

NEW JERSEY CASINO CONTROL COMMISSION

Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

Tropicana sale deadline extended 120 days

For Immediate Release

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ATLANTIC CITY -- The Casino Control Commission Wednesday extended the deadline for the sale of the Tropicana Hotel Casino for another 120 days.

The commission unanimously approved a request from Gary Stein, the state-appointed conservator and trustee of the Tropicana, to reject bids received earlier this year and start the sale process over.

“Requiring Justice Stein to produce a buyer from the available pool is impractical,” Commission Chair Linda M. Kassekert said. She noted that Stein had concluded that none of the existing bidders had offered what he viewed as a fair market value for the property.

Kassekert added that “whoever the participants in the bid process may have been, none of them, nor anyone else not already a party has raised any concerns with Justice Stein’s proposal to reject the original process and start over.”

The commission voted on December 12, 2007 not to renew the Tropicana’s casino license, formerly held by Adamar of New Jersey. It also found that the company that owned Adamar, Tropicana Entertainment, was not qualified to own a casino hotel in Atlantic City. That vote triggered a trust through which Stein, a retired justice of the New Jersey State Supreme Court, controls the stock of Adamar. The commission subsequently named Stein as conservator. Title to all of Adamar’s assets was automatically transferred to the conservator and he was charged with selling the casino hotel complex while keeping it open and operating. Under the Casino Control Act, the trustee has a period of at least 120 days to find a suitable buyer, but the commission can extend that deadline for good cause. The commission had previously extended the deadline to June 18.

“I am satisfied that there is good cause to afford Justice Stein another 120 days from today,” Kassekert said. She added that Stein’s initial efforts “seemed overwhelmed, at least temporarily, by external events” including the Chapter 11 bankruptcy filing by some of Adamar’s former parent companies.

To expedite the process, the commission will consider a request from Stein to retain another financial advisor at a special meeting on June 30. Stein will then have until July 8 to submit a comprehensive plan that details the new sale process. The commission directed him to evaluate whether procedures under Section 363 of the Federal Bankruptcy Code could serve as a template for the new sale process.

The commission also called for a comprehensive management analysis of the strengths and weaknesses of existing personnel by July 9.

REMARKS OF
CHAIR LINDA M. KASSEKERT
Petition of Tropicana Conservator
For Extension of Time

ON DECEMBER 12, 2007, THE COMMISSION DENIED THE APPLICATION OF ADAMAR OF NEW JERSEY, INC. FOR A RENEWAL OF ITS CASINO LICENSE, AND ALSO REFUSED TO GRANT PLENARY QUALIFICATION TO ADAMAR'S PARENT COMPANIES, WHICH WERE APPROACHING THE CONCLUSION OF THEIR PERIOD OF INTERIM CASINO AUTHORIZATION. WITH THOSE ACTIONS, THE RELATED ICA TRUST AGREEMENT BECAME OPERATIVE. THE COMMISSION ALSO INSTITUTED A CONSERVATORSHIP THAT ALLOWED FOR THE CONTINUED OPERATION OF THE CASINO HOTEL FACILITY.

RETIRED JUSTICE GARY STEIN SERVES AS THE TRUSTEE AND CONSERVATOR FOR THE FORMER CASINO LICENSEE. ONCE THE ICA TRUST BECAME OPERATIVE, SECTION 95.14E ESTABLISHED AN INITIAL PERIOD OF 120 DAYS, THROUGH APRIL 10, 2008, WITHIN WHICH JUSTICE STEIN HAD TO SELL THE TRUST PROPERTY.

ON APRIL 2, 2008, THE COMMISSION FOUND GOOD CAUSE TO EXTEND THAT SALE PERIOD THROUGH JUNE 9, 2008. ON MAY 29, 2008, JUSTICE STEIN SOUGHT TO EXTEND THE SALE PERIOD FOR AN ADDITIONAL 120 DAYS. ALTHOUGH THE COMMISSION BEGAN CONSIDERING THAT REQUEST AT THE LAST PUBLIC MEETING, THE EXTENSIVE TESTIMONY AND OTHER MATERIALS PRESENTED AT OR ON

THE EVE OF THE HEARING MADE IT IMPRACTICAL TO DISPOSE OF THE MATTER IN ANY SUBSTANTIVE WAY AT THAT TIME. CONSEQUENTLY, THE MATTER HAS BEEN CARRIED UNTIL TODAY, AND THE COMMISSION GRANTED A BRIEF EXTENSION OF THE SALE PERIOD TO ACCOMMODATE AND COINCIDE WITH THAT RESCHEDULING.

IN SEEKING AN ADDITIONAL 120 DAYS, JUSTICE STEIN ADVISES THAT HE PLANS TO REJECT ALL OUTSTANDING BIDS AND RESTART THE SALE PROCESS. THUS, THE COMMISSION INITIALLY MUST DETERMINE WHETHER REJECTING THOSE BIDS IS APPROPRIATE. IF IT SO CONCLUDES, ONLY THEN WILL THE COMMISSION NEED TO EXAMINE WHETHER TO AUTHORIZE JUSTICE STEIN TO RESTART THE

SALE PROCESS, AND TO ESTABLISH THE PERIOD WITHIN WHICH TO AFFORD HIM THE OPPORTUNITY TO COMPLETE THAT TASK.

IN ORDER TO ASSESS THE APPROPRIATENESS OF REJECTING THE OUTSTANDING BIDS, THE COMMISSION MUST BE SATISFIED THAT DOING SO IS CONSISTENT WITH THE LEGISLATIVE PURPOSES UNDERLYING THE CASINO CONTROL ACT, PARTICULARLY THE REQUIREMENT THAT THE DISPOSITION OF TRUST PROPERTY OCCUR WITHIN 120 DAYS. BY AFFORDING THE COMMISSION THE DISCRETION TO EXTEND THAT PERIOD FOR GOOD CAUSE, THE LEGISLATURE HARDLY INTENDED FOR THE PROCESS TO SUCCUMB TO A FORMULAIC RIGIDITY, ESPECIALLY IN THE ABSENCE OF SPECIFIC STATUTORY GUIDANCE AS TO THE

PROPER COURSE TO PURSUE IF NO EXTENSION IS GRANTED. HOWEVER, HAVING SPECIFIED AN INITIAL FOUR-MONTH WINDOW FOR A SALE TO OCCUR, THE LEGISLATURE ALSO SEEMINGLY DESIRED A RELATIVELY EXPEDITED PROCESS, TEMPERED, FOR EXAMPLE, BY THE 90-DAY PERIOD THAT THE STATUTE AFFORDS THE DIVISION WITHIN WHICH TO CONDUCT ITS PRELIMINARY INVESTIGATION OF CERTAIN ICA CANDIDATES.

IN OTHER INSTANCES WHERE THE ACT CREATES A 120-DAY TIMELINE, THE PARTICIPANTS IN THE PROCESS TYPICALLY ARE ALREADY SUBJECT TO REGULATORY OVERSIGHT. FOR EXAMPLE, WHEN A CASINO LICENSEE AGREES TO BE ACQUIRED, THE USUAL SALES CONTRACT MUST PROVIDE THAT

NO CLOSING CAN OCCUR WITHIN THE 120-DAYS FOLLOWING THE PURCHASER SUBMITTING A COMPLETED ICA APPLICATION. THE COMMISSION AND THE DIVISION CAN READILY MONITOR THAT PROCESS AND PREVENT ANY SUCH SELLER FROM TRANSFERRING CASINO-RELATED PROPERTY THAT WOULD INFRINGE UPON THE TIME WITHIN WHICH THE DIVISION IS TO CONDUCT ITS PRELIMINARY INVESTIGATION OF THE ICA CANDIDATE.

BY CONTRAST, SECTION 95.14E, WHICH CONTAINS THE 120-DAY DEADLINE AT ISSUE HERE, OFFERS NO PARTICULAR GUIDANCE AS TO HOW THE TRUSTEE IS TO PRODUCE THE BUYER FOR THE TRUST PROPERTY. AT THIS POINT IT BEARS NOTING THE OBVIOUS: SUCH A PROSPECTIVE BUYER IS LARGELY BEYOND

REGULATORY PARAMETERS UNTIL THE CONTRACT IS EXECUTED.

FURTHERMORE, IT MUST BE ACKNOWLEDGED THAT ECONOMIC FORCES GENERALLY BEYOND THE DIRECT CONTROL OF THE REGULATORY APPARATUS ALSO MAY COME INTO PLAY. TO THE EXTENT THOSE FORCES PRODUCE A BUYER THAT HYPOTHETICALLY IS WILLING TO PAY LESS THAN WHAT MIGHT OTHERWISE BE OFFERED HAD A TRUSTEESHIP NOT BEEN IN PLACE CERTAINLY PRESENTS A REGULATORY CONUNDRUM: DOES THE COMMISSION INSIST THAT A SALE TO SUCH A BUYER OCCUR FOR THE SAKE OF CONCLUDING THE PROCESS, OR DOES IT ALLOW THE PROCESS TO CONTINUE WITH NO IMMEDIATE END IN SIGHT IN THE HOPES THAT A BUYER CAN

BE FOUND THAT IS WILLING TO PAY CLOSER TO WHAT JUSTICE STEIN CHARACTERIZES AS “FAIR MARKET VALUE?”

CLEARLY, DERIVING THE HIGHEST AND BEST PRICE IS TANGENTIAL TO THE ULTIMATE REGULATORY GOAL OF QUICKLY SEEING THE FORMER CASINO LICENSEE UNDER THE OPERATIONAL CONTROL OF A BUYER THAT PASSES REGULATORY MUSTER. NEVERTHELESS, THERE ARE OTHER SOUND AND POSSIBLY COUNTERVAILING POLICY REASONS TO AVOID FIXATING ON A QUICKER SALE AT ANY PRICE.

FOR INSTANCE, IT IS PLAIN THAT THE LEGISLATURE CONTEMPLATED THAT AN ICA TRUSTEE COULD SELL TRUST PROPERTY TO A PROSPECTIVE BUYER THAT ITSELF NEEDED ICA IN

ORDER TO CLOSE ON THE PURCHASE. THE SALE CONTRACT TO SUCH A BUYER CANNOT PROVIDE FOR A CLOSING DATE THAT IS SOONER THAN THE 121ST DAY AFTER THE BUYER COMPLETES ITS APPLICATION FOR ICA. GIVEN THAT UNDER SUCH CIRCUMSTANCES IT WOULD BE ALMOST IMPOSSIBLE TO CONCLUDE SUCH A SALE WITHIN THE INITIAL 120-DAY TIMELINE DESIGNATED IN SECTION 95.14E, THE LEGISLATURE, RATHER THAN EXPECT THE COMMISSION TO TAKE A REGIMENTED VIEW OF THAT DEADLINE, CERTAINLY MUST HAVE CONTEMPLATED A MORE ADAPTABLE APPROACH.

ACCORDING TO THE TESTIMONY, JUSTICE STEIN RESERVED TO HIMSELF A TREMENDOUS AMOUNT OF FLEXIBILITY IN TERMS OF HOW THE BID PROCESS WOULD BE CONDUCTED. AT FIRST BLUSH, SUCH FLEXIBILITY WOULD SEEM

STRATEGICALLY TO BE A POSITIVE FOR THE PROCESS, AND THERE WAS TESTIMONY SUGGESTING THAT SUCH FLEXIBILITY IS CUSTOMARY IN TRANSACTIONS COMPARABLE TO THIS ONE. HOWEVER, EVEN THE BUILT-IN ELASTICITY OF THE PROCESS SEEMED OVERWHELMED, AT LEAST TEMPORARILY, BY EXTERNAL EVENTS, SUCH AS THE BANKRUPTCY FILING OF SOME OF ADAMAR'S FORMER PARENT COMPANIES. WHETHER ULTIMATELY THE LACK OF REGULARITY AND WELL-DEFINED BENCHMARKS LED TO THE UNDOING OF THE PROCESS REMAINS SPECULATION.

FOR THAT MATTER, AS JUSTICE STEIN TESTIFIED, AT LEAST TWO BIDDERS, CONTRARY TO THE CONFIDENTIALITY AGREEMENTS THEY HAD EACH SIGNED, HAD JOINTLY APPROACHED THE

JUSTICE'S FINANCIAL ADVISOR WITH THE PROSPECT OF SUBMITTING A COMBINED BID. ALTHOUGH THE JUSTICE ALLOWED THEM TO SUBMIT A JOINT BID, AND HE ASSUMES THAT WHAT WAS SUBMITTED CONSTITUTED SUCH A JOINT BID, HE HAD ADMONISHED THOSE BIDDERS THAT IF THEIR OFFER DID NOT REFLECT FAIR MARKET VALUE HE WOULD DISREGARD IT.

GIVEN THOSE CIRCUMSTANCES, REQUIRING JUSTICE STEIN TO PRODUCE A BUYER FROM THE AVAILABLE POOL IS IMPRACTICAL. MOREOVER, AS THE JUSTICE PLAINLY TESTIFIED, NONE OF THOSE BIDDERS IS OFFERING WHAT HE VIEWS AS FAIR MARKET VALUE. SIGNIFICANTLY, WHOEVER THE PARTICIPANTS IN THE BID PROCESS TO DATE MAY HAVE BEEN, NONE OF THEM, NOR ANYONE ELSE NOT ALREADY A PARTY, HAS RAISED IN THIS

PROCEEDING ANY CONCERNS WITH THE JUSTICE'S PROPOSAL TO REJECT THAT PROCESS AND START OVER.

ALTHOUGH I AM THUS PREPARED FOR THE JUSTICE TO MOVE FORWARD, I AM MORE CIRCUMSPECT REGARDING THE MANNER IN WHICH HE SHOULD DO SO. WITHOUT UNREASONABLY CONSTRAINING HIS OPTIONS IN THE RESTARTED PROCESS, HE AND HIS ADVISORS CERTAINLY SHOULD EVALUATE WHETHER THERE ARE PROCEDURES UNDER SECTION 363 OF THE FEDERAL BANKRUPTCY CODE THAT COULD SERVE AS A TEMPLATE FOR THE SALE PROCESS THAT JUSTICE STEIN WILL UNDERTAKE IN FURTHERANCE OF THE CASINO CONTROL ACT.

SPEAKING OF HIS ADVISORS, SEPARATELY PENDING IS A PETITION SEEKING APPROVAL FOR

JUSTICE STEIN TO HIRE A CO-INVESTMENT ADVISOR THAT WOULD SERVE ALONGSIDE JP MORGAN CHASE, WHICH IS THE SUCCESSOR TO BEAR STEARNS, THE ADVISOR THAT THE COMMISSION INITIALLY APPROVED. GIVEN THE RECENT FILING OF THOSE MATERIALS, NO DECISION ON THE CO-ADVISOR PETITION WILL BE FORTHCOMING TODAY. HOWEVER, THE COMMISSION DOES NOT HAVE THE LUXURY OF WAITING A MONTH TO CONSIDER THE MATTER AT THE NEXT REGULARLY-SCHEDULED PUBLIC MEETING. THEREFORE, I PROPOSE THAT THE COMMISSION SCHEDULE THAT PETITION FOR A SPECIAL MEETING ON JUNE 30, 2008. BY NEXT WEDNESDAY, THE JUSTICE SHOULD SUBMIT A FORM OF ENGAGEMENT AGREEMENT BETWEEN HIM AND HIS PROPOSED NEW ADVISOR, AND ANY

SEPARATE AGREEMENT BETWEEN THAT ADVISOR AND JP MORGAN THAT IN PARTICULAR ADDRESSES ANY FEE-SHARING ARRANGEMENT BETWEEN THEM, AS WELL AS SUBMIT SUCH OTHER RELEVANT MATERIALS AS THE STAFFS OF COMMISSION, THE DIVISION OR BOTH REQUEST. BEFORE THAT SPECIAL MEETING, ALL NECESSARY VENDOR FORMS FROM THOSE ADVISORS SHALL BE FILED, WITH THE EXPECTATION THAT, IF APPROVED BY THE COMMISSION, THEY EACH WILL BE REQUIRED TO FILE AN APPLICATION FOR A NON-GAMING C-S-I LICENSE WITHIN 30 DAYS.

AS FOR MANAGING THE PROPERTY DURING THE RESTARTED BID PROCESS, EARLY ON THE COMMISSION APPROVED THE JUSTICE'S DECISION TO HIRE THREE CONSULTANTS TO AUGMENT THE MANAGEMENT TEAM AT THE PROPERTY, WHICH

THE JUSTICE HAS LARGELY LEFT INTACT. CERTAINLY, HAD THE PROPERTY BEEN SOLD DURING THE INITIAL TIMELINES, THE NEW OWNERS WOULD LIKELY HAVE UNDERTAKEN A MANAGEMENT ANALYSIS OF THE STRENGTHS AND WEAKNESSES OF EXISTING PERSONNEL. WITH NO SALE IMMINENT AND THE JUSTICE SEEKING A 120-DAY EXTENSION, SUCH A COMPREHENSIVE MANAGEMENT ANALYSIS IS NOW APPROPRIATE AND SHOULD BE CONCLUDED BY JULY 9, 2008, SO THAT THE COMMISSION WILL HAVE THE OPPORTUNITY TO EVALUATE THE DATA AT THE NEXT REGULARLY SCHEDULED PUBLIC MEETING ON JULY 16, 2008. IN ORDER TO EFFECTUATE THIS PROCESS EXPEDITIOUSLY, I PROPOSE THAT THE COMMISSION DELEGATE TO ME THE AUTHORITY TO SELECT THE PERSON OR PERSONS THAT WILL CONDUCT THE

ANALYSIS, AND I CERTAINLY WILL CONSULT WITH THE DIVISION AND JUSTICE STEIN DURING THAT PROCESS.

IN SUM, I AM SATISFIED THAT THERE IS GOOD CAUSE TO AFFORD JUSTICE STEIN UNDER SECTION 95.14E AN ADDITIONAL 120 DAYS FROM TODAY. RECOGNIZING THAT ANY ACTION ON HIS PETITION FOR APPROVAL OF CO-INVESTMENT ADVISORS IS OVER A WEEK AWAY, HE WILL BE AFFORDED 20 DAYS, UNTIL JULY 8, 2008, TO SUBMIT A COMPREHENSIVE PLAN THAT DETAILS THE SALE PROCESS HE WILL FOLLOW, INCLUDING TIMELINES AND MILESTONES ALONG WITH THEIR RELATED COSTS AND EXPENSES, ALL OF WHICH WE ANTICIPATE CONSIDERING AT THE JULY 16, 2008, PUBLIC MEETING. WHETHER ANY PROCEEDING UNDER SECTION 363 OF THE FEDERAL

BANKRUPTCY CODE CAN BE CONCLUDED WITHIN THAT 120-DAY RUBRIC IS SPECULATIVE, BUT CERTAINLY IT WILL BE INTERESTING TO SEE IF THE JUSTICE PROPOSES SOMETHING SO AMBITIOUS AND IF NOT, WHY NOT. FURTHER, DRAFTS OF ALL PERTINENT OPERATIVE DOCUMENTS MUST ALSO BE SHARED WITH THE COMMISSION AND THE DIVISION AS THEY BECOME AVAILABLE SO THAT ANY ISSUES CAN BE VETTED PROMPTLY. IN THAT REGARD, THE EVOLVING PRACTICE OF WEEKLY CONFERENCE CALLS WILL NOW BE FORMALIZED, AND FURTHER LINES OF COMMUNICATION WILL BE MAINTAINED THROUGH THE JUSTICE SUBMITTING DETAILED MONTHLY PROGRESS REPORTS ON HIS EFFORTS.

FURTHER, IF THE COMMISSION AGREES TO THE 120-DAY EXTENSION, IT WILL BE WHOLLY APPROPRIATE TO CONTINUE THE REQUIREMENT

IMPOSED AT THE LAST MEETING FOR THE FORMER LICENSEE ON A ROLLING BASIS TO MAINTAIN FOR CASINO HOTEL OPERATIONAL PURPOSES A \$19 MILLION BALANCE, \$4 MILLION OF WHICH IS EARMARKED FOR WEEKENDS AND SPECIAL EVENTS, IN ITS SO-CALLED CONCENTRATION ACCOUNT BEFORE PAYMENTS CAN BE MADE FROM THAT ACCOUNT FOR ITEMS SUCH AS INTEREST PAYMENTS AND FEES INCURRED AND APPROVED IN CONNECTION WITH THE CONSERVATORSHIP AND THE TRUSTEESHIP. I FURTHER PROPOSE THAT REQUESTS TO MAKE PAYMENTS OUTSIDE THOSE GUIDELINES THAT ARISE ON AN EMERGENT BASIS AND FOR WHICH PAYMENT SCHEDULES AND REVISED FORECASTS ARE SUPPLIED BE REFERRED TO ME FOR CONSIDERATION UNDER DELEGATED AUTHORITY, IN CONSULTATION WITH THE DIVISION

AS APPROPRIATE. ADDITIONALLY, TO AID THE COMMISSION IN MONITORING THE OUTFLOWS FROM THE CONCENTRATION ACCOUNT, JUSTICE STEIN, FOR ANY PAYMENTS THAT ARE SUBJECT TO THE \$19 MILLION THRESHOLD, SHALL SUBMIT A SCHEDULE THAT ESTABLISHES THE MONTHLY AMOUNT PROJECTED TO BE WITHDRAWN FROM THE ACCOUNT TO COVER THOSE ITEMS, WITH AUTHORITY DELEGATED TO ME TO AUTHORIZE PAYMENTS THAT EXCEED SUCH PROJECTED AMOUNTS, SUBJECT, OF COURSE, TO THE COMMISSION HAVING FIRST APPROVED THE ACTUAL BILLS FOR ANY SUCH PROJECTED AMOUNTS.

BEFORE MAKING MY MOTION, SOME COMMENT ON THE DIVISION'S PROPOSAL TO SEGREGATE CONSERVATOR COSTS FROM

TRUSTEE COSTS IS APPROPRIATE. ALTHOUGH CONCEPTUALLY THE DIVISION'S SUGGESTION HAS SOME APPEAL, IT IS AT VARIANCE WITH THE COMMISSION'S ORDER APPOINTING JUSTICE STEIN AS CONSERVATOR, WHEREIN THE COMMISSION PROVIDED THAT:

Stein as conservator shall be permitted to hire such legal or other advisors as he deems necessary consistent with fulfilling the policies of the Act, all of which shall constitute costs and expenses of the conservator that are recoverable from the former casino licensee as set forth hereinafter...

FURTHER, THE COMMISSION SPECIFICALLY DETERMINED THAT THE HOURLY RATE THAT JUSTICE STEIN WAS TO CHARGE AS CONSERVATOR WOULD BE IN LIEU OF THE RATE SET FORTH IN THE ICA TRUST AGREEMENT. THUS, I DO NOT BELIEVE THAT THE CIRCUMSTANCES WARRANT ANY RETROACTIVE APPLICATION OF THE DIVISION'S ESPOUSED PRINCIPLE. ALTHOUGH THE PARTIES HAVE WORKED TOWARD A SOLUTION TO BE

APPLIED PROSPECTIVELY, APPARENTLY THEY HAVE NOT REACHED A CONCLUSION. I WOULD ENCOURAGE THEM TO CONTINUE THEIR DIALOGUE, WHICH CAN BE ADDRESSED AT A SUBSEQUENT MEETING IF NECESSARY.

BASED ON AND SUBJECT TO MY EARLIER COMMENTS, I NOW MOVE TO EXTEND THE SALE PERIOD UNDER SECTION 95.14E FOR AN ADDITIONAL 120 DAYS FROM AND AFTER TODAY.