) day after the Sale Order Hearing Deadline, provided, however, that Buyer shall not be entitled to exercise its rights under this clause if the Sale Orders have been entered by the Bankruptcy Courts prior to Buyer exercising such rights; or (ii) following entry of the Sale Orders, the Sale Orders are materially and adversely modified by a Modifying Order and such Modifying Order is not reversed, revoked, vacated, stayed or further modified within thirty (30) days thereafter such that the Sale Orders are in full force and effect; provided, however, that with respect to both (i) and (ii), if Buyer does not exercise its right to terminate this Agreement pursuant to this **Section 9.1(g)** within fifteen (15) days after the occurrence of (i) or (ii), then Buyer shall be deemed to have irrevocably waived its right to terminate this Agreement pursuant to this **Section 9.1(g)**;

(h) by Buyer, if the Chapter 11 case of any Seller is converted to a case under Chapter 7 of the Bankruptcy Code;

(i) subject to **Section 7.2(b)**, by either Buyer or the Trustee/Conservator, if one or more of the Sellers has executed and delivered definitive documentation with respect to one or more Alternative Transactions and the Bankruptcy Courts shall enter, after the end of the Auction Period, an Order approving such Alternative Transaction(s);

(j) by the Trustee/Conservator, if (i) any Governmental Entity has issued an order, decree or ruling or taken any other action, in each case, (y) denying Buyer any Gaming Approval required as a condition to the consummation of the transactions contemplated by this Agreement or (z) providing for or requiring relief inconsistent with the terms of this agreement, or (ii) Buyer fails to pursue, or determines to withdraw, terminate, abandon, or otherwise render inoperative, any pending application with respect to any Gaming Approval required as a condition to the consummation of the transactions contemplated by this Agreement;

(k) by the Trustee/Conservator, if (i) the conditions set forth in **Sections 8.1** and **8.2** have been satisfied (other than those conditions that by their terms are to be satisfied at the Closing, and on the date of such termination no state of facts or circumstances exists that would cause such conditions not to be able to be satisfied on the Closing Date if the Closing were to occur on such date) and (ii) Buyer fails to promptly consummate the transactions contemplated hereby in accordance with the terms and conditions hereof; and

(l) by the Trustee/Conservator, if the Written Direction has been modified or amended in a manner reasonably likely, in the reasonable judgment of the Trustee/Conservator, to prevent or materially delay the consummation of the Sale, or if the Written Direction has been withdrawn or terminated.

## **Section 9.2 Effect of Termination**

(a) Remedies. In the event of termination of this Agreement as provided in, and in accordance with, **Section 9.1**, this Agreement shall become wholly void and of no further force and effect without liability to Buyer, the Sellers, the Trustee/Conservator, the Administrative Agent or any of their respective Subsidiaries, Affiliates, officers, directors, managers, employees, agents, advisors or other representatives, and each shall be fully released and discharged from any other liability or obligation under or resulting from this Agreement and each party shall have no other remedy or cause of action under or relating to this Agreement or any applicable Law including, without limitation, for reimbursement of expenses, except that the rights and obligations of the parties under **Section 4.14**, **Section 5.3**, clauses (ii) and (v) of the proviso to **Section 6.4(a)**, the confidentiality provisions contained in **Section 6.4**, **Section 6.6**, this **Section 9.2** and **Article XI**) shall remain in full force and effect. In the event that this Agreement is terminated for any reason, Buyer shall promptly redeliver all Confidential Information. Notwithstanding any other provision of this **Section 9.2(a)** or this Agreement, to the maximum extent permissible by Law, neither the Trustee/Conservator nor the Administrative Agent shall have any liability under this Agreement or any other Ancillary Agreement, whether or not this Agreement is terminated or the Closing occurs.

(b) Fees and Expenses. Except as otherwise expressly provided in this Agreement, in the Trust Agreement or otherwise by order of the Commission, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses, whether or not the Closing occurs, except (i) that if the Agreement is terminated, all fees and expenses incurred by the Trustee/Conservator and the professionals advising him (including the Broker, pursuant to the Engagement Letter) shall be paid by the Company and (ii) whether or not this Agreement is terminated or the Closing occurs, all fees and expenses incurred by the Administrative Agent and its advisors in connection with the transactions contemplated hereby shall be paid by the Company or the Tropicana Parties, as applicable, in accordance with any Order entered by the NJ Bankruptcy Court or the Delaware Bankruptcy Court and, to the extent that any such fees or expenses are not paid prior to the Closing, Buyer will pay such fees and expenses in accordance with **Section 3.2(a)(iv)**.

**Section 9.3 Mutually Exclusive Remedies**

The termination rights under **Section 9.1** may not be exercised or invoked in the event this Agreement is terminated in accordance with the provisions of **Section 6.12(c)**.

**ARTICLE X**

**SURVIVAL; AS IS, WHERE IS**

**Section 10.1 No Survival of Representations, Warranties and Agreements**

Except as expressly set forth in this Agreement, none of the (i) representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement or (ii) covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement that by their terms contemplate performance prior to or on the Closing Date shall survive the Closing, and none of the parties nor their respective officers, directors or stockholders shall have any liability with respect thereto from and after the Closing.

**Section 10.2 As Is, Where Is**

Buyer or its representatives have fully examined and inspected the Property prior to the execution of this Agreement, and subject to the provisions of this **Section 10.2** and **Article IV**, Buyer agrees to accept the Property AS IS, WHERE IS, WITH ALL FAULTS as of the Closing. Buyer agrees that, except as provided in **Article IV**, Buyer is not relying upon any representations, statements, or warranties (oral or written, implied or express) of any officer, employee, agent or representative of the Tropicana Parties, the Company, the Company Subsidiary or the Trustee/Conservator, or any salesperson or broker involved in this transaction as to the Property or the Business, including: (a) any representation, statements or warranties as to the physical or environmental condition of the Property or the Business; (b) the fitness and/or suitability of the Property for use as a gaming facility or for any other particular purpose; (c) the financial performance of the Property or the Business; (d) the compliance of the Property or the Business with applicable building, zoning, subdivision, environmental, or land use Laws, codes, ordinances, rules or regulations; (e) the state of repair of the Property; (f) the value of the Property or the Business; (g) the manner or quality of construction of the Property; (h) the income derived or to be derived from the or the Business; or (i) the fact that the Property may be located on earthquake faults or in hazardous seismic zones, flood zones or hurricane zones. Buyer also acknowledges that the Purchase Price reflects and takes into account that the Property and the Business are being sold “AS-IS.” Buyer, for itself and its successors and assigns, waives any right to assert any claim against the Company, the Company Subsidiary, the



Trustee/Conservator, the Tropicana Parties or any of their respective Affiliates, at Law or in equity, relating to any such matter, whether latent or patent, disclosed or undisclosed, known or unknown, in contract or tort, now existing or hereafter arising.

## ARTICLE XI

### MISCELLANEOUS

#### **Section 11.1    Governing Law; Consent to Jurisdiction; Waiver of Trial by Jury**

(a) This Agreement and the transactions contemplated hereby, and all disputes between or among, as the case may be, the parties under or related to this Agreement or the facts and circumstances leading to its execution, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the applicable provisions of the Bankruptcy Code and the Laws of the State of New Jersey applicable to contracts made and to be performed in the State of New Jersey, without giving effect to such jurisdiction's principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction (unless the application of such principles or rules of conflict of laws is required by statute).

(b) Without limiting any party's right to appeal any order of the Bankruptcy Courts, (i) the Bankruptcy Courts shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes arising out of or relating to this Agreement, the Ancillary Agreements or the transactions contemplated hereby and thereby or for recognition or enforcement of any judgment relating thereto and (ii) any and all actions or proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Courts, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Courts and shall receive notices at such locations as indicated in **Section 11.2**; provided, however, that if the Bankruptcy Cases have closed, each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New Jersey State court and the federal courts of the United States of America located in the State of New Jersey, and any appellate court from any thereof, in any such claim, dispute, action or proceeding. Each of the parties hereby irrevocably and unconditionally (i) agrees not to commence any such action or proceeding except in such courts, (ii) agrees that any claim in respect of any such action or proceeding may be heard and determined in such court, (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in any such court, and (iv) waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the

judgment or in any other manner provided by Law. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in **Section 11.2**. Nothing in this Agreement shall affect the right of any party to this Agreement to serve process in any other manner permitted by Law.

(c) EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (iii) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 11.1(c)**.

## **Section 11.2    Notices**

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, delivered by facsimile (which is confirmed), mailed by registered or certified mail (return receipt requested) or delivered by a nationally-recognized overnight courier to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

- (a) if to Buyer (to which notices shall only be delivered on and following the Joinder Date, at such address and to such Persons as will be identified in the Joinder), with a copy (which shall not constitute notice) to:

Latham & Watkins LLP  
885 Third Avenue, Suite 1000  
New York, New York 10022-4834  
Attn: Mark A. Broude  
Fax: (212) 751-4864

- (b) if to the Trustee/Conservator, to:

The Honorable Gary S. Stein  
c/o Pashman Stein  
Court Plaza South  
21 Main Street,  
Hackensack, New Jersey 07601-7054  
Fax: 201-488-5556

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022  
Attn: Michael W. Blair  
Fax: 212-909-6836

- (c) if to any Seller on or prior to the Closing Date:

Adamar of New Jersey, Inc.  
Brighton and The Boardwalk  
Atlantic City, New Jersey 08401  
Attn: Mark Giannantonio, President and Chief Operating Officer  
Fax: 609-641-5181

with copies (which shall not constitute notice) to:

The Honorable Gary S. Stein  
c/o Pashman Stein  
Court Plaza South  
21 Main Street,  
Hackensack, New Jersey 07601-7054  
Fax: 201-488-5556

and

Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022  
Attn: Michael W. Blair  
Fax: 212-909-6836

- (d) if to a Tropicana Party (including any Non-Conservatorship Seller) or after the Closing Date, to any Seller, to:

Tropicana Entertainment, LLC  
3930 Howard Hughes Parkway,  
4<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
Attn: Chief Legal Officer  
Fax: 312-861-2200

with a copy (which shall not constitute notice) to:

Kirkland & Ellis, L.L.P.  
200 East Randolph Drive  
Chicago, Illinois 60601-6636  
Attn: Marc Kieselstein, P.C.  
Attn: David Seligman, P.C.  
Fax: 312-861-2200

- (e) if to the Administrative Agent, to:

Credit Suisse  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Agency Group  
Fax: 212-325-8304

with a copy (which shall not constitute notice) to:

Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York 10019-7475  
Attn: Paul H. Zumbro  
Attn: Damien R. Zoubek  
Fax: 212-474-3700

### **Section 11.3    Headings; Table of Contents**

The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**Section 11.4    Entire Agreement**

This Agreement, the Ancillary Agreements, the Bidding Procedures Orders, the Sale Orders and all documents and instruments referred to herein constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. Each party hereto agrees that, except for the representations and warranties contained in this Agreement and the respective Disclosure Letters, none of the parties hereto makes any other representations or warranties, and each hereby disclaims any other representations and warranties made by itself or any of its respective representatives or other representatives, with respect to the execution and delivery of this Agreement or the transactions contemplated hereby, notwithstanding the delivery or disclosure to any of them or their respective representatives of any documentation or other information with respect to any one or more of the foregoing.

**Section 11.5    Severability**

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

**Section 11.6    Assignment**

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by operation of Law (including, without limitation, by merger or consolidation) or otherwise without the prior written consent of the other parties, except that, subject to any required Regulatory Approvals, (i) Buyer may assign any of its rights and obligations hereunder to (a) any of its Affiliates, (b) to any of its or its assignee's (whether prior to or subsequent to the Closing) lenders as collateral security, and (c) after the Closing, all or any portion of its rights and obligations hereunder; provided, in the case of clauses (a) and (c) of this clause (i), that such assignee executes a joinder to this Agreement, (ii) in connection with assignment of the Acquired Assets pursuant to the credit bid, the Administrative Agent may assign any of its rights and obligations hereunder to Buyer and (iii) the Tropicana Parties may assign their rights and obligations hereunder pursuant to any Plan of Reorganization approved by the Delaware Bankruptcy Court. Any assignment in violation of this **Section 11.6** shall be void.

**Section 11.7    Third Party Beneficiaries**

This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective permitted successors and assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 11.8    Counterparts**

This Agreement may be executed and delivered by facsimile or portable document format and/or in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

**Section 11.9    Mutual Drafting**

Each party hereto has participated in the drafting of this Agreement, which each party acknowledges is the result of extensive negotiations between the parties. In the event of any ambiguity or question of intent arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

**Section 11.10    Amendment**

This Agreement may be amended only by a written instrument duly executed and delivered by each of the parties hereto to the other parties hereto.

**Section 11.11    Extension; Waiver**

At any time prior to the Closing, the parties hereto may, by duly authorized action and to the extent legally allowed, (i) extend the time for or waive the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions contained herein, in each case to the extent, if any, that the extending or waiving party is the contractual beneficiary of such obligation, act, representation, warranty, agreement or condition. Any agreement on the

part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party.

**Section 11.12 Time of Essence**

Time is of the essence with respect to this Agreement and all terms, provisions, covenants and conditions herein.

**Section 11.13 Disclosure Letters**

The AC Disclosure Letters shall be arranged so as to correspond to the numbered and lettered paragraphs contained in this Agreement and the disclosure in any paragraph shall, to the extent applicable, qualify other paragraphs in this Agreement to the extent that it is reasonably apparent from the face of such disclosure that such disclosure also qualifies or applies to such other paragraphs. The Buyer Disclosure Letter shall be arranged so as to correspond to the numbered and lettered paragraphs contained in this Agreement and the disclosure in any paragraph shall, to the extent applicable, qualify other paragraphs in this Agreement to the extent that it is reasonably apparent from the face of such disclosure that such disclosure also qualifies or applies to such other paragraphs.

**Section 11.14 Matters Relating to the Administrative Agent**

The Administrative Agent has executed this Agreement at the direction of the Required Lenders in order to facilitate the transactions contemplated hereby. Each of the parties hereto acknowledges and agrees that, immediately prior to the Closing, the Administrative Agent will assign all of its rights to receive the Acquired Assets to Buyer, and Buyer hereby agrees to accept such assignment in the manner contemplated by this Agreement, and that none of the Sellers' title to, control of or possession of any of the Acquired Assets, or any of the Sellers' obligations in respect of any of the Assumed Liabilities, shall be transferred to or assumed by the Administrative Agent. Each of Tropicana Entertainment, the Sellers and the Trustee/Conservator, on behalf of itself and its respective Affiliates, acknowledges and agrees that neither the Administrative Agent nor any of its Affiliates, nor any Lender or its Affiliates, shall have any liability or other obligation in the event of any failure of the Required Lenders to designate (in a form and substance satisfactory to the Administrative Agent, including with respect to indemnification of the Administrative Agent) the Buyer under this Agreement, nor shall the Administrative Agent or any of its Affiliates or any Lender or any of its Affiliates (other than Buyer) have any liability or other obligation for the failure of Buyer (after it has been designated as contemplated in this sentence) to execute and deliver the joinder to this Agreement as contemplated by **Section 6.19** or in the event of any breach by Buyer of any of its obligations

under this Agreement, including Buyer's obligations to accept such assignment from the Administrative Agent or to consummate the transactions in accordance with the terms of this Agreement. Each of Tropicana Entertainment, the Sellers and the Trustee/Conservator, on behalf of itself and its respective Affiliates, further acknowledges and agrees that neither the Administrative Agent nor any of its Affiliates or any Lender or any of its Affiliates (other than Buyer) shall in any way be deemed to be attributed or otherwise responsible for any of the covenants, obligations or other agreements of Buyer under this Agreement.

*[signature pages follow]*



IN WITNESS WHEREOF, the undersigned have caused this Agreement to be signed by their respective duly authorized officers as of the date first written above.

**ADAMAR OF NEW JERSEY, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**MANCHESTER MALL, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**The Honorable Gary S. Stein**, exclusively in his role as Trustee under the Interim Casino Authorization Trust Agreement declared operative by the State of New Jersey Casino Control Commission in its Order No. 07-12-12-A, and Conservator for and on behalf of Adamar of New Jersey Inc. pursuant to Commission Order No. 07-12-19

\_\_\_\_\_

**TROPICANA ENTERTAINMENT, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**RAMADA NEW JERSEY HOLDINGS  
CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**ATLANTIC-DEAUVILLE, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**ADAMAR GARAGE CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**RAMADA NEW JERSEY, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CREDIT SUISSE, CAYMAN ISLANDS  
BRANCH, exclusively in its capacity as  
Administrative Agent and Collateral Agent for  
the Secured Parties**

By: \_\_\_\_\_  
Name:  
Title:

**Annex A**

**Alternate Provisions for Other Bidders**