

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

**Caption in compliance with D.N.J. LBR 9004-2(c)**

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Administrative Agent, and Beal Bank Nevada*

In re:

TCI 2 HOLDINGS, LLC, et al.,

Debtors.

Chapter 11

Case No.: 09-13654 (JHW)

(Jointly Administered)

Confirmation Hearing

Date: February ~~11~~16, 2010

Time: ~~11~~9:00 a.m.

Judge: Hon. Judith H. Wizmur

**~~THIRD~~FOURTH AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE  
PROPOSED BY BEAL BANK AND ICAHN PARTNERS**

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Beal Bank (f/k/a Beal Bank, S.S.B.), as Administrative Agent (as defined below), and Beal Bank Nevada, Icahn Partners LP, Icahn Partners Master Fund LP, Icahn [Partners](#) Master Fund II LP and Icahn [Partners](#) Master Fund III LP, as creditors in the above-captioned chapter 11 cases, propose the following joint chapter 11 plan, pursuant to section 1121(a) of title 11 of the United States Code.

## SECTION 1. DEFINITIONS AND INTERPRETATION

### A. Definitions.

The following terms used herein shall have the respective meanings defined below (such meanings to be equally applicable to both the singular and plural):

1.1. ***Accredited Investor*** means an “accredited investor” as defined in Rule 501(a) of Regulation D under the Securities Act.

1.2. ***Accredited Investor Questionnaire*** means the Accredited Investor Questionnaire filed with the Bankruptcy Court as an exhibit to the Disclosure Statement Order and approved by the Bankruptcy Court in connection with the Plan.

1.3. ***Administrative Agent*** means Beal Bank (f/k/a Beal Bank, S.S.B.), as administrative agent under the First Lien Credit Agreement, and its successors, assigns or designees.

1.4. ***Administrative Expense Claim*** means any right to payment constituting a cost or expense of administration of any of the Reorganization Cases allowed under sections 503(b), 507(a)(2) and 1114(e) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses of preserving the Debtors’ estates, any actual and necessary costs and expenses of operating the Debtors’ business, any indebtedness or obligations incurred or assumed by the Debtors, as Debtors in Possession, during the Reorganization Cases, including, without limitation, for the acquisition or lease of property or an interest in property or the rendition of services, any allowances of compensation and reimbursement of expenses to the extent allowed by Final Order under sections 330 or 503 of the Bankruptcy Code, and any fees or charges assessed against the estates of the Debtors under section 1930 of chapter 123 of title 28 of the United States Code.

1.5. ***Administrative Expense Claims Bar Date*** means the Business Day which is seven (7) days after the Confirmation Date or such other date as approved by order of the Bankruptcy Court.

1.6. ***Agents*** means the Administrative Agent and Collateral Agent.

1.7. ***AHC-Debtor Plan*** means the Sixth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by the Ad Hoc Committee of Holders of 8.5% Senior Secured Notes Due 2015 and the Debtors dated December 24, 2009, as such plan may be amended, modified or supplemented.

1.8. ***Allowed*** means, with reference to any Claim, (i) any Claim against any Debtor which has been listed by such Debtor in the Schedules, as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary proof of claim has been filed and for which no objection has been interposed, (ii) any timely filed Claim as to which no objection to allowance has been interposed in accordance with section 7.1 hereof or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective holder, or (iii) any Claim expressly allowed by a Final Order or hereunder.

1.9. **Amended Organizational Documents** means the amended and/or restated certificate of incorporation or formation, the amended and/or restated bylaws, and/or such other applicable organizational documents (including any limited liability company operating agreement or partnership agreement) of New Partner Co, NewCo and Reorganized TER Holdings and of the other Reorganized Debtors, each in form and substance acceptable to Icahn Partners.

1.10. **Backstop Agreement** means that certain Backstop Agreement in substantially the same form as attached to the Disclosure Statement, as revised to reflect the terms (including without limitation, the terms of the Rights Offering) set forth in the Plan and as the same may be thereafter amended, to be entered into by and among the Backstop Parties, NewCo and Reorganized TER Holdings, as it may be further amended from time to time in accordance with the terms thereof.

1.11. **Backstop Allocation** means the New Common Stock to be issued to and allocated among the Backstop Parties pursuant to and in accordance with the terms of Section 3(b) of the Backstop Agreement equal to 3.740% of the outstanding New Common Stock on a Fully Diluted Basis.

1.12. **Backstop Commitment** means the agreement of each Backstop Party pursuant to the Backstop Agreement to purchase its proportion of all of the Unsubscribed Shares that are not purchased by the Rights Offering Participants as part of the Rights Offering.

1.13. **Backstop New Common Stock** means New Common Stock to be purchased by the Backstop Parties pursuant to the Backstop Commitment.

1.14. **Backstop Parties** means the parties that are signatories to the Backstop Agreement other than NewCo and Reorganized TER Holdings and their successors, designees and assigns.

1.15. **Backstop Purchase Price** means an amount in dollars equal to the product of the number of Unsubscribed Shares and the Per Share Subscription Amount.

1.16. **Bankruptcy Code** means title 11 of the United States Code, as amended from time to time, as applicable to the Reorganization Cases.

1.17. **Bankruptcy Court** means the United States Bankruptcy Court for the District of New Jersey having jurisdiction over the Reorganization Cases and, to the extent of any reference made under section 157 of title 28 of the United States Code, the unit of such District Court having jurisdiction over the Reorganization Cases under section 151 of title 28 of the United States Code.

1.18. **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time, applicable to the Reorganization Cases, and any Local Rules of the Bankruptcy Court.

1.19. **Beal Bank** means Beal Bank (f/k/a Beal Bank, S.S.B.) and/or Beal Bank Nevada, in each case, as applicable, and their respective successors, designees and assigns.

1.20. **BNAC** means BNAC, Inc., a Texas corporation, and a direct or indirect wholly-owned subsidiary of Beal Bank Nevada.

1.21. **Business Day** means any day other than a Saturday, a Sunday or any other day on which banking institutions in New York, New York are required or authorized to close by law or executive order.

1.22. **Call Option** means Icahn Partners' right under the Put/Call Agreement to purchase the Unpurchased Interest.

1.23. **Cash** means legal tender of the United States of America.

1.24. **Causes of Action** means without limitation, any and all actions, causes of action, controversies, liabilities, obligations, rights, suits, damages, judgments, claims, and demands whatsoever, whether known or unknown, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, existing or hereafter arising, in law, equity or otherwise.

1.25. **Claim** has the meaning set forth in section 101(5) of the Bankruptcy Code.

1.26. **Class** means any group of Claims or Equity Interests classified by the Plan pursuant to section 1122(a)(1) of the Bankruptcy Code.

1.27. **Collateral Agent** means Beal Bank (f/k/a Beal Bank S.S.B.), as collateral agent under the First Lien Credit Agreement, its successors, assigns or designees.

1.28. **Commencement Date** means February 17, 2009.

1.29. **Confirmation Date** means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order.

1.30. **Confirmation Hearing** means the hearing to be held by the Bankruptcy Court regarding confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.31. **Confirmation Order** means the order of the Bankruptcy Court confirming the Plan as to each of the Debtors pursuant to section 1129 of the Bankruptcy Code.

1.32. **Convenience Amount** means an amount to be set forth in the Plan Supplement or other filing with the Bankruptcy Court.

1.33. **Convenience Class Claim** means a General Unsecured Claim, ~~other than a Second Lien Note Deficiency Claim~~; (i) Allowed in an amount less than or equal to the Convenience Amount or (ii) as to which the Holder of such General Unsecured Claim has elected (by marking the appropriate box on its ballot for voting on the Plan) to reduce its Claim to the Convenience Amount in order to have its Claim treated as a Convenience Class Claim.

1.34. **Conversion** means the issuance of First Lien Conversion New Common Stock in respect of the First Lien Claims pursuant to Section 4.3(ii) of the Plan.

1.35. **Debtor Subsidiaries** means the Debtors, other than TER, TCI 2 and TER Holdings.

1.36. **Debtors** means TCI 2 Holdings, LLC; TER; TER Holdings; TER Funding; Trump Entertainment Resorts Development Company, LLC; Trump Taj Mahal Associates, LLC, d/b/a Trump Taj Mahal Casino Resort; Trump Plaza Associates, LLC, d/b/a Trump Plaza Hotel and Casino; Trump Marina Associates, LLC, d/b/a Trump Marina Hotel Casino; TER Management Co., LLC; and TER Development Co., LLC.

1.37. **Debtors in Possession** means the Debtors in their capacity as debtors in possession in the Reorganization Cases pursuant to sections 1101, 1107(a) and 1108 of the Bankruptcy Code.

1.38. **Disallowed** means a finding of the Bankruptcy Court in a Final Order or provision in the Plan providing that a Disputed Claim shall not be Allowed.

1.39. **Disbursing Agent** means any entity (including any applicable Debtor if it acts in such capacity) in its capacity as a disbursing agent under section 6.4 hereof.

1.40. **Disclosure Statement** means that certain disclosure statement relating to the Plan, including, without limitation, all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

1.41. **Disclosure Statement Order** means the order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code and approving the procedures for solicitation of this Plan and the Rights Offering.

1.42. **Disputed Claim** means any Claim which has not been Allowed pursuant to the Plan or a Final Order, and:

(a) if no proof of claim has been filed by the applicable deadline: (i) a Claim that has been or hereafter is listed on the Schedules as disputed, contingent or unliquidated; or (ii) a Claim that has been or hereafter is listed on the Schedules as other than disputed, contingent or unliquidated, but as to which the Debtors or Reorganized Debtors or any other party in interest has interposed an objection or request for estimation which has not been withdrawn or determined by a Final Order; or

(b) if a proof of claim or request for payment of an Administrative Expense Claim has been filed by the applicable deadline: (i) a Claim for which no corresponding Claim has been or hereafter is listed on the Schedules; (ii) a Claim for which a corresponding Claim has been or hereafter is listed on the Schedules as other than disputed, contingent or unliquidated, but the nature or amount of the Claim as asserted in the proof of claim varies from the nature and amount of such Claim as listed on the Schedules; (iii) a Claim for which a corresponding Claim has been or hereafter is listed on the Schedules as disputed, contingent or unliquidated; or (iv) a Claim for which a timely objection or request for estimation is interposed by the Debtors, the Reorganized Debtors or any other party in interest which has not been withdrawn or determined by a Final Order.

1.43. **Disputed Rights Offering List** means a schedule identifying the General Unsecured Claims, other than Second Lien Note Claims, as to which the Backstop Parties dispute the Rights Participation Claim Amount, as determined by Backstop Parties, for the holder of each such Claim for purposes of Section 5.3 of the Plan, which schedule shall be filed on or prior to the Subscription Commencement Date.

1.44. **Distribution Record Date** means the Confirmation Date.

1.45. **Effective Date** means a Business Day on or after the Confirmation Date selected by the First Lien Lenders on which the conditions to the effectiveness of the Plan specified in section 9 hereof have been satisfied or waived.

1.46. **Eligible Holder** means a holder of an Allowed General Unsecured Claim or an Allowed Second Lien Note ~~Secured~~ Claim as of the Rights Offering Record Date who has timely completed and returned an Accredited Investor Questionnaire representing that such holder is an Accredited Investor in accordance with the Disclosure Statement Order. ~~Each~~ Notwithstanding the

foregoing, each of the Backstop Parties shall be deemed an Eligible Holder for purposes of this Plan and the Rights Offering without any further action by such Backstop Parties and regardless of whether any such Backstop Party returned an Accredited Investor Questionnaire.

1.47. ***Equity Interest*** means any equity security (as defined in section 101(16) of the Bankruptcy Code) or general or limited partnership interest in any of the Debtors.

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

1.49. ***Final Cash Collateral Order*** means that Final Order (I) Authorizing Use of Cash Collateral Pursuant to Section 363 of Bankruptcy Code and (II) Providing Adequate Protection to Prepetition Secured Parties Pursuant to Sections 361, 362, 363, and 364 of Bankruptcy Code, entered by the Bankruptcy Court on March 23, 2009 (as amended, modified or supplemented from time to time).

1.50. ***Final Distribution Date*** means, in the event there exists on the Effective Date any Disputed Claims, a date selected by the First Lien Lenders, in their sole discretion, after which all such Disputed Claims have been resolved by Final Order.

1.51. ***Final Order*** means an order or judgment of the Bankruptcy Court entered by the Clerk of the Bankruptcy Court on the docket in the Reorganization Cases, which has not been reversed, vacated or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument or rehearing shall then be pending, or (ii) if an appeal, writ of certiorari, new trial, reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a Final Order.

1.52. ***First Lien Conversion New Common Stock*** means New Common Stock to be issued to the First Lien Lenders pursuant to the Conversion representing (i) 62.597% of the outstanding New Common Stock on a Fully Diluted Basis if the Rights Offering is fully subscribed and (ii) 78.596% of the New Common Stock on a Fully Diluted Basis if the Rights Offering is not consummated; provided, in either case, that the First Lien Lenders may designate one or more affiliates to which some or all of such New Common Stock are to be issued.

1.53. ***First Lien Credit Agreement*** means that certain Credit Agreement dated as of December 21, 2007, among TER Holdings, as borrower, TER, as a guarantor, the subsidiary guarantors named therein, Beal Bank (f/k/a Beal Bank, S.S.B.) and Beal Bank Nevada, as Lenders, and Beal Bank (f/k/a Beal Bank, S.S.B.), as Administrative Agent and Collateral Agent, as amended by that certain First Amendment to Credit Agreement dated as of December 21, 2007, Second Amendment to Credit Agreement dated as of May 29, 2008, and Third Amendment to Credit Agreement dated as of October 28, 2008.

1.54. ***First Lien Lender Claims*** means any and all Claims arising under or in connection with the First Lien Credit Agreement and all documents relating thereto. The First Lien Lender Claims include an Allowed Secured Claim totaling \$485,062,701.38 in principal as of September 30, 2009, plus interest, fees, costs, and any other charges or amounts due thereon or in connection therewith, none of which shall be subject, in any way, to defense, recharacterization, setoff, preference, fraudulent transfer, disgorgement, or other claim whatsoever.



1.55. **First Lien Lenders** means the lenders under the First Lien Credit Agreement, including Beal Bank Nevada, Icahn Partners, and any successors, assigns or designees.

1.56. **First Lien Loan Documents** means all Loan Documents (as defined in the First Lien Credit Agreement) and any other agreements and documents delivered pursuant thereto or in connection therewith.

1.57. **Fully Diluted Basis** means the percentage of ownership that would result after giving effect to the Rights Offering (if applicable), the Conversion, the Backstop Allocation (if applicable), the conversion of the Icahn DIP Loan into New Common Stock (if applicable) and the conversion of the Icahn Equity Contribution into New Common Stock (if applicable).

1.58. **General Unsecured Claim** means any Claim against any of the Debtors other than (a) Intercompany Claims; (b) First Lien Lender Claims; (c) Second Lien ~~Secured~~ Note Claims; (d) Other Secured Claims; (e) Administrative Expense Claims; (f) Priority Tax Claims; and (g) Claims paid before the Effective Date in connection with that certain order entered by the Bankruptcy Court on or about February 20, 2009, authorizing the Debtors to pay certain prepetition claims of critical vendors and approving procedures related thereto. For avoidance of doubt, General Unsecured Claims shall not include the Second Lien Note Deficiency Claims.

1.59. **Icahn DIP Loan** means a debtor in possession loan in the amount of \$45,000,000 that Icahn Partners shall make to the Debtors on the Confirmation Date, on terms and conditions reasonably acceptable to the Debtors and Icahn Partners, the proceeds of which shall be used for working capital purposes and Cash payments required under the Plan.

1.60. **Icahn Equity Contribution** means a \$80,000,000 Cash payment (i.e., equity contribution) that Icahn Partners shall make to the Debtors on the Effective Date, if the Rights Offering is not consummated.

1.61. **Icahn Partners** means Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Partners Master Fund II LP and Icahn Partners Master Fund III LP, and their respective successors, designees and assigns.

1.62. **Icahn Penalty Payment** means a Cash payment in the amount of \$50,000,000 to be made by Icahn Partners on the Confirmation Date to an escrow account with a third party that is mutually acceptable to Icahn Partners and the Debtors, which payment shall be forfeited to the Debtors under certain circumstances as described in Section 5.10 hereof.

1.63. **Intercompany Claim** means any Claim of a Debtor against another Debtor.

1.64. **Membership Interests** means the sole class of membership interests in the limited liability company of Reorganized TER Holdings.

1.65. **New Common Stock** means the shares of common stock, par value \$0.01, of NewCo, of which 120,000,000 shares shall be authorized pursuant to the Certificate of Incorporation.

1.66. **New Partner Co** means New Partner Corporation, a "C" corporation newly formed under the laws of the State of Delaware and to be wholly-owned by the First Lien Lenders, or one or more of their affiliates, for the purpose of, among other things, holding Membership Interests in accordance with the terms of the Plan.

1.67. **NewCo** means NewCorporation, a corporation newly formed under the laws of the State of Delaware, which shall issue New Common Stock and hold Membership Interests, each in accordance with the terms of the Plan.

1.68. ***Non-Debtor Released Parties*** means the Released Parties other than the Debtors and Reorganized Debtors.

1.69. ***Other Priority Claim*** means any Claim against any of the Debtors other than an Administrative Expense Claim or a Priority Tax Claim, entitled to priority in payment as specified in section 507(a)(3), (4), (5), (6), (7) or (9) of the Bankruptcy Code.

1.70. ***Other Secured Claim*** means any Secured Claim against the Debtors not constituting a First Lien Lender Claim or a Second Lien Note Claim or a Claim arising under or relating to any guaranty obligation under (i) the First Lien Credit Agreement; (ii) the Second Lien Notes or (iii) that certain indenture governing the Second Lien Notes, dated as of May 20, 2005, by and among TER Holdings and TER Funding, as issuers, the guarantors named therein, and U.S. Bank, National Association, as indenture trustee.

1.71. ***Per Share Subscription Price*** means the amount in dollars required to be paid by an Eligible Holder to exercise a Subscription Right in the Rights Offering.

1.72. ***Plan*** means this joint chapter 11 plan of reorganization, including the exhibits hereto, as the same may be amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms hereof.

1.73. ***Plan Documents*** means the Plan and any related documents or agreements, including but not limited to the Backstop Agreement.

1.74. ***Plan Filing Date*** means the first date that this Plan is filed with the Bankruptcy Court.

1.75. ***Plan Proponents*** means Beal Bank and Icahn Partners, and their respective successors, designees and assigns.

1.76. ***Plan Supplement*** means a supplemental appendix to the Plan containing, among other things, forms of the (i) Amended Organizational Documents for Reorganized TER Holdings and any other entities, as deemed necessary or desirable by the Administrative Agent or Collateral Agent, as applicable, (ii) Confirmation Order that will be filed with the Bankruptcy Court no later than 10 calendar days prior to the deadline set to file objections to confirmation of the Plan, and (iii) any other documents deemed by the Plan Proponents, as applicable, to be necessary or desirable to the consummation of the Plan.

1.77. ***[RESERVED]***

1.78. ***Priority Tax Claim*** means any Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.79. ***Pro Rata*** means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class (or several Classes taken as a whole) bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class (or several Classes taken as a whole), unless the Plan provides otherwise.

1.80. ***Put/Call Agreement*** means that certain letter agreement among Icahn Partners and Beal Bank dated December 10, 2009.

1.81. ***Put Option*** means Beal Bank's right under the Put/Call Agreement to require Icahn to purchase the Unpurchased Interest.



1.82. **Released Parties** means each of (a) the Debtors, their affiliates, direct or indirect subsidiaries, predecessors, successors, assigns, designees, current and former officers and directors, members, employees, agents, representatives, accountants, financial advisors, professionals and attorneys, (b) the Reorganized Debtors, their affiliates, direct or indirect subsidiaries, successors, assigns, designees, current and former officers and directors, members, employees, agents, representatives, accountants, financial advisors, professionals and attorneys, (c) Beal Bank, and each of Beal Bank's affiliates, direct or indirect subsidiaries, predecessors, successors, assigns, designees, current and former officers and directors, members, employees, agents, representatives, accountants, financial advisors, professionals and attorneys and all of their predecessors, successors and assigns, and (d) Icahn Partners, Carl C. Icahn, and each of their respective affiliates, and any of their respective direct or indirect subsidiaries, predecessors, successors, assigns, designees, current and former officers and directors, limited and general partners, members, employees, agents, representatives, accountants, financial advisors, professionals and attorneys and all of their predecessors, successors and assigns.

1.83. **Reorganization Cases** means the jointly administered cases under chapter 11 of the Bankruptcy Code commenced by the Debtors on February 17, 2009, in the Bankruptcy Court and styled In re TCI 2 Holdings, LLC, et al., 09-13654 (JHW) (Jointly Administered).

1.84. **Reorganized Debtor Subsidiaries** means all of the Debtor Subsidiaries, as reorganized on the Effective Date in accordance with the terms of the Plan.

1.85. **Reorganized Debtors** means the Debtors, as reorganized on the Effective Date in accordance with the terms of the Plan.

1.86. **Reorganized TER** means TER, as reorganized as of the Effective Date in accordance with the Plan.

1.87. **Reorganized TER Common Stock** means the shares of common stock, par value \$0.01, of Reorganized TER, which shares will be authorized pursuant to Section 5.2.

1.88. **Reorganized TER Holdings** means TER Holdings, as reorganized as a limited liability company as of the Effective Date in accordance with the Plan.

1.89. **Rights Offering** means the offering of Subscription Rights to purchase shares of New Common Stock to be issued by NewCo to the Rights Offering Participants pursuant to the Plan, for an aggregate purchase price equal to the Rights Offering Amount.

1.90. **Rights Offering Amount** means \$225,000,000.

1.91. **Rights Offering Participant** means an Eligible Holder exercising Subscription Rights in connection with the Rights Offering.

1.92. **Rights Offering Pro Rata Share** means with respect to the Subscription Rights of each Rights Offering Participant, the ratio (expressed as a percentage) of such participant's Rights Participation Claim Amount to the aggregate Rights Participation Claim Amounts of all Eligible Holders, determined as of the Subscription Expiration Date.

1.93. **Rights Offering Proceeds** means the amount of Rights Offering Proceeds that are actually received by the Subscription Agent upon the consummation of the Rights Offering.

1.94. **Rights Offering Record Date** means the Voting Record Date.

1.95. ***Rights Offering Stock*** means the shares of New Common Stock to be offered to Rights Offering Participants pursuant to the Rights Offering.

1.96. ***Rights Participation Claim Amount*** means;

(a) in the case of a Second Lien Note Claim, the amount of such Second Lien Note Claim;

(b) in the case of any General Unsecured Claim other than a Second Lien Note Claim,

(i) if no proof of claim has been timely filed with respect to such Claim and such Claim has been listed in the Schedules as liquidated in amount and not disputed or contingent, the lesser of the amount set forth in the Schedules or the Disputed Rights Offering List and as to which no objection has been interposed by the First Lien Lenders;

(ii) if a timely proof of claim has been filed with respect to such Claim in a fixed and liquidated amount and the Claim is not listed on the Disputed Rights Offering List, the amount set forth in the proof of claim;

(iii) if such Claim is on the Disputed Rights Offering List, the amount, if any, of such Claim set forth thereon in the column entitled "Amount", unless the holder of such Claim has obtained an order of the Bankruptcy Court at least ten (10) calendar days prior to the Subscription Expiration Date, otherwise determining the amount of the Claim for purposes of the Rights Offering; and

(iv) other than in the circumstances described (i), (ii) and (iii) above, the Rights Participation Claim Amount shall be zero unless the holder of such Claim has obtained an order of the Bankruptcy Court at least ten (10) calendar days prior to the Subscription Expiration Date, otherwise determining the amount of the Claim for purposes of the Rights Offering.

Notwithstanding anything contained herein to the contrary, under no circumstances shall any holder of a General Unsecured Claim that was not timely filed or deemed timely filed have any Rights Participation Claim Amount.

1.97. ***Schedules*** means the schedules of assets and liabilities and the statement of financial affairs filed by the Debtors under section 521 of the Bankruptcy Code, Bankruptcy Rule 1007, and the Official Bankruptcy Forms of the Bankruptcy Rules as such schedules and statements have been or may be supplemented or amended from time to time through the Confirmation Date.

1.98. ***Second Lien Note Claims*** means all Claims arising under or in connection with (i) the Second Lien Notes and (ii) the Second Lien Notes Indenture.

1.99. ***Second Lien Note Deficiency Claims*** means the Second Lien Note Claims less the Second Lien Note Secured Claims.

1.100. ***Second Lien Note Secured Claims*** means the portion of the Second Lien Note Claims that constitutes a Secured Claim as determined by the Bankruptcy Court in accordance with Section 506 of the Bankruptcy Code.

1.101. ***Second Lien Notes*** means the 8-1/2% Senior Secured Notes due 2015 issued by TER Holdings and TER Funding and guaranteed by certain subsidiaries of TER Holdings pursuant to the Second Lien Notes Indenture.

1.102. ***Second Lien Notes Indenture*** means that certain indenture governing Second Lien Notes, dated as of May 20, 2005, by and among TER Holdings and TER Funding, as issuers, the guarantors named therein, and the Second Lien Notes Indenture Trustee, as amended, supplemented, or modified.

1.103. ***Second Lien Notes Indenture Trustee*** means U.S. Bank, National Association, as indenture trustee under the Second Lien Notes Indenture.

1.104. ***Section 510(b) Claim*** means any Claim against a Debtor that is subordinated, or subject to subordination, pursuant to section 510(b) of the Bankruptcy Code, including Claims arising from the rescission of a purchase or sale of a security of a Debtor for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

1.105. ***Secured Claim*** means a Claim to the extent (i) secured by property of the estate, the amount of which shall be determined in accordance with section 506(a) of the Bankruptcy Code, or (ii) secured by the amount of any rights of setoff of the holder thereof under section 553 of the Bankruptcy Code.

1.106. ***Securities Act*** means the Securities Act of 1933, as amended.

1.107. ***Subscribed Shares*** means those shares of New Common Stock offered in connection with the Rights Offering that are validly subscribed for pursuant to the Rights Offering prior to the Subscription Expiration Date and for which payment has been received by the Subscription Agent by the Subscription Payment Date.

1.108. ***Subscription Agent*** means any entity designated as such by the Plan Proponents to act as a subscription agent in connection with the Rights Offering.

1.109. ***Subscription Commencement Date*** means the date on which Subscription Forms are first mailed to Eligible Holders.

1.110. ***Subscription Expiration Date*** means the deadline for voting on the Plan as specified in the Subscription Form, subject to Icahn Partners' right to extend such date, and which shall be the final date by which an Eligible Holder may elect to subscribe in the Rights Offering.

1.111. ***Subscription Form*** means the form to be used by an Eligible Holder pursuant to which such Eligible Holder may exercise Subscription Rights, which form shall be in form and substance acceptable to Icahn Partners.

1.112. ***Subscription Payment Date*** means ~~twenty (20) days following the Subscription Expiration Date or such later date to be designated by the Plan Proponents~~the date set forth in the Disclosure Statement Order by which the Subscription Purchase Price will be due, which date may be the Subscription Expiration Date.

1.113. ***Subscription Purchase Price*** means for each Rights Offering Participant exercising Subscription Rights, the number of shares of New Common Stock to be purchased by such Rights Offering Participant pursuant to such Rights Offering Participant's exercise of Subscription Rights multiplied by the Per Share Subscription Price.

1.114. ***Subscription Rights*** means the non-transferable, non-certificated subscription rights of Eligible Holders to purchase shares of Rights Offering Stock in connection with the Rights Offering on the terms and subject to the conditions set forth in Section 5.3 of the Plan.

1.115. *Subscription Rights Equivalent Amount* means \$.005 per \$1.00 of the principal or face amount of the Allowed Claims.

1.116. *Subsidiary Equity Interests* means the Equity Interests in the Debtor Subsidiaries.

1.117. *TCI 2* means TCI 2 Holdings, LLC, a Delaware limited liability company.

1.118. *TER* means Trump Entertainment Resorts, Inc., a Delaware corporation.

1.119. *TER Funding* means Trump Entertainment Resorts Funding, Inc., a Delaware corporation.

1.120. *TER Holdings* means Trump Entertainment Resorts Holdings, L.P., a Delaware limited partnership.

1.121. *Trump Parties* means Donald J. Trump, Ivanka M. Trump (whether in their individual capacities, their capacities as guarantors, their capacities as current or former partners, members, officers, directors, employees, agents, representatives, advisors, professionals of, or contracting parties with, the Debtors or otherwise), Trump Organization LLC, Ace Entertainment Holdings, Inc. and any of their respective affiliates and related persons (other than Debtors and Reorganized Debtors) and any of their respective present or former partners, officers, directors, members, employees, agents, representatives, accountants, financial advisors, professionals and attorneys and all of their predecessors, successors and assigns (in any case, other than Debtors and Reorganized Debtors).

1.122. *Unpurchased Interest* means Beal Bank's First Lien Lender Claims, and any rights, property or assets provided or distributed in respect thereof.

1.123. *Unsubscribed Shares* means those shares of New Common Stock offered in connection with the Rights Offering that are not validly subscribed for pursuant to the Rights Offering prior to the Subscription Expiration Date or for which payment has not been received by the Subscription Agent by the Subscription Payment Date.

1.124. *Voting Deadline* means the date for determining which holders of Claims are entitled to vote to accept or reject this Plan as applicable, which date is set forth in the Disclosure Statement Order.

1.125. *Voting Record Date* means the date for determining which holders of Claims are entitled to receive the Disclosure Statement and vote to accept or reject this Plan as applicable, which date is set forth in the Disclosure Statement Order.

**B. Interpretation; Application of Definitions and Rules of Construction.**

Unless otherwise specified, all section or exhibit references in the Plan are to the respective section in, or exhibit to, the Plan, as the same may be amended, waived or modified from time to time. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Plan as a whole and not to any particular section, subsection or clause contained therein. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof.

**SECTION 2. ADMINISTRATIVE EXPENSE AND PRIORITY CLAIMS**

2.1. *Administrative Expense Claims.*

Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a different treatment, the Debtors shall pay to each holder of an Allowed Administrative Expense Claim Cash in an amount equal to such Claim on, or as soon thereafter as is reasonably practicable, the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim; *provided, however*, that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtors, as Debtors in Possession, or liabilities arising under loans or advances to or other obligations incurred by the Debtors, as Debtors in Possession, whether or not incurred in the ordinary course of business, shall be paid by the Debtors in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing or other documents relating to such transactions.

Except as otherwise provided in this Section 2.1, unless previously filed or paid, requests for payment of Administrative Expense Claims must be filed and served on the Reorganized Debtors pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Expense Claims Bar Date. Holders of Administrative Expense Claims that are required to file and serve a request for payment of such Administrative Expense Claims that do not file and serve such a request by the Administrative Expense Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Expense Claims against the Debtors or the Reorganized Debtors and their property and such Administrative Expense Claims shall be deemed discharged as of the Effective Date. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Section 10 hereof. Objections to such requests must be filed and served on the Reorganized Debtors and the requesting party by the later of (a) 7 days after the Confirmation Date and (b) 15 days after the filing of the applicable request for payment of Administrative Expense Claims, if applicable, as the same may be modified or extended from time to time by order of the Bankruptcy Court.

2.2. *Compensation and Reimbursement Claims.*

All entities seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under section 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code (i) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is seven (7) days after the entry of the Confirmation Order, (ii) shall be paid in full from the Debtors' or Reorganized Debtors' Cash on hand in such amounts as are allowed by the Bankruptcy Court (A) upon the later of (1) the Effective Date and (2) the date upon which the order relating to any such Allowed Administrative Expense Claim is entered, or (B) upon such other terms as may be mutually agreed upon between the holder of such an Allowed Administrative Expense Claim and the Debtors or, on and after the Effective Date, the Reorganized Debtors. Subject to the Administrative Agent's prior written approval, the Reorganized Debtors are authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Confirmation Date and until the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

2.3. *Priority Tax Claims.*

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the Debtors or the Reorganized Debtors, (i) Cash in an amount equal to such Allowed Priority Tax Claim on, or as soon thereafter as is reasonably practicable, the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, or (ii) equal annual Cash payments in an aggregate amount

equal to such Allowed Priority Tax Claim, together with interest at the applicable rate under section 511 of the Bankruptcy Code, over a period not exceeding five (5) years after the date of assessment of such Allowed Priority Tax Claim. The Debtors reserve the right to prepay at any time under this option. Except as otherwise permitted in this section, all Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as such obligations become due.

### SECTION 3. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

The following table designates the Classes of Claims against and Equity Interests in the Debtors and specifies which of those Classes are (i) impaired or unimpaired by the Plan, (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code and (iii) deemed to reject the Plan. Classes designated with the letters A – J refer to Classes of Claims against each of the Debtors. The Classes designated 4A – 4E refer to Second Lien Note Claims against TER Holdings, Trump Marina Assoc., LLC, TER Development Co., LLC, Trump Plaza Assoc., LLC, and Trump Taj Mahal Assoc., LLC.

Class	Designation	Treatment	Entitled to Vote
<del>1A</del> <del>1J</del>	Other Priority Claims	Unimpaired	No (deemed to accept)
<del>2A</del> <del>2J</del>	Other Secured Claims	Unimpaired	No (deemed to accept)
<del>3A</del> <del>3J</del>	First Lien Lender Claims	Impaired	Yes
<del>4A</del> <del>4E</del>	Second Lien Note Claims	Impaired	Yes
<del>5A</del> <del>5J</del>	General Unsecured Claims	Impaired	Yes
6	Intercompany Claims	Unimpaired	No (deemed to accept)
7	Section 510(b) Claims	Impaired	No (deemed to reject)
8	TER Equity Interests	Impaired	No (deemed to reject)
9	TER Holdings Equity Interests	Impaired	No (deemed to reject)
10	Subsidiary Equity Interests	Impaired	No (deemed to reject)
11	Convenience Class Claims	Impaired	Yes

### SECTION 4. TREATMENT OF CLAIMS AND EQUITY INTERESTS

#### 4.1. *Other Priority Claims (Class ~~1A~~ through ~~1J~~).*

The legal, equitable and contractual rights of the holders of Allowed Other Priority Claims are unaltered. Except to the extent that a holder of an Allowed Other Priority Claim has been paid by the Debtors prior to the Effective Date or otherwise agrees to different treatment, each holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction of such Allowed Other Priority Claim, payment of the Allowed Other Priority Claim in full in Cash on or as soon as reasonably practicable after (a) the Effective Date, (b) the date such Other Priority Claim becomes Allowed or (c) such other date as may be ordered by the Bankruptcy Court.

#### 4.2. *Other Secured Claims (Class ~~2A~~ through ~~2J~~).*



Except to the extent that a holder of an Allowed Other Secured Claim against any of the Debtors has agreed to a different treatment of such Claim, each holder of an Allowed Other Secured Claim shall receive, in the sole discretion of the Reorganized Debtors, either (a) the property securing such Allowed Other Secured Claim, (b) Cash in an amount equal to the value of the property securing such Allowed Other Secured Claim, or (c) the treatment required under section 1124(2) of the Bankruptcy Code for such Claim to be reinstated or rendered unimpaired.

4.3. *First Lien Lender Claims (~~Classes 3A through 3J~~ Class 3).*

The First Lien Lenders (or their successors, assigns or designees, as applicable) shall receive, in full satisfaction of the First Lien Lender Claims, their Pro Rata share of (i) if the Rights Offering is consummated, \$100,000,000 in Cash from the Rights Offering Proceeds, (ii) the First Lien Conversion New Common Stock, (iii) all the Reorganized TER Common Stock, which will be issued to New Partner Co as designee of the First Lien Lenders, and (iv) all of the equity interests in New Partner Co.

4.4. *Second Lien Note ~~Secured~~ Claims (~~Classes 4A through 4E~~ Class 4).*

Each holder of an Allowed Second Lien Note ~~Secured~~ Claim shall receive, in full and final satisfaction of such Claim, (I) if a hearing to consider confirmation of the AHC-Debtor Plan does not occur because that plan fails to meet the requirements of Section 1129(a)(10) of the Bankruptcy Code, that plan is withdrawn, or for any other reason, such holder shall receive its Pro Rata share (together with other holders entitled to a distribution under this Section 4.4 and holders of Allowed General Unsecured Claims that are entitled to a distribution under Section 4.5 hereof) of (a) \$13,937,300, to be paid in Cash and (b) the Subscription Rights (subject to Section 5.3 hereof); and (II) in all other cases, such holder shall not be entitled to, nor shall it receive or retain, any property or interest in property on account of its Allowed Second Lien Note ~~Secured~~ Claim.

4.5. *General Unsecured Claims (~~Class 5A through 5J~~).*

Each holder of an Allowed General Unsecured Claim, other than an Allowed Convenience Class Claim, shall receive, in full and final satisfaction of such Claim, (I) if a hearing to consider confirmation of the AHC-Debtor Plan does not occur because that plan fails to meet the requirements of Section 1129(a)(10) of the Bankruptcy Code, that plan is withdrawn, or for any other reason, such holder shall receive its Pro Rata share (together with other holders entitled to a distribution under this Section 4.5 and holders of Allowed Second Lien Note ~~Secured~~ Claims that are entitled to a distribution under Section 4.4 hereof) of (a) \$13,937,300, to be paid in Cash and (b) the Subscription Rights (subject to Section 5.3 hereof); and (II) in all other cases, such holder shall not be entitled to, nor shall it receive or retain, any property or interest in property on account of its Allowed General Unsecured Claims.

4.6. *Intercompany Claims (Class 6).*

On or after the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), all Intercompany Claims will, (i) at the option of Reorganized TER Holdings, subject to the consent of Icahn Partners, (A) be preserved and reinstated, or (B) after setoff be contributed on a net basis to the capital of the obligor, or (ii) with the mutual consent of both the obligor and the obligee (subject also to the consent of Icahn Partners), be released, waived and discharged on and as of the Effective Date, *provided, however*, the (a) Intercompany Claims of TER or TCI 2 Holdings against Debtors other than TER and TCI 2 Holdings shall be released, waived and discharged unless otherwise agreed to in writing by Icahn Partners and (b) holders of Intercompany Claims against Trump Marina Assoc., LLC, TER Development Co., LLC, Trump Plaza Assoc., LLC, and Trump Taj Mahal Assoc., LLC shall not receive or retain any distribution or payment on account of such Claims, unless otherwise agreed to in writing by Icahn Partners.

4.7. *Section 510(b) Claims (Class 7).*

Holders of Section 510(b) Claims shall not receive or retain any distribution or payment on account of such Section 510(b) Claim. On the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), all such Section 510(b) Claims shall be discharged and extinguished.

4.8. *Equity Interests in TER (Class 8).*

Holders of the Equity Interests in TER shall not receive or retain any distribution or payment on account of such Equity Interests. On the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), all Equity Interests in TER shall be cancelled.

4.9. *Equity Interests in TER Holdings (Class 9).*

Holders of the Equity Interests in TER Holdings shall not receive or retain any distribution or payment on account of such Equity Interests. On the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), all Equity Interests in TER Holdings shall be cancelled.

4.10. *Subsidiary Equity Interests (Class 10).*

Except as set forth in Section 5.6 hereof, holders of the Subsidiary Equity Interests shall not receive or retain any distribution or payment on account of such Subsidiary Equity Interests. On the Effective Date (except as set forth in Section 5.6 hereof (and then as of the time set forth therein)), all Subsidiary Equity Interests shall be cancelled.

4.11. *Convenience Class Claims (Class 11).*

Each Holder of an Allowed Convenience Class Claim shall receive, in full and final satisfaction of such Claim, Cash equal to its Pro Rata share of \$500,000, to be paid out of the general working capital of the Debtors.

**SECTION 5. MEANS FOR IMPLEMENTATION**

5.1. *Settlement of Certain Claims.*

Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution, releases and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims or controversies resolved pursuant to the Plan. All Plan distributions made to creditors holding Allowed Claims in any Class are intended to be and shall be final, and no Plan distribution to the holder of a Claim in one Class shall be subject to being shared with or reallocated to the holders of any Claim in another Class by virtue of any prepetition collateral trust agreement, shared collateral agreement, subordination agreement or other similar inter-creditor arrangement.

5.2. *Authorization and Issuance of Plan Securities.*

In accordance with the terms of this Plan, each of the applicable Reorganized Debtors, NewCo and New Partner Co. is authorized to and shall issue, as applicable, the Membership Interests, the New Common Stock, the Reorganized TER Common Stock and any and all other securities, notes, stock, instruments, certificates, and other documents or agreements required to be issued, executed or delivered pursuant to this Plan (collectively with the Subscription Rights, the "New Securities and Documents"), in each case without further notice to or order of the Bankruptcy



Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any entity.

Pursuant to section 1145(a) of the Bankruptcy Code, shares of New Common Stock issued under the Plan other than pursuant to the Rights Offering shall be exempt from registration under section 5 of the Securities Act and state securities laws and may be resold by holders thereof without registration, unless the holder is an “underwriter” (as defined in section 1145(b)(1) of the Bankruptcy Code) with respect to such securities, subject to the terms thereof, applicable securities laws and the Amended Organizational Documents, as applicable. Without limiting the effect of section 1145 of the Bankruptcy Code, all documents, agreements, and instruments entered into and delivered on or as of the Effective Date contemplated by or in furtherance of this Plan, including, without limitation, any of the Amended Organizational Documents or any other agreement or document related to or entered into in connection with any of the foregoing, shall become, and the Backstop Agreement shall remain, effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any entity (other than as expressly required by such applicable agreement).

Shares of New Common Stock issued in the Rights Offering shall not be issued pursuant to the exemption from registration under the Securities Act provided by Section 1145(a) of the Bankruptcy Code and will not be registered under the Securities Act. Such shares shall be issued pursuant to Section 4(2) under the Securities Act and/or Regulation D thereunder and will, accordingly, be considered “restricted securities” under the Securities Act.

The New Common Stock will be subject to restrictions on transfer to prevent NewCo from becoming a “reporting company” under the Exchange Act. Specifically, no holder of shares of New Common Stock shall transfer any such shares to any person, nor shall NewCo effect the transfer of any shares of New Common Stock to any person, if, at the time of such transfer, NewCo has more than four hundred fifty (450) record holders of New Common Stock in the aggregate, or if the Board of Directors of NewCo reasonably determines that such transfer would, if effected, result in NewCo having more than four hundred fifty (450) holders of record of New Common Stock in the aggregate.

It is the Plan Proponents' current intention to prepare and file with the Securities and Exchange Commission within 180 days after the Effective Date a registration statement to register for resale under the Securities Act shares of New Common Stock that are not otherwise freely tradable. The foregoing restriction on having more than four hundred fifty (450) holders of record of New Common Stock will terminate upon the effectiveness of any such registration statement.

### 5.3. *Rights Offering.*

(a) ***Issuance of Subscription Rights.*** Each Eligible Holder shall be entitled to receive Subscription Rights entitling such participant to subscribe for up to its Rights Offering Pro Rata Share of the Rights Offering Stock. Eligible Holders shall have the right, but not the obligation, to participate in the Rights Offering as provided herein. If, after the Rights Offering Record Date but at least five (5) calendar days prior to the Subscription Expiration Date, a holder of a Disputed Claim who otherwise would be an Eligible Holder, is permitted to participate in the Rights Offering as a result of a Bankruptcy Court order estimating such Claim for the purpose of determining such holder's Rights Participation Claim Amount, such holder shall be permitted to participate in the Rights Offering to the same extent as an Eligible Holder. For the avoidance of doubt, to the extent that a Disputed Claim becomes an Allowed Claim after the date that is five (5) calendar days prior to the Subscription Expiration Date, then the holder of such Claim shall not be entitled to any Rights Participation Claim Amount.

(b) ***Subscription Period.*** The Rights Offering shall commence on the Subscription Commencement Date and shall expire on the Subscription Expiration Date. Each

Eligible Holder intending to participate in the Rights Offering must (i) affirmatively elect to exercise its Subscription Rights, in whole or in part, and (ii) pay its Subscription Purchase Price in connection therewith, on or prior to the Subscription Expiration Date in accordance with the Subscription Form. On the Effective Date, all Unsubscribed Shares shall cease to be available for subscription in the Rights Offering, and any exercise of such Subscription Rights after the Subscription Expiration Date (other than the purchase of shares by the Backstop Parties pursuant to the Backstop Agreement) shall be null and void and there shall be no obligation to honor any such purported exercise received by the Subscription Agent after the Subscription Expiration Date, regardless of when the documents relating to such exercise were sent.

(c) ***Subscription Purchase Price.*** Each Rights Offering Participant choosing to exercise its Subscription Rights, in whole or in part, shall ~~(i) be advised in writing by the Subscription Agent, as promptly as practicable following the Subscription Expiration Date, of the number of shares of Rights Offering Stock required to be purchased by such Rights Offering Participant as a result of such exercise and (ii)~~ be required to pay such participant's Subscription Purchase Price for such shares of Rights Offering Stock not later than the Subscription Payment Date; provided, however, that no fractional shares of New Common Stock shall be issued pursuant to any exercise of Subscription Rights.

(d) ***Exercise of Subscription Rights.*** In order to exercise the Subscription Rights, each Eligible Holder must: (a) return a duly completed Subscription Form to the Subscription Agent so that such form is actually received by the Subscription Agent on or before the Subscription Expiration Date, and (b) pay to the Subscription Agent (on behalf of NewCo) on or before the Subscription Payment Date such holder's Subscription Purchase Price in accordance with the wire instructions set forth on the Subscription Form or by bank or cashier's check delivered to the Subscription Agent as specified in the Subscription Form. If the Subscription Agent for any reason does not receive from a given holder of Subscription Rights (a) a duly completed Subscription Form on or prior to the Subscription Expiration Date, and (b) immediately available funds in an amount equal to such holder's Subscription Purchase Price on or prior to the Subscription Payment Date, such holder shall be deemed to have relinquished and waived its right to participate in the Rights Offering and any shares that such holder could have purchased upon its valid exercise of Subscription Rights shall be deemed to be Unsubscribed Shares. The payments made in accordance with the Rights Offering shall be deposited and held by the Subscription Agent in a trust account, or similarly segregated account or accounts which shall be separate and apart from the Subscription Agent's general operating funds and any other funds subject to any lien or similar encumbrance and which segregated account or accounts will be maintained for the purpose of holding the money for administration of the Rights Offering until the Effective Date. The Subscription Agent shall not use such funds for any other purpose prior to such date and shall not encumber or permit such funds to be encumbered with any lien or similar encumbrance.

Each Rights Offering Participant may exercise all or any portion of such holder's Subscription Rights pursuant to the Subscription Form, but the exercise of any Subscription Rights shall be irrevocable and shall obligate the exercising Rights Offering Participant to purchase the applicable shares of New Common Stock and to pay the Subscription Purchase Price for such shares on or prior to the Subscription Payment Date. In order to facilitate the exercise of the Subscription Rights, on the Subscription Commencement Date, a Subscription Form will be mailed to each Eligible Holder together with appropriate instructions for the proper completion, due execution and timely delivery of the Subscription Form. ~~As promptly as practicable following the Subscription Expiration Date, the Subscription Agent will deliver to each Rights Offering Participant that has validly exercised its Subscription Rights in whole or in part a written statement specifying the number of shares of the Rights Offering Stock to be purchased by such Rights Offering Participant as a result of such exercise of Subscription Rights and the applicable Subscription Purchase Price for such shares as well as instructions for the payment of the applicable Subscription Purchase Price to the Subscription Agent prior to the Subscription Payment Date.~~

(e) ***Rights Offering Procedures.*** Notwithstanding anything contained herein to the contrary, Icahn Partners may modify the procedures relating to the Rights Offering or adopt such additional detailed procedures consistent with the provisions of this Section 5.3 (including without limitation Section 5.3(q)) to more efficiently administer the exercise of the Subscription Rights.

(f) ***Transfer Restriction; Revocation.*** The Subscription Rights shall not be transferable. Any such transfer or attempted transfer will be null and void, and no purported transferee will be treated as the holder of, or permitted to exercise any Subscription Rights. Once a Rights Offering Participant has properly exercised its Subscription Rights, such exercise will not be permitted to be revoked.

(g) ***Rights Offering Information.*** The Subscription Agent shall give the Backstop Parties by e-mail and electronic facsimile transmission written notification setting forth either (i) a true and accurate calculation of the number of Unsubscribed Shares, and the aggregate Subscription Purchase Price therefor (a "Purchase Notice") or (ii) in the absence of any Unsubscribed Shares, the fact that there are no Unsubscribed Shares and that the Backstop Commitments are terminated (a "Satisfaction Notice") as soon as practicable after the Subscription Payment Date (and, in any event, no later than four (4) Business Days prior to the Effective Date). In addition, the Subscription Agent shall notify the Backstop Parties, on each Friday during the Subscription Period and on each Business Day during the five (5) Business Days prior to the Subscription Expiration Date (and any extensions thereto), or more frequently if requested by the Backstop Parties, of the aggregate number of Subscription Rights known by the Subscription Agent to have been exercised pursuant to the Rights Offering as of the close of business on the preceding Business Day or the most recent practicable time before such request, as the case may be. The Subscription Agent shall determine the number of Unsubscribed Shares, if any, in good faith, and provide each of the Backstop Parties with a Purchase Notice or a Satisfaction Notice that accurately reflects the number of Unsubscribed Shares as so determined.

(h) ***Distribution of the New Common Stock.*** In accordance with Section 5.4, NewCo or the Subscription Agent on behalf of NewCo shall distribute the Rights Offering Stock purchased by each Rights Offering Participant that has properly exercised, and paid the Subscription Price for, its Subscription Rights to such holder. If the exercise of a Subscription Right would result in the issuance of a fractional share of New Common Stock, then the number of shares of New Common Stock to be issued in respect of such Subscription Right will be calculated to one decimal place and rounded up or down to the closest whole share (with a half share rounded up). The total number of the shares of New Common Stock that may be purchased pursuant to the Rights Offering shall be adjusted as necessary to account for the rounding provided for in this paragraph.

(i) ***[RESERVED].***

(j) ***Rights Offering Backstop.*** Subject to the terms and conditions of Section 5.3(q) hereof and the Backstop Agreement, without prejudice to the rights of the Backstop Parties to seek later an upward or downward adjustment if the number of Unsubscribed Shares in the Purchase Notice is inaccurate, each of the Backstop Parties, severally and not jointly, will subscribe for and purchase, directly or indirectly, through one or more of its affiliates in accordance with Section 5.4, the Backstop New Common Stock in consideration for payment of the Backstop Purchase Price to NewCo. Delivery of the Backstop New Common Stock will be made to the accounts of the respective Backstop Parties (or to such other accounts as the Backstop Parties may designate) at 10:00 a.m., New York City time, on date specified in Section 5.4 against payment of the Backstop Purchase Price in immediately available funds to an account specified by NewCo at least 24 hours in advance of the Effective Date. The Backstop New Common Stock will be delivered with any and all issue, stamp, transfer or similar taxes or duties payable in connection with such delivery duly paid by the Debtors or the Reorganized Debtors to the extent required under the Confirmation Order or applicable law. Notwithstanding anything contained herein to the contrary, the Backstop Parties, in their sole

discretion, may designate that some or all of the Backstop New Common Stock be issued in the name of, and delivered to, one or more of their affiliates.

(k) **Backstop Allocation.** In accordance with Section 5.4, the Backstop Parties, directly or indirectly, through one or more of its affiliates shall receive the Backstop Allocation to be allocated in the manner set forth in the Backstop Agreement.

(l) **Disputed Claims.** For all purposes of this Section 5.3, each Rights Offering Participant is entitled to participate in the Rights Offering solely to the extent of its Rights Participation Claim Amount, if any.

(m) **Recalculation as of the Subscription Date.** The Rights Participation Claims Amount and Rights Offering Pro Rata Share of each Rights Offering Participant shall be recalculated on the Subscription Expiration Date to account for any allowances or disallowances, as applicable, of General Unsecured Claims or Second Lien Note ~~Secured~~ Claims prior to the day that is five (5) Business Days prior to the Subscription Expiration Date and each properly exercising holder of a General Unsecured Claim or Second Lien Note ~~Secured~~ Claim under the Rights Offering shall only be entitled to purchase the amount of New Common Stock so calculated on such date.

(n) **Subsequent Adjustments.** If as a result of allowances prior to the fifth (5th) Business Day preceding the Subscription Expiration Date of General Unsecured Claims or Second Lien Note ~~Secured~~ Claim for purposes of participating in the Rights Offering, more than all of the New Common Stock subject to the Rights Offering has been subscribed for as a result of the exercise of the Subscription Rights, the New Common Stock subscribed for by each properly subscribing Rights Offering Participant shall be reduced on a pro rata basis based upon the number of shares of New Common Stock properly subscribed for by such participant.

(o) **Validity of Exercise of Subscription Rights.** All questions concerning the timeliness, viability, form and eligibility of any exercise of Subscription Rights, and the determination of whether the conditions in paragraph (i) of Section 5.3(q) have been met, shall be determined by the Subscription Agent as directed by Icahn Partners, whose good faith determinations shall be final and binding. The Subscription Agent as directed by Icahn Partners, in its discretion, may waive any defect or irregularity, or permit a defect or irregularity to be corrected within such times as they may determine, or reject the purported exercise of any Subscription Rights. Subscription Forms shall be deemed not to have been received or accepted until all irregularities have been waived or cured within such time as the Subscription Agent with the consent of Icahn Partners determines. The Subscription Agent will use commercially reasonable efforts to give notice to any Rights Offering Participants regarding any defect or irregularity in connection with any purported exercise of Subscription Rights by such participant and, may permit such defect or irregularity to be cured within such time as the Subscription Agent with the consent of Icahn Partners may determine in good faith to be appropriate; provided, however, that neither Icahn Partners nor the Subscription Agent shall incur any liability for failure to give such notification. Within five (5) days after the Voting Deadline, the Subscription Agent shall file with the Bankruptcy Court a report regarding the results of the Rights Offering including a list identifying all those Subscription Forms deemed rejected due to defect or irregularity.

(p) **Indemnification of Backstop Parties.** Upon entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as the case may be (in such capacity, the "Indemnifying Parties") shall indemnify and hold harmless the Backstop Parties and each of their respective affiliates, members, partners, officers, directors, employees, agents, advisors, controlling persons and professionals (each an "Indemnified Person") from and against any and all losses, claims, damages, liabilities and reasonable expenses, joint or several, to which any such Indemnified Person may become subject arising out of or in connection with any claim, challenge, litigation, investigation or proceeding (each, an "Action") with respect to the Rights Offering, the Backstop Agreement, the Plan or the transactions contemplated hereby or thereby, including without limitation, distribution of the Backstop Allocation, distribution of the Subscription Rights, the purchase and sale of New

Common Stock in the Rights Offering and purchase and sale of Backstop New Common Stock pursuant to the Backstop Agreement, regardless of whether any of such Indemnified Persons is a party thereto, and to reimburse such Indemnified Persons for any reasonable legal or other reasonable out-of-pocket expenses as they are incurred in connection with investigating, responding to or defending any of the foregoing, provided that the foregoing indemnification will not, as to any Indemnified Person, apply to losses, claims, damages, liabilities or expenses to the extent that they are finally judicially determined to have resulted from gross negligence or willful misconduct on the part of such Indemnified Person. If for any reason the foregoing indemnification is unavailable to any Indemnified Person or insufficient to hold it harmless, then the Indemnifying Parties shall contribute to the amount paid or payable by such Indemnified Person as a result of such loss, claim, damage, liability or expense in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnifying Parties on the one hand and such Indemnified Person on the other hand but also the relative fault of the Indemnifying Parties, on the one hand, and such Indemnified Person, on the other hand, as well as any relevant equitable considerations. The Indemnifying Parties also agree that no Indemnified Person shall have any liability based on their exclusive or contributory negligence or otherwise to the Indemnifying Parties, any person asserting claims on behalf of or in right of any of the Indemnifying Parties, or any other person in connection with or as a result of the Rights Offering or the transactions contemplated thereby, except as to any Indemnified Person to the extent that any losses, claims, damages, liability or expenses incurred by the Debtors are finally judicially determined to have resulted from gross negligence or willful misconduct of such Indemnified Person in performing the services that are the subject of the Backstop Agreement. The indemnity and reimbursement obligations of the Indemnifying Parties described in this Section 5.3(p) shall be in addition to any liability that the Indemnifying Parties may otherwise have to an Indemnified Person and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Indemnifying Parties and any Indemnified Person.

Promptly after receipt by an Indemnified Person of notice of the commencement of any claim, litigation, investigation or proceeding relating to the Backstop Agreement or any of the transactions contemplated thereby ("Proceedings"), such Indemnified Person will, if a claim is to be made hereunder against the Indemnifying Parties in respect thereof, notify the Indemnifying Parties in writing of the commencement thereof; provided that (i) the omission so to notify the Indemnifying Parties will not relieve it from any liability that it may have hereunder except to the extent it has been materially prejudiced by such failure and (ii) the omission so to notify the Indemnifying Parties will not relieve it from any liability that it may have to an Indemnified Person otherwise than on account of the provisions described in this Section 5.3(p). In case any such Proceedings are brought against any Indemnified Person and it notifies the Indemnifying Person of the commencement thereof, if the Indemnifying Parties commits in writing to fully indemnify and hold harmless the Indemnified Person with respect to such Proceedings without regard to whether the Effective Date occurs, the Indemnifying Parties will be entitled to participate in such Proceedings, and, to the extent that it may elect by written notice delivered to such Indemnified Person, to assume the defense thereof, with counsel reasonably satisfactory to such Indemnified Person, provided that if the defendants in any such Proceedings include both such Indemnified Person and the Indemnifying Parties and such Indemnified Person shall have concluded that there may be legal defenses available to it that are different from or additional to those available to the Indemnifying Parties, such Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such Proceedings on behalf of such Indemnified Person. Upon receipt of such indemnification commitment from the Indemnifying Parties and notice from the Indemnifying Parties to such Indemnified Person of its election so to assume the defense of such Proceedings and approval by such Indemnified Person of counsel, the Indemnifying Parties shall not be liable to such Indemnified Person for expenses incurred by such Indemnified Person in connection with the defense thereof (other than reasonable costs of investigation) unless (i) such Indemnified Person shall have employed separate counsel in connection with the assertion of legal defenses in accordance with the proviso to the next preceding sentence (it being understood, however, that the Indemnifying Parties shall not be liable for the expenses of more than one separate counsel, approved by the Backstop Parties, representing the Indemnified Persons who are parties to such Proceedings), (ii) the



Indemnifying Parties shall not have employed counsel reasonably satisfactory to such Indemnified Person to represent such Indemnified Person at the Indemnifying Parties' expense within a reasonable time after notice of commencement of the Proceedings, or (iii) the Indemnifying Parties shall have authorized in writing the employment of counsel for such Indemnified Person.

Each Indemnifying Party agrees that it will not settle or compromise or consent to the entry of any judgment in, or otherwise seek to terminate any pending or threatened Action in respect of which indemnification or contribution may be sought hereunder (whether or not any Indemnified Person is a party to such Action) unless the Indemnified Person has given its prior written consent, or the settlement, compromise, consent or termination (i) includes an express unconditional release of such Indemnified Person from the party bringing such Action and (ii) does not include any admission of fault on the part of any Indemnified Party. The Indemnifying Party shall not be liable for any settlement of any Action effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the ~~indemnifying party~~ Indemnifying Party agrees to indemnify the Indemnified Person from and against any loss or liability by reason of such settlement or judgment.

(q) ***Rights Offering Conditional.*** Notwithstanding anything to the contrary in this Section 5.3, in any other section of this Plan, or otherwise:

(i) the Rights Offering shall not be consummated unless (x) 50% or more of the Rights Offering Stock (the "***Rights Offering Threshold***") is validly subscribed and paid for by the Subscription Expiration Date in accordance with the terms hereof and (y) a hearing to consider confirmation of the AHC-Debtor Plan does not occur because that plan fails to meet the requirements of Section 1129(a)(10) of the Bankruptcy Code, that plan is withdrawn, or for any other reason;

(ii) for the avoidance of doubt, (A) the Backstop New Common Stock to be purchased by the Backstop Parties pursuant to the Backstop Commitment shall not be counted in determining whether or not the Rights Offering Threshold has been met, and (B) the Backstop Commitment shall only apply if the conditions in paragraph (i) of this Section 5.3(q) have been met but less than 100% of the Rights Offering Stock has been subscribed and paid for;

(iii) the Subscription Agent shall, as promptly as practicable, advise in writing the Rights Offering Participants, the Plan Proponents and the Backstop Parties whether the conditions in paragraph (i) of this Section 5.3(q) have been met and, accordingly, whether the Rights Offering shall (1) be consummated, in which case the Rights Offering shall proceed in accordance with the provisions of this Section 5.3, or (2) not be consummated;

(iv) if the Rights Offering will not be consummated pursuant to this Section 5.3(q), the Subscription Agent shall take reasonable steps to restore all Rights Offering Participants, the Plan Proponents and the Backstop Parties to their *status quo ante* in respect thereof, including without limitation the return, as promptly as practicable, of any payments made on account of a holder's Subscription Purchase Price; and

(v) to effectuate the terms of the Rights Offering and in order to facilitate the implementation of the Plan, the terms and conditions of the Backstop Agreement, the Backstop Commitment and ~~any~~ all transactions and documents ancillary or related thereto (including without limitation the commitment letter addressed to certain of the Debtors, dated December 13, 2009 and signed by the Backstop Parties) shall be deemed to be, and shall be, hereby amended and revised to reflect the terms of the Rights Offering as provided for in the Plan, including without limitation the provisions of this Section 5.3(q).

5.4. *Provisions for Distributions of Plan Securities / Certain Corporate Restructurings.*

(a) *Certain Distributions and Restructurings.*

On the Effective Date, the following shall occur in the sequence provided below:

(i) All Claims other than the First Lien Lender Claims, any Claim not otherwise subject to discharge hereunder, and the Equity Interests in TER shall be discharged at 10:00 a.m. Eastern Time on the Effective Date.

(ii) TER Holdings shall be converted to a limited liability company and shall become Reorganized TER Holdings and the equity interests of TER Holdings shall be cancelled in accordance with Section 4.9. Immediately after the cancellation of equity interests in TER Holdings in accordance with Section 4.9, Reorganized TER Holdings shall issue all Membership Interests to New Partner Co and Reorganized TER, such that New Partner Co and Reorganized TER shall hold all issued and outstanding Membership Interests. The conversion of TER Holdings into a limited liability company, the cancellation of equity interests in TER Holdings in accordance with Section 4.9, and the issuance of new Membership Interests in Reorganized TER Holdings immediately afterwards shall occur at 1:00 p.m. Eastern Time on the Effective Date.

(iii) The books of Reorganized TER Holdings shall be closed on the Effective Date for U.S. federal income tax purposes in accordance with Section 706 of the Internal Revenue Code, as of the close of business on the Effective Date, and any income from cancellation, discharge or retirement of indebtedness, including, without limitation, discharge of all Claims referred to in Section 5.4(a)(i), shall be allocated among the partners of Reorganized TER Holdings prior to such discharge, in proportion to their interests in Reorganized TER Holdings at the beginning of the Effective Date. The close of business of Reorganized TER Holdings shall occur at 11:59 p.m. Eastern Time on the Effective Date.

Immediately on the first Business Day following the Effective Date (the "Second Closing Date"), the following shall occur in the sequence provided below:

(iv) NewCo shall (A) issue any New Common Stock issuable to the holders of Allowed Second Lien Note Claims and holders of Allowed General Unsecured Claims pursuant to the valid exercise of Subscription Rights in the Rights Offering (if applicable); and (B) contemporaneously with the acts taken in clause (A) NewCo will be issued 99% of the outstanding Membership Interests.

(v) The distributions contemplated by Section 4.3 of the Plan shall be made in satisfaction of the First Lien Lenders Claims and NewCo shall issue Backstop New Common Stock and the Backstop Allocation to the Backstop Parties pursuant to the terms of the Backstop Agreement (if applicable).

Upon completion of the foregoing transactions, each of Reorganized TER and New Partner Co (each as designees of the First Lien Lenders) shall hold Membership Interests representing 0.5% of the outstanding Membership Interests on and after the Second Closing Date.

Additionally, upon completion of the foregoing transactions, New Partner Co (as designee of the First Lien Lenders) shall own 100% of the Reorganized TER Common Stock.

(b) *Modification and Reservation of Rights.*

Further modifications to the foregoing corporate restructurings or additional restructurings for reasonable business and tax purposes may be consummated without further notice

or modification to the Plan, provided that the value of distributions contemplated hereunder does not materially change as a result of such modifications. Nothing herein shall prohibit the modification of the Amended Organizational Documents from and after the Effective Date in accordance with the applicable Amended Organizational Document.

5.5. *Cash Distribution.*

In accordance with Section 5.4, Reorganized TER Holdings shall pay (a) if the Rights Offering is consummated, (i) \$100,000,000 in Cash to the First Lien Lenders from the Rights Offering Proceeds and (ii) \$45,000,000 in Cash to Icahn Partners from the Rights Offering Proceeds to repay the Icahn DIP Loan, and (b) any distributions provided for in Section 4.11.

Except as otherwise provided in this Plan or the Confirmation Order, all Cash necessary for the Reorganized Debtors to make payments required pursuant to this Plan, including the Cash distributions contemplated in Sections 4.3, 4.4 and 4.5 hereof (in each case, as applicable) will be obtained from the Reorganized Debtors' Cash balances, including Cash from operations and the proceeds of the Icahn DIP Loan, Icahn Equity Contribution and/or the Rights Offering (in each case, as applicable). Cash payments to be made pursuant to this Plan will be made by the Reorganized Debtors.

5.6. *Subsidiary Equity Interests.*

On the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)) all Subsidiary Equity Interests in existence on the Commencement Date shall be cancelled and replaced by new Subsidiary Equity Interests so as to maintain the legal existence and organizational structure of the Debtor Subsidiaries existing on the date immediately prior to the Effective Date. Maintenance of such structure does not represent a distribution of value on account of the Subsidiary Equity Interests in existence on the Commencement Date. Notwithstanding the foregoing, as the case may be, the distribution and/or disposition of all Equity Interests in TCI 2 shall be as reflected in the Plan Supplement, as elected by Icahn Partners in its discretion.

5.7. *Cancellation of Existing Securities and Agreements.*

Except (i) for purposes of evidencing a right to distributions under the Plan, (ii) with respect to executory contracts or unexpired leases that have been assumed by the Debtors, or (iii) as otherwise provided hereunder, on the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), all the agreements and other documents evidencing (a) the Claims or rights of any holder of a Claim against the Debtors, including all indentures and notes evidencing such Claims, and (b) any Equity Interest in TER and any Subsidiary Equity Interests shall be cancelled and of no further force or effect; *provided however*, that notwithstanding anything to the contrary set forth elsewhere in this Plan, the rights of the First Lien Lenders with respect to and in each of the "Services Agreement", the "Trademark License Agreement" and the "Trademark Security Agreement", as such terms are defined in the First Lien Credit Agreement, shall be preserved with respect to any collateral deemed by the First Lien Lenders to be necessary or desirable to the operation of the businesses of the Debtors.

5.8. *Compliance with Tax Requirements.*

(a) All parties (including the Reorganized Debtors and the holders of New Common Stock) shall report for all federal income tax purposes consistent with the Plan.

(b) Consistent with the intent that Reorganized TER Holdings will initially be treated as a partnership for federal income tax purposes, no election will be made by Reorganized



TER Holdings to be taxed as a corporation for federal income tax purposes without the consent of Icahn Partners.

(c) In connection with the Plan, the Debtors and the Disbursing Agent, as applicable, shall comply with all withholding and reporting requirements imposed by federal, state, local, and foreign taxing authorities and all Plan distributions hereunder shall be subject to such withholding and reporting requirements. Notwithstanding the above, each holder of an Allowed Claim that is to receive a Plan distribution shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any government unit, *including* income, withholding and other tax obligations, on account of such Plan distribution. The Disbursing Agent has the right, but not the obligation, to not make a Plan distribution until such holder has made arrangements satisfactory to the Disbursing Agent for payment of any such tax obligations.

5.9. *NewCo.*

(a) **Formation and Name.** On the Effective Date or as soon thereafter as is practicable, the Reorganized Debtors may change their name(s) to such name(s) that may be determined in accordance with applicable law.

(b) **Board of Directors of NewCo.** The board of directors of NewCo shall be comprised of seven (7) members. The board of directors shall include (i) two (2) directors selected by the holders of a majority of the Subscribed Shares if 90% or more of the Rights Offering Stock is subscribed for, or (ii) one (1) director appointed by the holders of a majority of the Subscribed Shares if more than half of the Rights Offering Stock, but less than 90%, is subscribed for. The remaining directors shall be selected by the First Lien Lenders or their designee. The appointment of individuals to the board of directors and such individuals' ability to serve as directors and perform the duties of directors on the Effective Date shall, as of the Effective Date, (i) comply with the applicable regulatory requirements and (ii) have been approved, qualified, licensed, found suitable or otherwise permitted to serve in such capacity, as applicable, by all applicable gaming authorities. To the extent that any holder of Subscribed Shares may have nomination rights as described above, such holder may need to be found qualified in accordance with applicable gaming laws and regulations in order to exercise such nomination rights.

(c) **Officers of NewCo.** The officers of TER immediately prior to the Effective Date will serve as the officers of NewCo on the Effective Date; provided, however, that any officer of TER appointed after the Plan Filing Date is subject to the approval of the First Lien Lenders. On and after the Effective Date, the officers of NewCo will be determined by NewCo's board of directors, provided that the following officers and employees of TER will be offered one year severance arrangements: Don Browne, John Burke, Mark Juliano, Rosalind Krause, Chris Latil, Loretta Pickus, Robert Pickus, James Rigot, Mark Sachais, and Franco Pilli. Such agreements shall not contain change of control provisions or equity participation but shall contain a severance benefit equal to one year's salary triggered upon a termination by the employer without cause.

5.10. *Other Transactions.*

(a) **Debtor in Possession Loan.** On the Confirmation Date, Icahn Partners shall make the Icahn DIP Loan. On the Effective Date, (i) if the Rights Offering is not consummated, the Icahn DIP Loan shall be converted into New Common Stock and (ii) if the Rights Offering is consummated, \$45,000,000 of the Rights Offering Proceeds shall be applied to repay in full the Icahn DIP Loan.

(b) **Icahn Equity Contribution.** If the Rights Offering is not consummated, Icahn Partners shall make the Icahn Equity Contribution on the Effective Date.

(c) ***Penalty Payment.*** On the Confirmation Date, Icahn Partners shall deposit the Icahn Penalty Payment in an escrow account with a third party that is mutually acceptable to Icahn Partners and the Debtors. If the Effective Date does not occur on or before the date that is 270 days following the Confirmation Date (the “***Forfeiture Date*”**), for the sole reason that one or more regulatory approvals necessary for the Effective Date to occur have not been obtained, the Icahn Penalty Payment shall be irrevocably forfeited to the Debtors on the Forfeiture Date. If (a) the Effective Date occurs on or before the Forfeiture Date or (b) the Effective Date does not occur on or before the Forfeiture Date because any condition to the Effective Date other than obtaining necessary regulatory approvals has not been satisfied or waived by Icahn Partners on or before the Forfeiture Date, the Icahn Penalty Payment shall be returned to Icahn Partners on the earlier of the Forfeiture Date and the Effective Date. Notwithstanding the foregoing, if Icahn Partners closes the transactions under this Plan following the Forfeiture Date, the Icahn Penalty Payment shall be returned to Icahn Partners on the Effective Date.

(d) ***Other Plan Transactions.*** On the Effective Date or as soon as reasonably practicable thereafter, the Debtors may, with the prior consent of Icahn Partners but subject to any applicable limitations or other requirements of the First Lien Loan Documents, (i) cause any or all of the Reorganized Debtor Subsidiaries to be liquidated or merged into one or more of the other Reorganized Debtor Subsidiaries or any other subsidiaries of the Debtors or dissolved, (ii) cause the transfer of assets between or among the Reorganized Debtor Subsidiaries, (iii) cause any or all of the Amended Organizational Documents of any Reorganized Debtor Subsidiaries to be implemented, effected or executed and/or (iv) engage in any other transaction in furtherance of the Plan. Any such transactions may be effective as of the Effective Date pursuant to the Confirmation Order without any further action by the stockholders, members, general or limited partners, or directors of any of the Debtors, the Debtors in Possession or the Reorganized Debtors; provided, however, that from the Effective Date through the Second Closing Date, the Debtors may take no action other than in the ordinary course of their daily operations without the consent of Icahn Partners.

#### 5.11. ***Plan Amendments.***

The Plan Proponents reserve the right to amend the Plan consistent with and/or as permitted by the Bankruptcy Code and Bankruptcy Court.

### SECTION 6. **DISTRIBUTIONS**

#### 6.1. ***Distribution Record Date.***

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Equity Interests as maintained by the Debtors, or their respective agents, shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Equity Interests. The Debtors or the Reorganized Debtors shall have no obligation to recognize any transfer of the Claims or Equity Interests occurring on or after the Distribution Record Date.

#### 6.2. ***Date of Distributions.***

Except as otherwise provided herein, any distributions and deliveries to be made hereunder shall be made on the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)) or as soon thereafter as is practicable. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

6.3. *Disbursing Agent.*

All distributions hereunder shall be made by Reorganized TER Holdings (or such other entity designated by Reorganized TER Holdings), as Disbursing Agent, on or after the Effective Date or as otherwise provided herein. A Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court, and, in the event that a Disbursing Agent is so ordered, all costs and expenses of procuring any such bond or surety shall be borne by Reorganized TER.

6.4. *Powers of Disbursing Agent.*

The Disbursing Agent shall be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary or desirable to perform its duties hereunder, (ii) make all distributions contemplated hereby and (iii) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan.

6.5. *Surrender of Instruments.*

As a condition to receiving any distribution under the Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Disbursing Agent or its designee. Any holder of such instrument or note that fails to (i) surrender such instrument or note, or (ii) execute and deliver an affidavit of loss and/or indemnity reasonably satisfactory to the Disbursing Agent and furnish a bond in form, substance and amount reasonably satisfactory to the Disbursing Agent before the first anniversary of the Effective Date shall be deemed to have forfeited all rights and Claims and may not participate in any distribution hereunder. Any distribution so forfeited shall become property of the Reorganized Debtors. For the avoidance of doubt, this section 6.5 does not apply to any distribution to be made to the Agents or First Lien Lenders pursuant to this Plan.

6.6. *Delivery of Distributions.*

Subject to Bankruptcy Rule 9010, all distributions to any holder of an Allowed Claim shall be made to a Disbursing Agent, who shall transmit such distribution to the applicable holders of Allowed Claims. In the event that any distribution to any holder is returned as undeliverable, the Disbursing Agent shall use reasonable efforts to determine the current address of such holder, but no distribution to such holder shall be made unless and until the Disbursing Agent has determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest; *provided* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one (1) year from the Effective Date. After such date, all unclaimed property or interest in property shall revert to the Reorganized Debtors, and the Claim of any other holder to such property or interest in property shall be discharged and forever barred.

6.7. *Manner of Payment Under Plan.*

At the option of the Debtors, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements.

6.8. *Setoffs.*

The Debtors and the Reorganized Debtors may, but shall not be required to, set off against any Claim (for purposes of determining the Allowed amount of such Claim on which distribution shall be made), any claims of any nature whatsoever that the Debtors or the Reorganized Debtors may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Reorganized Debtors

of any such claim the Debtors or the Reorganized Debtors may have against the holder of such Claim; *provided, however*, that, subject to the occurrence of the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), the Debtors and the Reorganized Debtors shall not be permitted to setoff against any Allowed Claim held by any of the Agents or any First Lien Lender.

6.9. *Distributions After Effective Date.*

Distributions made after the Effective Date to holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall be deemed to have been made on the Effective Date.

6.10. *Allocation of Distributions Between Principal and Interest.*

To the extent that any Allowed Claim entitled to a distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall be allocated to the principal amount (as determined for federal income tax purposes) of the Claim first, and then to accrued but unpaid interest.

**SECTION 7. PROCEDURES FOR DISPUTED CLAIMS**

7.1. *Objections to Claims.*

The Reorganized Debtors shall be entitled to object to Claims other than Claims which are expressly Allowed pursuant to the Plan or Allowed by Final Order subsequent to the Effective Date. Any objections to Claims shall be served and filed on or before the later of: (a) one hundred twenty (120) days after the Effective Date, and (b) such date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (a) above.

7.2. *Payments and Distributions with Respect to Disputed Claims.*

Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

7.3. *Estimation of Claims.*

The Reorganized Debtors may at any time request that the Bankruptcy Court estimate any contingent, unliquidated or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated or Disputed Claim, the amount so estimated shall constitute either the allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Reorganized Debtors may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

7.4. *Distributions Relating to Disputed Claims.*

At such time (if any) as a Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall distribute to the holder of such Claim, such holder's pro rata portion of the property distributable with respect to the Class in which such Claim belongs. To the extent that all or a portion of a Disputed Claim is Disallowed, the holder of such Claim shall not receive any distribution on account of the portion of such Claim that is Disallowed and any property withheld pending the resolution of such Claim shall be reallocated pro rata to the holders of Allowed Claims in the same class.

**7.5. *Distributions after Allowance.***

To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, a distribution shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the holder of such Claim, the distribution to which such holder is entitled hereunder. The Reorganized Debtors or Disbursing Agent, as applicable, may institute reasonable procedures to ensure that Holders of Disputed Claims that subsequently become Allowed Claims receive the distribution to which they are entitled under the Plan, including but not limited to the creation of appropriate reserves for Disputed Claims.

**7.6. *Preservation of Rights to Settle Claims.***

In accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce, sue on, settle or compromise (or decline to do any of the foregoing) all claims, rights, causes of action, suits and proceedings, whether in law or in equity, whether known or unknown, that the Debtors or their estates may hold against any person or entity without the approval of the Bankruptcy Court, subject to the terms of section 7.1 hereof, the Confirmation Order, and any contract, instrument, release, indenture or other agreement entered into in connection herewith. The Reorganized Debtors or their successor(s) may pursue such retained claims, rights or causes of action, suits or proceedings, as appropriate, in accordance with the best interests of the Reorganized Debtors or their successor(s) who hold such rights.

**7.7. *Disallowed Claims.***

All claims held by persons or entities against whom or which any Debtor or Reorganized Debtor has commenced a proceeding asserting a cause of action under sections 542, 543, 544, 545, 547, 548, 549 and/or 550 of the Bankruptcy Code shall be deemed "disallowed" claims pursuant to section 502(d) of the Bankruptcy Code and holders of such claims shall not be entitled to vote to accept or reject the Plan. Claims that are deemed disallowed pursuant to this section shall continue to be disallowed for all purposes until the avoidance action against such party has been settled or resolved by Final Order and any sums due to the Debtors or the Reorganized Debtors from such party have been paid.

**SECTION 8. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**8.1. *General Treatment.***

As of, and subject to the occurrence of the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), and subject to section 8.2 herein, all executory contracts and unexpired leases (including, in each case, any related amendments, supplements, consents, estoppels, or ancillary agreements) to which any of the Debtors are parties are hereby assumed except for an executory contract or unexpired lease that (i) previously has been assumed or rejected pursuant to Final Order of the Bankruptcy Court, (ii) is specifically designated by Icahn Partners as a contract or lease to be rejected on the Schedule of Rejected Contracts to be attached hereto as Exhibit A, or (iii) is the subject of a separate (a) assumption motion filed by the



Debtors, or (b) rejection motion filed by the Debtors under section 365 of the Bankruptcy Code prior to the Confirmation Date.

8.2. *Cure of Defaults.*

Except to the extent that different treatment has been agreed to by the nondebtor party or parties to any executory contract or unexpired lease to be assumed pursuant to section 8.1 hereof, the Debtors shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of section 365 of the Bankruptcy Code, within twenty (20) days prior to the commencement of the Confirmation Hearing, file and serve a schedule with the Bankruptcy Court listing the cure amounts of all executory contracts or unexpired leases to be assumed. Any party that fails to object to the applicable cure amount shall be forever barred, estopped and enjoined from disputing the cure amount and/or from asserting any Claim against the applicable Debtor or Reorganized Debtor arising under section 365(b)(1) of the Bankruptcy Code except as set forth in the schedule of cure amounts. If there are any objections filed, the cure payments, if any, required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving such dispute. The Debtors shall retain their right to reject any of their executory contracts or unexpired leases that are subject to a dispute, including contracts or leases that are subject to a dispute concerning amounts necessary to cure any defaults, until the entry of a Final Order resolving such dispute.

8.3. *Rejection Claims.*

In the event that the rejection of an executory contract or unexpired lease by any of the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not heretofore evidenced by a timely filed proof of claim, shall be forever barred and shall not be enforceable against the Debtors or the Reorganized Debtors, or their respective properties or interests in property as agents, successors or assigns, unless a proof of claim is filed with the Bankruptcy Court and served upon counsel for the Debtors and the Reorganized Debtors on or before the date that is thirty (30) days after the Confirmation Date or such later rejection date that occurs as a result of a dispute concerning amounts necessary to cure any defaults.

8.4. *Assignment and Effect of Assumption and/or Assignment.*

Any executory contract or unexpired lease assumed or assumed and assigned shall remain in full force and effect for the benefit of the Reorganized Debtor or assignee in accordance with its terms, notwithstanding any provision in such executory contract or unexpired lease (including those of the type described in sections 365(b)(2) of the Bankruptcy Code) that prohibits, restricts or conditions such assumption, transfer or assignment. Any provision that prohibits, restricts or conditions the assignment or transfer of any such executory contract or unexpired lease or that terminates or modifies such executory contract or unexpired lease or allows the counterparty to such executory contract or unexpired lease to terminate, modify, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon any such transfer and assignment constitutes an unenforceable anti-assignment provision and is void and of no force or effect.

8.5. *Non-Survival of the Debtors' Indemnification Obligations.*

As of the Effective Date of the Plan, all present and future obligations of the Debtors pursuant to their corporate charters and bylaws or other organizational documents, or pursuant to any contracts or agreements, to indemnify current and former partners, current and former members, current and former officers, current and former directors, current and former employees, current and former agents, current and former representatives, current and former advisors, or current and former professionals of the Debtors with respect to all present and future actions, suits and proceedings

against any of the Debtors and/or any such partners, members, directors, officers, employees, agents, representatives, advisors and/or professionals, shall be discharged by confirmation of the Plan.

8.6. *Insurance Policies.*

All insurance policies pursuant to which the Debtors have any obligations in effect as of the date of the Confirmation Order shall be deemed and treated as executory contracts pursuant to the Plan and shall be assumed by the respective Debtors and Reorganized Debtors and shall continue in full force and effect. All other insurance policies shall revert in the Reorganized Debtors.

8.7. *Casino Property Leases.*

For purposes of the Plan, "Casino Property Leases" shall mean each of the following: (i) the ground lease dated as of July 1, 1980, by and between Magnum Associates and Magnum Associates II, as lessor, and Atlantic City Seashore 1, Inc., as lessee, (ii) the ground lease dated as of July 1, 1980, by and between SSG Enterprises, as lessor, and Atlantic City Seashore 2, Inc., as lessee, (iii) the agreement of lease dated July 11, 1980, by and between Plaza Hotel Management Company, as lessor, and Atlantic City Seashore 3, as lessee, (iv) the amended and restated lease agreement dated September 1991, by and between Trump Taj Mahal Associates, LLC, as landlord, and Trump Taj Mahal Associates, LLC, as tenant, and (v) the lease agreement by and between the State of New Jersey acting through the Department of Environmental Protection, Division of Parks and Forestry, as landlord, and Trump Marina Associates, L.L.C., as tenant. The Casino Property Leases shall be deemed and treated as executory contracts pursuant to the Plan and shall be assumed by the respective Debtors and Reorganized Debtors and shall continue in full force and effect.

8.8. *Compliance with Gaming Laws and Regulations.*

NewCo shall not distribute New Common Stock to any person or entity in violation of the gaming laws and regulations in the states in which the Debtors or the Reorganized Debtors, as applicable, operate. Consequently, no holder shall be entitled to receive New Common Stock unless and until such holder's acquisition of New Common Stock does not require compliance with such license, qualification or suitability requirements or such holder has been licensed, qualified, found suitable, or has obtained a waiver or exemption from such license, qualification, or suitability requirements.

To the extent a holder is not entitled to receive New Common Stock on the Effective Date as a result of applicable gaming laws and regulations, NewCo shall not distribute New Common Stock to such holder, unless and until such holder complies with applicable gaming laws and regulations. Until such holder has complied with applicable gaming laws and regulations, such holder shall not be a shareholder of NewCo and shall have no voting rights or other rights of a stockholder of NewCo.

If a holder is entitled to receive New Common Stock under the Plan and is required, under applicable gaming laws to undergo a suitability investigation and determination and such holder either (i) refuses to undergo the necessary application process for such suitability approval or (ii) after submitting to such process, is determined to be unsuitable to hold the New Common Stock or withdraws from the suitability determination prior to its completion, then, in that event, NewCo shall hold the New Common Stock and (x) such holder shall only receive such distributions from NewCo as are permitted by the applicable gaming authorities, (y) the balance of the New Common Stock to which such holder would otherwise be entitled will be marketed for sale by NewCo, as agent for such holder, subject to compliance with any applicable legal requirements, and (z) the proceeds of any such sale shall be distributed to such holder as soon as such sale can be facilitated and subject to regulatory approval. In addition, in the event that the applicable gaming authorities object to the possible suitability of any holder, the New Common Stock shall be distributed only to such holder upon a formal finding of suitability. If a gaming authority subsequently issues a formal finding that a holder

lacks suitability, or such holder withdraws from or does not fully cooperate with the suitability investigation, then the process for the sale of that holder's New Common Stock shall be as set forth in (x), (y), and (z) above.

## SECTION 9. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE.

### 9.1. *Conditions Precedent to the Effective Date.*

The occurrence of the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)) of the Plan is subject to the satisfaction or waiver of the following conditions precedent:

(a) all actions, documents and agreements necessary to implement and consummate the Plan, including, without limitation, all actions, documents and agreements necessary to implement the Rights Offering, entry into the documents contained in the Plan Supplement, and entry into the Amended Organizational Documents, each in form and substance reasonably satisfactory to the First Lien Lenders, and the transactions and other matters contemplated thereby, shall have been effected or executed;

(b) the Confirmation Order, in form and substance reasonably acceptable to Icahn Partners, shall have been entered, and there shall have been no modification or stay of the Confirmation Order or entry of other court order prohibiting transactions contemplated by the Plan from being consummated;

(c) the Debtors shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions or documents necessary to implement the Plan and that are required by law, regulation or order;

(d) the Debtors shall have distributed the Backstop New Common Stock and the Backstop Allocation to the Backstop Parties in accordance with the terms and conditions in the Backstop Agreement (but only if the Rights Offering is consummated pursuant to Section 5.3(q));

(e) the Debtors shall have paid in full in Cash all unpaid fees and expenses of the Plan Proponents incurred in connection with the Reorganization Cases, including any fees and expenses incurred in connection with the transactions contemplated by the Backstop Agreement (but only if the Rights Offering is consummated pursuant to Section 5.3(q)), owing under the Final Cash Collateral Order or otherwise;

(f) all conditions to the Backstop Agreement, including without limitation, that the Rights Offering shall have been conducted and the Subscription Expiration ~~date~~Date shall have occurred, that the Rights Offering Stock and Backstop New Common Stock shall be validly issued (but only if the Rights Offering is consummated pursuant to Section 5.3(q)), that any waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 shall have expired or been terminated thereunder, no breaches or violations by NewCo or Reorganized TER Holdings, and no judgment, decree or other legal impediment to closing shall have occurred;

(g) the prior receipt by the First Lien Lenders and their affiliates of, and the continued effectiveness of, any and all required approvals or consents of the transactions contemplated by this Plan from all necessary governmental agencies and authorities upon terms and conditions satisfactory to the Plan Proponents; and

(h) the individual and aggregate amounts of each of the following, as determined by the Bankruptcy Court, shall be acceptable to Icahn Partners in its sole discretion: (i) any Allowed Administrative Expense Claims pursuant to Section 2.1 of the Plan; (ii) any claims for compensation and reimbursement of expenses allowed pursuant to Section 2.2 of the Plan; (iii) any Allowed Priority



Tax Claims pursuant to Section 2.3 of the Plan; (iv) any Allowed Other Priority Claims; and (v) any Allowed Other Secured Claims.

9.2. *Waiver of Conditions Precedent to Effective Date.*

The Plan Proponents shall have the right to waive or deem satisfied one or more of the conditions precedent set forth in section 9.1 of this Plan in their sole discretion, in whole or in part, without the need for notice or hearing.

9.3. *Effect of Failure of Conditions to Effective Date.*

If the Effective Date does not occur on or prior to one hundred and eighty (180) days after the Confirmation Date (which date may be extended with the consent of the Plan Proponents by written notice to TER Holdings for up to ninety (90) additional days if the necessary regulatory approvals have not been obtained) then the Plan Proponents may move to vacate the Confirmation Order. If the Effective Date does not occur or if the Confirmation Order is vacated (i) no distributions under the Plan shall be made, (ii) the Debtors and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred, and (iii) all the Debtors' obligations with respect to the Claims and the Equity Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtors or any other entity or to prejudice in any manner the rights of the Debtors or any other entity in any further proceedings involving the Debtors or otherwise.

**SECTION 10. EFFECT OF CONFIRMATION**

10.1. *Vesting of Assets.*

As of the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of the Debtors' estates shall vest in the Reorganized Debtors free and clear of all Claims, liens, encumbrances, charges and other interests. The Reorganized Debtors may operate their businesses and may use, acquire and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code, except as provided herein including, without limitation, section 4.3 of the Plan. As of the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), all mortgages, deeds of trust, liens, pledges, or other security interests against any property of the Debtors or their estates shall be fully released, terminated and discharged without further notice or action by the Debtors, Reorganized Debtors, holders of any such mortgages, deeds of trust, liens, pledges, or other security interests against any property of the Debtors or their estates, the Bankruptcy Court or any applicable federal, state or local governmental agency or department.

10.2. *Discharge.*

Except as otherwise provided herein or contemplated hereby, the rights afforded herein and the payments and distributions to be made hereunder shall (i) discharge all existing debts and Claims, and (ii) terminate all Equity Interests of any kind, nature or description whatsoever against or in the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as otherwise provided herein or in the Confirmation Order, all persons or entities who have held, now hold, or may hold Claims against any of the Debtors or Equity Interests in the Debtors, are permanently enjoined from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to such Claim against the Debtors or the Reorganized Debtors or Equity Interest in the Debtors, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtors or the Reorganized Debtors, (iii) creating, perfecting or enforcing any encumbrance of any kind against

the Debtors or the Reorganized Debtors or against the property or interests in property of the Debtors or the Reorganized Debtors, or (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtors or the Reorganized Debtors, with respect to such Claim against any of the Debtors or Equity Interest in the Debtors; provided, however, that for the avoidance of doubt and notwithstanding anything to the contrary in this Plan, the discharge of Claims and any other benefits provided by this Section 10.2 shall not inure to the benefit of, and shall not otherwise apply to, any of the Trump Parties. Such injunction shall extend to any successors of the Debtors and Reorganized Debtors and their respective properties and interest in properties.

10.3. *Term of Injunctions or Stays.*

Unless otherwise provided, all injunctions or stays arising under or entered during the Reorganization Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

10.4. *Injunction Against Interference with Plan.*

Upon the entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present or former partners, members, employees, agents, officers, directors, principals, representatives or advisors, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

10.5. *Releases.*

On the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), the Released Parties shall be deemed to and hereby unconditionally and irrevocably release each other from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity or person would have been legally entitled to assert (whether individually, derivatively or collectively), relating to any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganization Cases, or the Plan, except that (i) no Released Party shall be released from any act or omission that constitutes gross negligence, willful misconduct or fraud as determined by Final Order of a court of competent jurisdiction, (ii) the foregoing release shall not apply to any claims of the Debtors, the Reorganized Debtors or the First Lien Lenders and their affiliates against current officers, former officers, current directors, former directors, current managers and former managers of the Debtors, and (iii) the foregoing release shall not apply to any express contractual or financial obligations owed to the Debtors or the Reorganized Debtors or any right or obligation arising under or that is part of the Plan or an agreement entered into pursuant to, in connection with or contemplated by, the Plan, including without limitation, the obligations under the Amended Organizational Documents, the Rights Offering (if applicable) and all ancillary and related documents thereto. For the avoidance of doubt and notwithstanding anything to the contrary in this Plan, (A) none of the Trump Parties shall be, or shall be deemed to be, released pursuant to this Section 10.5 or otherwise under this Plan by any entity or person from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity or person may be legally entitled to assert (whether individually, derivatively or collectively), relating to any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganization Cases, or the Plan, or otherwise, and (B) the Persons described in clauses (c) or (d) of the definition of Released Parties shall not release, nor be deemed to release, the other Persons described in clauses (c) or (d) of the definition of Released Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or

unforeseen, existing or hereafter arising, in law, equity or otherwise, that such other party may be legally entitled to assert (whether individually, derivatively or collectively).

10.6. *Exculpation.*

As of the Effective Date, the following parties, entities and individuals shall have no liability for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to the Reorganization Cases or formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the consummation of the Plan, the Disclosure Statement, Backstop Agreement or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other pre-Effective Date act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors except for any express contractual or financial obligations owed to the Debtors, the Reorganized Debtors or the Non-Debtor Released Parties or any right or obligation arising under or that is part of the Plan or an agreement entered into pursuant to, in connection with or contemplated by, the Plan, including without limitation, the obligations under the Amended Organizational Documents, the Rights Offering and all ancillary and related documents thereto: (i) the Backstop Parties; (ii) Beal Bank, any of Beal Bank's affiliates, subsidiaries, designees or assigns, BNAC and the Agents and their respective members, agents, financial advisors, investment bankers, professionals, accountants and attorneys (including partners, owners and members thereof); and (iii) Icahn Partners, Carl C. Icahn, and each of their respective affiliates, and any of their respective direct or indirect subsidiaries, predecessors, successors, assigns, designees, current and former officers and directors, limited and general partners, members, employees, agents, representatives, accountants, financial advisors, professionals, and attorneys and all of their predecessors, successors and assigns; provided, however that in no case shall any party identified in clauses (i) through (iii) above include or be deemed to include any of the Trump Parties. Such parties, entities and individuals shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan and the ancillary documents hereto. For the avoidance of doubt and notwithstanding anything to the contrary in this Plan, nothing in this Section 10.6 or otherwise shall limit the liability of the Persons described in clauses (c) or (d) of the definition of Released Parties to the other Persons described in clauses (c) or (d) of the definition of Released Parties. Notwithstanding the foregoing, the provisions of this section 10.6 shall not limit any liability on the part of the aforementioned parties that is determined by a Final Order of a court of competent jurisdiction for actions or failure to act amounting to willful misconduct, intentional fraud or criminal conduct.

10.7. *Injunction Related to Releases.*

Upon the Effective Date, the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to this Plan, including but not limited to the Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released in sections 10.5 and 10.6 of the Plan, shall be permanently enjoined.

10.8. *Retention of Causes of Action/Reservation of Rights.*

(a) Nothing contained herein or in the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or causes of action that the Debtors or the Reorganized Debtors may have or which the Reorganized Debtors may choose to assert on behalf of their respective estates under any provision of the Bankruptcy Code or any applicable non-bankruptcy law or rule, common law equitable principle or other source of right or obligation, including, without limitation, (i) any and all Claims against any person or entity, to the extent such person or entity asserts a crossclaim, counterclaim and/or Claim for setoff which seeks affirmative relief against the Debtors, the Reorganized Debtors, their officers, directors, partners, members, employees, agents, advisors, professionals or representatives; and (ii) the turnover of any property of the Debtors' estates;

*provided, however*, that this section 10.8(a) shall not apply to any claims released in section 10.5 herein or for which exculpation has been provided in section 10.6 herein.

(b) Nothing contained herein or in the Confirmation Order shall be deemed to be a waiver or relinquishment of any claim, cause of action, right of setoff or other legal or equitable defense which the Debtors had immediately prior to the Commencement Date, against or with respect to any Claim left unimpaired by the Plan. The Reorganized Debtors shall have, retain, reserve and be entitled to assert all such claims, causes of action, rights of setoff and other legal or equitable defenses which they had immediately prior to the Commencement Date fully as if the Reorganization Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights respecting any Claim left unimpaired by the Plan may be asserted after the Confirmation Date to the same extent as if the Reorganization Cases had not been commenced.

#### 10.9. *Solicitation of the Plan.*

As of and subject to the occurrence of the Confirmation Date: (i) the Plan Proponents shall be deemed to have solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including without limitation, sections 1125(a) and (e) of the Bankruptcy Code, and any applicable non-bankruptcy law, rule or regulation governing the adequacy of disclosure in connection with such solicitation and (ii) the Plan Proponents and each of their respective directors, officers, employees, affiliates, agents, financial advisors, investment bankers, professionals, accountants and attorneys shall be deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer and issuance of any securities under the Plan, and therefore are not, and on account of such offer, issuance and solicitation will not be, liable at any time for any violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or the offer and issuance of any securities under the Plan.

#### 10.10. *Plan Supplement.*

The Plan Supplement shall be filed with the Clerk of the Bankruptcy Court by no later than five (5) Business Days prior to the Confirmation Hearing. All contents of the Plan Supplement shall be in form and substance acceptable to the First Lien Lenders, the Backstop Parties, and the Agents. Upon its filing with the Bankruptcy Court, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Documents to be included in the Plan Supplement will be posted at [www.terrecap.com](http://www.terrecap.com) as they become available, but no later than 10 calendar days prior to the deadline set to file objections to confirmation of the Plan.

#### 10.11. *Corporate Action.*

On the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), all matters provided for herein that would otherwise require approval of the stockholders, directors, general or limited partners, or members of one or more of the Debtors or Reorganized Debtors, including without limitation, the authorization (i) to issue or cause to be issued the New Common Stock and Membership Interests, and (ii) for documents and agreements to be effectuated pursuant to the Plan, the election or appointment as the case may be, of directors, managers and officers of the Reorganized Debtors pursuant to the Plan and the Amended Organization Documents, and the qualification of each of the Reorganized Debtors as a foreign corporation or entity wherever the conduct of business by such entity requires such qualification, shall be deemed to have occurred and shall be in effect from and after the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)) pursuant to the applicable general corporation, limited partnership or limited liability company law of the states in which the Debtors or the Reorganized Debtors are organized, without any requirement of further action by the

stockholders, directors, general or limited partners, or members of the Debtors or the Reorganized Debtors.

10.12. *Claims Payable by Insurance Carriers.*

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, such Claim may be expunged to the extent of any agreed upon satisfaction on the Claims Register without a Claims objection having been filed and without any further notice or action, order or approval of the Bankruptcy Court.

**SECTION 11. RETENTION OF JURISDICTION**

On and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, and related to the Reorganization Cases for, among other things, the following purposes:

- (a) to hear and determine motions and/or applications for the assumption or rejection of executory contracts or unexpired leases and the allowance, classification, priority, compromise, estimation or payment of Claims resulting therefrom;
- (b) to determine any motion, adversary proceeding, application, contested matter and other litigated matter pending on or commenced after the Confirmation Date;
- (c) to ensure that distributions to holders of Allowed Claims are accomplished as provided herein;
- (d) to consider Claims or the allowance, classification, priority, compromise, estimation or payment of any Claim;
- (e) to enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified or vacated;
- (f) to issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to facilitate compliance with, and to restrain interference by any person with the consummation, implementation or enforcement of the Plan, the Confirmation Order or any other order of the Bankruptcy Court and the transactions contemplated hereby and thereby;
- (g) to hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;
- (h) to hear and determine all applications under sections 330, 331 and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date;
- (i) to hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan, the Confirmation Order, any transactions or payments contemplated hereby, or any agreement, instrument or other document governing or relating to any of



the foregoing, including without limitation, any disputes arising between the Effective Date and the Second Closing Date;

(j) to take any action and issue such orders as may be necessary to construe, enforce, implement, execute and consummate the Plan or to maintain the integrity of the Plan following consummation;

(k) to hear any disputes arising out of, and to enforce, the order approving alternative dispute resolution procedures to resolve personal injury, employment litigation and similar claims pursuant to section 105(a) of the Bankruptcy Code;

(l) to determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(m) to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including any requests for expedited determinations under section 505(b) of the Bankruptcy Code);

(n) to hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

(o) to enter a final decree closing the Reorganization Cases;

(p) to recover all assets of the Debtors and property of the Debtors' estates, wherever located; and

(q) to hear and determine any rights, Claims or causes of action held by or accruing to the Debtors pursuant to the Bankruptcy Code or pursuant to any federal statute or legal theory.

## SECTION 12. MISCELLANEOUS PROVISIONS

### 12.1. *Payment of Statutory Fees.*

On the Effective Date, and thereafter as may be required, the Debtors shall pay all fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

### 12.2. *Substantial Consummation.*

On the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

### 12.3. *Request for Expedited Determination of Taxes.*

The Reorganized Debtors shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Commencement Date through the Effective Date.

### 12.4. *Retiree Benefits.*

On and after the Effective Date (except as set forth in Section 5.4 hereof (and then as of the time set forth therein)), pursuant to section 1129(a)(13) of the Bankruptcy Code, the Reorganized Debtors shall continue to pay all retiree benefits (within the meaning of, and subject to the limitations of, section 1114 of the Bankruptcy Code), if any, at the level established in accordance with section 1114 of the Bankruptcy Code, at any time prior to the Confirmation Date, for the

duration of the period for which the Debtor had obligated itself to provide such benefits. Nothing herein shall: (a) restrict the Debtors' or the Reorganized Debtors' right to modify the terms and conditions of the retiree benefits, if any, as otherwise permitted pursuant to the terms of the applicable plans, non-bankruptcy law, or section 1114(m) of the Bankruptcy Code; or (b) be construed as an admission that any such retiree benefits are owed by the Debtors.

12.5. *Amendments.*

(a) *Plan Modifications.* The Plan may be amended, modified or supplemented by the First Lien Lenders in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code. In addition, after the Confirmation Date, the First Lien Lenders may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect to such matters as may be necessary or desirable to carry out the purposes and effects of the Plan.

(b) *Other Amendments.* Prior to the Effective Date, and with the consent of the Backstop Parties, the First Lien Lenders may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court.

12.6. *Effectuating Documents and Further Transactions.*

Each of the officers of the Reorganized Debtors is authorized, in accordance with his or her authority under the resolutions of the applicable board of directors or equivalent body, to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents and take such actions as may be necessary, desirable or appropriate to effectuate and further evidence the terms and conditions of the Plan.

12.7. *Reservation of Rights.*

Subject to the Bankruptcy Code, the Bankruptcy Rules and Orders of the Bankruptcy Court, to the extent that the Plan is not confirmed and/or consummated in form and substance satisfactory to the First Lien Lenders, the First Lien Lenders reserve any and all rights and remedies whatsoever, including without limitation, pursuant to Bankruptcy Code Section 1111(b).

12.8. *Severability.*

If, prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, solely upon the request of Icahn Partners, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

12.9. *Governing Law.*

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit hereto or a schedule in the Plan Supplement provides otherwise, the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance



with, the laws of the State of New York, without giving effect to the principles of conflict of laws thereof.

12.10. *Time.*

In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

12.11. *Binding Effect.*

The Plan shall be binding upon and inure to the benefit of the Debtors, the holders of Claims and Equity Interests, and each of their respective successors and assigns, including, without limitation, the Reorganized Debtors.

12.12. *References.*

To effectuate the terms of the Put/Call Agreement and in order to facilitate the implementation of the Plan:

1. unless the context otherwise requires, any reference to Beal Bank (in their capacity as a First Lien Lender, Administrative Agent, Collateral Agent and/or Plan Proponent, as the case may be) and in the Plan Documents shall be deemed to refer to:
  - a. Beal Bank and Icahn Partners, in accordance with their Pro Rata share of the First Lien Lender Claims, until and unless the Put Option or Call Option has been exercised; and
  - b. Icahn Partners, upon the exercise of the Put Option or Call Option;
2. until and unless the Put Option or Call Option has been exercised, Icahn Partners shall be entitled to 51% of all of the rights, powers, privileges and payments afforded Beal Bank under the Plan and all Plan Documents, provided, however, that Icahn Partners shall be entitled to 100% of approval and consent rights afforded Beal Bank under the Plan and all Plan Documents as described in subsection 4 below;
3. upon the exercise of the Put Option or Call Option, Icahn shall be entitled to 100% of all of the rights, powers, privileges and payments afforded Beal Bank under the Plan and all Plan Documents; and
4. whether or not the Put Option or Call Option has been exercised, subject to certain limited exceptions set forth in the Put/Call Agreement and the Credit Agreement, consent and approval rights provided to Beal Bank under the Plan or any Plan Documents shall inure to the benefit of Icahn Partners, and Icahn Partners shall be substituted for Beal Bank in any and every instance in which the Plan or any Plan Document provides for or requires the consent or approval of Beal Bank.

12.13. *Notices.*

All notices, requests and demands to or upon the Debtors, Beal Bank or Icahn Partners, as applicable, to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtors:

Trump Entertainment Resorts, Inc.  
1000 Boardwalk Drive  
Atlantic City, New Jersey 08401  
Facsimile: (609) 449-6705  
Attn: Mark Juliano  
Robert M. Pickus, Esq.

- and -

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attn: Michael F. Walsh, Esq.  
Ted S. Waksman, Esq.  
Telephone: (212) 310-8000  
Telecopier: (212) 310-8007

If to Beal Bank:

Beal Bank  
6000 Legacy Drive  
Plano, Texas 75024  
Attn: Jacob C Cherner  
Telephone: (469) 467-5000  
Facsimile: (469) 241-9567

- and -

White & Case LLP  
1155 Avenue of the Americas  
New York, New York 10036  
Attn: Thomas E Lauria, Esq.  
Gerard Uzzi, Esq.  
Andrew Ambruoso, Esq.  
Eric Stodola, Esq.

Telephone: (212) 819-8200  
Telecopier: (212) 354-8113

If to Icahn Partners:

Keith Schaitkin  
Deputy General Counsel  
Icahn Enterprises LP  
767 Fifth Avenue, 47th Floor  
New York NY 10153

Telephone: (212) 702 4380

- and -

Edward S. Weisfelner  
Brown Rudnick LLP

Seven Times Square  
New York, NY 10036

- and -

Jeffrey L. Jonas  
Brown Rudnick LLP  
One Financial Center  
Boston, MA 02111

12.14. *Plan Proponents.*

(a) **Beal Bank.** Beal Bank certifies that it does not believe that any conflict of interest exists with respect to its role as Plan Proponent.

(b) **Icahn Partners.** Icahn Partners are currently owners of bank debt issued by Tropicana Entertainment, LLC (“Tropicana Entertainment”) which, along with certain of its affiliates, is currently in Chapter 11 proceedings in the U.S. Bankruptcy Court for the District of Delaware. The Bankruptcy Court has approved a plan of reorganization for Tropicana Entertainment and when that plan of reorganization is consummated, Icahn Partners will be the largest shareholder of reorganized Tropicana Entertainment, owning approximately 47% of the equity securities of reorganized Tropicana Entertainment. Reorganized Tropicana Entertainment will own casinos in five jurisdictions: New Jersey, Mississippi, Indiana, Louisiana and Nevada. Icahn Partners is currently seeking to be found qualified or suitable in all five jurisdictions. Further, on November 23, 2009, Icahn Nevada Gaming Acquisition, LLC, a wholly owned subsidiary of Icahn Enterprises, L.P., entered into an agreement to provide debtor in possession financing, and to become a stalking horse bidder for the assets of Fontainebleau Las Vegas Holdings, LLC (the “Fontainebleau”). Fontainebleau is a partially constructed hotel and casino on Las Vegas Blvd, in Las Vegas, Nevada. The auction for Fontainebleau is currently scheduled for January 27, 2010 and if there are no higher bids, Icahn Nevada gaming Acquisition, LLC will take ownership of, and, subject to required regulatory approvals, may develop and eventually operate this hotel and casino. Also, Icahn Partners owns certain debt instruments of Harrah’s Entertainment, Inc.

Dated: ~~December 29, 2009~~ January 5, 2010

Respectfully submitted,

**BEAL BANK (f/k/a BEAL BANK, S.S.B.),** in its  
capacity as Administrative Agent under the First Lien  
Credit Agreement

**BEAL BANK NEVADA**

**ICAHN PARTNERS LP**

**ICAHN PARTNERS MASTER FUND LP**

**ICAHN PARTNERS MASTER FUND II LP**

**ICAHN PARTNERS MASTER FUND III LP**



By: BEAL BANK (F/K/A BEAL BANK,  
S.S.B.), in its capacity as Administrative  
Agent under the First Lien Credit  
Agreement

By: \_\_\_\_\_  
Name: Jacob C Cherner  
Title: Authorized Signatory

By: Beal Bank Nevada

By: \_\_\_\_\_  
Name: Jacob C Cherner  
Title: Authorized Signatory

By: Icahn Partners LP

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

By: Icahn Partners Master Fund LP

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

By: Icahn Partners Master Fund II LP

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

By: Icahn Partners Master Fund III LP

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



**EXHIBITS AND SCHEDULES**  
**TO THE PLAN OF REORGANIZATION**

**Exhibit A**

**Schedule 8.1**

**SCHEDULE OF EXECUTORY  
CONTRACTS TO BE REJECTED**

To be filed subsequently.

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