

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

|                            |   |                          |
|----------------------------|---|--------------------------|
|                            | X |                          |
|                            | : |                          |
| <i>In re</i>               | : | Chapter 11               |
|                            | : |                          |
| MAGNA ENTERTAINMENT CORP., | : | Case No. 09-10720 (MFW)  |
| <i>et al.</i> ,            | : |                          |
|                            | : | Jointly Administered     |
| Debtors.                   | : |                          |
|                            | : | Re: Docket Nos. 93 & 476 |
|                            | X |                          |

**ORDER (A) AUTHORIZING AND SCHEDULING AN AUCTION  
AT WHICH THE DEBTORS WILL SOLICIT HIGHER  
AND BETTER OFFERS IN CONNECTION WITH THE SALE OF  
CERTAIN ASSETS, (B) APPROVING THE BIDDING PROCEDURES FOR  
SUCH ASSETS, (C) APPROVING THE FORM AND SCOPE OF NOTICES OF  
THE BIDDING PROCEDURES AND (D) GRANTING OTHER RELATED RELIEF**

Upon the amended motion, dated May 1, 2009 (the "Amended Motion"),<sup>1</sup>  
of Magna Entertainment Corp. ("Magna Entertainment") and its affiliated debtors, as  
debtors in possession (collectively, "Debtors"),<sup>2</sup> for an order (a) authorizing and  
scheduling an auction at which the Debtors will solicit higher and better offers in

<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Amended Motion.

<sup>2</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: (i) Magna Entertainment Corp., 8374; (ii) The Santa Anita Companies, Inc., 6180; (iii) Los Angeles Turf Club, Incorporated, 6200; (iv) Pacific Racing Association, 5367; (v) MEC Land Holdings (California) Inc., 7410; (vi) Gulfstream Park Racing Association Inc., 6292; (vii) GPRA Thoroughbred Training Center, Inc., 2326; (viii) MEC Dixon, Inc., 7005; (ix) MEC Holdings (USA) Inc., 8494; (x) Sunshine Meadows Racing, Inc., 4288; (xi) Thistledown, Inc., 5742; (xii) MEC Maryland Investments, Inc., 4637; (xiii) 30000 Maryland Investments LLC, 1704, (xiv) Remington Park, Inc., 2024; (xv) GPRA Commercial Enterprises Inc., 6156; (xvi) Pimlico Racing Association, Inc., 4527; (xvii) The Maryland Jockey Club of Baltimore City, Inc., 3840; (xviii) Laurel Racing Association Limited Partnership, 0504; (xix) Laurel Racing Assoc., Inc., 0505; (xx) Prince George's Racing, Inc., 6493; (xxi) Southern Maryland Racing, Inc., 9850; (xxii) Southern Maryland Agricultural Association, 9661; (xxiii) Maryland Jockey Club, Inc., 3124; and (xxiv) AmTote International, Inc., 1143.



connection with the sale of the Assets, (b) approving the Bidding Procedures for such Assets, and (c) approving the form and scope of the Sale Notice; and the Court having jurisdiction to consider the Amended Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Amended Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Amended Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Amended Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Amended Motion is in the best interests of the Debtors, their estates and creditors; the Debtors have determined that seeking approval of the sale of the Assets subject to the Bidding Procedures set forth herein, will produce the highest and best offer for the Assets, in whole or in part, and, accordingly, the Bidding Procedures, as set forth below, are reasonable and appropriate and the use of the Auction represents the best method for maximizing the return from the sale of the Assets; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Amended Motion is GRANTED.
2. The form and scope of the Sale Notice is reasonable and appropriate.
3. All objections to the Amended Motion or the relief requested therein with regard to the Bidding Procedures and the Sale Notice that have not been

withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits. Pursuant to Bankruptcy Rule 6004(f)(1), the Debtors are authorized to conduct an Auction in respect of the Assets pursuant to the terms and conditions set forth herein.

4. The following Bidding Procedures are approved and shall apply with respect to the proposed sale of the Assets:

- (a) Expressions of Interest. Any party that wishes to make a preliminary bid for the Assets (an "Expression of Interest"), in whole or in part, and conduct due diligence with respect to the Assets, must:
1. Execute a confidentiality agreement, in form and substance satisfactory to the Debtors. Upon execution of the confidentiality agreement, any party that wishes to conduct due diligence with respect to the Assets may be granted access to all material information that has been or will be provided to other bidders.
  2. Provide the Debtors with sufficient information to demonstrate to the Debtors, upon consultation with the Creditors' Committee, that such bidder has the financial wherewithal and ability to consummate the transactions contemplated in the Form Agreement or, if the Expression of Interest pertains to less than all of the Assets, such transaction.
  3. Inform the Debtors for which of the Assets the party seeks to submit a bid and the range of value the party assigns to the Asset or each of the Assets if the Expression of Interest pertains to more than one Asset.
  4. **Expressions of Interest for the Assets (other than the Ocala Property, the Dixon Property, StrenFex and Fex Straw Manufacturing) must be submitted to Miller Buckfire & Co., LLC, 153 East 53rd Street, New York, New York, 10022, Attention: Michael Wildish (Email: [michael.wildish@millerbuckfire.com](mailto:michael.wildish@millerbuckfire.com); and Facsimile: 212-895-1850), Financial Advisors for MEC, no later than May 27, 2009 at 5:00 p.m. (prevailing Eastern Time).**

5. After a bidder has submitted an Expression of Interest, the bidder shall be granted access to all material information reasonably requested; provided, however, that, upon consultation with the Creditors' Committee, the Debtors shall retain the ability to withhold trade secrets or other proprietary information from competitors.

(b) Submission of Definitive Bids.

1. Definitive Bids. A party may submit a bid ("Definitive Bid") for the Assets, in whole or in part.
2. Definitive Bid Deadline. Definitive Bids must be (1) in writing, (2) signed by an individual authorized to bind the bidder, and (3) received no later than **July 31, 2009 at 5:00 p.m. (prevailing Eastern Time)** (the "Definitive Bid Deadline"), by (i) Miller Buckfire & Co., LLC, 153 East 53rd Street, New York, New York, 10022, Attention: Michael Wildish (Email: [michael.wildish@millerbuckfire.com](mailto:michael.wildish@millerbuckfire.com); and Facsimile: 212-895-1850), Financial Advisors for MEC; (ii) Magna Entertainment Corp., 227 Magna Drive, Aurora, Ontario, Canada, Attention: Blake Tohana, (Email: [Blake.Tohana@magnaent.com](mailto:Blake.Tohana@magnaent.com); and Facsimile: 905-726-2585); and William Ford (Email: [Bill.Ford@magnaent.com](mailto:Bill.Ford@magnaent.com); and Facsimile: 905-726-2585); (iii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York, 10153, Attention: Brian S. Rosen, Esq. (Email: [brian.rosen@weil.com](mailto:brian.rosen@weil.com); and Facsimile: 212-310-8007); co-counsel for the Debtors; and (iv) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 Attention: Mark D. Collins, Esq. (Email: [Collins@rlf.com](mailto:Collins@rlf.com), co-counsel for the Debtors.
3. Form of Agreement. A Definitive Bid must (1) be presented under a signed, irrevocable and binding contract, marked to show any modifications made to the Form Agreement, including the name of the bidder and other conforming changes that must be made to reflect the bidder and its Definitive Bid, (2) not be subject to obtaining financing, or future consent or approval, including, without limitation, consent of the bidder's board of directors (or similar governing body), horse racing or gaming regulatory approval out, due diligence, or the receipt of any consents, in each case, not otherwise required by the Form Agreement, as notated by the bidder, (3) fully disclose the identity of each entity that will be bidding for one or more of

the Assets or otherwise participating in connection with such Definitive Bid, and the complete terms of any such participation, (4) state such bidder's offer is irrevocable and binding until the closing of the sale of the Assets (or any individual Asset) if such bidder is the prevailing purchaser or the Back-Up Bidder (as defined below), and (5) not request any transaction or break-up fee, expense reimbursement, or similar type of payment.

4. Deposits. A Definitive Bid must be accompanied by a deposit of ten-percent (10%) of the purchase price of the Definitive Bid (the "Deposit"), which shall, prior to the Definitive Bid Deadline, be delivered with the Definitive Bid either by a certified or bank check or by wire transfer of immediately available funds as a minimum good faith deposit and shall be used to fund a portion of the purchase price in the event that the bidder is the Winning Bidder (as defined below).
5. Financial Information. A Definitive Bid must be accompanied by sufficient and adequate information to demonstrate to the Debtors, upon consultation with the Creditors' Committee, that such bidder has the financial wherewithal and ability to consummate the transactions contemplated in the Form Agreement or, if a Definitive Bid is for less than all of the Assets, the sale transaction contemplated by the Definitive Bid in a timely manner, including evidence of adequate financing, a parent guaranty, or irrevocable letter of credit, if deemed appropriate, each in a form agreed upon by the Debtors. Such evidence shall include, but not be limited to, the most current audited and latest unaudited financial statements of the bidder or, if the bidder is an entity formed for the purpose of participating in the Auction, financials of the equity holder(s) of the bidder and the written commitment of the equity holder(s) of the bidder to be financially responsible for the bidder's obligations in connection with the sale. If the bidder is unable to provide such information, the Debtors may, upon consultation with the Creditors' Committee, (a) accept other information sufficient to demonstrate to that the bidder has the financial wherewithal to consummate the sale, or (b) waive this requirement in its entirety.
6. Stalking Horse. Based upon Definitive Bids received, the Debtors, in their business judgment, and upon consultation with the Creditors' Committee, will enter into final negotiations with the bidders who represent the highest and

best value for the Assets, in whole or in part, with the intent of entering into a "stalking horse" agreement by no later August 7, 2009. Thereafter, and solely to the extent necessary to address any pre-Auction issues, the Debtors shall file such "stalking horse" agreement with the Court and seek limited approval thereof.

(c) Auction.

1. Auction Date and Time. In the event that the Debtors enter into a "stalking horse" agreement with respect to one or more of the Assets, the Debtors will hold an Auction on September 8, 2009 commencing at 9:00 a.m. at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, or at such other time, date and place as determined and announced by the Debtors, for consideration of the other Definitive Bids, each as may be increased at such Auction.
2. Rejection of Definitive Bids. The Debtors may, upon consultation with the Creditors' Committee, reject any Definitive Bid not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or the Bidding Procedures Order; provided, however, that, notwithstanding anything to the contrary herein, the Debtors shall have the right to entertain non-conforming offers for the Assets, in whole or in part, in their business judgment, and upon consultation with the Creditors' Committee.
3. Withdrawal of the Assets. The Debtors may, upon consultation with the Creditors' Committee, withdraw the Assets, in whole or in part, from the Auction at any time, including, without limitation, if the Definitive Bids do not reach a threshold amount warranting continuation of the Auction with respect to a particular Asset.
4. Adjournment of Auction. The Auction may be adjourned as the Debtors deem appropriate. Reasonable notice of such adjournment and the time and place for the resumption of the Auction shall be given to all entities that submitted a Definitive Bid.
5. Other Terms. The Debtors, upon consultation with the Creditors' Committee, may make modifications to the Auction Rules and the Bidding Procedures, as may be determined to be

in the best interests of the Debtors' estates or creditors; provided, however, that such modifications are not material in nature. Any such modification shall be announced prior to the start of the Auction. The Auction, the Bidding Procedures and all Definitive Bids are subject to such other non-material terms and non-material conditions as are announced by the Debtors during the course of the Auction.

- (d) The Winning Bidder. Immediately at the conclusion of the Auction, the Debtors shall determine, upon consultation with the Creditors' Committee, which Definitive Bid constitutes the highest and best offer (the "Winning Bidder") and the Winning Bidder(s) shall execute and deliver to the Debtors (a) its modified Form Agreement (the "Winning Purchase Agreement") and (b) an additional deposit, if necessary, such that the Winning Bidder's Deposit equals ten percent (10%) of the purchase price reflected in the Winning Purchase Agreement.
- (e) Irrevocability of Certain Definitive Bids. The Definitive Bid of the Winning Bidder shall remain open, irrevocable and binding. The bid of the next highest bidder (the "Back-Up Bidder") at the highest price bid by such bidder at the Auction, shall remain open and irrevocable until the earlier to occur of (i) the closing, or closings, as the case may be, of the sale, or sales, of all the Assets, (ii) ninety (90) days following the entry of the Sale Order(s), or (iii) the release of such bid by the Debtors. The Deposits of all other Bidders will be released.
- (f) Failure to Close. Subject to the terms of the Winning Purchase Agreement, in the event the Winning Bidder (as determined by the Debtors and approved by the Court) fails to consummate the proposed transaction by the closing date contemplated in the Winning Purchase Agreement, (i) such Winning Bidder shall be deemed to have forfeited its Deposit and the Debtors shall retain the Deposit and reserve the right to pursue all available remedies, whether legal or equitable, available to them, and (ii) shall be authorized to consummate the proposed transaction with the Back-Up Bidder.
- (g) Expenses. Subject to the terms of the Winning Purchase Agreement or any other executed agreement binding upon the Debtors, any bidders presenting bids shall bear their own costs and expenses in connection with the sale, whether or not such sale is ultimately approved.

5. The following Cure Procedures are approved and shall apply with respect to any proposed assumption and assignment of executory contracts and/or unexpired leases:

(a) Notice of Cure Procedures:

1. Following the Auction, but no later than September 9, 2009, the Debtors will file a schedule listing the cure amounts, if any, for each contract and lease they intend to assume and assign to the Winning Bidder (the "Cure Schedule") and will serve the Cure Schedule on the parties to those contracts and leases.

(b) Notice of Adequate Assurance Package:

1. The Debtors will request the Winning Bidder(s) to identify the contracts and leases to be assigned and submit to the Debtors evidence of their ability to provide adequate assurance of future performance on these contracts and leases (the "Adequate Assurance Package").
2. Upon written request to the Debtors' counsel by a party to a contract or lease proposed to be assigned to Winning Bidder(s), the Debtors will provide to such party any Adequate Assurance Package proposed by the Winning Bidder(s).

(c) Objections to Cure Amounts or Adequate Assurance:

1. Any objections to the assumption and assignment of any contract or lease identified on the Cure Schedule, including, without limitation, to the cure amount or the adequacy of the assurance of future performance set forth in the Adequate Assurance Package, must be in writing, filed with the Court and served on the Debtors no later than two (2) business days after the Cure Schedule has been filed.

(d) Resolution of Objections:

1. The Debtors intend to cooperate with the counterparties to contracts and leases to attempt to reconcile any difference in a particular cure amount. If no objections are timely filed, then the cure amounts set forth in the Cure Schedule

shall be binding upon the non-debtor party to the lease or contract for all purposes in this case and will constitute an assumed final determination of total cure amounts required to be paid by the Debtors in connection with the assumption of such contract or lease and assignment to the Winning Bidder. In addition, each non-debtor party to a contract and lease on the Cure Schedule that fails to timely object to the proposed assumption and assignment of a contract or leases shall be forever barred from objecting to the assumption by the Debtor and assignment to the Winning Bidder of such contract or lease.

2. If a timely objection is filed and such objection cannot otherwise be resolved by the parties, the Court may schedule a hearing, and, if the Debtors and the Winning Bidder elect to close prior to such hearing, the cure amount as set forth on the Cure Schedule shall be deposited into escrow. If the Debtors and the Winning Bidders elect to close, the pendency of a dispute relating to cure amounts will not prevent or delay the closing on any sale of the , including the assumption and assignment of contracts and leases not subject to an objection.

6. The Form Agreement, annexed hereto as Exhibit "A," is hereby approved.

7. No non-independent member of the Board of Directors of Magna Entertainment (the "Board") nor any person associated with, or a representative of, MI Developments Inc. ("MID") or MID Islandi sf. ("MID Islandi") shall (i) participate in any discussions or deliberations of the Board or (ii) vote on any resolutions of the Board with respect to or in connection with the Board's consideration and approval of transactions, contracts or determinations made, or proposed to be made, with respect to any proposed stock or asset sale transaction that is subject to this Order; provided, however, that, the foregoing is not intended, nor shall it be construed, to limit the rights of MID or MID Islandi or any of their associates or representatives (collectively, the

"MID Entities"), to participate in the sale process contemplated by this Order, but under no circumstances shall any MID Entity participate in any deliberations or determinations of the Board with respect to any transaction subject to this Order.

8. Any conflict between the terms and provisions of this Order and the Form Agreement shall be resolved in favor of this Order.

9. The Debtors are hereby authorized and directed to serve this Order and the Sale Notice, in substantially the form attached hereto as Exhibit "B," upon, among other persons, (i) United States Trustee, (ii) the attorneys for the Debtors' postpetition lenders, (iii) all entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in or on the Assets, (iv) the attorneys for any statutory committee(s), if and when appointed in these cases, (v) the attorneys for the Debtors' prepetition secured lenders, (vi) all parties that have requested or that are required to receive special notice pursuant to Bankruptcy Rule 2002, and (vii) all persons who have expressed an interest in acquiring the Assets, in whole or in part, within the last six months within the last six months, no later than ten (10) days after entry of this Order, and all such service shall constitute good and sufficient notice of the sale of the Assets, this Order, the Auction, the Sale Hearing and all proceedings to be held thereon.

10. The Sale Hearing shall be held on September 14, 2009 at 10:30 am (prevailing Eastern Time) or as soon thereafter as counsel may be heard. In the event that the Court approves the sale or sales of the Assets, in whole or in part, (a) if such sale is consummated prior to a confirmed plan of reorganization, unless otherwise paid to secured creditors on account of valid and perfected liens and security interests, the Debtors shall segregate the proceeds from the sale of such Asset(s) in an interest bearing

escrow account, subject to the lien(s) and security interests of any secured creditor, and such liens and securities interests shall attach to the proceeds thereof in the same order of priority as such liens and security interests attached to such Asset(s) and be subject to further order of the Court and (b) if such sale is consummated pursuant to a confirmed plan of reorganization, the proceeds thereof shall be distributed in accordance with the terms and provisions of any such plan of reorganization.

11. Responses or objections, if any, to the relief requested in the Amended Motion with regard to the request for the sale of the Assets, must be (a) in writing, (b) comply with the Bankruptcy Rules and the Local Rule, and (c) be filed with the clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 North Market Street, Wilmington Delaware 19801; and be served upon and served upon (i) Magna Entertainment Corp., 337 Magna Drive, Aurora, Ontario L4G 7K1 (Attn: William G. Ford, General Counsel); (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq.), co-counsel for the Debtors; (iii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Brian S. Rosen, Esq.), co-counsel for the Debtors; (iv) the Office of the United States Trustee, 844 King Street, Room 2313, Wilmington, Delaware 19801 (Attn.: Mark Kenney, Esq.); (v) Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Lee Attanasio, Esq.), counsel for the Debtors' postpetition lenders, and (vi) Kramer Levin Naftalis & Frankel, LLP, 1177 Avenue of the Americas, New York, New York 10036 (Attn: Kenneth H. Eckstein, Esq.) and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington Delaware, 19899 (Attn: Laura Davis Jones, Esq.), counsel for the Creditors' Committee,

so as to be received no later than five (5) days prior to the Sale Hearing (the "Objection Deadline").

12. Bankruptcy Rule 6004(h) is hereby waived and this Order shall be effective immediately upon its entry.

13. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: Wilmington, Delaware  
May 11, 2009

  
\_\_\_\_\_  
THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

## **Exhibit A**

**[Form Agreement]**

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**PURCHASE AGREEMENT**

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**BY AND AMONG**

**MAGNA ENTERTAINMENT CORP.<sup>1</sup>  
MEC DIXON, INC.<sup>2</sup>  
MEC PROJEKTENTWICKLUNGS AG<sup>3</sup>  
MEC TEXAS RACING, INC.<sup>4</sup>  
RACETRACK HOLDINGS, INC.<sup>5</sup>  
SANTA ANITA COMMERCIAL ENTERPRISES, INC.<sup>6</sup>  
SUNSHINE MEADOWS RACING, INC.<sup>7</sup> ]  
AS SELLERS<sup>8</sup>**

**- and -**

**[PURCHASER]**

**Dated as of [            ], 2009**

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<sup>1</sup> Owner of stock of MEC Oregon Racing, Inc. which owns Portland Meadows; Remington Park, Inc. which owns Remington Park; The Santa Anita Companies, Inc. which owns Santa Anita Park; Thistledown, Inc. which owns Thistledown; and Fex Straw Manufacturing Inc.

<sup>2</sup> Owner of Dixon Property.

<sup>3</sup> Owner of capital stock of FEX OKO-Faserverarbeitungs GmbH (StreuFex).

<sup>4</sup> Owner of Lone Star Interests.

<sup>5</sup> Owner of Lone Star Interests.

<sup>6</sup> Owner of Caruso JV Interest.

<sup>7</sup> Owner of Ocala Property.

<sup>8</sup> Appropriate references to be included or deleted in individual bid.

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## PURCHASE AGREEMENT

**PURCHASE AGREEMENT** (the "**Agreement**"), dated as of [ ], 2009, by and among MAGNA ENTERTAINMENT CORP. ("**MEC**"), a Delaware corporation, [MEC DIXON INC., a Delaware corporation], [MEC PROJEKTENTWICKLUNGS AG, an Austrian corporation], [MEC TEXAS RACING, INC., a Delaware corporation], [RACETRACK HOLDINGS, INC., a Delaware corporation], [SANTA ANITA COMMERCIAL ENTERPRISES, INC., a Delaware corporation], [and] [SUNSHINE MEADOWS RACING, INC., a Delaware corporation],<sup>9</sup>, as Sellers (collectively, the "**Sellers**"), and [PURCHASER], a [ ] corporation ("**Purchaser**").

### RECITALS:

A. The Sellers currently, among other things, (1) conduct thoroughbred racing and *pari mutuel* and simulcast wagering at, among other facilities, [[Santa Anita Park ("**Santa Anita**")], [Thistledown ("**Thistledown**")], [Lone Star Park ("**Lone Star**")], [Remington Park ("**Remington Park**")]] [and] [Portland Meadows ("**Portland Meadows**", and collectively with [Santa Anita], [Thistledown], [Lone Star] and [Remington Park], the "**Racetracks**")<sup>10</sup>, (2) own undeveloped real property, (3) own interests in the [Caruso JV] (the "**Joint Venture**")<sup>11</sup>, and (4) own and operate certain facilities, including media and technology assets relating to the thoroughbred racing and gaming industry at the Racetracks and elsewhere.

B. MEC, the direct or indirect parent of each of the other Sellers, and certain of MEC's subsidiaries and affiliates, on March 5, 2009 commenced cases (the "**Chapter 11 Cases**") under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") by filing voluntary petitions for relief with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

C. Sellers desire to sell assets and equity interests on the terms and conditions contained in this Agreement, including obtaining confirmation of a chapter 11 plan and an order of the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code authorizing the Transaction.

D. NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the parties hereto covenant and agree as follows:

### ARTICLE I DEFINITIONS

**Section 1.1. Recitals.** The recitals set forth above are incorporated by reference and are expressly made part of this Agreement.

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<sup>9</sup> Appropriate references to be included or deleted in individual bid.

<sup>10</sup> Appropriate references to Racetracks to be included or deleted in individual bid.

<sup>11</sup> Appropriate references to Joint Venture to be included or deleted in individual bid.

**Section 1.2. Definitions.** The following definitions shall apply to and constitute part of this Agreement and all Exhibits and Schedules attached hereto:

**"Adjustment"** shall mean the Purchase Price adjustment required pursuant to Section 2.4.

**"Affiliate"** shall mean a person or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified. For purposes of this definition, "control" shall mean (a) a fifty percent (50%) or more common equity ownership or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**"Applicable Laws"** shall mean all domestic or foreign statutes, laws, by-laws, regulations, rules, ordinances and orders of governmental or other public authorities having jurisdiction.

**"Assignment and Assumption of Contracts"** shall mean an assignment by each Seller and assumption by the Purchaser of such Seller's right, title and interest in and to the Existing Contracts, such agreement substantially in the form attached hereto as Exhibit A.

**"Assignment and Assumption of Leases"** shall mean an assignment by each Seller and assumption by the Purchaser of such Seller's right, title and interest in and to the Existing Leases, such agreement substantially in the form attached hereto as Exhibit B.]<sup>12</sup>

**"Assumed Liabilities"** shall mean those liabilities of the Sellers as set forth on Exhibit C.

**"Bill of Sale"** shall mean a bill of sale for the Chattels.

**"Business Day"** shall mean any day other than a Saturday, Sunday or other day on which commercial banks in New York City, New York, or Toronto, Ontario are authorized or obligated to close under Applicable Laws.

**"Caruso JV"** shall mean the joint venture formed by SAC and Santa Anita Commercial Holdings Co., LLC to develop approximately fifty-one (51) acres of land surrounding Santa Anita Park.]]<sup>13</sup>

**"Caruso JV Interest"** shall mean the fifty percent (50%) interest in the Caruso JV owned by SAC.]]<sup>14</sup>

[ **"Chattels"** means the equipment, inventory, supplies and other chattels, in each case, if any, located on or about the Lands, which are owned by the Sellers and used exclusively in the maintenance, repair and operation of the Lands.]]<sup>12</sup>

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<sup>12</sup> Include if purchasing one or more Lands.

<sup>13</sup> Include if purchasing Caruso JV Interest.

<sup>14</sup> Include if purchasing Caruso JV Interest.

**"Claims"** shall mean claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, reasonable legal fees and disbursements, including in respect of investigation, interest, demands and actions of any nature or any kind whatsoever.

**"Closing"** shall mean the consummation of the Transaction in accordance with the terms set forth in Article VIII.

**"Closing Date"** shall mean the first (1st) Business Day following satisfaction or waiver of all the conditions set forth in Article VII, or such other date as the Sellers and the Purchaser shall mutually agree upon in writing.

**"Closing Documents"** shall mean any agreements, instruments and other deliveries to be delivered at the Closing pursuant to Sections 8.2 and 8.3.

**"Confirmation Order"** shall mean the order of the Bankruptcy Court confirming the Plan in accordance with section 1129 of the Bankruptcy Code.

**"Contracts"** shall mean any contracts and agreements entered into by any Seller[, Purchased Company or Joint Venture]<sup>15</sup>, [or by which any of them is bound with respect to the Lands, including all contracts and agreements in respect of the severance, development, construction, management, leasing, maintenance or operation of the Lands.]<sup>12</sup>

**"Control"** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and **"Controlling"** and **"Controlled"** shall have meanings correlative thereto.

**"Deed"** shall mean a deed in customary form for conveying title to real property in the respective jurisdictions in which the Lands being acquired directly are located.]<sup>12</sup>

**"Dixon Property"** shall mean certain real property located in Dixon, California, consisting of approximately two hundred sixty (260) acres, and more specifically described on Exhibit F-1 hereto.]<sup>16</sup>

**"Due Diligence"** shall mean such investigations, inspections, reviews, tests and audits relating to the Purchased Assets (including title to the Purchased Assets and compliance with Applicable Laws) as the Purchaser deems reasonably necessary or desirable in its sole and absolute discretion.

**"Employee Plan"** shall mean each Benefit Plan other than a Multiemployer Plan, a Multi-Employer Health Plan or a Governmental Plan.]<sup>15</sup>

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<sup>15</sup> Bracketed language only applicable if purchasing a Purchased Company or Joint Venture, as the case may be.

<sup>16</sup> Include if purchasing Dixon Property.

**"Encumbrances"** shall mean all mortgages, pledges, charges, liens, debentures, trust deeds, claims, assignments by way of security or otherwise, security interests, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in the Purchased Assets or any part thereof or interest therein, and any agreements, leases, licenses, occupancy agreements, options, easements, rights of way, restrictions, executions or other encumbrances (including notices or other registrations in respect of any of the foregoing) affecting title to the Purchased Assets or any part thereof or interest therein.

**"Environmental Laws"** shall mean all applicable federal, state, municipal and local laws, statutes, regulations and other legal requirements relating to the protection of the environment or natural resources.

**"Environmental Permits"** shall mean all material licenses, permits, approvals, consents, certificates, registrations and other authorizations issued pursuant to Environmental Laws in respect of the Lands.]<sup>12</sup>

**"Environmental Reports"** shall mean accurate and complete copies of any material reports, studies, analyses, evaluations, assessments or monitoring data that have been performed with regard to the Lands and which are in the possession or control of the Sellers.]<sup>12</sup>

**"ERISA"** shall mean the Employee Retirement Income Security Act of 1974, as amended.]<sup>15</sup>

**"Existing Contracts"** shall mean all Contracts, as amended, renewed or otherwise varied to the date of this Agreement, all of which are listed on Exhibit D.

**"Existing Leases"** shall mean all Leases, as amended, renewed or otherwise varied to the date of this Agreement, all of which are listed on Exhibit E.]<sup>12</sup>

**"Fex Straw Stock"** shall mean the common stock of Fex Straw Manufacturing, Inc., a Delaware corporation, issued and outstanding as of the date hereof.]<sup>17</sup>

**"Fex Straw Austria Stock"** shall mean the outstanding capital stock of FEX OKO-Faserverarbeitungs GmbH, an Austrian company, issued and outstanding as of the date hereof.]<sup>18</sup>

**"GAAP"** shall mean United States generally accepted accounting principles in effect from time to time.

**"Governmental Authority"** shall mean any domestic, foreign or local government, quasi-governmental authority, regulatory authority, government department, agency, commission, board, arbitral or other tribunal or court having jurisdiction or power of any nature over the Purchased Assets.

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<sup>17</sup> Include if purchasing Fex Straw.

<sup>18</sup> Include if purchasing Fex Straw.

[**"Governmental Plan"** shall mean a "governmental plan" as defined in Section 3(32) of ERISA.]<sup>15</sup>

**"Hazardous Substances"** shall mean any material, substance or waste defined or characterized as hazardous, toxic, a pollutant or a contaminant under Environmental Laws.

**"Hearing"** shall mean the hearing to be held by the Bankruptcy Court to consider the Sale Motion and the approval of the Transaction.

**"HRTV"** shall mean HRTV, LLC, a Delaware limited liability company, an operator of a television network dedicated to providing programming and content relating to horse racing and the horse racing industry.

**"HSR"** shall mean the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

**"Intellectual Property Rights"** means all trade or brand names, business names, trade-marks (including logos), trade-mark registrations and applications, service marks, service mark registrations and applications, copyrights, copyright registrations and applications, issued patents and pending applications and other patent rights, industrial design registrations, pending applications and other industrial design rights, trade secrets, proprietary information and know-how, equipment and parts lists and descriptions, instruction manuals, inventions, inventors' notes, research data, blue prints, drawings and designs, formulae, processes, technology and other intellectual property, together with all rights under licenses, registered user agreements, technology transfer agreements and other agreements or instruments relating to any of the foregoing.

**"IRC"** shall mean the Internal Revenue Code of 1986, as amended.

**"IRS"** shall mean the Internal Revenue Service of the United States.

**"Land Development Code"** means any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued affecting the Lands.]<sup>12</sup>

**"Lands"** shall mean the fee simple interest in [the Ocala Property] [and] [the Dixon Property], together with any and all improvements located on or in the Lands and any and all easements, tenements, rights-of-way and other rights and interests appurtenant thereto and any and all improvements located therein.]<sup>12</sup>

**"Leases"** shall mean any agreements to lease, leases, renewals of leases and other rights (including licenses) granted by or on behalf of the Sellers or their respective predecessors in title as owner of the Lands which entitle any Person to possess or occupy any space on or within the Lands, together with all security, guarantees and indemnities relating thereto.]<sup>12</sup>

**"Licenses"** shall mean any and all *pari mutuel* or other horse racing or gaming related licenses.

**["Lone Star Interests"** shall mean the partnership interests of MEC Lone Star, LP.]

**"Losses"** shall mean in respect of any matter, all losses, damages, liabilities, diminution in value, deficiencies, costs and expenses (including all reasonable legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly.

**["MEC Oregon Racing Stock"** shall mean the common stock of MEC Oregon Racing, Inc., a Delaware corporation, issued and outstanding as of the date hereof.]<sup>19</sup>

**["MEC Texas Racing Stock"** shall mean the common stock of MEC Texas Racing, Inc., a Delaware corporation, issued and outstanding as of the date hereof.]

**["Multiemployer Plan"** shall mean a "multiemployer plan" as defined in Section 3(37) of ERISA.]<sup>15</sup>

**["Multi-Employer Health Plan"** shall mean a "multiple employer welfare benefit arrangement" as defined in Section 3(40)(A) of ERISA.]<sup>15</sup>

**"Notice"** shall mean any notice, request, consent, acceptance, waiver or other communication required or permitted to be given pursuant to this Agreement.

**["Ocala Property"** shall mean certain real property located in Ocala, Florida, consisting of approximately four hundred ninety (490) acres, and more specifically described on Exhibit F-2 hereto.])<sup>20</sup>

**"Ordinary Course of Business"** shall mean the operation and conduct of the affairs of an enterprise in the ordinary course of its business, consistent with past practice and the businesses in which the respective Sellers operate.

**["Permits"** shall mean, to the extent assignable, all the right, title, benefit and interest of any Seller in any and all licenses (other than *pari mutuel* or other horse racing or gaming-related licenses), franchises, governmental and other approvals, development rights and permits relating to the Lands.])<sup>12</sup>

**["Permitted Encumbrances"** shall mean: (i) the Existing Leases; (ii) liens for current taxes or other similar governmental impositions which are not yet delinquent; (iii) discrepancies, conflicts in boundary lines, shortage in area, encroachments and any other state of facts shown on any survey provided to the Purchaser and those matters set forth on Schedule A on any title report provided to the Purchaser; (iv) rights of Tenants under Existing Leases; (v) laws, regulations, resolutions or ordinances, including building, zoning and environmental protection, as to the use, occupancy, subdivision, development, conversion or redevelopment of the Lands imposed by any Governmental Authority; (vi) any and all mortgages and liens upon and security interests in any of the Lands; (vii) any unrecorded and recorded encumbrances, liens, agreements

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<sup>19</sup> Include if purchasing Portland Meadows.

<sup>20</sup> Include if purchasing Ocala Property.

and other instruments affecting the Lands which have been accepted by the Purchaser by notice in writing to the Sellers on or before the Closing Date; and (viii) all other matters which would not materially adversely affect the use of the Lands as currently conducted.]<sup>12</sup>

**"Person"** shall mean an individual, partnership, limited liability company, corporation, trust, unincorporated organization, government, or any department or agency thereof, and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual.

**"Plan Effective Date"** shall mean the date upon which all the conditions to effectiveness of the Plan shall have been satisfied or waived and the Transaction shall have been substantially consummated.

**"Purchase Price"** shall mean [ ] (\$[ ]) subject to the adjustment provided for in Section 2.4.

**"Purchased Assets"** shall mean, collectively, the assets, the stock of or the interest in the Purchased Companies and the interest in the Joint Venture to be purchased by the Purchaser and set forth in detail in Section 2.1.

**"Purchased Companies"** shall mean [The Santa Anita Companies, Inc.], [Thistledown, Inc.], [Remington Park, Inc.], [MEC Oregon Racing, Inc.], [Fex Straw Manufacturing Inc.], [FEX OKO-Faserverarbeitungs GmbH], [MEC Texas Racing, Inc.], [Racetrack Holdings, Inc.], [MEC Lone Star, LP].<sup>21</sup>

**"Purchaser's Solicitors"** shall mean [ ], or such other firms of solicitors or lawyers acting for the Purchaser and notice of which is provided to the Sellers in accordance with the provisions of Section 10.7.

**["Racetrack Holding Stock"]** shall mean the common stock of Racetrack Holdings, Inc., a Delaware corporation, issued and outstanding as of the date hereof.]

**["Reorganized Remington Stock"]** shall mean the common stock of Remington Park, Inc., an Oklahoma corporation, to be issued on the Plan Effective Date.]<sup>22</sup>

**["Reorganized Santa Anita Stock"]** shall mean the common stock of The Santa Anita Companies, Inc., a Delaware corporation to be issued on the Plan Effective Date.]<sup>23</sup>

**["Reorganized Thistledown Stock"]** shall mean the common stock of Thistledown, Inc., an Ohio corporation to be issued on the Plan Effective Date.]<sup>24</sup>

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<sup>21</sup> Appropriate references to be included or deleted in individual bid.

<sup>22</sup> Include if purchasing Remington Park.

<sup>23</sup> Include if purchasing Santa Anita.

<sup>24</sup> Include if purchasing Thistledown.

**"Representations"** shall mean the representations, warranties and certifications made or to be made pursuant to this Agreement and all agreements, documents and instruments entered into in connection herewith.

**["Requisitions Notice"]** shall mean the notice which may be sent by the Purchaser, no later than ten (10) Business Days prior to the commencement of the Hearing in accordance with the provisions of Section 6.1.]<sup>12</sup>

**["SAC"]** shall mean Santa Anita Commercial Enterprise, Inc.]<sup>25</sup>

**"Sale Motion"** shall mean the motion to be filed by MEC and the Sellers with the Bankruptcy Court seeking an order, pursuant to section 363 of the Bankruptcy Code, authorizing the sale of the Purchased Assets to the Purchaser, free and clear of all Encumbrances, other than Permitted Encumbrances.

**"Sale Order"** shall mean the order of the Bankruptcy Court authorizing, among other things, the sale of the Purchased Assets to the Purchaser pursuant to this Agreement and the consummation of the Transaction.

**"Statement of Closing Adjustments"** shall mean the Statement of Closing Adjustments to be made as of the Closing Date and delivered by the Sellers on or prior to the second (2nd) Business Day prior to the Closing, together with detailed calculations used by the Sellers with respect thereto.

**"Subsidiary"** shall mean, with respect to any Person, any corporation, partnership, association or other business entity (a) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power to elect a majority of the board of directors or the equivalent thereof of such corporation, company, association or other business entity or more than fifty percent (50%) of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, Controlled or held by such Person and one or more subsidiaries of such Person, or (b) that is, at the time any determination is being made, otherwise Controlled, by such Person or by one or more other subsidiaries of such Person.

**"Tax" or "Taxes"** shall mean any federal, state, local or foreign net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add on minimum, ad valorem, value added, transfer, stamp, or environmental tax, escheat payments or any other tax, custom, duty, governmental fee or other like assessment or charge (together with any and all interest, penalties and additions to tax imposed with respect thereto) imposed on or with respect to any of the Sellers, the Purchased Companies or the Joint Venture by any taxing authority.

**"Tax Return" or "Tax Returns"** shall mean all material returns, declarations of estimated tax payments, reports, estimates, information returns and statements, including any related or supporting information with respect to any of the foregoing, filed or to be filed with

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<sup>25</sup> Include if purchasing Caruso JV Interest.

any taxing authority in connection with the determination, assessment, collection or administration of any Taxes.

["**Tenants**" shall mean all Persons having a right to possess or occupy the Lands or any part thereof now or hereafter pursuant to an Existing Lease.]<sup>12</sup>

"**Termination Date**" shall mean the date on which this Agreement is terminated in accordance with the provisions of Article IX.

"**TrackNet Media**" shall mean TrackNet Media Group, LLC, a distributor of the Racetracks' horse racing content through media outlets to other racetracks, off track betting facilities, casinos and advance deposit wagering companies, and purchaser of horse racing content from third parties for redistribution.

"**Transfer Taxes**" means any transfer, documentary, sales, use, stamp, registration and other such taxes, any conveyance fees, any recording charges and any other similar fees and charges (including penalties and interest in respect thereof).

"**Transaction**" shall mean the transactions contemplated herein, including the purchase and sale of the Purchased Assets provided for in this Agreement.

"**Working Capital**" shall mean Current Assets minus Current Liabilities. The terms "**Current Assets**" and "**Current Liabilities**" mean the sum of the current assets and current liabilities, respectively, of the Purchased Companies, calculated in accordance with United States generally accepted accounting principles ("GAAP").

["**Voluntary Liens**" shall mean liens and other Encumbrances (other than Permitted Encumbrances) which each of the respective Sellers has knowingly and intentionally placed (or suffered or allowed to be placed) on the Lands, including (x) notices of *lis pendens* or mechanics' liens resulting from such Seller's failure to pay any obligation of the Sellers, and (y) all mortgages, deeds of trust, assignments of leases, financing statements and other instruments securing debt, including any existing mortgages.]<sup>12</sup>

**Section 1.3. Other Terms.** Other terms may be defined elsewhere in this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement. As used in this Agreement, any reference to any federal, state, local, or foreign law, including any applicable law, will be deemed also to refer to such law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. The words "**include**", "**includes**", and "**including**" will be deemed to be followed by "**without limitation**". Pronouns in masculine, feminine, or neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words "**this Agreement**", "**herein**", "**hereof**", "**hereby**", "**hereunder**", and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. References in this agreement to Articles, Sections, Schedules or Exhibits are to Articles or Sections of, Schedules or Exhibits to, this Agreement, except to the extent otherwise specified herein.

**Section 1.4. Headings.** The headings of the sections, paragraphs and subsections of this Agreement are inserted for convenience only and are not part of this Agreement and do not in any way limit or modify the terms or provisions of this Agreement and shall not affect the interpretation hereof.

**Section 1.5. Interpretation.** The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party hereto because of the authorship of any provision of this Agreement.

**Section 1.6. Time.** Time shall be of the essence of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. Whenever action must be taken (including the giving of notice, the delivery of documents or the funding of money) under this Agreement, prior to the expiration of, by no later than or on a particular date, unless otherwise expressly provided in this Agreement, such action must be completed by 5:00 p.m. on such date. The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the parties or by their respective solicitors. All references herein to time are references to Toronto time.

**Section 1.7. Joint Venture.** Notwithstanding any other provisions hereof, the representations and warranties given hereunder with respect to any Joint Venture are given by the Sellers only to the knowledge of the Sellers and without inquiry of the management or employees of such Joint Venture, except for the representations and warranties given respecting the Sellers' direct or indirect ownership and other rights and obligations in respect of such Joint Venture. Covenants given by the Sellers shall not extend to such Joint Venture; provided however, that, if an issue relating to such Joint Venture arises, which issue would be the subject matter of any of the covenants contained in this Agreement but for the fact that the covenants do not extend to such Joint Venture, subject to any pre-existing agreement, the Sellers shall use commercially reasonable efforts to comply with such covenant and shall vote its voting interests in such Joint Venture in respect of such issue consistent with complying with the relevant covenant as though such covenant did extend to such Joint Venture. The Sellers shall also exercise any other proper influence in such Joint Venture in a manner consistent with complying with the relevant covenant as though such covenant did extend to such Joint Venture, subject to any Applicable Laws, applicable fiduciary duties or contractual obligations (other than under this Agreement).]<sup>15</sup>

## ARTICLE II AGREEMENT OF PURCHASE AND SALE

**Section 2.1. Purchase and Sale.** Each Seller hereby agrees to sell, transfer, assign, set over and convey to the Purchaser, and the Purchaser hereby agrees to purchase, acquire and assume from each of the Sellers, upon the terms and subject to the conditions of this Agreement, all right, title and interest of such Seller of any nature whatsoever, in the following Purchased Assets:

- (a) [[Caruso JV]. The Caruso JV Interest;
- (b) [Dixon]. The Dixon Property;
- (c) [Fex Straw]. The Fex Straw Stock and the Fex Straw Austria Stock;
- (d) [Lone Star]. The Lone Star Interests<sup>26</sup>;
- (e) [Portland Meadows]. The MEC Oregon Racing Stock;
- (f) [Ocala]. The Ocala Property;
- (g) [Remington]. The Reorganized Remington Stock;
- (h) [Santa Anita]. The Reorganized Santa Anita Stock; [and]
- (i) [Thistledown]. The Reorganized Thistledown Stock.<sup>27</sup>

**Section 2.2. Condition of Conveyance.** The Purchased Assets shall be sold, conveyed, assigned, transferred and delivered by the Sellers to the Purchaser by appropriate instruments of transfer, bills of sale, endorsements, assignments [and Deeds]<sup>12</sup>, all in form and substance reasonably satisfactory to the Purchaser and the Seller, and free and clear of any and all Encumbrances of any and every kind, nature and description, other than Permitted Encumbrances; provided, however, that, to the extent that any of the Purchased Assets consist of leasehold interests in property owned by others, Purchaser hereby acknowledges and agrees that each such Purchased Asset shall be sold, conveyed, assigned, transferred and delivered hereunder subject to all the rights and interests of the owner of the leased property and to any security interest, lien or encumbrance which has been granted by such owner.

**Section 2.3. Payment of Purchase Price.** At the Closing, the Purchase Price shall be satisfied by payment of the Purchase Price by the Purchaser to the Sellers, by certified or bank cashier's check or by wire transfer of immediately available funds, all as adjusted pursuant to the terms and provisions of Section 2.4.

**Section 2.4. Purchase Price Adjustment.**

(a) The Purchase Price to be paid at the Closing shall be adjusted and increased or decreased, on a dollar-for-dollar basis, in an amount equal to the sum of the Working Capital of each of the Racetracks as of the Closing Date. In connection therewith, the Sellers shall prepare and deliver to the Purchaser at least two (2) Business Days prior to Closing the Statement of Closing Adjustments. The Sellers shall give to the Purchaser access to the Sellers' working papers and supporting materials in order to confirm the Statement of Closing Adjustments.

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<sup>26</sup> In the alternative, could purchase the MEC Texas Racing Stock and the Racetrack Holdings Stock.

<sup>27</sup> Appropriate references to be inserted or deleted in individual bid.

(b) Within 30 days after the Closing Date, the Purchaser shall prepare and deliver to MEC a statement (the "**Purchaser Statement**") setting forth the Working Capital as of the close of business on the Closing Date (the "**Closing Date Working Capital**").

(c) During the 10-day period following MEC's receipt of the Purchaser Statement, MEC and its independent auditors shall be permitted to review the working papers of the Purchaser relating to the Purchaser Statement. The Purchaser Statement shall become final and binding upon the parties on the 30th day following delivery thereof, unless MEC gives written notice of its disagreement with the Purchaser Statement (a "**Notice of Disagreement**") to the Purchaser before such date. Any Notice of Disagreement shall (i) specify in reasonable detail the nature of any disagreement so asserted and (ii) only include disagreements based on mathematical errors or based on the Closing Date Working Capital not being calculated in accordance with this Section 2.4. If a Notice of Disagreement is received by the Purchaser in a timely manner, then the Purchaser Statement (as revised in accordance with this sentence) shall become final and binding upon the Purchaser and MEC on the earlier of (A) the date the Purchaser and MEC resolve in writing any differences they have with respect to the matters specified in the Notice of Disagreement or (B) the date any disputed matters are finally resolved in writing by the Accounting Firm. During the 30-day period following the delivery of a Notice of Disagreement, the Purchaser and MEC shall seek in good faith to resolve in writing any differences that they may have with respect to the matters specified in the Notice of Disagreement. During such period the Purchaser and its auditors shall have access to the working papers of MEC prepared in connection with the Notice of Disagreement. At the end of such 30-day period, MEC and the Purchaser shall submit to an independent accounting firm (the "**Accounting Firm**") for arbitration any and all matters that remain in dispute and which were properly included in the Notice of Disagreement. The Accounting Firm shall be a nationally recognized independent public accounting firm as shall be agreed upon by the parties hereto in writing. The Purchaser and MEC shall jointly request that the Accounting Firm render a decision resolving the matters submitted to the Accounting Firm within 30 days after such submission. Judgment may be entered upon the determination of the Accounting Firm in any court having jurisdiction over the party against which such determination is to be enforced. The Sellers and Purchaser agree to treat any payment made pursuant to the Notice of Disagreement as an adjustment to the Purchase Price for all Tax purposes. The cost of any arbitration (including the fees and expenses of the Accounting Firm and reasonable attorney fees and expenses of the parties) pursuant to this Section 2.4 shall be borne by the Purchaser and MEC in inverse proportion as they may prevail on matters resolved by the Accounting Firm, which proportionate allocations shall also be determined by the Accounting Firm at the time the determination of the Accounting Firm is rendered on the merits of the matters submitted.

(d) Immediately upon the Purchaser Statement becoming final and binding, the Purchase Price shall either (a) be increased by the amount by which the Closing Date Working Capital exceeds the Estimated Working Capital or (b) be decreased by the amount by which Closing Date Working Capital is less than the Estimated Working Capital. If the Closing Date Working Capital exceeds the Estimated Working Capital (the "**Shortfall**"), the Purchaser shall promptly remit such Shortfall by wire transfer of immediately available funds to the account so designated by the Seller. If the Closing Date Working Capital is less than the Estimated Working Capital (the "**Overpayment**"), the Seller shall promptly remit such

Overpayment by wire transfer of immediately available funds to the account so designated by the Purchaser.

**Section 2.5. Assumption of Liabilities.** Notwithstanding any provision contained in this Agreement to the contrary, on the Closing Date, Purchaser shall assume certain obligations and liabilities of the Sellers, to the extent but only to the extent as set forth on Exhibit C hereto, as and when such Assumed Liabilities shall become due and payable pursuant to the terms of the documents pursuant to which such Assumed Liabilities were created, including, to the extent set forth on Exhibit C, the payment of all amounts necessary to cure any monetary defaults in respect of such Assumed Liabilities. Without in any way limiting the foregoing, on the Closing Date, in accordance with the terms and conditions of the Sale Order, the Sellers shall be relieved of any liability with respect to such Assumed Liabilities.

### ARTICLE III COURT APPROVAL

**Section 3.1. Conditions Precedent.** In addition to the conditions set forth in Article VII, it shall be a condition precedent to the obligations of each of the parties to this Agreement that (i) the Bankruptcy Court shall have entered the Sale Order, after notice and a hearing as defined in section 102(1) of the Bankruptcy Code, approving the terms and conditions of this Agreement and authorizing the Sellers to perform all acts necessary to consummate the Transaction and (ii) the Bankruptcy Court shall have entered the Confirmation Order.

**Section 3.2. Allocation of Purchase Price.**<sup>28</sup> Within three (3) Business Days after the Closing Date, the Purchaser shall provide the Sellers with a schedule (the "Allocation Schedule") setting forth the Purchaser's allocation of the portion of the Purchase Price attributable to the [Dixon Property,] [Ocala Property,] and [assets of the Joint Venture] and [Lone Star]] among such respective assets. The Allocation Schedule shall be reasonable and shall be prepared in accordance with Section 1060 of the IRC and the Treasury Regulations promulgated thereunder and any applicable provision of state, local or foreign law. Such allocation shall be deemed final unless MEC has notified the Purchaser in writing of any disagreement with the Allocation Schedule within thirty (30) Business Days after submission thereof by the Purchaser. If the allocation is deemed final or the Purchaser and MEC reach such agreement, the Purchaser, MEC and the Sellers shall execute and file all Tax Returns in a manner consistent with the allocation determined pursuant to this Section 3.2. In the event that the parties hereto do not agree to a purchase price allocation in accordance with this Section 3.2, then the Sellers and the Purchaser shall refer the disagreement to the Accounting Firm. The Accounting Firm shall resolve any disagreement within 30 days and the Sellers and the Purchaser agree the decision of the Accounting Firm shall be conclusive and binding on both the Sellers and the Purchaser. The fees of the Accounting Firm shall be borne by the Sellers and the Purchaser in inverse proportion as they may prevail on the disagreement resolved by the Accounting Firm, which proportionate allocations shall also be determined by the Accounting Firm at the time the determination of the Accounting Firm is rendered. The Purchaser, MEC and

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<sup>28</sup> Note to draft: Similar provision will be provided to the extent an election under Section 338(h)(10) of the Internal Revenue Code will be made with respect to any of the Purchased Companies.

the Sellers shall execute and file all Tax Returns and other related documents in a manner consistent with the Accounting Firm's determination.<sup>29]</sup>

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES

**Section 4.1. Representations and Warranties of the Sellers.** Except as disclosed on the attached Disclosure Schedule, each of the Sellers, jointly but not severally, hereby represents and warrants to and in favor of the Purchaser, as follows:

(a) The Sellers are duly formed and subsisting under the respective laws of their states of formation, are properly qualified to do business in such states, and have the corporate power, authority, right and capacity to own the Purchased Assets, including the Lands, and to enter into, execute and deliver this Agreement and, subject to the entry of the Sale Order and the Confirmation Order, to carry out the Transaction in the manner contemplated by this Agreement.

(b) The Transaction has been duly and validly authorized by all requisite corporate or other proceedings of each of the Sellers[, the Purchased Companies and the Joint Venture,]<sup>15</sup> and subject to the entry of the Sale Order and the Confirmation Order, upon execution and delivery by the Sellers and the Purchaser, this Agreement and all other documents and agreements to be delivered by the Sellers pursuant to this Agreement shall constitute legal, valid and binding obligations of the Sellers.

(c) [Each of the Purchased Companies is duly formed and subsisting under the respective laws of the state of its formation, is properly qualified to do business in such state, and has the corporate power or other authority, right and capacity to own, operate and/or lease the properties and assets now owned, operated and/or leased by it, and to carry on its business in all respects as currently conducted by it.]<sup>15</sup>

(d) Neither the execution of this Agreement nor its performance by the Sellers will result in a breach of any material term or material provision, or constitute a default under, or conflict with or cause the acceleration of any material obligation of the Sellers[, the Purchased Companies or the Joint Venture]<sup>15</sup> under the constituent documents or by-laws of the Sellers, [the Purchased Companies or the Joint Venture]<sup>15</sup>, or any indenture, mortgage, deed of trust or any other material agreement to which any of them is a party, or by which any of them is bound, and, other than the Sale Order and the Confirmation Order and any applicable approvals of any Governmental Authority, no consent, approval or other documentation is necessary to enable the Sellers to complete the Transaction pursuant to this Agreement in compliance with all existing obligations, Permits or Licenses of the Sellers[, the Purchased Companies and the Joint Venture,]<sup>15</sup> and in compliance with all Applicable Laws, Permitted Encumbrances and any other obligations or agreements which affect the Purchased Assets[, the Purchased Companies and the Joint Venture.]<sup>15</sup>

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<sup>29</sup> Note to draft: This section is applicable to asset sales.

(e) To the knowledge of any of the Sellers, neither the execution of this Agreement nor its performance by any of the Sellers will result in a breach of any term or provision or constitute a default under, or conflict with or cause the acceleration of any obligation of any of the Sellers under, any indenture, mortgage, deed of trust or any other material agreement to which MEC or any Subsidiary of MEC is a party, or by which MEC or any Subsidiary of MEC is bound and no consent, approval or other documentation, other than the Sale Order and the Confirmation Order and any applicable approvals of any Governmental Authority, is necessary to enable the Sellers to complete the Transaction pursuant to this Agreement in compliance with all existing obligations of MEC or any Subsidiary of MEC.

(f) To the knowledge of the Sellers, there is no material pending or threatened actions, suits, proceedings, claims, investigations, applications or complaints (whether or not purportedly on behalf of any of the Sellers) against or affecting any of the Sellers [or the Purchased Companies]<sup>15</sup>, which in any way relate to or involve or could adversely affect the Purchased Assets [or the Purchased Companies]<sup>15</sup>, [or the occupancy or use of the Lands by the Sellers]<sup>12</sup>, in law or in equity, which could affect the validity of this Agreement, the title to the Purchased Assets, the value of the Purchased Assets or the conveyance of any of the Purchased Assets to the Purchaser.

(g) [Other than the Purchaser, no Person has any written or oral agreement or option, for the purchase or acquisition of all or any of the Purchased Assets; other than the Sale Order and the Confirmation Order, the Sellers have obtained all consents necessary to the sale of the Purchased Assets to the Purchaser.]

(h) [The relevant Seller has good and marketable fee simple title to, and the exclusive right to possess, use and occupy the Lands subject to any applicable Existing Leases and Permitted Encumbrances.]<sup>12</sup> The Sellers have the full right, power and authority to sell the Purchased Assets to the Purchaser as contemplated by this Agreement.

(i) [Exhibit G hereto sets forth the capitalization of each of the Purchased Companies and the Joint Venture. All of the outstanding shares of capital stock of the Purchased Companies are validly issued, fully paid and non-assessable (or with respect to the [Reorganized Santa Anita Stock], [Reorganized Thistledown Stock] [and] [Reorganized Remington Stock]]<sup>30</sup> will be validly issued, fully paid and non-assessable) and are not subject to, nor were they issued in violation of, any preemptive rights, and, except as set forth in Exhibit G hereto, such shares or interests are or will be, as the case may be, owned by the Sellers, free and clear of any Encumbrance (other than Permitted Encumbrances) with respect thereto. Except as described above, as of the date hereof, there are not, and at the Closing there will not be, any capital stock or other equity interests in the Purchased Companies issued or outstanding or any subscriptions, options, warrants, calls, rights, convertible securities or other agreements or commitments of any character obligating any Purchased Company to issue, transfer or sell any of its capital stock or other equity interests, or any agreements, arrangements, or understandings granting any Person any rights in any Purchased Company similar to capital stock or other equity interests.]<sup>15</sup>

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<sup>30</sup> Appropriate references to be inserted or deleted in individual bid.

(j) [To the knowledge of the Sellers, no consent by any Governmental Authority, including any horse racing board or other regulatory or licensing body, is required in connection with the Purchaser's acquisition of the Purchased Assets and where applicable, the cessation of the Sellers' operations on the Lands, nor will the Purchaser be required to become licensed by, or otherwise submit to the regulatory regime of, any horse racing board or other regulatory or licensing body by virtue of the Purchaser's acquisition of the Purchased Assets (so long as the Purchaser [or the applicable Purchased Company]<sup>15</sup> does not operate a race track or other gaming venue on the Lands)]<sup>12</sup>.

(k) [Each Purchased Company holds all material licenses, permits, approvals, consents, certificates, registrations and similar authorizations (whether governmental, regulatory or otherwise) (a "Company License") necessary to carry on the business as currently conducted by it or to own or lease any of the property or assets utilized by it as such property or assets are currently owned, leased or utilized. Each Company License and material Permit is valid, subsisting and in good standing and the applicable Purchased Company is not in default or breach of such Company License or material Permit and, to the knowledge of the Sellers, no proceeding is pending or threatened to revoke or limit any Company License or material Permit.]<sup>15</sup>

(l) [(i) the Existing Leases disclosed to the Purchaser pursuant to Exhibit E hereto are the only Leases relating to or affecting the Lands as of the date hereof, the applicable Seller has not otherwise leased, subleased or otherwise granted to any Person the right to use or occupy the Lands or any portion thereof, and at Closing there shall not be any Leases affecting the Lands other than the Existing Leases, and such Existing Leases constitute, in each case, the entire agreement between the Sellers and the Tenants with respect to the lease or occupancy of space on or within the Lands and (ii) the Sellers is not in material default under any of the Existing Leases and, at the Time of Closing, there shall not exist a material default or an event which, with the passage of time or the giving of notice or both, would constitute a material default on the part of the Sellers under any of the Existing Leases.]<sup>12</sup>

(m) (i) the Existing Contracts disclosed to the Purchaser pursuant to Exhibit D hereto are the only Contracts [relating to or affecting the Lands]<sup>12</sup> or otherwise material to the applicable Seller [or Purchased Company]<sup>15</sup>, and at Closing there shall not be any Contracts affecting the Lands or otherwise material to the applicable Seller [or Purchased Company]<sup>15</sup>, other than the Existing Contracts; (ii) none of the Sellers [or Purchased Companies]<sup>15</sup> is a party to, and neither the Sellers [nor the Purchased Companies]<sup>15</sup> nor any of the Purchased Assets is or on Closing will be bound or affected by, any Contracts (whether oral or written) except the Existing Contracts; (iii) except for any default resulting from the insolvency of such Seller [or Purchased Company]<sup>15</sup>, none of the Sellers [or Purchased Companies]<sup>15</sup> has either given or received notice of any default, and neither the Sellers [nor the Purchased Companies]<sup>15</sup> is in material default under any of the Existing Contracts and, at the Time of Closing, there shall not exist any default or event which, with the passage of time or the giving of notice or both, would constitute a material default in the performance and/or observance of the obligations on the part of the Sellers [or the relevant Purchased Company]<sup>15</sup> under any of the Existing Contracts (including the Permitted Encumbrances); and (iv) each of the Existing Contracts (including the Permitted Encumbrances) is in full force and effect as to the Sellers [or the relevant Purchased Company]<sup>15</sup>, unamended by oral or written agreement except as disclosed to the Purchaser pursuant to Exhibit D hereto, and each Seller [or the relevant Purchased Company]<sup>15</sup> is entitled

to the full benefit and advantage of each of the Existing Contracts to which it is a party in accordance with the terms thereof.

(n) The documents and information delivered or made available to the Purchaser pursuant to Section 5.1 constitute all of the material documentation with respect to the Purchased Assets within the Sellers' possession or control and at Closing, there shall not exist:

(i) any information or documentation relating to the Purchased Assets which was not disclosed or made available by the Sellers, as applicable, to the Purchaser as required by Section 5.1; or

(ii) any incompleteness of the information or documentation provided to the Purchaser pursuant to Section 5.1 with respect to the subject matter of such information or documentation; or

(iii) any inaccuracy in any of the information or documentation provided to the Purchaser pursuant to Section 5.1,

the effect of which lack of disclosure, incompleteness or inaccuracy is that the Purchaser was not aware of facts or circumstances which result, or could be reasonably expected to result, in a material adverse change in the value of the Purchased Assets.

(o) [There is direct access to, and egress from, the Lands from adjacent public roadways or streets abutting the Lands and, to the knowledge of the Sellers, there is no fact or condition which may result in interference with or termination of such access.]<sup>12</sup>

(p) [All Permits of Governmental Authorities having jurisdiction necessary in connection with the current use and operation of the Lands have been obtained and are in good standing in all material respects.]<sup>12</sup>

(q) [The Sellers and the relevant Purchased Companies have operated the Lands, and, until Closing, will operate the Lands, in the ordinary course in accordance with industry standard practices as would a prudent owner of comparable properties and has carried out all routine day to day repairs and maintenance in respect thereof.]<sup>12</sup>

(r) None of the Sellers is a "foreign corporation", "foreign partnership", "foreign trust", "foreign estate", "foreign person", "affiliate" of a "foreign person" or a "United States intermediary" of a "foreign person" within the meaning of the IRC Sections 897 and 1445, the Foreign Investments in Real Property Tax Act of 1980, the International Foreign Investment Survey Act of 1976, the Agricultural Foreign Investment Disclosure Act of 1978, or the regulations promulgated pursuant to such Acts or any amendments to such Acts.

(s) The Sellers and each Person owning an interest (directly or indirectly) in the Sellers is not: (i) identified on the "Specially Designated Nationals or Blocked Persons List" maintained by the Office of Foreign Purchased Assets Control, Department of Treasury (the "**OFAC**") and/or any other similar list maintained by the OFAC or the United States Department of Commerce, Bureau of Industry and Security of any other United States Governmental Authority pursuant to Applicable Laws; and (ii) a Person with whom a United States person is prohibited to engage in transactions pursuant to any trade embargo, economic sanction, or other

prohibition of Applicable Laws, or Executive Order of the President of the United States or United Nations decree or resolution, provided, however, that this Subsection shall not apply to any Person to the extent that such Person's interest in the Sellers is through a U.S. Publicly-Traded Entity and as used in this Agreement, "U.S. Publicly-Traded Entity" means a Person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned Subsidiary of such a Person.

(t) Any fee due to any broker or agent retained by the Sellers in respect of this Agreement or the Transaction shall be paid by the Sellers.

(u) [To the knowledge of the Sellers, the Lands and use thereof have been, are in material compliance with, Environmental Laws, except as specifically disclosed in Environmental Reports delivered to the Purchaser.]<sup>12</sup>

(v) Except as disclosed in Environmental Reports made available to the Purchaser: (i) each of the Sellers [and the Purchased Companies]<sup>15</sup> are and have been in compliance with Environmental Laws, which compliance includes obtaining, maintaining, and complying with any Environmental Permits, except for such non-compliance that in each case or in the aggregate would not reasonably be expected to result in future material liability; (ii) neither the Sellers [nor the Purchased Companies]<sup>15</sup> are subject to any Claim or, to the knowledge of the Sellers, threatened Claim alleging either or both that the Sellers or the Purchased Assets may be in violation of any Environmental Law or Environmental Permit, or may have any liability under Environmental Law, except for such Claims that each case or in the aggregate would not reasonably be expected to result in future material liability; and (iii) to the knowledge of the Sellers, no facts, circumstances or conditions exist with respect to [the Lands or]<sup>12</sup> [the Purchased Companies]<sup>15</sup> that would in each case or in the aggregate reasonably be expected to result in material liability.

(w) [Neither the Sellers nor the relevant Purchased Company have received any written notice of any, and, to the knowledge of the Sellers, there is no threatened or pending eminent domain, condemnation or rezoning proceedings with respect to the Lands or any part of the Lands.]<sup>12</sup>

(x) [Each Purchased Company has good, valid and marketable title to, or the right to use, all of its Intellectual Property Rights. To the knowledge of Sellers, all current and former employees of any of the Purchased Companies have assigned to the Purchased Company at which they work or worked, as the case may be, all Intellectual Property Rights that such employees have created while in the scope of their employment with such Purchased Company, including copyrights in works made for hire and patents, except where failure to assign such Intellectual Property Rights would not reasonably be expected to materially impair the ability of such Purchased Company to continue to obtain free of charge the benefits of such Intellectual Property Rights. Exhibit H lists each registered Intellectual Property Right owned by each of the Purchased Companies and each material contract, license and agreement with respect to Intellectual Property Rights pursuant to which any of the Purchased Companies have granted any Person the right to reproduce, distribute, market or exploit Intellectual Property Rights. There is no action, pending, or to the Sellers' knowledge, threatened that challenges the validity of ownership or use of any Intellectual Property Rights of the Purchased Companies. To Sellers'

knowledge, no third party's operations or products infringe on the Intellectual Property Rights in any material respect. To Sellers' knowledge, the Purchased Companies' operations and products do not infringe in any material respect on the intellectual property rights of any other Person. Neither the Sellers nor any of the Purchased Companies have received during the preceding two (2) years any written claim of infringement with respect to any Intellectual Property Rights used by the Purchased Companies.]<sup>15</sup>

(y) [Exhibit I hereto sets forth a complete list of all material insurance policies with respect to which any of the Purchased Companies are a party, a named insured or otherwise the beneficiary of coverage.]<sup>15</sup>

(z) [Exhibit J sets forth a complete and correct list of all material: (i) "employee benefit plans," as defined in Section 3(3) of ERISA, (ii) employment, consulting, retention, or change in control, and (iii) other employee benefit arrangements or payroll practices, including, without limitation, bonus plans, incentive, equity or equity-based compensation, or deferred compensation arrangements, termination or severance plans or arrangements, stock purchase, sick leave, vacation pay, salary continuation for disability, hospitalization, medical insurance, and life insurance plans and programs, excluding, in each case, collective bargaining agreements and any plans, programs or arrangements mandated by Applicable Laws, sponsored, maintained by, contributed to by or required to be contributed to by MEC, any of the Purchased Companies or any Subsidiaries of the Purchased Companies for the benefit of current or former employees of the Purchased Companies or any of their respective Subsidiaries (the "**Benefit Plans**").]<sup>15</sup>

(aa) [True and complete copies of the following documents, with respect to each of the Employee Plans have been made available to Purchaser by the Purchased Companies or MEC, to the extent applicable: (i) any plans, all amendments thereto and related trust documents, and amendments thereto; (ii) the most recent Forms 5500 and all schedules thereto and the most recent actuarial report, (iii) the most recent IRS determination letter and (iv) the most recent summary plan descriptions.]<sup>15</sup>

(bb) [Except as set forth on Exhibit J, all Employee Plans covering current or former employees of the Purchased Companies located in the United States ("**U.S. Employee Plans**") have been maintained in compliance, in all material respects, with their terms and with all applicable provisions of ERISA, the IRC and other Applicable Laws.]<sup>15</sup>

(cc) [Except as set forth on Exhibit J, the Employee Plans intended to qualify under Section 401 of the IRC are so qualified and the trusts maintained pursuant thereto are exempt from federal income taxation under Section 501 of the IRC, and, to the knowledge of the Seller, nothing has occurred with respect to the operation of the Employee Plans which could cause the loss of such qualification or exemption or the imposition of any material liability, penalty or tax under ERISA or the IRC.]<sup>15</sup>

(dd) [None of the Purchased Companies or any of its or their affiliates and any trade or business (whether or not incorporated) which is or has, within the last six years, been under common control, or which is or has, within the last six years, been treated as a single employer, with any of them under Section 414(b), (c), (m) or (o) of the IRC ("**ERISA Affiliate**") has incurred any material liability under Title IV of ERISA, Section 302 of ERISA or Section

412 of the IRC that has not been satisfied in full. Except as set forth on Exhibit J, if any U.S. Employee Plan, which for purposes of this Section 4.1(ee) shall include any "employee pension plan" as defined in Section 3(2) of ERISA, subject to Title IV of ERISA, Section 302 of ERISA or Section 412 of the IRC maintained by any ERISA Affiliate, were to terminate, there would be no material amount of unfunded liabilities (as defined in Section 4001(a)(17) of ERISA) with respect to such U.S. Employee Plan.]<sup>15</sup>

(ee) [As of the date hereof, there are no actions, claims or lawsuits (other than routine claims for benefits in the ordinary course) pending or, to the knowledge of the Sellers, threatened, with respect to any U.S. Employee Plan.]<sup>15</sup>

(ff) [None of the Purchased Companies nor any ERISA Affiliate have, within the past six years, withdrawn or partially withdrawn from any Multiemployer Plan with respect to which there is any outstanding material liability. None of the Purchased Companies nor any ERISA Affiliate have, within the past 12 months, received notice from any Multiemployer Plan that it is in reorganization or is insolvent, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise Tax, or that such plan intends to terminate or has terminated.]<sup>15</sup>

(gg) [Except as set forth on Exhibit J, neither the execution of this Agreement, nor the consummation of the Transaction will (i) entitle any employees of the Purchased Companies or any of their respective Subsidiaries to severance pay or any increase in severance pay upon any termination of employment after the date hereof under any U.S. Employee Plan, or (ii) accelerate the time of payment or vesting or result in any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or result in any other material obligation pursuant to, any of the U.S. Employee Plans.]<sup>15</sup>

(hh) [Each Employee Plan covering current or former employees of the Purchased Companies or any of their respective Subsidiaries located outside of the United States has been maintained in compliance, in all material respects, with its terms and the applicable Laws of the relevant jurisdiction.]<sup>15</sup>

(ii) [The Purchased Companies are not a party to any labor or collective bargaining agreement.]<sup>15</sup>

(jj) [There are no (i) strikes, work stoppages, work slowdowns or lockouts pending, or to the knowledge of the Sellers, threatened against or involving any of the Purchased Companies or (ii) material unfair labor practice charges, grievances or complaints pending or, to the knowledge of the Sellers, threatened by or on behalf of any employee or group of employees of the Purchased Companies.]<sup>15</sup>

(kk) [Each of the applicable Purchased Companies holds a license to conduct live horse racing with pari mutuel wagering at the respective Racetracks.]<sup>15</sup>

(ll) [All material Tax Returns required to be filed by or with respect to [the Purchased Companies, the [the Dixon Property,] [the Ocala Property] or, to the knowledge of the Sellers, the Joint Venture have been timely filed (taking into account valid extensions of the time for filing) and all such Tax Returns are true, complete and accurate in all material respects. The

Sellers, the Purchased Companies and, to the knowledge of the Sellers, the Joint Venture have timely paid, or caused to be paid, all material Taxes shown as due on such Tax Returns. There are no examinations or other administrative or court proceedings relating to material Taxes in progress or pending, and there is no existing, pending or threatened in writing claim, proposal or assessment against any Purchased Company or, to the knowledge of the Sellers, the Joint Venture for material Taxes.]<sup>15</sup>

**Section 4.2. Representations and Warranties of the Purchaser.** The Purchaser represents and warrants to and in favor of the Sellers, as follows:

(a) The Purchaser is a corporation duly existing under the laws of the [ ] and has the corporate power, authority, right and capacity to enter into this Agreement and to carry out the Transaction in the manner contemplated by this Agreement.

(b) The Transaction has been duly and validly authorized by all requisite corporate proceedings; upon execution and delivery by the Sellers and the Purchaser, this Agreement and all other documents and agreements to be delivered by the Purchaser pursuant to this Agreement shall constitute legal, valid and binding obligations of the Purchaser; and

(c) The Purchaser has not engaged or become liable to any broker in respect of this Agreement or the Transaction.

**Section 4.3. Survival.** The representations contained in this Agreement or in any Closing Documents shall not survive the Closing. Notwithstanding anything contained in this Agreement to the contrary, all of the representations, shall be subject to the following conditions and limitation: in the event that, prior to the Closing, the Purchaser gains current actual knowledge of a fact or circumstance which, by its nature and plainly on its face, indicates that a representations is, was, or will become untrue or inaccurate, then the Purchaser shall not have the right to bring any lawsuit or other legal action against the Sellers, nor pursue any other remedies against the Sellers, as a result of the breach of the representations caused thereby, but the Purchaser's sole right shall be to terminate this Agreement and not to proceed with the Transaction, in which event there shall be no liability on the part of the Sellers for breaches of representations of which the Purchaser had current actual knowledge prior to the Closing. For greater certainty and notwithstanding the foregoing, the parties hereto acknowledge and agree that the mere delivery by the Sellers to the Purchaser, and possession by the Purchaser, of the documents and instruments contemplated in Section 2.2 shall not be sufficient to constitute actual knowledge on the part of the Purchaser that a representations is, was or has become untrue or inaccurate.

**Section 4.4. Non-Waiver.** The Sellers agree that the Purchaser's right to do searches, reviews, examinations, investigations, inspections, assessments, audits and analyses, and the exercise of such right, shall not affect, reduce or mitigate any of the Representations or covenants of the Sellers contained in this Agreement or any of the damages and costs owing by the Sellers to the Purchaser as a result of any breach of such Representations or covenants.

## ARTICLE V COVENANTS

**Section 5.1. Covenants of the Sellers.** From and after the date hereof, the Sellers covenant and agree as follows:

(a) The Sellers shall deliver to the Purchaser the following in respect of the Purchased Assets:

(1) [copies of all Existing Leases and a copy of each notice of default, if any, received or sent by or on behalf of the Sellers in respect of any Existing Lease if the default referred to in such notice remains outstanding;]<sup>12</sup>

(2) copies of all Existing Contracts and each notice of default, if any, received or sent by or on behalf of the Sellers in respect of any Existing Contract if the default referred to in such notice remains outstanding;

(3) [the most current survey of the Lands, if any, in the Sellers' possession, together with the most recent title reports, deeds and title insurance policies, if any, in respect of the Lands;]<sup>12</sup>

(4) [a list of all outstanding litigation, arbitration, mediation or other proceedings affecting or relating to the Lands to which and of the Sellers is a party or in respect of which it has been formally notified and of all threatened litigation, arbitration, mediation or other proceedings affecting or relating to the Lands of which the Sellers has received written notice, together with any material correspondence relating thereto;]<sup>12</sup>

(5) a list of any third party consents, waivers or assumptions which are necessary to permit the conveyance of the Purchased Assets to the Purchaser;

(6) copies of any Environmental Report;

(7) [if requested by the Purchaser, authorizations enabling the Purchaser's Solicitors to obtain information from Governmental Authorities concerning the Lands (at the Purchaser's sole cost and expense);]<sup>12</sup>

(8) such other written information, correspondence and documentation relating to the Purchased Assets that is in the possession or control of the Sellers and which the Purchaser has requested, acting reasonably.

(b) As used in this Section 5.1, the term "control of the Sellers" shall mean, in addition to the Sellers, materials in the possession or control of MEC, current legal counsel to the Sellers or MEC, or any consultants, advisors or other third party professionals currently commissioned, retained or instructed by the Sellers or MEC.

(c) Any lists, documentation or other information provided by the Sellers pursuant to this Section 5.1 shall be amended or supplemented, as necessary from time to time, until 5:00 p.m. on the Business Day immediately preceding the Closing. In addition, if any of the Sellers becomes aware of a failure to provide any document or other information that it is required to provide in accordance with this Section 5.1 at any time prior to the Closing, it shall forthwith advise the Purchaser in writing of such failure and deliver such information to the Purchaser.

(d) The Purchaser acknowledges and agrees that it has not, for purposes of entering into this Agreement or consummating the Transaction, relied on any representations or warranties or other statement or omission of Sellers or any of its directors, officers, employees, agents, stockholders, affiliates, consultants, counsel, accountants, or other representatives, other than the representations and warranties contained in this Agreement (including the Exhibits and Schedules hereto).

(e) [Between the date hereof and the Closing Date, the Seller shall, and shall cause the Purchased Companies to, operate their business in the Ordinary Course of Business and shall not, except as required or expressly permitted pursuant to the terms hereof or as the Purchaser shall consent in writing or as may be approved by order of the Bankruptcy Court, enter into any material transaction, other than in the Ordinary Course of Business. Notwithstanding the foregoing, the Purchaser acknowledges that Seller, in its sole discretion, may distribute as a dividend or contribute as a capital contribution, or cause the distribution or contribution of, prior to or at the Closing, (i) amounts owing pursuant to the inter-company accounts between the Purchased Companies, on the one hand, and their respective Affiliates (including Seller and its Affiliates, but not including any of the Purchased Companies), on the other hand, and (ii) one or more notes of the Purchased Companies in an aggregate amount no greater than \_\_\_\_\_ (the "Specified Notes"), and that such distribution or contribution will not result in a breach of this Agreement. In the event that Seller pays or declares a dividend of the Specified Notes, Seller agrees that it shall, the next Business Day and no later than one Business Day before Closing, contribute the Specified Notes back to each of the Purchased Companies making the respective distribution and causing each of the Purchased Companies' net worth to be unaffected by the distribution of the Specified Notes and the re-contribution to the Purchased Companies.]<sup>15</sup>

(f) Except as set forth in the Confirmation Order, the Sellers shall diligently make all payments to be made and otherwise observe and perform or cause to be observed or performed all covenants and obligations to be observed or performed by the Sellers under the Existing Contracts [and the Existing Leases]<sup>12</sup>.

(g) [Until Closing, the Sellers shall not take any action, nor permit any action to be taken, which could reasonably be expected to materially adversely affect the current zoning of the Lands or the present or future use of the Lands.]<sup>12</sup>

(h) To the extent required by applicable law, the Sellers shall make the filing or filings as may be required by HSR.

(i) [The Sellers shall negotiate in good faith to enter into arm's length agreements with the Purchaser prior to the Closing Date, that provides that the Purchaser will provide content from races at [Santa Anita Park], [Thistledown], [Remington Park], [Portland Meadows] [and] [Lone Star] to HRTV, TrackNet Media and/or such other entity as directed by the Sellers on terms similar to those currently in effect (the "HRTV/TrackNet Agreements").]<sup>31</sup>

(j) [The Sellers shall negotiate in good faith to enter into an agreement with the Purchaser prior to the Closing Date, that provides that (i) [Santa Anita Park], [Thistledown],

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<sup>31</sup> To be included if Purchaser purchases one or more Racetracks.

[Remington Park], [Portland Meadows] [and] [Lone Star] will carry the signal for simulcast purposes from races at [INSERT NAMES OF RACETRACKS PURCHASED] and (ii) [INSERT NAMES OF RACETRACKS PURCHASED] will carry the signal for simulcast purposes from races at [Santa Anita Park], [Thistledown], [Remington Park], [Portland Meadows] [and] [Lone Star] on terms similar to those currently in effect (the "**Reciprocal Simulcast Agreement**")<sup>32</sup>.

**Section 5.2. Covenants of the Purchaser.** (a) The obligation of the Purchaser to complete the Transaction pursuant to this Agreement is subject to the condition that the Purchaser is satisfied with the Due Diligence in its sole and absolute discretion on or before the date hereof, which satisfaction is hereby evidenced by the execution and delivery of this Agreement by the Purchaser.

(b) [The Purchaser shall negotiate in good faith to enter into the HRTV/TrackNet Agreements with the Seller prior to the Closing Date.]<sup>33</sup>

(c) [The Purchaser shall negotiate in good faith to enter into the Reciprocal Simulcast Agreements with the Seller prior to the Closing Date.]<sup>34</sup>

(d) To the extent required by applicable law, the Purchaser shall make the filing or filings as may be required by HSR.

**Section 5.3. Joint Obligations.** The parties shall proceed diligently and in good faith to attempt to settle, on or before the Closing Date or such earlier date as may be expressly set forth herein, the contents of all Closing Documents to be executed and delivered by the Sellers and the Purchaser; provided, however, that, in the case of any Closing Documents to be executed and delivered in the forms attached hereto as Exhibits, such forms shall not be subject to further negotiations and the Sellers and the Purchaser shall provide all details and/or information necessary to complete such documents, subject to the other's approval of the accuracy of such details and information, such approval not to be unreasonably withheld.

**Section 5.4. Approvals of the Purchaser.** While this Agreement is in effect, the Sellers agree not to amend, cancel or accept a surrender or forfeiture of [any Existing Leases or]<sup>12</sup> Existing Contracts other than (i) [Existing Leases or]<sup>12</sup> Existing Contracts which are scheduled to expire prior to Closing and do not have a renewal right on the part of the Seller [and (ii) Existing Leases that are in default without the prior written approval of the Purchaser, which approval may not be unreasonably withheld]<sup>12</sup>, and shall not enter into any Lease or Contract without the prior written approval of the Purchaser, which approval may not be unreasonably withheld; provided, however, that the Sellers may enter into any such Contract in order to make emergency repairs or to comply with Applicable Law without prior notice to, or approval of, the Purchaser; and, provided, further, that the Sellers provide the Purchaser with written notice thereof, together with a copy of any such Contract, promptly thereafter; and, provided, further,

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<sup>32</sup> To be included if Purchaser purchases one or more, BUT NOT ALL Racetracks.

<sup>33</sup> See footnote 31.

<sup>34</sup> See footnote 32.

that the Sellers shall provide the Purchaser with a complete copy of any document which creates, amends, cancels, surrenders or forfeits any [Existing Lease or]<sup>12</sup> Existing Contract within five (5) Business Days after it is entered into by the parties thereto.

**Section 5.5. Notice of Default.** The Sellers shall, within five (5) Business Days of receipt thereof, provide to the Purchaser: (i) a copy of any notices of any material default that any of the Sellers receives in respect of the [Existing Leases and/or]<sup>12</sup> Existing Contracts and any notices of default under [the Existing Leases]<sup>12</sup> or any Existing Contract that it sends to another Person, in either case after the date of this Agreement and (ii) state or federal environmental orders that would reasonably be expected to result in a material liability issued by any Governmental Authorities having jurisdiction relating to [the Purchased Companies]<sup>15</sup> [or the Lands]<sup>12</sup>.

**Section 5.6. Approvals.** Whenever in this Agreement it is stated that the approval or consent of a party is required, it is understood that, except where otherwise specifically so stated, such approval or consent shall be in writing, and shall not be unreasonably withheld or delayed.

**Section 5.7. Risk of Condemnation and Eminent Domain.** The Sellers shall promptly notify the Purchaser in writing in the event that it receives a notice of condemnation and/or exercise of eminent domain in respect of all or any material part of the Purchased Assets or the assets thereof[, including the Lands,]<sup>12</sup> as applicable, and such notice shall include a copy of the notice of condemnation and/or exercise of eminent domain and copies of all correspondence relating thereto in the possession of the Sellers. [If notice of a material condemnation and/or exercise of a material eminent domain is with respect to more than 25% of one (1) Land prior to Closing, the Purchaser may elect by notice in writing given to the Sellers within ten (10) Business Days (the "**Notice Date**") after receipt from the Sellers of notice of the proposed condemnation and/or exercise eminent domain either:

(a) to complete the Transaction, in which case the Purchaser shall continue to be bound by this Agreement except that any compensation awarded for expropriation and all right and claim of the Sellers to any such proceeds and compensation not paid by the Closing Date shall be assigned to the Purchaser; or

(b) to terminate this Agreement, in which event this Agreement shall automatically terminate, be null and void and of no further force and effect whatsoever and the Purchaser and Sellers shall be released from all obligations under this Agreement (except those which are expressly stated to survive any termination of this Agreement).

If the notice of the proposed condemnation and/or exercise of eminent domain is received by the Sellers at such time that there would be insufficient time for the Purchaser to make its election hereunder, the Closing Date shall be postponed to a date which is five (5) Business Days after the earlier of the date such election is made or the period for making such election has expired, or if such date is not a Business Day, then the next Business Day thereafter. The failure of the Purchaser to notify the Sellers of its election by the Notice Date shall be deemed by the Sellers to be an election by the Purchaser to complete the Transaction pursuant to this Section 5.7.]<sup>12</sup>

**Section 5.8. Damage Before Closing.** The interest of the Sellers in and to the Purchased Assets shall be at the risk of the Sellers until Closing. The Sellers shall insure the

Purchased Assets and the assets thereof until the Closing as they currently insure the Purchased Assets and the assets thereof. If loss or damage to the Purchased Assets occurs, then the Sellers shall promptly deliver a written notice to the Purchaser specifying the nature and extent of the loss or damage and estimating the cost of repair (the "**Notice of Loss**"), then neither party shall have any right to terminate this Agreement by virtue thereof, the Sellers shall pay any insurance deductibles in respect of such loss or damage (and shall pay to the Purchaser an amount equal to the amount, if any, by which the cost of repairs or restoration of such loss or damage exceeds the amount of property insurance proceeds payable to the Purchaser as hereinafter contemplated), the Purchaser shall be entitled to all proceeds of property insurance in respect of such loss or damage (except that portion, if any, required to reimburse the Sellers for repair or restoration work it has done prior to Closing and insurance for loss of income prior to Closing, all of which shall be paid to the Sellers), and the parties shall complete the Transaction.

## **ARTICLE VI**

### **TITLE**

**Section 6.1. [Search of Title.]** The Purchaser shall be allowed until 5:00 p.m. on the Business Day fifteen (15) Business Days prior to the commencement of the Hearing, at its own expense, to examine title to the Lands and the other matters referred to in the next paragraph and to submit to the Sellers its objections to the title to the Lands and such matters. In the event that the Purchaser has any valid objections based on title to the Lands, the Purchaser shall deliver a Requisition Notice listing any and all such objections in reasonable detail on or before 5:00 p.m. on the Business Day ten (10) Business Days prior to the commencement of the Hearing. If any such objections are, by their nature, curable by the payment of money, then the Sellers shall cure such defects; provided, however, that the Sellers shall not be required to expend more than \$[ ] in the aggregate in connection with such cures. For all other defects, the Purchaser shall, by notice to the Sellers delivered no later than five (5) Business Days prior to the commencement of the Hearing, have the right to waive such objections and close (without offsetting the Purchase Price) or to terminate this Agreement, in which event this Agreement shall terminate, be null and void and of no further force and effect whatsoever, and the Purchaser and Sellers shall be released from all obligations under this Agreement (except those which are expressly stated to survive any termination of this Agreement). The failure of Purchaser to notify Sellers of its election by five (5) Business Days prior to the commencement of the Hearing shall be deemed by the Sellers to be an election by the Purchaser to close the Transaction (without offsetting the Purchase Price). Notwithstanding the foregoing or anything to the contrary contained in this Agreement, the Sellers shall, on or prior to the Closing Date pay, discharge or remove of record all Voluntary Liens or cause to be paid, discharged or removed of record all Voluntary Liens (or delivered documents to effect the foregoing, in escrow, pursuant to Section 8.2) at the Sellers' sole cost and expense all of the following items (other than open real estate taxes, water and sewer charges that are subject to adjustment in accordance with Section 2.6 hereof and other than Permitted Encumbrances).

Except for any valid objection so made pursuant to a Requisition Notice, and except for any objection going to the root of title, the Purchaser shall be conclusively deemed to have irrevocably accepted the Sellers' title to the Lands and satisfied itself with respect to the other matters referred to in this Section 6.1.]<sup>12</sup>

## ARTICLE VII CONDITIONS TO CLOSING

**Section 7.1. Conditions for the Purchaser.** Notwithstanding any other provision of this Agreement to the contrary, the obligation of the Purchaser to complete the Transaction shall be subject to the satisfaction of the following conditions, as determined by the Purchaser in its sole and absolute discretion:

(a) All the terms, covenants and conditions of this Agreement to be complied with or performed or satisfied by the Sellers shall have been complied with or performed or satisfied in all material respects, including all deliveries required to be made pursuant to Article VIII hereof; provided, however, that, in the case of any term, covenant and/or condition qualified by materiality pursuant to the terms of this Agreement, such term, covenant and/or condition shall have been complied with or performed in all respects.

(b) The representations and warranties of the Sellers set forth in Section 4.1 hereof shall be true and correct in all material respects as of the date of this Agreement and as of the Closing; provided, however, that, in the case of any representation and/or warranty qualified by materiality pursuant to the provisions of Section 4.1 hereof, such representation and/or warranty shall be true and correct in all respects as of the date of this Agreement and as of the Closing.

(c) No action or proceeding, at law or in equity, shall have been commenced by any Person to enjoin, restrict or prohibit the Closing which has not, by the Closing Date, been dismissed, quashed or permanently stayed without any further right of appeal or right to seek leave to appeal.

(d) The Plan Effective Date shall have occurred as of the Closing Date.

(e) All applicable time periods under HSR, as such time periods may be modified by the Bankruptcy Code, shall have expired and no action, suit or proceeding relating HSR shall have been instituted and remain pending before a court or other governmental body by any governmental agency or public authority to restrain, prohibit or otherwise challenge the Transaction, nor shall any governmental agency have notified any party hereto that consummation of such transactions would or might violate such law.

The conditions set forth in this Section 7.1 are for the sole benefit of the Purchaser, and may be waived in whole or in part by the Purchaser by notice to the Sellers in writing without prejudice to the Purchaser's rights under this Agreement or at law, if any, in the event of the non-fulfillment of any other condition or conditions.

**Section 7.2. Conditions for the Sellers.** The obligation of the Sellers to complete the Transaction shall be subject to the satisfaction of the following conditions:

(a) All the terms, covenants and conditions of this Agreement to be complied with or performed or satisfied by the Purchaser shall have been complied with or performed or satisfied in all material respects, including all deliveries required to be made pursuant to Article VIII hereof; provided, however, that, in the case of any term, covenant and/or condition qualified

by materiality pursuant to the terms of this Agreement, such term, covenant and/or condition shall have been complied with or performed in all respects;

(b) The representations and warranties of the Purchaser set out in Section 4.3 hereof shall be true and correct in all material respects as of the date of this Agreement and as of the Closing; provided, however, that, in the case of any representation and/or warranty qualified by materiality pursuant to the provisions of Section 4.3, such representation and/or warranty shall be true and correct in all respects as of the date of this Agreement and as of the Closing.

(c) No action or proceeding, at law or in equity, shall have been commenced by any Person to enjoin, restrict or prohibit the Closing, which has not, by the Closing Date, been dismissed, quashed or permanently stayed without any further right of appeal or right to such leave to appeal.

(d) The Plan Effective Date shall have occurred as of the Closing Date.

(e) [The parties shall have entered into the HRTV/TrackNet Agreements and the Reciprocal Simulcast Agreement, in each case in form and substance satisfactory to the Seller.]<sup>35</sup>

(f) All applicable time periods under HSR, as such time periods may be modified by the Bankruptcy Code, shall have expired and no action, suit or proceeding relating HSR shall have been instituted and remain pending before a court or other governmental body by any governmental agency or public authority to restrain, prohibit or otherwise challenge the Transaction, nor shall any governmental agency have notified any party hereto that consummation of such transactions would or might violate such law.

The conditions set forth in this Section 7.2 are for the sole benefit of the Sellers, and may be waived in whole or in part by the Sellers by notice to the Purchaser in writing without prejudice to the Sellers' rights under this Agreement or at law, if any, in the event of non-fulfillment of any other condition or conditions.

## ARTICLE VIII CLOSING

**Section 8.1. Closing Arrangements.** Upon all conditions precedent to the Purchaser's and the Sellers' obligation to close the transactions as set forth in this Agreement having been satisfied and fulfilled, or waived, as the case may be, the Closing shall take place on the Closing Date, at 10:00 a.m., local time, at the offices of Osler, Hoskin & Harcourt LLP, 100 King Street West, 1 First Canadian Place, Suite 6100, Toronto, Ontario or at such other time or place as may be mutually agreed to by the parties.

**Section 8.2. Sellers' Deliveries.** On or before the Closing Date, the Sellers shall deliver or cause to be delivered the following items and documents to the Purchaser, with each such document to be effective as of the Closing:

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<sup>35</sup> As applicable.

(a) a certificate executed on behalf of each of the Sellers representing and certifying that the conditions set forth in Section 7.1 have been fulfilled;

(b) evidence that the Sellers have obtained the approval of the Board of Directors of MEC in respect of the Transaction;

(c) the Statement of Adjustments;

(d) [any applicable Deed in favor of the Purchaser, duly executed by the Sellers;]<sup>12</sup>

(e) [certificates representing all of the issued and outstanding shares of the [Reorganized Santa Anita Stock], [Reorganized Thistledown Stock] [and] [Reorganized Remington Stock]]<sup>36</sup> and the [Fex Straw Stock], [the Fex Straw Austria Stock], [the MEC Texas Racing Stock], [the Racetrack Holdings Stock] and [the MEC Oregon Racing Stock]<sup>37</sup>, along with appropriate instruments of transfer duly endorsed in blank, respectively]<sup>15</sup>;

(f) [an assignment of the Caruso JV Interest]<sup>15, 38</sup>;

(g) a Bill of Sale;

(h) [an assignment of the Permits (to the extent assignable) in favor of the Purchaser, duly executed by the Sellers, which shall be sufficient to remise, release and quit-claim to the Purchaser all right, title, interest, claim and demand which the Sellers have in and to all of the Permits attributable to the Lands, and to irrevocably transfer such Permits to the Purchaser to be used by the Purchaser in its sole and absolute discretion, together with any other additional documents or instruments required to effect, record or consummate such transfer of Permits;]<sup>12</sup>

(i) the Assignment and Assumption of Contracts, duly executed by the Sellers;

(j) [the Assignment and Assumption of Leases, duly executed by the applicable Sellers;]<sup>12</sup>

(k) a certificate of non-foreign status of each Seller pursuant to Section 1445 of the IRC and Section 1.1445-2(b) of the Treasury Regulations promulgated thereunder;

(l) such notices as the Purchaser may reasonably require be given to [the Tenants under the Existing Leases and other]<sup>12</sup> parties to the assigned Existing Contracts of their assignment to the Purchaser[, together with directions relating to the payment of rent under such Existing Leases, and]<sup>12</sup> payment of other amounts under the assigned Existing Contracts, all executed by the Sellers in such form as the Purchaser may reasonably require;

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<sup>36</sup> Appropriate references to be inserted or deleted in individual bid.

<sup>37</sup> Appropriate references to be inserted or deleted in individual bid.

<sup>38</sup> Appropriate references to be inserted or deleted in individual bid.

(m) a direction of the Sellers as to the payment of the Purchase Price, including wire transfer instructions, and the name of the payee (if other than the Sellers);

(n) a certificate of good standing of each of the Sellers [and the Purchased Companies]<sup>15</sup>;

(o) a certified copy of the Confirmation Order;

(p) all other conveyances and other documents which are required and which the Purchaser has reasonably requested on or before the Closing Date to give effect to this Transaction, including the proper transfer, assignment and conveyance of the Purchased Assets by the Sellers to the Purchaser, free and clear of all Encumbrances except the Permitted Encumbrances.

**Section 8.3. Purchaser's Deliveries.** On or before the Closing Date, the Purchaser shall deliver or cause to be delivered the following items and documents to the Sellers, with each such document to be effective as of the Time of Closing:

(a) a certificate executed on behalf of the Purchaser representing and certifying that the conditions set forth in Section 7.2 have been fulfilled;

(b) the Assignment and Assumption of Contracts, duly executed by the Purchaser;

(c) [the Assignment and Assumption of Leases, duly executed by the Purchaser;]<sup>12</sup>

(d) the Purchase Price; and

(e) all other documents which the Sellers have reasonably requested to give effect to this Transaction.

**Section 8.4. [Separate Tax Parcel]** In the event that, as of Closing, the Lands do not constitute a separate tax parcel, the Transaction shall be completed and the parties shall pro rate the realty Taxes with the Purchaser providing a check payable to the taxing authority for its pro rata share of realty Taxes in respect of the Lands.]<sup>12</sup>

**Section 8.5. Tax Matters.**<sup>39</sup> (a) (i) [With respect to Tax Returns for any Tax period (or a portion thereof) ending on the Closing Date, MEC and Sellers shall include the income of

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<sup>39</sup> The Sellers may decide to make an election under Section 338(h)(10) of the IRC and any corresponding or similar elections under state, local or foreign law (the "Section 338(h)(10) Election") with respect to any of the Purchased Companies, and Purchaser shall agree to join with the Sellers in making such elections and to cooperate with the Sellers otherwise. If Purchaser decides to make the Section 338(h)(10) Election, Sellers shall agree to join with the Purchaser in making the elections and to cooperate with Purchaser otherwise, provided, however, that (i) an adjustment to the Purchase Price shall be made to account for any benefit that Purchaser realizes from making the elections and (ii) Purchaser shall be liable for and shall indemnify and hold the Sellers and the Sellers' Affiliates harmless from and against any and all costs (including, without limitation, any taxes and use of federal or state net operating losses) resulting from making the Section 338(h)(10) Election.

the Purchased Companies on consolidated, combined and unitary federal, state and local Tax Returns, and Sellers shall pay Taxes attributable to such income. The Purchased Companies shall furnish Tax information to MEC and Sellers for inclusion in the consolidated, combined and unitary Tax Returns for the period (or a portion thereof) that includes the Closing Date in accordance with the Purchased Companies' past custom and practice at the Purchaser's cost.

(ii) With respect to Tax Returns for any Tax period (or a portion thereof) that begins on or before the Closing Date and ends after the Closing Date, Purchaser shall prepare or cause to be prepared and file or cause to be filed all Tax Returns of the Purchased Companies. Purchaser shall deliver such Tax Returns to Sellers for review and comment at least twenty (20) days prior to filing. Purchaser shall not file such Tax Returns without Sellers' consent (such consent not to be unreasonably withheld, conditioned or delayed). Purchaser shall pay all Taxes shown due on such Tax Returns; provided, however, that Purchaser shall have the right recover directly from the Sellers the amount of such Taxes which relate to the portion of the taxable period ending on the Closing Date as determined pursuant to Section 8.5(b)(ii) hereof. In the event that the parties hereto do not agree as to any of the Tax Returns described in this Section 8.5(a)(ii), MEC, the Sellers and the Purchaser shall refer the disagreement to the Accounting Firm. The Accounting Firm shall resolve any disagreement within 30 days and MEC, the Sellers and the Purchaser agree the decision of the Accounting Firm shall be conclusive and binding on both the Sellers and the Purchaser. The fees of the Accounting Firm shall be borne by MEC, the Sellers and the Purchaser in inverse proportion as they may prevail on the disagreement resolved by the Accounting Firm, which proportionate allocations shall also be determined by the Accounting Firm at the time the determination of the Accounting Firm is rendered.

(iii) With respect to Tax Returns not described in Sections 8.5(a)(i) and (ii) and which Tax Returns are for the Tax period (or a portion thereof) ending on or before the Closing Date (the "Separate Tax Returns"), the Sellers shall prepare such Separate Tax Returns in accordance with past practice. The Purchaser shall timely execute and file, or cause to be timely executed and filed, the Separate Tax Returns with the appropriate taxing authorities, provided that the Sellers shall pay to the Purchaser or the Purchased Companies the Tax shown due on the Separate Tax Returns three (3) days prior to the filing of such Separate Tax Returns.

(b) (i) The parties acknowledge that, for federal income Tax purposes, the taxable year of the Purchased Companies will end as of the close of the Closing Date. With respect to all other Taxes, the Sellers and the Purchaser will, unless prohibited by applicable law, take such actions as may be required to close the taxable period of the Purchased Companies as of the close of the Closing Date.

(ii) In the case of any Taxes that are imposed on a periodic basis and are payable for a taxable period that includes, but does not end on, the Closing Date, the portion of such Tax which relates to the portion of such taxable period ending on the Closing Date shall (i) in the case of any Taxes, other than Taxes based upon or related to income or receipts, be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in the entire taxable period, and (ii) in the case of any Tax based upon or related to income or receipts, be deemed equal to the amount which would be payable if the relevant taxable period ended as of the end of the Closing Date.

(c) The Sellers shall cause the provisions of any Tax sharing agreement between (i) any Seller, on one hand, and (ii) any Purchased Company, on the other, to be terminated on or before the Closing Date. After the Closing Date, no party shall have any rights or obligations under any such Tax sharing agreement.]<sup>15</sup>

(d) On the Closing Date, and solely to the extent not exempt in accordance with section 1146 of the Bankruptcy Code, the Purchaser shall have the responsibility of payment of all state and local Transfer Taxes, if any, including those payable in connection with the recording of the Deeds, occasioned by the conveyance of [the Lands]<sup>12</sup> and the Purchased Assets from the Sellers to the Purchaser, as well as any notary fees incurred in connection therein; provided, however, that the parties shall reasonably cooperate in availing themselves of any available exemptions from any collection of (or otherwise reduce) any such Transfer Taxes, including a request that the Sellers' sale of the Purchased Assets be exempted from Transfer Taxes pursuant to Section 1146 of the Bankruptcy Code. [The Purchaser shall be responsible for costs and expenses associated with the recordings of the Deeds.]<sup>12</sup>

(e) Any refunds (and any interest received thereon) of any Tax received by any of the Purchased Companies for any period (or portion thereof) ending on or before the Closing Date shall belong to the Sellers, provided that the Tax at issue either was paid on or before the Closing Date or was paid by the Sellers (or any Affiliate thereof) after the Closing Date.

(f) MEC and the Sellers shall have control over any audit, suit, action or proceeding (each a "**Tax Contest**") relating to a Tax issue of any of the Purchased Companies with respect to any period (or a portion thereof) ending prior to or on the Closing Date and for which MEC or the Sellers are primarily liable under this Agreement. MEC and the Sellers shall keep Purchaser apprised of all developments relating to the Tax Contest, provide Purchaser with copies of all correspondence from any taxing authority relating to any such Tax Contest, and conduct the defense of such Tax Contest diligently and in good faith.]<sup>15</sup>

## ARTICLE IX TERMINATION OF AGREEMENT

**Section 9.1. Termination of Agreement By Either Party.** This Agreement may be terminated by the Sellers or by the Purchaser, in their or its sole option and discretion, in the event that (a) the Purchaser or any Seller, as the case may be, breaches the covenants set forth in Article V hereof or (b) the Sale Order and Confirmation Order are not entered by the Bankruptcy Court on or prior to [ ], 2009; provided, however, that, in the event that the Sale Motion is denied by the Bankruptcy Court, unless otherwise agreed to by the Purchaser and the Sellers, the Agreement shall terminate automatically without any further notice or action by any person.

**Section 9.2. Effect of Termination.** Except as otherwise provided herein, in the event of termination of this Agreement, this Agreement (other than the terms and provisions set forth in Section 2.3 and Section 3.3 hereof, which shall survive such termination) shall become null and void and be deemed of no force and effect, with no liability on the part of any party hereto (or of any of its directors, officers, employees, consultants, contractors, agents, legal and

financial advisors or other representatives), and no party hereto shall have any obligations to any other party hereto arising out of this Agreement. Upon termination, this Agreement shall not be an admission by any party hereto, and no party hereto shall seek to admit it into evidence against any other party hereto.

## **ARTICLE X MISCELLANEOUS**

**Section 10.1. As-Is/Where-Is Transaction.** The Purchaser acknowledges and agrees that, except as expressly provided in this Agreement or in any Closing Documents provided by the Sellers to the Purchaser at Closing, and without derogating from any indemnities provided by the Sellers herein or in any Closing Documents, the Sellers make no representation, warranty or covenant, express, implied or statutory, of any kind whatsoever with respect to the Purchased Assets, including, without limitation, representation, warranty or covenant as to title, survey conditions, use of the Purchased Assets for the Purchaser's intended use, the condition of the Purchased Assets, past or present use, development, investment potential, tax ramifications or consequences, compliance with any Applicable Laws, present or future zoning, the presence or absence of Hazardous Substances, the availability of utilities, habitability, merchantability, fitness or suitability for any purpose, or any other matter with respect to the Purchased Assets, all of which are (without derogating from any indemnities provided by the Sellers herein or in any Closing Documents), except as otherwise expressly provided in this Agreement or in any Closing Documents provided by the Sellers to the Purchaser at Closing, hereby expressly disclaimed by the Sellers. The provisions of this Section 9.1 shall survive Closing and the delivery of the Deed or any expiration or termination of this Agreement without limitation as to time.

**Section 10.2. [No Recording]** The Sellers acknowledge and agree that they shall not record, or cause to be recorded, this Agreement, or any part thereof, or any instrument, agreement or other document evidencing this Agreement, against title to the Lands (or any part thereof) unless so instructed by the Purchaser, provided the Purchaser shall pay all costs and expenses in connection therewith.<sup>12</sup>

**Section 10.3. Obligations as Covenants.** Each agreement and obligation of each party hereto in this Agreement, even though not expressed as a covenant, shall be considered for all purposes to be a covenant.

**Section 10.4. Tender.** Any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified check or bank draft drawn on or from one of the five largest Schedule I Canadian chartered banks or a first class bank of the United States of America, or by wire transfer. All checks to be tendered shall be drawn upon one of the five largest Schedule I Canadian chartered banks, measured by reference to authorized capital.

**Section 10.5. Relationship of the Parties.** Nothing in this Agreement shall be construed so as to make the Purchaser a partner of the Sellers [and nothing in this Agreement shall be construed so as to make the Purchaser an owner of the Lands for any purpose until the Closing Date.]<sup>12</sup>

**Section 10.6. Amendment of Agreement.** This Agreement may not be supplemented, modified or amended except by a written agreement executed by each Party to be affected by such supplement, modification or amendment.

**Section 10.7. Notices.** Any Notice shall be in writing and shall be deemed to have been duly given or made when personally delivered or when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows, or to such other addresses as may be furnished hereafter by notice, in writing, to the other Party on at least three (3) Business Days' prior notice, to the following Parties:

(a) If to the Purchaser, to:

with a copy given in like manner to:

(b) If to the Sellers, to:

Magna Entertainment Corp.  
337 Magna Drive  
Aurora, Ontario, Canada L4G 7K1  
Attention: Senior Legal Counsel  
Telecopy: (905) 726-2585

with a copy given in like manner to:

Osler, Hoskin & Harcourt LLP  
100 King Street West  
1 First Canadian Place  
Suite 6100  
Toronto, Ontario M5X 1B8  
Attention: Jean M. Fraser  
Telecopy: (416) 862 -6666

-and-

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Brian S. Rosen, Esq.  
Telecopy: (212) 310 -8007

Any Notice which is delivered or is sent by telecopy shall be deemed to have been validly and effectively given and received on the date it is delivered or sent, unless it is delivered or sent after 5:00 p.m. on any given day or on a day which is not a Business Day, in which case it shall be deemed to have been validly and effectively given and received on the Business Day next following the day it was delivered or sent, provided that, in the case of a Notice sent by telecopy it shall not be deemed to have been sent unless there has been confirmation of transmission.

**Section 10.8. Specific Performance.** It is understood and agreed by the Parties that money damages would not be a sufficient remedy for any breach of this Agreement by any Party and each non-breaching Party should be entitled to specific performance and injunctive or other equitable relief as a remedy of such a breach.

**Section 10.9. Fees and Expenses.** If any party hereto brings an action against any other party hereto based upon a breach by the other party hereto of its obligations under this Agreement, the prevailing party shall be entitled to all reasonable expenses incurred, including reasonable attorneys' fees and expenses. Subject to Section 3.3, the parties agree that all costs and expenses of the parties relating to the Transaction shall be paid by the party incurring such expenses.

**Section 10.10. Governing Law; Jurisdiction; Service of Process.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to any principles of conflicts of law. By its execution and delivery of this Agreement, each of the parties hereto irrevocably and unconditionally agrees for itself that any legal action, suit or proceeding between any of the Sellers, on the one hand, and the Purchaser, on the other hand, with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought in the Bankruptcy Court for that purpose only, and, by execution and delivery of this Agreement, each hereby irrevocably accepts and submits itself to the jurisdiction of such court, generally and unconditionally, with respect to any such action, suit or proceeding. In the event any such action, suit or proceeding is commenced, the parties hereby agree and consent that service of process may be made, and personal jurisdiction over any party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the party at the address of such party set forth in Section 10.7 hereof, unless another address has been designated by such party in a notice given to the other parties in accordance with the provisions of Section 10.7 hereof.

**Section 10.11. Further Assurances.** Each of the Parties hereto shall, at its own cost, from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

**Section 10.12. Entire Agreement.** This Agreement constitutes the full and entire agreement between the parties hereto pertaining to the Transaction and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto made by any Party, and there are no other warranties or representations and no other agreements between the parties hereto in connection with the Transaction except as specifically set forth in this Agreement.

**Section 10.13. Waiver.** No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided. All waivers hereunder must be in writing to be effective.

**Section 10.14. Survival.** To the extent provided herein, this Agreement and the representations, warranties and covenants set forth herein shall survive the Closing of the Transaction and shall remain in full force and effect thereafter.

**Section 10.15. Assignment.** Neither the Sellers nor the Purchaser shall assign their respective rights and/or obligations hereunder (or agree to do so) without the prior written consent of the other Party, which consent may be withheld by such Party in its sole and absolute discretion.

**Section 10.16. Successors and Assigns.** All of the covenants and agreements set forth in this Agreement are intended to bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns and be enforceable by the parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

**Section 10.17. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original hereof, and all of which shall constitute a single agreement effective as of the date hereof. Any delivery of an executed copy of this Agreement by way of telecopy shall constitute delivery hereof, provided that any party delivering by way of telecopy shall, as soon as reasonably practicable, deliver an originally executed counterpart of this Agreement to the other parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

[PURCHASER]

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

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

MAGNA ENTERTAINMENT CORP.

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

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

[SELLER]

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

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

**EXHIBIT A**

**FORM OF ASSIGNMENT AND ASSUMPTION OF CONTRACTS**

ASSIGNMENT AND ASSUMPTION OF CONTRACTS, dated as of \_\_\_\_,  
2009.

B E T W E E N:

[NAME OF SELLERS],  
(the "Sellers"),

OF THE FIRST PART,

- and -

[NAME OF PURCHASER],  
(the "Purchaser"),

OF THE SECOND PART.

WHEREAS pursuant to that certain Purchase Agreement, dated as of [        ],  
2009, between the Sellers, as sellers, and the Purchaser, as purchaser (the "**Purchase Agreement**"), the Sellers agreed to sell and the Purchaser agreed to purchase, among other things, the property legally described in Schedule A hereto (the "**Property**");

AND WHEREAS pursuant to the Purchase Agreement, the Sellers has agreed that the Assigned Contracts (as defined below) shall be assigned to the Purchaser;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Section 1.1. **Definitions**: Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Purchase Agreement. The terms defined herein shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:

(a) "**Agreement**" means this Assignment and Assumption of Contracts;

(b) "**Assigned Contracts**" means those contracts and agreements entered into by the Sellers or by which the Sellers is bound in respect of the severance, development, construction, management, leasing, maintenance or operation of the Lands, which Assigned Contracts are listed on the attached Schedule B, together with all security, guarantees and indemnities relating thereto ; and

(c) **"Assigned Interest"** means all of the Seller's right, title and interest in and to the Assigned Contracts and all rights, benefits and advantages whatsoever to be derived therefrom from and after the date hereof.

## **ARTICLE II** **ASSIGNMENT**

**Section 2.1 Assignment by the Sellers:** The Sellers hereby absolutely grants, transfers, assigns and sets over, as of the date of this Agreement, the Assigned Interest unto the Purchaser. The parties agree that if the assignment of any Assigned Contract is prohibited at law or requires the consent of any other party or parties and such consent has not or cannot be obtained, the Sellers shall hold the Assigned Interest in such Assigned Contract in trust for the benefit of the Purchaser and shall take all actions with respect thereto as the Purchaser may direct for the Purchaser's account and benefit.

**Section 2.2 Acceptance by the Purchaser:** The Purchaser hereby accepts the assignment of the Assigned Interest as of the date of this Agreement.

## **ARTICLE III** **ASSUMPTION AND INDEMNITY**

**Section 3.1 Agreement by the Purchaser:** The Purchaser hereby agrees to be bound by, assume, comply with and be responsible for all of the obligations, covenants and liabilities of the Sellers accruing and arising from and after the date of this Agreement under or in respect of the Assigned Contracts. Without limiting the generality of the foregoing, the Purchaser covenants and agrees with the Sellers:

(a) to pay all amounts payable by the Sellers under and in respect of the Assigned Contracts relating to the period from and including the date of this Agreement; and

(b) to indemnify and save harmless the Sellers and its partners, shareholders, officers, directors, employees and agents, from and against any and all liabilities, damages, costs, expenses, causes of action, suits, claims, demands and judgments arising from or in connection with a breach by the Purchaser, its shareholders, directors, officers, employees, agents or those for whom it is responsible at law, from and after the date of this Agreement, of any of the covenants and obligations of the Sellers under or in respect of the Assigned Contracts.

**Section 3.2 Agreement by the Sellers:** The Sellers hereby agrees to be bound by and be responsible for all of the obligations, covenants and liabilities of the Sellers accruing and arising prior to the date of this Agreement under or in respect of the Assigned Contracts. Without limiting the generality of the foregoing, the Sellers covenants and agrees with the Purchaser:

(a) to pay all amounts payable, or deemed to be payable, by the Sellers under and in respect of the Assigned Contracts relating to the period prior to the date of this Agreement; and

(b) to indemnify and save harmless the Purchaser and its shareholders, directors, officers, employees and agents, from and against any and all liabilities, damages, costs, expenses, causes of action, suits, claims, demands and judgments arising from or in connection with the Assigned Contracts, including, without limitation, any breach by the Sellers, its shareholders, directors, officers, employees, agents or those for whom it is in law responsible, prior to the date of this Agreement, of any of the covenants and obligations of the Sellers under or in respect of the Assigned Contracts and any failure by the Sellers to pay any monies due, owing or accruing by the Sellers under or in connection with the Assigned Contracts for the period prior to the date hereof.

#### **ARTICLE IV** **MISCELLANEOUS**

**Section 4.1 Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of ■ and the applicable laws of the United States of America.

**Section 4.2 Further Assurances:** Each of the parties shall execute and deliver all such further documents and do such other things as the other party may reasonably request to give full effect to this Agreement.

**Section 4.3 Successors and Assigns:** All of the covenants and agreements in this Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties have executed this Agreement.

[NAME OF SELLERS]

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

[NAME OF PURCHASER]

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

**Schedule A to Exhibit A**

**Legal Description of the Lands**

**EXHIBIT B**

**FORM OF ASSIGNMENT AND ASSUMPTION OF LEASES**

**ASSIGNMENT AND ASSUMPTION OF LEASES**, dated as of \_\_\_\_, 2009.

**B E T W E E N:**

**[NAME OF SELLERS]**  
(the "**Sellers**"),

OF THE FIRST PART,

- and -

**[NAME OF PURCHASER]**  
(the "**Purchaser**"),

OF THE SECOND PART.

WHEREAS pursuant to that certain Purchase Agreement (Purchased Assets), dated as of March 5, 2009, between the Sellers, as sellers, and the Purchaser, as purchaser (the "**Purchase Agreement**"), the Sellers agreed to sell and the Purchaser agreed to purchase, among other things, the property legally described in Schedule A hereto (the "**Property**");

AND WHEREAS pursuant to the Purchase Agreement, the Sellers has agreed that the Assigned Leases (as defined below) shall be assigned to the Purchaser;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I**  
**DEFINITIONS**

**Section 1.1 Definitions:** Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Purchase Agreement. The terms defined herein shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:

(a) "**Agreement**" means this Assignment and Assumption of Leases, including the schedules attached hereto;

(b) "**Assigned Interest**" means all of the Seller's right, title and interest in and to the Assigned Leases and all rights, benefits and advantages whatsoever to be derived therefrom from and after the date hereof; and

(c) **"Assigned Leases"** means all agreements to lease, leases, renewals of leases, subtenancy agreements and other rights (including licences) granted by or on behalf of the Sellers or its predecessors in title as owner of the Property which entitle any Person to possess or occupy any space within the Property, which Assigned Leases are listed on the attached Schedule B, together with all security, guarantees and indemnities relating thereto.

## **ARTICLE II** **ASSIGNMENT**

**Section 2.1 Assignment by the Sellers:** The Sellers hereby absolutely grants, transfers, assigns and sets over, as of the date of this Agreement and to the extent such Assigned Leases are assignable at law, the Assigned Interest unto the Purchaser. The parties agree that if the assignment of any Assigned Lease is prohibited at law or requires the consent of any other party or parties and such consent has not or cannot be obtained, the Sellers shall hold the Assigned Interest in such Assigned Lease in trust for the benefit of the Purchaser and shall take all actions with respect thereto as the Purchaser may direct for the Purchaser's account and benefit.

**Section 2.2 Acceptance by the Purchaser:** The Purchaser hereby accepts the assignment of the Assigned Interest as of the date of this Agreement.

## **ARTICLE III** **ASSUMPTION AND INDEMNITY**

**Section 3.1 Agreement by the Purchaser:** The Purchaser hereby agrees to be bound by, assume, comply with and be responsible for all of the obligations, covenants and liabilities of the Sellers accruing and arising from and after the date of this Agreement under or in respect of the Assigned Leases. Without limiting the generality of the foregoing, the Purchaser covenants and agrees with the Sellers:

(a) to pay all amounts payable by the Sellers under and in respect of the Assigned Leases relating to the period from and including the date of this Agreement; and

(b) to indemnify and save harmless the Sellers, its partners, shareholders, officers, directors, employees and agents, from and against any and all liabilities, damages, costs, expenses, causes of action, suits, claims, demands and judgments arising from or in connection with a breach by the Purchaser, its shareholders, directors, officers, employees, agents or those for whom it is responsible at law, from and after the date of this Agreement, of any of the covenants and obligations of the Sellers under or in respect of the Assigned Leases.

**Section 3.2 Agreement by the Sellers:** The Sellers hereby agrees to be bound by and be responsible for all of the obligations, covenants and liabilities of the Sellers accruing and arising prior to the date of this Agreement under or in respect of the Assigned Leases. Without limiting the generality of the foregoing, the Sellers covenants and agrees with the Purchaser:

(a) to pay all amounts payable by the Sellers under and in respect of the Assigned Leases relating to the period prior to the date of this Agreement; and

(b) to indemnify and save harmless the Purchaser and its shareholders, directors, officers, employees and agents, from and against any and all liabilities, damages, costs, expenses, causes of action, suits, claims, demands and judgments arising from or in connection with a breach by the Sellers, its partners, employees or agents, prior to the date of this Agreement, of any of the covenants and obligations of the Sellers under or in respect of the Assigned Leases.

#### **ARTICLE IV MISCELLANEOUS**

**Section 4.1 Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of ■ and the applicable laws of the United States of America.

**Section 4.2 Further Assurances:** Each of the parties shall execute and deliver all such further documents and do such other things as the other party may reasonably request to give full effect to this Agreement.

**Section 4.3 Successors and Assigns:** All of the covenants and agreements in this Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF the parties have executed this Agreement.

[NAME OF SELLERS]

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

Name:

Title:

[NAME OF PURCHASER]

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

Name:

Title:

**Schedule A to Exhibit B**

**Legal Description of the Lands**

**Schedule B to Exhibit B**

**Leases**

**EXHIBIT C**

**ASSUMED LIABILITIES**

**EXHIBIT D**

**LIST OF EXISTING CONTRACTS**

**EXHIBIT E**

**LIST OF EXISTING LEASES**

**EXHIBIT F**

**DESCRIPTION OF LANDS**

**EXHIBIT G**  
**CAPITALIZATION**

**EXHIBIT H**

**INTELLECTUAL PROPERTY**

**EXHIBIT I**  
**INSURANCE**

**EXHIBIT J**

**BENEFITS**

**Exhibit B**

**[Sale Notice]**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

|                                   |        |                                |
|-----------------------------------|--------|--------------------------------|
|                                   | -----X |                                |
|                                   | :      |                                |
| <i>In re</i>                      | :      | <b>Chapter 11</b>              |
|                                   | :      |                                |
| <b>MAGNA ENTERTAINMENT CORP.,</b> | :      | <b>Case No. 09-10720 (MFW)</b> |
| <i>et al.,</i>                    | :      |                                |
|                                   | :      | <b>Jointly Administered</b>    |
| <b>Debtors.</b>                   | :      |                                |
|                                   | :      |                                |
|                                   | -----X |                                |

**NOTICE OF AUCTION AND SALE HEARING**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. On March 5, 2009, Magna Entertainment Corp. ("Magna Entertainment") and its affiliated debtors, as debtors in possession (together, the "Debtors" and, collectively with Magna Entertainment's non-debtor subsidiaries, "MEC"),<sup>3</sup> commenced voluntary cases pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. On May 1, 2009, the Debtors filed a motion (the "Amended Motion") for entry of orders, among other things: (a) an order (the "Bidding Procedures Order") (i) approving the bidding procedures (as set forth in the Bidding Procedures Order, the "Bidding Procedures") for the sale (the "Sale") of the Assets (as defined herein); (ii) approving the form of purchase agreement to be used in connection with the Sale (the "Form Agreement"), substantially in the form annexed to the Amended Motion as Exhibit "C", (iii) scheduling \_\_\_\_\_, 2009 as the date and time for the hearing to approve the sale (the "Sale Hearing") to the winning bidder, (iv) approving a process

<sup>3</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: (i) Magna Entertainment Corp., 8374; (ii) The Santa Anita Companies, Inc., 6180; (iii) Los Angeles Turf Club, Incorporated, 6200; (iv) Pacific Racing Association, 5367; (v) MEC Land Holdings (California) Inc., 7410; (vi) Gulfstream Park Racing Association Inc., 6292; (vii) GPRA Thoroughbred Training Center, Inc., 2326; (viii) MEC Dixon, Inc., 7005; (ix) MEC Holdings (USA) Inc., 8494; (x) Sunshine Meadows Racing, Inc., 4288; (xi) Thistledown, Inc., 5742; (xii) MEC Maryland Investments, Inc., 4637; (xiii) 30000 Maryland Investments LLC, 1704, (xiv) Remington Park, Inc., 2024; (xv) GPRA Commercial Enterprises Inc., 6156; (xvi) Pimlico Racing Association, Inc., 4527; (xvii) The Maryland Jockey Club of Baltimore City, Inc., 3840; (xviii) Laurel Racing Association Limited Partnership, 0504; (xix) Laurel Racing Assoc., Inc., 0505; (xx) Prince George's Racing, Inc., 6493; (xxi) Southern Maryland Racing, Inc., 9850; (xxii) Southern Maryland Agricultural Association, 9661; (xxiii) Maryland Jockey Club, Inc., 3124; and (xxiv) AmTote International, Inc., 1143. [Will Be Deleted For Publication]

to pay cure obligations, if any, pursuant to section 365 of the Bankruptcy Code for those contracts that the Debtors may seek to assume and assign to the winning bidder (the "Cure Procedures"), and (iv) approving the notice of the auction (the "Auction") at which the Debtors will solicit competing bids for a sale of the and the Sale Hearing, and (b) upon completion of the Auction, an order approving the Sale (the "Sale Order").

3. Pursuant to the Amended Motion, the Debtors seek to sell the following (collectively, the "Assets," and individually, as defined in the Amended Motion):

- (a) Racetracks: Santa Anita Park, Thistledown, Remington Park and Portland Meadows.
- (b) Interests: The partnership interests of MEC Texas Racing, Inc. and Racetrack Holdings, Inc. in MEC Lone Star, LP (the "Lone Star Interests") and MEC's joint venture interests in The Shops at Santa Anita.
- (c) Other Property: The Ocala Property (as defined in the Amended Motion), the Dixon Property (as defined in the Amended Motion), Fex Straw Manufacturing and StreuFex.

The Debtors reserve the right to withdraw any of the Assets from the Sale.

On May \_\_, 2009, the United States Bankruptcy Court for the District of Delaware entered the Bidding Procedures Order. Pursuant to the Bidding Procedures Order, Expressions of Interest (as defined in the Bidding Procedures) for the Assets (other than the Ocala Property and the Dixon Property) must be submitted no later than May 27, 2009 at 5:00 p.m. (prevailing Eastern Time) and if the Debtors receive any Definitive Bids (as defined in the Bidding Procedures), for the Assets or any Definitive Bids for one or more of the Assets, the Debtors, in their business judgment and sole and absolute discretion, and upon the consultation of the Creditors' Committee, will enter into final negotiations with the bidders who represent the highest and best value for the Assets, in whole or in part, with the intent of entering into a "stalking horse" agreement by no later than August 7, 2009. In the event that the Debtors enter into a "stalking horse" agreement with respect to one or more of the Assets, the Debtors will hold an Auction on September 8, 2009 at 9:00 a.m. (prevailing Eastern Time) at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, 25<sup>th</sup> Floor, New York, New York 10153. Only parties that have submitted a Definitive Bid, as set forth in the Bidding Procedures Order, by no later than July 31, 2009 at 5:00 p.m. (prevailing Eastern Time) (the "Definitive Bid Deadline") may participate at the Auction. Any party that wishes to take part in this process and submit a bid for the Assets must submit their competing bid prior to the Definitive Bid Deadline and in accordance with the Bidding Procedures.

4. The Sale Hearing to consider approval of the Sale of the Assets to the Winning Bidder(s), free and clear of all liens, claims, and encumbrances, will be held before the Honorable Mary F. Walrath, United States Bankruptcy Judge, 824 North Market Street, Wilmington, Delaware 19801 on \_\_\_\_\_, 2009 at \_\_\_\_\_ (prevailing Eastern Time), or at such other time thereafter as counsel may be heard. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

5. Objections, if any, to the Sale, or the relief requested in the Amended Motion must: (a) be in writing; (b) comply with the Bankruptcy Rules and Local Rules; and (c) be filed with the clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 North Market Street, Wilmington, Delaware 19801, on or before \_\_\_\_ p.m. (prevailing Eastern Time) on \_\_\_\_, 2009; and be served upon (i) Magna Entertainment Corp., 337 Magna Drive, Aurora, Ontario L4G 7K1 (Attn: William G. Ford, General Counsel); (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq.), co-counsel for the Debtors; (iii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Brian S. Rosen, Esq.), co-counsel for the Debtors; (iv) the Office of the United States Trustee, 844 King Street, Room 2313, Wilmington, Delaware 19801 (Attn: Mark Kenney, Esq.); (v) Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Lee Attanasio, Esq.), counsel for the Debtors' postpetition lenders, and (vi) Kramer Levin Naftalis & Frankel, LLP, 1177 Avenue of the Americas, New York, New York 10036 (Attn: Kenneth H. Eckstein, Esq.) and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington Delaware, 19899 (Attn: Laura Davis Jones, Esq.), counsel for the Creditors' Committee, so as to be received no later than \_\_\_\_ p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2009 (the "Objection Deadline"). UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE AMENDED MOTION WITHOUT FURTHER HEARING AND NOTICE.

6. This Notice and the Sale Hearing is subject to the fuller terms and conditions of the Amended Motion and the Bidding Procedures Order, which shall control in the event of any conflict and the Debtors encourage parties-in-interest to review such documents in their entirety. Parties interested in receiving more information regarding the sale of the Assets and/or copies of any related document, including the Form Agreement, the Amended Motion or the Bidding Procedures Order, may make a written request to: (i) Miller Buckfire & Co., LLC, 153 East 53<sup>rd</sup> Street, 22<sup>nd</sup> Floor, New York, New York 10022 (Attn: Michael Wildish), financial advisors and investment bankers of the Debtors, (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Brian S. Rosen, Esq.), co-counsel for the Debtors, and/or (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq.), co-counsel for the Debtors.

In addition, copies of the Motion, the Bidding Procedures Order and this Notice can be found on (i) the Court's website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov); and (ii) <http://www.kccllc.net/magna>, and are on file with the Clerk of the Bankruptcy Court, Third Floor, 824 Market Street, Wilmington, Delaware 19801.

Dated: May \_\_, 2009  
Wilmington, Delaware

---

Mark D. Collins, Esq. (No. 2981)  
Maris J. Finnegan (*DE Admission Pending*)  
L. Katherine Good, Esq. (No. 5101)  
RICHARDS, LAYTON & FINGER, P.A.  
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