

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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In re:

TCI 2 HOLDINGS, LLC, et al.,

Debtors.

Chapter 11  
 Case No.: 09-13654 (JHW)  
 (Jointly Administered)

Confirmation Hearing  
 Date: January [ ], 2010  
 Time: [ ]  
 Judge: Hon. Judith H. Wizmur

**AMENDED JOINT PLAN OF REORGANIZATION  
 UNDER CHAPTER 11 OF THE BANKRUPTCY CODE  
 PROPOSED BY BEAL BANK (~~F/K/A BEAL BANK, S.S.B.~~),  
 AND BEAL BANK NEVADA 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 ~~(collectively, "Beal Bank")~~, Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Master Fund II LP and Icahn 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. **Agents** means the Administrative Agent and Collateral Agent.

1.6. **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, (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.

1.7. **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 amended and/or restated 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 ~~Beal Bank~~Icahn Partners.

1.8. **Backstop Agreement** means that certain Backstop Agreement in substantially the same form as attached to the Disclosure Statement, as 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.

1.9. **Backstop Allocation** means the ~~Membership Interests~~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 ~~3.829~~3.868% of the outstanding ~~Membership Interests~~New Common Stock on a Fully Diluted Basis.

1.10. **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.

1.11. **Backstop ~~Membership Interests~~New Common Stock** means ~~Membership Interests~~New Common Stock to be purchased by the Backstop Parties pursuant to the Backstop Commitment ~~in an amount equal to the number of Membership Interests that would have been issued to NewCo had the Unsubscribed Shares been Subscribed Shares.~~

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

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

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

1.15. **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.

1.16. **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.

1.17. **Beal Bank** ~~has the meaning set forth in the preface hereof and with respect to approvals or consents of Beal Bank herein shall mean the consent or approval of the Administrative Agent or its designee.~~ 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.

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

1.19. **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.

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

1.21. ~~1.20.~~ **Cash** means legal tender of the United States of America.

1.22. ~~1.21.~~ **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, ascertainable directly or derivatively, existing or hereafter arising, in law, equity or otherwise.

1.23. ~~1.22.~~ **Claim** has the meaning set forth in section 101(5) of the Bankruptcy Code.

1.24. ~~1.23.~~ **Class** means any group of Claims or Equity Interests classified by the Plan pursuant to section 1122(a)(1) of the Bankruptcy Code.

1.25. ~~1.24.~~ **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.

1.26. ~~1.25.~~ **Commencement Date** means February 17, 2009.

1.27. ~~1.26.~~ **Confirmation Date** means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order.

1.28. ~~1.27.~~ **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.

1.29. ~~1.28.~~ **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.

1.30. **Convenience Amount** means an amount to be set forth in the Plan Supplement.

1.31. **Convenience Class Claim** means a General Unsecured 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.

1.32. ~~1.29.~~ **Conversion** means the issuance of First Lien Conversion ~~Membership Interests~~ New Common Stock in respect of the First Lien Claims pursuant to Section 4.3(ii) of the Plan.

~~1.30. — [RESERVED]~~

1.33. ~~1.31.~~ **Debtor Subsidiaries** means the Debtors, other than TER, TCI 2 and TER Holdings.

1.34. ~~1.32.~~ **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.

1.35. ~~1.33.~~ **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.

1.36. ~~1.34.~~ **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.

1.37. ~~1.35.~~ **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.

1.38. ~~1.36.~~ **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.

1.39. ~~1.37.~~ **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.

1.40. ~~1.38.~~ **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.

1.41. ~~1.39.~~ **Disputed Rights Offering List** means a schedule identifying the General Unsecured Claims, other than Second Lien Note Claims, as to which ~~Beal Bank disputes the~~ Backstop Parties dispute the Rights Participation Claim Amount, as determined by ~~Beal Bank~~ 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.

1.42. ~~1.40.~~ **Distribution Record Date** means the Confirmation Date.

1.43. ~~1.41.~~ **Effective Date** means a Business Day on or after the Confirmation Date selected by ~~Beal Bank~~ the First Lien Lenders on which the conditions to the effectiveness of the Plan specified in section 9 hereof have been satisfied or waived.

1.44. ~~1.42.~~ **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. ~~Beal Bank~~ Each of the Backstop Parties shall be deemed an Eligible Holder for purposes of this Plan and Rights Offering without any further action by ~~Beal Bank~~ such Backstop Parties.

1.45. ~~1.43.~~ **Equity Distribution** means (i) the issuance to holders of Allowed Second Lien Note Secured Claims and Allowed General Unsecured Claims, on a Pro Rata basis,

~~201,000~~ shares of New Common Stock issued by NewCo equal to 2.031% of the outstanding New Common Stock on a Fully Diluted Basis, or (ii) if less than 50% of the Rights Offering Stock are subscribed to by holders of Allowed Second Lien Note Secured Claims and Allowed General Unsecured Claims, at ~~Beal Bank's~~ the First Lien Lenders' election, their Pro Rata share of \$13,937,300 in Cash in lieu of New Common Stock.

1.46. ~~1.44.~~ ***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.

1.47. ~~1.45.~~ ***Exchange Act*** means the Securities Exchange Act of 1934, as amended.

1.48. ~~1.46.~~ ***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).

1.49. ~~1.47.~~ ***Final Distribution Date*** means, in the event there exists on the Effective Date any Disputed Claims, a date selected by ~~Beal Bank~~ the First Lien Lenders, in ~~its~~ their sole discretion, after which all such Disputed Claims have been resolved by Final Order.

1.50. ~~1.48.~~ ***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.

1.51. ~~1.49.~~ ***First Lien Conversion Membership Interests New Common Stock*** means ~~Membership Interests New Common Stock~~ Membership Interests New Common Stock to be issued to the First Lien Lenders pursuant to the Conversion representing ~~60.708~~ 61.321% of the outstanding ~~Membership Interests New Common Stock~~ Membership Interests New Common Stock on a Fully Diluted Basis; provided, that the First Lien Lenders may designate one or more affiliates to which some or all of such ~~Membership Interests New Common Stock~~ Membership Interests New Common Stock are to be issued.

1.52. ~~1.50.~~ ***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.

1.53. ~~1.51.~~ ***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.

1.54. ~~1.52.~~ ***First Lien Lenders*** means the lenders under the First Lien Credit Agreement, including Icahn Partners, and any successors, assigns or designees.

1.55. ~~1.53.~~ ***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.

1.56. ~~1.54.~~ ***Fully Diluted Basis*** means the percentage of ownership that would result after giving effect to the Rights Offering, the Conversion, the Backstop Allocation, and the Equity Distribution (assuming the Equity Distribution is made in New Common Stock) ~~and the issuance of Membership Interests to New Partner Co and Reorganized TER as set forth in Section 5.4.~~

1.57. ~~1.55.~~ ***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 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 include the Second Lien Note Deficiency Claims.

1.58. ***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.

1.59. ~~1.56.~~ ***Intercompany Claim*** means any Claim of a Debtor against another Debtor.

1.60. ~~1.57.~~ ***Membership Interests*** means the sole class of membership interests in the limited liability company of Reorganized TER Holdings.

1.61. ~~1.58.~~ ***New Common Stock*** means the shares of common stock, par value \$0.01, of NewCo, of which ~~12,000,000~~ 120,000,000 shares shall be authorized pursuant to the Certificate of Incorporation.

1.62. ~~1.59.~~ ***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 ~~Beal Bank~~ the First Lien Lenders, or one or more of ~~its~~ their affiliates, for the purpose of, among other things, holding Membership Interests ~~and Preferred Stock~~ in accordance with the terms of the Plan.

1.63. ~~1.60.~~ ***NewCo*** means New Corporation, a corporation newly formed under the laws of the State of Delaware, which shall issue New Common Stock ~~and Preferred Stock~~, and hold Membership Interests, each in accordance with the terms of the Plan.

1.64. ~~1.61.~~ ***Non-Debtor Released Parties*** means the Released Parties other than the Debtors and Reorganized Debtors.

1.65. ~~1.62.~~ ***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.

1.66. ~~1.63.~~ ***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.



1.67. ~~1.64.~~ **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.

1.68. ~~1.65.~~ **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.

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

1.70. ~~1.66.~~ **Plan Filing Date** means the first date that this Plan is filed with the Bankruptcy Court.

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

1.72. ~~1.67.~~ **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 by ~~Beal Bank~~ 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 ~~Beal Bank~~ the Plan Proponents, as applicable, to be necessary to the consummation of the Plan.

~~1.68. — Preferred Stock means one share of preferred stock, par value \$0.01 per share, that provides the holder, initially New Partner Co., with the right to approve certain actions to be taken by NewCo.~~

1.73. **[RESERVED]**

1.74. ~~1.69.~~ **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.

1.75. ~~1.70.~~ **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.

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

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

1.78. ~~1.71.~~ **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, ~~and~~ (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.

1.79. ~~1.72.~~ **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).

1.80. ~~1.73.~~ **Reorganized Debtor Subsidiaries** means all of the Debtor Subsidiaries, as reorganized on the Effective Date in accordance with the terms of the Plan.

1.81. ~~1.74.~~ **Reorganized Debtors** means the Debtors, as reorganized on the Effective Date in accordance with the terms of the Plan.

1.82. ~~1.75.~~ **Reorganized TER** means TER, as reorganized as of the Effective Date in accordance with the Plan.

1.83. ~~1.76.~~ **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.

1.84. ~~1.77.~~ **Reorganized TER Holdings** means TER Holdings, as reorganized as a limited liability company as of the Effective Date in accordance with the Plan.

1.85. ~~1.78.~~ **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.

1.86. ~~1.79.~~ **Rights Offering Amount** means \$225,000,000.

1.87. ~~1.80.~~ **Rights Offering Participant** means an Eligible Holder exercising Subscription Rights in connection with the Rights Offering.

1.88. ~~1.81.~~ **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.

1.89. ~~1.82.~~ **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.

1.90. ~~1.83.~~ **Rights Offering Record Date** means the Voting Record Date.

1.91. ~~1.84.~~ **Rights Offering Stock** means the shares of New Common Stock to be offered to Rights Offering Participants pursuant to the Rights Offering.

1.92. ~~1.85.~~ **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 ~~Beal Bank~~[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.

1.93. ~~1.86.~~ **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.

1.94. ~~1.87.~~ **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.

1.95. ~~1.88.~~ **Second Lien Note Deficiency Claims** means the Second Lien Note Claims less the Second Lien Note Secured Claims.

1.96. ~~1.89.~~ **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.

1.97. ~~1.90.~~ **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.

1.98. ~~1.91.~~ **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.

1.99. ~~1.92.~~ **Second Lien Notes Indenture Trustee** means U.S. Bank, National Association, as indenture trustee under the Second Lien Notes Indenture.

1.100. ~~1.93.~~ **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.

1.101. ~~1.94.~~ **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.

1.102. ~~1.95.~~ **Securities Act** means the Securities Act of 1933, as amended.

1.103. ~~1.96.~~ **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.

1.104. ~~1.97.~~ **Subscription Agent** means any entity designated as such by ~~Beal Bank~~ the Plan Proponents to act as a subscription agent in connection with the Rights Offering.

1.105. ~~1.98.~~ **Subscription Commencement Date** means the date on which Subscription Forms are first mailed to Eligible Holders.

1.106. ~~1.99.~~ **Subscription Expiration Date** means the deadline for voting on the Plan as specified in the Subscription Form, subject to ~~Beal Bank's~~ 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.

1.107. ~~1.100.~~ **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 ~~Beal Bank~~ Icahn Partners.

1.108. ~~1.101.~~ **Subscription Payment Date** means twenty (20) days following the Subscription Expiration Date or such later date to be designated by ~~Beal Bank~~ the Plan Proponents by which the Subscription Purchase Price will be due.

1.109. ~~1.102.~~ **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.

1.110. ~~1.103.~~ **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.

1.111. ~~1.104.~~ **Subscription Rights Equivalent Amount** means \$.005 per \$1.00 of the principal or face amount of the Allowed Claims.

1.112. ~~1.105.~~ **Subsidiary Equity Interests** means the Equity Interests in the Debtor Subsidiaries.

1.113. ~~1.106.~~ **TCI 2** means TCI 2 Holdings, LLC, a Delaware limited liability company.

1.114. ~~1.107.~~ **TER** means Trump Entertainment Resorts, Inc., a Delaware corporation.

1.115. ~~1.108.~~ **TER Funding** means Trump Entertainment Resorts Funding, Inc., a Delaware corporation.

1.116. ~~1.109.~~ **TER Holdings** means Trump Entertainment Resorts Holdings, L.P., a Delaware limited partnership.

1.117. **Trump Parties** means Donald J. Trump, Ivanka M. Trump (whether in their individual capacities, their capacities as current or former officers or directors of the Debtors or otherwise) and their respective affiliates (other than Debtors and Reorganized Debtors) and any of their respective present or former officers and directors, members, employees, agents, representatives, accountants, financial advisors, professionals and attorneys and all of their predecessors, successors and assigns.

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

1.119. ~~1.110.~~ **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.

1.120. ~~1.111.~~ **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.

1.121. ~~1.112.~~ **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.

**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 forty-five (45) days after the Effective Date, (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 (i) the Effective Date and (ii) 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. 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.

<b>Class</b>	<b>Designation</b>	<b>Treatment</b>	<b>Entitled to Vote</b>
1A-1J	Other Priority Claims	Unimpaired	No (deemed to accept)
2A-2J	Other Secured Claims	Unimpaired	No (deemed to accept)
3A-3J	First Lien Lender Claims	Impaired	Yes
4A-4E	Second Lien Note Claims	Impaired	Yes

5A-5J	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)
<u>11</u>	<u>Convenience Class Claims</u>	<u>Impaired</u>	<u>Yes</u>

**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).***

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) \$100,000,000 in Cash from the Rights Offering Proceeds, (ii) the First Lien Conversion ~~Membership Interests~~ New Common Stock, (iii) ~~the Preferred Stock,~~ (iv) all the Reorganized TER Common Stock, and (v) 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).***

Holders of Allowed Second Lien Note Secured Claims shall receive, in full and final satisfaction of such Claims, their Pro Rata share of the (i) the Subscription Rights, and (ii) to the extent the Second Lien Note Secured Claims are Allowed, the Equity Distribution.

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

Holders of Allowed General Unsecured Claims, other than holders of Allowed Convenience Class Claims, shall receive, in full and final satisfaction of such Claims, their Pro Rata

share (i) the Subscription Rights, and (ii) the Equity Distribution, if any, not distributed to holders of Allowed Second Lien Note Secured 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 ~~Beal Bank~~[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 ~~Beal Bank~~[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 ~~Beal Bank~~[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.

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)*

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 5.4 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 Preferred 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.

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. Any Shares of New Common Stock issued in accordance with the distributions set forth in Sections 4.4 and 4.5 of this Plan on account of the Equity Distribution (~~and the related Membership Interests issued to NewCo in connection therewith~~) shall be issued pursuant to the exemption from registration under the Securities Act provided by Section 1145(a) of the Bankruptcy Code.

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 affirmatively elect to exercise its Subscription Rights, in whole or in part, on or prior to the Subscription Expiration Date. 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 an interest-bearing 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, ~~Beal Bank~~ [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 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) ~~***Subscription for Membership Interests by NewCo.*** Subject to the terms and conditions of the Backstop Agreement, without prejudice to the rights of NewCo to seek later an~~

~~upward or downward adjustment if the number of Unsubscribed Shares in the Purchase Notice is inaccurate, NewCo will subscribe for and purchase in accordance with Section 5.4 a number of Membership Interests of Reorganized TER Holdings representing 32.452% of the outstanding Membership Interests on a Fully Diluted Basis, which amount shall be reduced pro rata depending on the number of Subscribed Shares, in consideration for payment of an amount equal to the Rights Offering Proceeds by NewCo to Reorganized TER Holdings. Delivery of such Membership Interests will be made to the account of NewCo at 10:00 a.m., New York City time, on the date specified in Section 5.4 against payment of an amount equal to the Rights Offering Proceeds in immediately available funds to an account specified by Reorganized TER Holdings at least 24 hours in advance of the Effective Date. Such Membership Interests 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.~~  
~~RESERVED.~~

(j) **Rights Offering Backstop.** Subject to the terms and conditions of 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 ~~Membership Interests~~New Common Stock in consideration for payment of the Backstop Purchase Price to ~~Reorganized TER Holdings~~NewCo. Delivery of the Backstop ~~Membership Interests~~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 ~~Reorganized TER Holdings~~NewCo at least 24 hours in advance of the Effective Date. The Backstop ~~Membership Interests~~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 ~~Membership Interests~~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 shall be determined by the Subscription Agent as directed by ~~Beal Bank~~Icahn Partners, whose good faith determinations shall be final and binding. The Subscription Agent as directed by ~~Beal Bank~~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 ~~Beal Bank~~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 ~~Beal Bank~~Icahn Partners may determine in good faith to be appropriate; provided, however, that neither ~~Beal Bank~~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 ~~Membership Interests~~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 Parties 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 agrees to indemnify the Indemnified Person from and against any loss or liability by reason of such settlement or judgment.

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 (a) the valid exercise of Subscription Rights in the Rights Offering, and (b) Sections 4.4 and 4.5 of this Plan on account of the Equity Distribution; and (B) contemporaneously with the acts taken in clause (A) ~~and subject to the terms and conditions of the Backstop Agreement, NewCo will subscribe for and purchase on the Second Closing Date a number of Membership Interests of Reorganized TER Holdings representing 32.452~~ NewCo will be issued 99% of the outstanding Membership Interests ~~on a Fully Diluted Basis, which amount shall be reduced pro rata depending on the number of Subscribed Shares, in consideration for payment of an amount equal to the Rights Offering Proceeds by NewCo to Reorganized TER Holdings.~~

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

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

Additionally, upon completion of the foregoing transactions, New Partner Co (as designee of ~~Beal Bank~~) ~~shall hold the Preferred Stock on and after the Second Closing Date, and~~ the First Lien Lenders shall own 100% of the Reorganized TER Common Stock.

~~For the avoidance of doubt, the aggregate purchase price for the Backstop Membership Interests, the Backstop Allocation, the Membership Interests held by Reorganized TER and New Partner Co, and the First Lien Conversion Membership Interests shall be the aggregate amount of the First Lien Lender Claims plus the Backstop Purchase Price minus \$100,000,000.~~

(b) *Modification and Reservation of Rights.*



Further modifications to the foregoing corporate restructurings or additional restructurings 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) \$100,000,000 in Cash to the First Lien Lenders from the Rights Offering Proceeds ~~and~~, (b) if less than 50% of the Rights Offering Stock is subscribed to by holders of Allowed Second Lien Note Secured Claims and Allowed General Unsecured Claims, at ~~Beal Bank~~ the Administrative Agent's election, such holders' Pro Rata share of \$13,937,300 in lieu of New Common Stock, ~~and (c) 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 distribution contemplated in Section 4.3 and any Cash distribution made on account of the Equity Distribution, will be obtained from the Reorganized Debtors' Cash balances, including Cash from operations and the proceeds of the Rights Offering. 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.

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 ~~not be cancelled and shall remain valid and enforceable in accordance with their terms~~ be preserved with respect to any collateral deemed necessary 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 ~~Membership Interests~~ 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 ~~Beal Bank~~ 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. ~~Reorganized TER Holdings~~ 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 ~~Managers~~ Directors of NewCo.* The board of ~~managers of Reorganized TER Holdings~~ directors of NewCo shall be comprised of seven (7) ~~managers~~ members. The board of ~~managers~~ directors shall include (i) two (2) ~~managers appointed by NewCo and~~ directors selected by the holders of a majority of the ~~New Common Stock~~ Subscribed Shares if 90% or more of the Rights Offering Stock is subscribed for, or (ii) one (1) ~~manager~~ director appointed by ~~NewCo and selected by the~~ holders of a majority of the ~~New Common Stock~~ Subscribed Shares if more than half of the Rights Offering Stock, but less than 90%, is subscribed for. ~~In any event, the~~ The remaining ~~managers~~ directors shall be selected by ~~Beal Bank or its designee~~ the First Lien Lenders or their designee. The appointment of at least five (5) of the seven (7) directors of the board of directors and their 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 (b) such individuals 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 ~~Reorganized TER Holdings~~ NewCo.* The officers of TER immediately prior to the Effective Date will serve as the officers of ~~Reorganized TER Holdings~~ NewCo on the Effective Date; provided, however, that any officer of TER appointed after the Plan Filing Date is subject to the approval of ~~Beal Bank~~ the First Lien Lenders. On and after the Effective Date, the officers of ~~Reorganized TER Holdings~~ NewCo will be determined by ~~Reorganized TER Holdings~~ NewCo's board of managers, 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 without cause.

~~(d) — Transfer of Membership Interests. Subject to any restrictions that apply under applicable securities laws, Beal Bank shall have the right to transfer or distribute any or all of the Membership Interests held by them respectively to any person or entity, or persons or entities. NewCo shall not be permitted to transfer or distribute any Membership Interests that it holds.~~

5.10. ~~NewCo~~.

~~(a) — *Board of Directors.* The board of directors of NewCo shall be comprised of three members selected in accordance with NewCo's Certification of Incorporation.~~

~~(b) — *Capital Stock.* The capital stock of NewCo shall consist of New Common Stock and one share of Preferred Stock.~~

5.10. ~~5.11.~~ *Other Transactions.*

On the Effective Date or as soon as reasonably practicable thereafter, the Debtors may, with the prior consent of ~~Beal Bank~~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 Reorganized TER Holdings; 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 ~~Beal Bank~~Icahn Partners.

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 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.

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 [Beal Bank/Cahn 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 obligations of the Debtors pursuant to their corporate charters and bylaws or other organizational documents, and any contracts or agreements, to indemnify current and former officers and directors of the Debtors with respect to all present and future actions, suits and proceedings against the Debtors or such directors and/or officers, based upon any act or omission for or on behalf of the Debtors, 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 ~~Beal Bank~~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 ~~Beal Bank~~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 ~~Membership Interests~~New Common Stock and the Backstop Allocation to the Backstop Parties in accordance with the terms and conditions in the Backstop Agreement;

(e) the Debtors shall have paid in full in Cash all unpaid fees and expenses of ~~Beal Bank~~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, 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 shall have occurred, that the Rights Offering Stock and Backstop ~~Membership Interests~~New Common Stock shall be validly issued, 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; and

(g) the prior receipt by ~~Beal Bank~~the First Lien Lenders and ~~its~~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 ~~Beal Bank~~the Plan Proponents.

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

~~Beal Bank~~The Plan Proponents shall have the right to waive or deem satisfied ~~to waive~~ one or more of the conditions precedent set forth in section 9.1 of this Plan in ~~its~~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 ~~Beal Bank~~the Plan Proponents by written notice to TER Holdings for up to sixty (60) additional days if the necessary regulatory approvals have not been obtained) then ~~Beal Bank~~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 TER and the Debtor Subsidiaries, 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 TER, ~~and all other parties in interest, along with their respective present and former employees, agents, officers, directors, principals and affiliates,~~ 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, ~~including their respective present and former employees, agents, officers, directors, principals and affiliates,~~ or the Reorganized Debtors or Equity Interest in TER, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtors, ~~including their respective present and former employees, agents, officers, directors, principals and affiliates,~~ or the Reorganized Debtors, (iii) creating, perfecting or enforcing any encumbrance of any kind against the Debtors, ~~including their respective present and former employees, agents, officers, directors, principals and affiliates,~~ or the Reorganized Debtors or against the property or interests in property of the Debtors, ~~including their respective present and former employees, agents, officers, directors, principals and affiliates,~~ or the Reorganized Debtors, or (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtors, ~~including their respective present and former employees, agents, officers, directors, principals and affiliates,~~ or the Reorganized Debtors, with respect to such Claim against any of the Debtors, ~~including their respective present and former employees, agents, officers, directors, principals and affiliates,~~ or Equity Interest in TER; 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 employees, agents, officers,

directors or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

10.5. ***Mutual 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 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 ~~Beal Bank~~the First Lien Lenders and ~~its~~their affiliates against ~~former~~current officers ~~and, 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 and all ancillary and related documents thereto. For the avoidance of doubt and notwithstanding anything to the contrary in this Plan, 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.

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 ~~current directors, officers and employees of the Debtors and the Reorganized Debtors; (ii) the affiliates, agents, financial advisors, investment bankers, professionals, accountants and attorneys of the Reorganized Debtors and their respective partners, owners and members; and (iii) Backstop Parties; (ii) Beal Bank, any of Beal Bank's affiliates, subsidiaries, designees or assigns, ~~the Backstop Parties~~, 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. 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 ~~(a)~~ 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, ~~or (b) subject to indemnification by the Debtors or Reorganized Debtors pursuant to Section 8.5 hereof, shall be 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 or representatives; and (ii) the turnover of any property of the Debtors' estates; *provided, however*, that this section 10.9(a) shall not apply to any claims released in section 10.5 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 ~~Debtors and~~ Beal-BankPlan 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 ~~Debtors and Beal-Bank~~ 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 ~~Beal Bank~~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, the Preferred~~ 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 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 ~~Beal Bank~~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, ~~Beal Bank~~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 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 and the Agents, ~~Beal Bank~~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, to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

12.7. *[RESERVED].*

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 ~~Beal Bank~~ [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. ~~12.12.~~ **Notices.**

All notices, requests and demands to or upon the Debtors ~~or~~ 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-~~9564~~-9567

- and -

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



Andrew Ambruoso, Esq.  
Eric Stodola, Esq.

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

~~12.13. **Absence of Conflict of Interest.**~~

~~Beal Bank hereby certifies that it does not believe that any conflict of interest exists with respect to its role as Plan proponent.~~

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 ~~4~~, 13, 2009  
~~Plano, Texas~~

Respectfully submitted,

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

~~{SIGNATURE PAGE APPEARS ON THE FOLLOWING PAGE}~~

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.)~~

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: \_\_\_\_\_

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.



Document comparison done by Workshare DeltaView on Monday, December 14, 2009 12:58:47 AM

Input:	
Document 1	interwovenSite://NYDMS/NEWYORK/7417130/31
Document 2	interwovenSite://NYDMS/NEWYORK/7442928/15
Rendering set	standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:		
	Count	
Insertions	459	
Deletions	454	
Moved from	3	
Moved to	3	
Style change	0	
Format changed	0	
Total changes	919	

**NOTEHOLDER BACKSTOP AGREEMENT**

~~THIS NOTEHOLDER BACKSTOP AGREEMENT~~ (this “Agreement”), dated as of ~~August 11, [ ]~~, 2009, is entered into by ~~the undersigned beneficial holders of Secured Notes (as defined below) and/or their investment advisors or managers identified on the signature pages hereto~~ Beal Bank Nevada (“Beal”) and Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Partners Master Fund II LP and Icahn Partners Master Fund III LP (collectively, “Icahn”) as creditors of the Debtors (as defined below) (each of Beal and Icahn, a “Creditor,” and collectively, the “InvestorsCreditors”). ~~WHEREAS, TER Corporation, a Delaware corporation (“TER Corp”) and Trump Entertainment Resorts Holdings, L.P., a Delaware limited partnership (“TER Holdings”), and Trump Entertainment Resorts Funding, Inc., a Delaware corporation (“TER Funding” and, together with TER Holdings, the “Issuers”)~~.

WHEREAS, Trump Entertainment Resorts, Inc., a Delaware corporation (“TER”) and TER Holdings entered into that certain Indenture (as amended, modified or supplemented prior to the date hereof, the “Indenture”), dated as of May 20, 2005, by and among the Issuers, the guarantors party thereto and U.S. Bank National Association, as indenture trustee (the “Trustee”), pursuant to which the Issuers issued \$1,250,000,000 principal amount of 8.5% Senior Secured Notes due 2015 (the “Secured Notes”), of which approximately \$1,248,968,669 in principal amount remained outstanding as of the date of the commencement of the Chapter 11 Cases (defined below) Credit Agreement dated as of December 21, 2007, among TER Holdings, as borrower, TER, as a guarantor, the subsidiary guarantors named therein, Beal Bank and Beal Bank Nevada, as Lenders, and Beal Bank, 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 the Credit Agreement dated as of May 29, 2008, and Third Amendment to the Credit Agreement dated as of October 28, 2008 (together, the “First Lien Credit Agreement”);

WHEREAS, Beal and Icahn entered into that certain Put/Call Agreement dated December 10, 2009, pursuant to which, among other things, Icahn purchased 51% of the First Lien Lender Claims (as defined in the Plan) from Beal Bank, (ii) Icahn has the right to purchase the remaining 49% of the First Lien Lender Claims from Beal within a specified time period (“Call Option”), and (iii) Beal has the right to require Icahn to purchase the Unpurchased Interest (as defined in the Plan) within a specified time period (the “Put Option”);

WHEREAS, unless the context otherwise requires, any reference to Creditors in this Agreement shall be deemed to refer to Beal and Icahn until and unless the Put Option or Call Option has been exercised and has closed, and to Icahn following the exercise and closing of the Put Option or Call Option;

~~WHEREAS, as of the date hereof, the Investors beneficially hold, in the aggregate, approximately 61% of the aggregate outstanding principal amount of the Secured Notes;~~ WHEREAS, Trump Entertainment Resorts, Inc. (“TER”), TER Holdings, TER Funding Beal beneficially holds in the aggregate approximately \$[•] million principal amount under the First Lien Credit Agreement and Icahn beneficially holds in the aggregate approximately \$[•] million principal amount under the First Lien Credit Agreement;

WHEREAS, TER, TER Holdings, Trump Entertainment Resorts Funding, Inc., a Delaware corporation (“TER Funding”) and certain of their subsidiaries (the “Subsidiaries,” and, together with TER, TER Holdings and TER Funding, the “Debtors”) have filed voluntary petitions for relief (the “Chapter 11 Cases”) under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”) before the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”);

WHEREAS, ~~the Investors~~ on August 3, 2009, the Debtors filed with the Bankruptcy Court a plan of reorganization seeking to implement a restructuring of the Debtors whereby, among other things, the Creditors would make, together with Donald J. Trump (“Trump”), an initial equity investment in the Debtors of at least \$100 million (the “Initial Plan”);

WHEREAS, on November 16, 2009, Trump purported to terminate his commitment with the Creditors in connection with the Initial Plan;

WHEREAS, the Creditors agree to modify the initial commitment set forth in the Initial Plan, by, among other things, (i) backstopping the Rights Offering (as defined below), and (ii) converting the First Lien Lender Claims (as defined in the Plan) into 61.321% of the outstanding New Common Stock (as defined below) on a Fully Diluted Basis (as defined in the Plan (the “Conversion Shares”));

WHEREAS, the Creditors are seeking to implement a restructuring of the Debtors pursuant to the terms and conditions set forth in the ~~Noteholder~~ Plan (as defined below) through a solicitation of votes for the ~~Noteholder~~ Plan (the “Solicitation”) pursuant to chapter 11 of the Bankruptcy Code; ~~and~~

WHEREAS, in order to facilitate, and as a condition to, the Rights Offering, TER Holdings will be converted into a limited liability company referred to as “TER LLC” in this Agreement on the first effective date of the Plan (the “Plan Effective Date”);

WHEREAS, subject to the Bankruptcy Court’s confirmation of the ~~Noteholder~~ Plan and the other conditions specified in Section 5 hereof, TER Corp will offer ~~and sell a total of 7,500,000~~ shares (the “Rights Offering Shares”) of the new common stock of ~~reorganized~~ TER (~~“Reorganized TER”~~) Corp, par value ~~\$0.100.01~~ per share (the “New Common Stock”), ~~representing 75% of the total shares of New Common Stock to be issued pursuant to the Noteholder Plan,~~ pursuant to a rights offering (the “Rights Offering”) to be conducted in connection with the Solicitation, whereby each holder of ~~Secured Notes~~ secured notes or unsecured claims (as specified in more detail in the ~~Noteholder~~ Plan) against the Debtors that is an Accredited Investor (as defined in Section 4(f) below) (and/or their investment advisors or managers) (each, an “Eligible Holder”) and that is not a holder of a Convenience Class Claim (as defined in the Plan) as of a record date (the “Record Date”) to be fixed by the Bankruptcy Court for the Solicitation shall be offered a non-transferable right (each, a “Right”) to purchase up to such Eligible Holder’s pro rata portion (calculated as provided in the ~~Noteholder~~ Plan) of the Rights Offering Shares, at ~~a~~ such purchase price per share (the “Purchase Price”) ~~equal to \$23.33 for each share of New Common Stock to be issued on the effective date of the Noteholder Plan (the “that would result in gross proceeds of \$225,000,000 if the Rights Offering was fully subscribed, such shares to be issued on the first Business Day following the~~ Plan Effective Date (the “Second Closing Date”);

**WHEREAS**, in order to facilitate the Rights Offering, pursuant to this Agreement, and subject to the terms, conditions and limitations set forth herein, each ~~of the Investors~~Creditor has agreed, severally and not jointly, ~~has agreed, on the terms and subject to the conditions set forth in this Agreement and the Noteholder Plan, to purchase on the Plan Effective Date, in the proportions set forth on Schedule 1 hereto, to subscribe for and purchase~~ at the Purchase Price, ~~such Investor's percentage, as set forth on Exhibit A hereto (the "Investor Percentages"), of the~~ on the Second Closing Date the number of Rights Offering Shares ~~minus the number of shares of New Common Stock~~not subscribed for in the Rights Offering on or before the Expiration Time (as defined below) (such unsubscribed Rights Offering Shares in the aggregate, the "Unsubscribed Shares")~~;~~

**WHEREAS**, pursuant to this Agreement, and subject to the terms, conditions and limitations set forth herein, TER LLC will issue to TER Corp, and TER Corp has agreed to subscribe for and purchase from TER LLC on the Second Closing Date, membership interests in TER LLC ("Membership Interests") for an aggregate purchase price of \$225 million (the "Membership Interest Purchase Price"), which Membership Interests will represent 32.452% of the outstanding Membership Interests on a Fully Diluted Basis (as defined in the Plan); and

**WHEREAS**, the consummation of the Rights Offering and the obligations of the ~~Investors~~Creditors under this Agreement are subject to the confirmation by the Bankruptcy Court, in connection with the Debtors' Chapter 11 Cases, of a plan of reorganization reflecting the terms and conditions set forth in this Agreement and in the form of a plan of reorganization attached as Exhibit BA hereto, as such terms and conditions may be modified after the date hereof ~~with the written approval of the Requisite Investors~~, subject to the provisions of Section ~~13~~11 hereof (such plan of reorganization, the "Noteholder Plan").

**NOW, THEREFORE**, in consideration of the foregoing, and the representations, warranties and covenants set forth herein, and other good and valuable consideration, ~~the Investors agree~~TER Holdings, TER Corp and each of the Creditors agrees as follows:

1. **Agreement of the ~~Investors~~Creditor to Support the ~~Noteholder Plan~~; ~~Transfers of Secured Notes~~**

(a) Voting. Subject to the conditions contained in Section 1(b) below, each ~~Investor~~Creditor agrees that, for the duration of the period (the "Lock-Up Period") commencing upon the ~~Effective Date~~date of this Agreement ~~(as defined in Section 9)~~ and ending on the date on which this Agreement is terminated by the ~~Requisite Investors~~Creditor in accordance with Section 8 hereof, ~~such Investor~~the Creditor shall, subject to ~~the~~its receipt ~~by such Consenting Holder~~ of a disclosure statement and other solicitation materials in respect of the ~~Noteholder~~ Plan (the "Disclosure Statement"):

(i) timely vote or cause to be voted its claims arising under the ~~Secured Notes~~First Lien Credit Agreement to accept the ~~Noteholder~~ Plan; *provided, however*, that such vote may, upon written notice to the Debtors ~~and the other Investors~~, be revoked (and, upon such revocation, deemed void *ab initio*) by ~~any Investor~~the Creditor at any time after the Lock-Up Period; and

(ii) timely vote or cause to be voted against and not consent to, or otherwise

directly or indirectly support, solicit, assist, encourage or participate in the formulation of, any restructuring or reorganization of the Debtors (or any plan or proposal in respect of the same) other than the ~~Noteholder~~ Plan.

(b) Certain Conditions. The obligations of ~~each Investor~~the Creditors set forth in Section 1(a) hereof are subject to the ~~following conditions:~~approval by the Creditors of the form and substance of the Plan and the Disclosure Statement in all respects.

~~(i) this Agreement shall have become effective in accordance with the provisions of Section 9 of this Agreement; and~~

~~(ii) the Requisite Investors shall have approved the form and substance of the Noteholder Plan and the Disclosure Statement in all respects.~~

(c) Rights of InvestorsCreditor Unaffected. Nothing contained herein shall (i) limit (A) the ability of ~~an Investor~~the Creditors to consult with ~~other Investors or~~ the Debtors or (B) the rights of ~~an Investor~~the Creditors under any applicable bankruptcy, insolvency, foreclosure or similar proceeding, including, without limitation, appearing as a party in interest in any matter to be adjudicated to appear and be heard, concerning any matter arising in the Chapter 11 Cases, in each case, so long as such consultation or appearance is not inconsistent with the ~~Investors'~~Creditor's obligations hereunder or under the terms of the ~~Noteholder~~ Plan and is not for the purpose of hindering, delaying or preventing the consummation of the ~~Noteholder~~ Plan; or (ii) limit the ability of ~~an Investor~~the Creditors to sell or enter into any transactions in connection with the ~~Secured Notes~~First Lien Credit Agreement or any other claims against or interests in the Debtors, ~~subject to Section 1(d) hereof; or (iii) limit the rights of any Investor under the Indenture or constitute a waiver or amendment of any provision of the Indenture.~~

(d) Transfers. ~~Each Investor agrees~~The Creditors agree that, for the duration of the Lock-Up Period, ~~such Investor~~the Creditors shall not sell, transfer, loan, hypothecate, assign or otherwise dispose of (including by participation), in whole or in part, any ~~of the Secured Notes or any option thereon or any right or interest therein (including the deposit of any Secured Notes into a voting trust or entry into a voting agreement with respect to any such Secured Notes);~~portion of its right, title or interest in the First Lien Credit Agreement unless the transferee thereof, prior to or concurrently with such transfer agrees in writing to become ~~an Investor and to be a~~Creditor bound by all of the terms and provisions of Section 1 of this Agreement ~~applicable to its transferor by executing and delivering a joinder agreement acceptable to the Requisite Investors, in which.~~ In such an event (i) the transferee shall be deemed to be ~~an Investor~~a Creditor for purposes of this Section 1 to the extent of such transferred rights and obligations and (ii) the transferor shall be deemed to relinquish its rights (and be released from its obligations) under Section 1 of this Agreement to the extent of such transferred rights and obligations. ~~Each Investor agrees~~The Creditors agree that any sale, transfer or assignment of any ~~Secured Notes~~claims under the First Lien Credit Agreement that does not comply with the terms and procedures set forth herein shall be deemed void *ab initio*; ~~and each other Investor shall have the right to enforce the voiding of such transfer. A transfer of Secured Notes by an Investor in accordance with this paragraph (d) shall not affect any rights or obligations of the transferring Investor under Section 3 hereof.~~

2. The Rights Offering-

The ~~Noteholder~~ Plan shall provide for the Rights Offering to be conducted in accordance with the following provisions:

(a) Rights Offering Shares will be offered for subscription solely by ~~holders of Secured Notes or unsecured claims against the Debtors (as will be specified in more detail in the Noteholder Plan) who are Accredited Investors (as defined in Section 4(f) of this Agreement).~~ Each such holder (an "Eligible Holder." Each Eligible Holder<sup>2</sup>) as of the Record Date will receive a ~~non-transferable~~ Right to purchase, at the Purchase Price, up to its pro rata share (as defined in the ~~Noteholder~~ Plan) of the Rights Offering Shares. The ballot form(s) (the "Ballots") distributed in connection with the solicitation of acceptance of the ~~Noteholder~~ Plan shall provide a place, or shall be accompanied by a subscription form, whereby each Eligible Holder may exercise its Right in whole or in part.

(b) The Rights may be exercised by Eligible Holders during a period (the "Rights Exercise Period") to be specified in the ~~Noteholder~~ Plan, which period will commence on the date the Ballots are distributed and will end at the Expiration Time. For purposes of this Agreement, "Expiration Time" means 5:00 p.m., New York City time, on the 20th calendar day (or if such day is not a Business Day, the next Business Day) after the date the Ballots are distributed under the ~~Noteholder~~ Plan, or such later date as the ~~Requisite Investors~~ Creditors may determine and specify in a notice provided to ~~the other Investors~~, the Debtors and the Bankruptcy Court before 9:00 a.m., New York City time, on the Business Day before the then-effective Expiration Time. For purposes of this Agreement, "Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in New York City are generally authorized or obligated by law or executive order to close.

(c) In order to exercise a Right, each Eligible Holder shall, prior to the Expiration Time, (i) return a duly executed Ballot (or subscription form) to the Subscription Agent (as defined below) and (ii) pay an amount equal to the ~~full~~ aggregate Purchase Price of the number of ~~shares of New Common Stock~~ Rights Offering Shares elected to be purchased by such Eligible Holder by wire transfer of immediately available funds to an interest-bearing escrow account established for the Rights Offering by a subscription agent for the Rights Offering selected by the ~~Requisite Investors~~ Creditors (the "Subscription Agent"), whose name and address will be set forth on the Ballots.

(d) If the ~~Noteholder~~ Plan is confirmed and becomes effective, the Rights Offering Shares will be issued on the ~~Plan Effective~~ Second Closing Date to the Eligible Holders whose Rights were validly exercised and payment made by such Eligible Holders, as provided in the ~~Noteholder~~ Plan. However, if the exercise of a Right would result in the issuance of a fractional share of New Common Stock, then the number of Rights Offering Shares ~~of New Common Stock~~ to be issued in respect of such 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~~ 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 in this paragraph; and

(e) If the Plan is confirmed and becomes effective, concurrently with the issuance by TER Corp of Rights Offering Shares to the Eligible Holders, TER Corp will subscribe for



Membership Interests in consideration for payment of the Membership Interest Purchase Price. Such Membership Interests issued by TER LLC to TER Corp will represent 99% of the outstanding Membership Interests on a Fully Diluted Basis (as defined in the Plan).

(f) ~~(e)~~ If the Subscription Agent for any reason does not receive from an Eligible Holder both a timely and duly completed Ballot (or subscription form, if applicable) and timely payment for the Rights Offering Shares being purchased by such Eligible Holder, the ~~Noteholder~~ Plan shall provide that, unless otherwise approved by the ~~Requisite Investors~~ Creditors, such Eligible Holder shall be deemed to have relinquished and waived its right to participate in the Rights Offering.

(g) ~~(f)~~ TER or the Subscription Agent shall give the ~~Investors~~ Creditors 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 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~~ Commitment (as defined below) ~~are is~~ terminated (a "Satisfaction Notice") as soon as practicable after the Expiration Time and, in any event, at least four (4) Business Days prior to the Plan Effective Date (the date of transmission of confirmation of a Purchase Notice or a Satisfaction Notice, the "Determination Date").

(h) Delivery of the Membership Interests to be issued to TER Corp will be made to TER Corp at 10:00 a.m., New York City time, on the Second Closing Date against payment of the Membership Interest Purchase Price by wire transfer of immediately available funds to a bank account in the United States specified by TER LLC to TER Corp at least 24 hours in advance.

(i) All Membership Interests will be delivered to TER Corp with any and all issue, stamp, transfer or similar taxes or duties payable in connection with such delivery duly paid by TER LLC to the extent required under the Confirmation Order or applicable law.

(j) The documents relating to the issuance of Membership Interests to TER Corp to be delivered on the Second Closing Date by or on behalf of the parties hereto will be delivered at the offices of White & Case LLP, 1155 Avenue of the Americas, New York, New York 10036 (Attn: Andrew C. Ambruoso) on the Second Closing Date.

### 3. The Backstop ~~Commitments~~ Commitment. -

(a) On the basis of the representations and warranties contained herein, but subject to the conditions set forth in Section 5 hereof (including ~~2~~ without limitation, the Confirmation Order (as defined below) becoming a Final Order (as defined below)), each ~~of the Investors~~ Creditor agrees, severally and not jointly, agrees in the proportions set forth on Schedule 1 hereto, to subscribe for and purchase on the ~~Plan Effective~~ Second Closing Date, at the aggregate Purchase Price therefor, ~~its Investor Percentage (as set forth on Exhibit A hereto) of~~ all Unsubscribed Shares as of the Expiration Time (the "Backstop ~~Commitments~~ Commitment"). For purposes of this Agreement, "Final Order" shall mean an order or judgment of the Bankruptcy Court which has not been reversed, stayed, modified or amended, and as to which (i) the time to appeal, seek certiorari or request reargument or further review or rehearing has expired and no appeal, petition for certiorari or request for reargument or further review or rehearing has been timely filed, or (ii) any appeal that has been or may be taken or any petition for certiorari or request for reargument or further review or rehearing that has been

or may be filed has been resolved by the highest court to which the order or judgment was appealed, from which certiorari was sought or to which the request was made and no further appeal or petition for certiorari has been or can be taken or granted.

(b) The ~~Investors~~Creditors and TER Corp agree, and the ~~Noteholder~~ Plan will provide, that, ~~to compensate the Investors for the risk of their undertakings herein, the Investors the Creditors~~ will be entitled to receive ~~a backstop fee (the "Backstop Fee"), payable in~~ 3.868% of the outstanding New Common Stock of TER Corp on a Fully Diluted Basis (as defined in the Plan) payable on the Second Closing Date ("Backstop Allocation," and the shares of New Common Stock, on the Effective Date, to be allocated as set forth in Exhibit A attached hereto received as Backstop Allocation, the "Backstop Allocation Shares," and such Backstop Allocation Shares together with the Conversion Shares and Unsubscribed Shares purchased by the Creditors pursuant to the Backstop Commitment, the "Shares").

(c) The ~~Investors~~Creditors agree, and the ~~Noteholder~~ Plan will further provide, that subject to the entry by the Bankruptcy Court of the order confirming the ~~Noteholder~~ Plan (the "Confirmation Order"), TER LLC will reimburse or pay, as the case may be, the out-of-pocket expenses reasonably incurred by the ~~Investors~~Creditors (whether prior to or after the date hereof) with respect to the transactions contemplated hereby or by the ~~Noteholder~~ Plan, in each case as part of the obligations of TER LLC to provide adequate protection to the Creditors pursuant to the Final Cash Collateral Order (as defined in the Plan) (collectively, "Transaction Expenses"), including, without limitation, filing fees (if any) required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") or the requirements of the New Jersey Casino Control Commission (the "CCC"), and any expenses relating thereto, and all Bankruptcy Court and other judicial and regulatory proceedings related to such transactions, including all reasonable fees and expenses of ~~Stroock & Stroock & Lavan LLP, Fox Rothschild LLP and Lowenstein Sandler PC, counsel to the Investors~~the Creditors, and any other professionals retained or to be retained by the ~~Investors~~Creditors, in connection with the transactions contemplated hereby or by the ~~Noteholder~~ Plan.

(d) On the ~~Plan Effective~~Second Closing Date, the ~~Investors~~Creditors will purchase only such number of Unsubscribed Shares as ~~are~~is listed in the Purchase Notice, without prejudice to the rights of the ~~Investors~~Creditors to seek later an upward or downward adjustment if the number of Unsubscribed Shares in such Purchase Notice is inaccurate.

(e) Delivery of the Unsubscribed Shares and the Backstop Allocation Shares issued to the Creditors will be made to the ~~accounts of the respective Investors (or to such other accounts as the Investors may designate)~~Creditors at 10:00 a.m., New York City time, on the ~~Plan Effective~~Second Closing Date against payment of the aggregate Purchase Price for the Unsubscribed Shares by wire transfer of immediately available funds to a bank account in the United States specified by TER Corp to the ~~Investors~~Creditors at least 24 hours in advance.

(f) All Unsubscribed Shares and the Backstop Allocation Shares 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 Company~~TER Corp to the extent required under the Confirmation Order or applicable law.

(g) The documents relating to the issuance of Unsubscribed Shares and the Backstop Allocation Shares to the Creditors to be delivered on the ~~Plan Effective~~Second Closing Date by

or on behalf of the parties hereto ~~and the Unsubscribed Shares~~ will be delivered at the offices of ~~Stroock & Stroock & Lavan LLP, 180 Maiden Lane~~ White & Case LLP, 1155 Avenue of the Americas, New York, New York ~~10038~~ 10036 (Attn: ~~Kristopher M. Hansen~~ Andrew C. Ambruoso) on the ~~Plan Effective~~ Second Closing Date.

(h) Notwithstanding anything to the contrary in this Agreement, ~~the Investors~~ each Creditor, in ~~their~~ its sole discretion, may designate that some or all of the Unsubscribed Shares and the Backstop Allocation Shares be issued in the name of, and delivered to, one or more of ~~their~~ its affiliates (as defined in Rule 12b-2 under the Exchange Act).

(i) In addition, the ~~Noteholder~~ Plan will provide for the following:

~~(i) — TER, or Reorganized TER, as the case may be, will use commercially reasonable efforts to list and maintain a listing of the New Common Stock on the New York Stock Exchange (“NYSE”) or the quotation of the New Common Stock on the Nasdaq National Market on or promptly following the Plan Effective Date.~~

~~(i)~~ ~~(ii)~~ The Subscription Agent shall notify the ~~Investors~~ Creditors, on each Friday during the Rights Exercise Period and on each Business Day during the five (5) Business Days prior to the Expiration Time (and any extensions thereto), or more frequently if requested by the ~~Requisite Investors~~ Creditors, of the aggregate number of 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.

~~(ii)~~ ~~(iii)~~ The Subscription Agent shall determine the number of Unsubscribed Shares, if any, in good faith, and provide ~~each Investor~~ the Creditors with a Purchase Notice or a Satisfaction Notice that accurately reflects the number of Unsubscribed Shares as so determined.

(j) Stock Splits, Dividends, etc Etc. In the event of any change in the number of shares of New Common Stock to be issued on the ~~Plan Effective~~ Second Closing Date, the Purchase Price and the number of Unsubscribed Shares to be purchased hereunder will be proportionally adjusted to reflect the increase or decrease in the number of issued and outstanding shares of New Common Stock.

(k) HSR Act. ~~TER, or Reorganized TER, as the case may be, and the Investors~~ If the purchase of the Shares by the Creditors or the purchase of Membership Interests by TER Corp and by the Creditors is subject to the terms of the HSR Act, TER LLC, TER Corp and the Creditors will promptly prepare and file all necessary documentation and to effect all applications that are necessary or advisable under the HSR Act so that the applicable waiting period shall have expired or been terminated thereunder with respect to the purchase of ~~Unsubscribed~~ Shares hereunder and Membership Interests, and not to take any action that is intended or reasonably likely to materially impede or delay the ability of the parties to obtain any necessary approvals required for the transactions contemplated by this Agreement.

~~(l) — Registration Rights Agreement. The Noteholder Plan will further provide that, if the Noteholder Plan becomes effective, on the Plan Effective Date, TER will enter into a Registration Rights Agreement (the “Registration Rights Agreement”) in form and~~

~~substance reasonably satisfactory to the Requisite Investors, requiring TER to prepare, in consultation with the Investors, a shelf registration statement (the "Registration Statement"), which Registration Rights Agreement shall include the terms set forth in Exhibit C hereto. Each Investor shall provide TER with such information as TER reasonably requests regarding such Investor for inclusion in the Registration Statement. The Registration Rights Agreement will provide that Reorganized TER will use commercially reasonable efforts to file the Registration Statement with the Securities and Exchange Commission within thirty (30) days after the Plan Effective Date.~~

4. **Representations and Warranties of the ~~Investors~~Creditors.** ~~Each of the Investors~~ ~~severally~~Creditor represents and warrants to, and agrees with, ~~the other Investors~~TER Corp and TER LLC as set forth below. Each representation, warranty and agreement is made as of the date hereof, as of the Confirmation Date, as of the Plan Effective Date and as of the ~~Plan Effective~~Second Closing Date:

(a) Formation. ~~Such Investor~~The Creditor has been duly incorporated or formed, as applicable, and is validly existing as a corporation or other entity in good standing under the applicable laws of its jurisdiction of incorporation or organization.

(b) Power and Authority. ~~Such Investor~~The Creditor has the requisite power and authority to enter into, execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary action required for the due authorization, execution, delivery and performance by it of this Agreement ~~and the Registration Rights Agreement.~~

(c) Execution and Delivery. This Agreement has been duly and validly executed and delivered by ~~such Investor~~the Creditor and constitutes its valid and binding obligation, enforceable against ~~such Investor~~the Creditor in accordance with its terms.

(d) Securities Laws Compliance. The ~~Unsubscribed~~Shares will not be offered for sale, sold or otherwise transferred by ~~such Investor~~the Creditor except pursuant to an effective registration statement under the Securities Act or in a transaction exempt from or not subject to registration under the Securities Act and any applicable state securities laws.

(e) Purchase Intent. ~~Such Investor~~The Creditor is acquiring ~~Unsubscribed~~the Shares for its own account or for the accounts for which it is acting as investment advisors or manager, and not with a view to distributing or reselling such ~~Unsubscribed~~Shares or any part thereof except pursuant to an effective registration statement under the Securities Act or an exemption from such registration. ~~Such Investor~~The Creditor understands that ~~such Investor~~it must bear the economic risk of this investment indefinitely, unless the ~~Unsubscribed~~Shares are registered pursuant to the Securities Act and any applicable state securities or Blue Sky laws or an exemption from such registration is available, and further understands that the resale of any ~~Unsubscribed~~Shares will not be registered with the Securities and Exchange Commission; ~~other than pursuant to the Registration Rights Agreement.~~ Nothing contained herein shall be deemed a representation or warranty by ~~such Investor~~the Creditor to hold the ~~Unsubscribed~~ Shares for any period of time.

(f) Accredited Investor Status. ~~Such Investor~~The Creditor is an "accredited investor" as defined in Rule 501(a) under the Securities Act ("Accredited Investor").

(g) Reliance on Exemptions. ~~Such Investor~~The Creditor understands that the ~~Unsubscribed~~ Shares are being offered and sold to ~~such Investor~~the Creditor in reliance upon specific exemptions from the registration requirements of United States federal and state securities laws and that TER Corp will be relying upon the truth and accuracy of, and the ~~Investor~~Creditor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of ~~such Investor~~the Creditor set forth herein in order to determine the availability of such exemptions and the eligibility of ~~such Investor~~the Creditor to acquire ~~Unsubscribed~~ Shares.

(h) Sophistication. ~~Such Investor~~The Creditor has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its investment in the ~~Rights Offering~~ Shares, ~~if any~~, to be acquired hereunder. ~~Such Investor~~The Creditor understands and is able to bear any economic risks associated with such investment (including, without limitation, the necessity of holding the ~~Rights Offering~~ Shares for an indefinite period of time) and is able to afford a loss of its investment in the ~~Rights Offering~~ Shares.

(i) Legend. ~~Such Investor~~The Creditor understands that the ~~Unsubscribed~~ Shares purchased by it under this Agreement shall bear a customary Securities Act legend.

~~(j) — Secured Notes. Each of the Investors confirms that it has advised Stroock & Stroock & Lavan LLP and/or Houlihan Lokey in writing of the principal amount of Secured Notes beneficially held by such Investor as of the date hereof, and that such information is accurate, true and correct as of the date hereof.~~

~~5. — Conditions to the Obligations of the Investors.~~

~~5. The obligations of the Investors to purchase Unsubscribed Shares pursuant to their respective Backstop Commitments on the Plan Effective Date are subject to the satisfaction of the following conditions (unless waived in writing by the Requisite Investors):~~Conditions to the Obligations of the Creditors. ~~The obligations of the Creditors to purchase Unsubscribed Shares pursuant to the Backstop Commitment on the Second Closing Date are subject to the satisfaction of the following conditions (unless waived in writing by the Creditors):~~

~~(a) — Material Adverse Effect. There shall not have occurred a Material Adverse Effect since the date of this Agreement and TER shall have delivered to the Investors an executed officers' certificate, dated the Plan Effective Date, confirming that no Material Adverse Effect has occurred since the date of this Agreement. For purposes of this Agreement, a "Material Adverse Effect" shall mean any one or more changes, events or effects that has, or would reasonably be likely to have or result in, a material adverse effect on the business, assets, financial condition or results of operations of TER and its direct and indirect subsidiaries (the "Company"), taken as a whole, or on the ability of the Company to consummate the Noteholder Plan or perform its obligations under the Noteholder Plan, in each case except for any such change, event or effect (a) resulting from general economic or business conditions in the United States (except to the extent such change, event or effect has a significantly disproportionate adverse effect on the Company as compared to other similarly situated businesses); (b) affecting companies~~



~~in the gaming industry generally in the United States or such industry in Atlantic City, New Jersey (except to the extent such change, event or effect has a significantly disproportionate adverse effect on the Company as compared to other similarly situated businesses); (c) resulting from any changes in any applicable law, or in generally accepted accounting principles, which take effect after the date hereof; (d) resulting from the announcement or performance of this Agreement or the transactions contemplated hereby, including by reason of the identities of the Investors or communication by an Investor or its affiliates of its plans or intentions regarding the operation of the Company's business; (e) resulting from any act or omission of the Company taken with the prior written consent of the Requisite Investors; (f) resulting from the filing of the Chapter 11 Cases; or (g) resulting from acts of war or terrorism (except to the extent such change, event or effect has a significantly disproportionate adverse effect on the Company as compared to other similarly situated businesses).~~

(a) ~~(b) Noteholder Plan.~~ The ~~Requisite Investors~~Creditors shall have approved in writing (i) the ~~Noteholder~~ Plan; (ii) prior to filing with the Bankruptcy Court, the Confirmation Order, which shall be consistent in all material respects with the provisions of the ~~Noteholder~~ Plan and otherwise reasonably satisfactory to the ~~Requisite Investors~~Creditors; and (iii) prior to filing with the Bankruptcy Court, any amendments or supplements to any of the foregoing, ~~to the extent any such amendment or supplement effects a material change to the Noteholder Plan or the Confirmation Order or any change to the total amount of or conditions to the payments made or to be made under this Agreement, and such amendment or supplement shall otherwise~~ shall be reasonably satisfactory to the ~~Requisite Investors~~Creditors.

(b) ~~(e) Chapter 11 Cases.~~ (i) The Disclosure Statement, in a form satisfactory to the ~~Requisite Investors~~Creditors, shall have been approved by the Bankruptcy Court pursuant to an order, in form and substance reasonably acceptable to the ~~Requisite Investors~~Creditors, and such order shall have become a Final Order, (ii) the ~~Noteholder~~ Plan shall have been confirmed by the Bankruptcy Court pursuant to the Confirmation Order, (iii) the Confirmation Order, in form and substance reasonably satisfactory to the ~~Requisite Investors~~Creditors, shall have been entered by the Bankruptcy Court and shall be a Final Order, and (iv) the Bankruptcy Court shall have entered Final Order(s), which order may be the Confirmation Order, in form and substance satisfactory to the ~~Requisite Investors~~Creditors in all respects.

(c) ~~(d) Conditions to Confirmation.~~ All conditions to confirmation and all conditions to the Plan Effective Date and the Second Closing Date set forth in the ~~Noteholder~~ Plan shall have been satisfied in all material respects in accordance with the ~~Noteholder~~ Plan (or waived in writing by the ~~Requisite Investors~~Creditors) and the ~~Plan Effective~~Second Closing Date shall have occurred not later than one-hundred ~~fiftyeighty~~ (150/180) calendar days after the entry of the Confirmation Order.

~~(e) Registration Rights Agreement.~~ ~~The Registration Rights Agreement shall have been executed and delivered by TER, which date may be extended for sixty (60) additional calendar days as set forth in the Plan.~~

(d) ~~(f) Rights Offering.~~ The Rights Offering shall have been conducted and the Expiration Time shall have occurred.

(e) ~~(g)~~ Purchase Notice. The ~~Investors~~Creditors shall have received a Purchase Notice in accordance with Section 2(g) hereof from the Subscription Agent, dated as of the Determination Date, certifying as to the number of Unsubscribed Shares ~~to be purchased pursuant to the Backstop Commitments~~.

(f) ~~(h)~~ Valid Issuance. ~~The New Common Stock~~On and after the Second Closing Date, the Rights Offering Shares and the Membership Interests shall be, upon payment of the aggregate Purchase Price for the Rights Offering Shares and the Membership Interest Purchase Price for the Membership Interests, as provided herein, validly issued and outstanding, fully paid, non- assessable and free and clear of all taxes, liens, pre-emptive rights, rights of first refusal, subscription and similar rights.

(g) ~~(i)~~ No Restraint. No judgment, injunction, decree or other legal restraint shall prohibit the consummation of the ~~Noteholder~~ Plan, the Rights Offering, the issuance of Membership Interests or the transactions contemplated by this Agreement.

(h) ~~(j)~~ HSR Act. If the purchase of ~~Unsubscribed~~the Shares by the ~~Investors pursuant to this Agreement~~Creditors or the purchase of Membership Interests by TER Corp and by the Creditors is subject to the terms of the HSR Act, the applicable waiting period shall have expired or been terminated thereunder with respect to such purchase.

(i) ~~(k)~~ No Breach or Violation. TER LLC and TER Corp shall have complied in all material respects with all obligations in the ~~Noteholder~~ Plan to be performed by TER LLC and TER Corp prior to the Plan Effective Date and the Second Closing Date.

(j) ~~(l)~~ Fees, etc. All fees and other amounts required to be paid or reimbursed by TER LLC and TER Corp to the ~~Investors~~Creditors as of the ~~Plan Effective~~Second Closing Date shall have been so paid or reimbursed.

~~(m) — Material Adverse Effect. The Debtors shall not have experienced a Material Adverse Effect since the date of this Agreement.~~

(k) ~~(n)~~ Termination. This Agreement shall not have been terminated by the ~~Requisite Investors~~Creditors pursuant to Section 8 hereof.

6. **Indemnification**. The ~~Noteholder~~ Plan shall contain indemnification provisions as follows:

(a) Subject to the entry of the Confirmation Order, TER ~~(LLC and TER Corp (each~~ in such capacity, ~~the~~an “Indemnifying Party”) shall indemnify and hold harmless the ~~Investors~~Creditor and each of ~~their~~its respective affiliates, members, partners, officers, directors, employees, agents, advisors ~~and~~, 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 with respect to the Rights Offering, the Backstop ~~Commitments, the Transaction Documents, the Noteholder~~Commitment, the Plan or the transactions contemplated hereby or thereby, including without limitation, ~~payment~~distribution of the Backstop ~~Fee~~Allocation or Transaction Expenses, if any, distribution of Rights, purchase and sale of Rights Offering Shares in the Rights Offering



and purchase and sale of Unsubscribed Shares pursuant to the Backstop ~~Commitments~~Commitment, 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 Party 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 Party on the one hand and such Indemnified Person on the other hand but also the relative fault of the Indemnifying Party, on the one hand, and such Indemnified Person, on the other hand, as well as any relevant equitable considerations. The relative benefits to the Indemnifying Party or Indemnifying Parties, as the case may be, on the one hand and all Indemnified Persons on the other hand shall be deemed to be in the same proportion as (i) the total value received or proposed to be received by TER Corp pursuant to the sale of Rights Offering Shares and the Conversion Shares or TER LLC pursuant to the sale of Membership Interests, as the case may be, contemplated by this Agreement bears to (ii) the ~~fee paid or proposed to be paid to the Investors in connection with such sale~~Backstop Allocation. The Indemnifying Party also agrees that no Indemnified Person shall have any liability based on their exclusive or contributory negligence or otherwise to the Indemnifying Party, any person asserting claims on behalf of or in right of any of the Indemnifying Party, or any other person in connection with or as a result of the Rights Offering, ~~the Transaction Documents~~ or the transactions contemplated thereby, except as to any Indemnified Person to the extent that any losses, claims, damages, liability or expenses incurred by TER LLC or TER Corp 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 this ~~Agreement or the Registration Rights~~ Agreement. The indemnity and reimbursement obligations of the Indemnifying Party described in this Section 6 shall be in addition to any liability that the Indemnifying Party 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 Party and any Indemnified Person.

(b) Promptly after receipt by an Indemnified Person of notice of the commencement of any claim, litigation, investigation or proceeding relating to the ~~Transaction Documents~~Backstop Commitment or any of the transactions contemplated thereby (“Proceedings”), such Indemnified Person will, if a claim is to be made hereunder against the Indemnifying Party in respect thereof, notify the Indemnifying Party in writing of the commencement thereof; provided that (i) the omission so to notify the Indemnifying Party 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 Party 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 6. In case any such Proceedings are brought against any Indemnified Person and it notifies the Indemnifying Party of the commencement thereof, if the Indemnifying Party commits in writing to fully indemnify and hold harmless the Indemnified Person with respect to such Proceedings without regard to whether the Plan Effective Date or the Second Closing Date occurs, the Indemnifying Party 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 Party 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 Party, 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 Party and notice from the Indemnifying Party 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 Party 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 Party shall not be liable for the expenses of more than one separate counsel, approved by the ~~Requisite Investors~~Creditors, representing the Indemnified Persons who are parties to such Proceedings), (ii) the Indemnifying Party shall not have employed counsel reasonably satisfactory to such Indemnified Person to represent such Indemnified Person at the Indemnifying Party's expense within a reasonable time after notice of commencement of the Proceedings or (iii) the Indemnifying Party shall have authorized in writing the employment of counsel for such Indemnified Person.

(c) 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 Proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not any Indemnified Person is a party to such Proceeding) 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 Proceeding and (ii) does not include any admission of fault on the part of any Indemnified Person. The Indemnifying Party shall not be liable for any settlement of any Proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the Indemnified Person from and against any loss or liability by reason of such settlement or judgment.

(d) For the avoidance of doubt, nothing in this Section 6 shall limit the rights and remedies of the Creditors under the First Lien Credit Agreement.

7. **Survival of Representations and Warranties, Etc.**

The representations and warranties made in this Agreement will not survive the ~~Plan Effective~~Second Closing Date.

8. **Termination.**

(a) The ~~Requisite Investors~~Creditors may terminate this Agreement, by written notice to ~~the other Investors~~TER LLC and TER Corp, upon the occurrence of any of the following:

(i) At any time after January 16, 2010 if the Bankruptcy Court has not entered an order approving the Disclosure Statement ~~Order~~ on or prior to such date.;

(ii) At any time after February 28, 2010 if the Bankruptcy Court has not entered the Confirmation Order with respect to the ~~Noteholder~~ Plan on or prior to such date;

(iii) At any time after the date that is one-hundred ~~fiftyeighty~~ (150180) calendar days after entry of the Confirmation Order, if the ~~Plan Effective~~ Second Closing Date with respect to the ~~Noteholder~~ Plan has not occurred on or prior to such date, which date may be extended for sixty (60) additional calendar days as set forth in the Plan;

(iv) The Bankruptcy Court shall have entered an order denying confirmation of the ~~Noteholder~~ Plan, the ~~Noteholder~~ Plan is terminated in accordance with its terms or the Confirmation Order is vacated or reversed and does not become a Final Order;

(v) Upon the failure of any of the conditions set forth in Section 75 hereof to be satisfied when required to be satisfied;

(vi) Upon the dismissal of any of the Chapter 11 Cases or the conversion of any of the Chapter 11 Cases from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code, or the Debtors file a motion or other pleading with the Bankruptcy Court seeking the dismissal or conversion of any of the Chapter 11 Cases; or

(vii) At any time, if the Bankruptcy Court (x) grants relief that is materially inconsistent with this Agreement or the ~~Noteholder~~ Plan in any respect or (y) enters an order confirming any plan of reorganization other than the ~~Noteholder~~ Plan; or

~~(viii) If the Requisite Investors determine to support a plan of reorganization for the Debtors other than the Noteholder Plan.~~

~~(b) In the event that the Bankruptcy Court has not entered the Confirmation Order with respect to the Noteholder Plan, in form and substance acceptable to the Requisite Investors, on or before March 15, 2010, and the Requisite Investors have not elected to terminate this Agreement under clause (ii) of Section 8(a) above, any Investor (each, a "Terminating Investor") shall have the right, at any time thereafter so long as the Confirmation Order has not been entered, to elect to terminate its Backstop Commitment under this Agreement, by written notice to the remaining Investors, in which event this Agreement shall terminate at the close of business on the seventh (7th) business day after such written notice is received by the remaining Investors, unless, prior to the close of business on such seventh (7th) business day, one or more of the remaining Investors, in their sole discretion, commits in writing to assume the Backstop Commitment of each Terminating Investor (on a pro rata basis in proportion to their respective Backstop Commitments or on such other basis as such remaining Investors may agree), whereupon the Terminating Investor shall cease to be an Investor hereunder and shall no longer have any rights or obligations under this Agreement, and this Agreement shall continue in effect with respect to the remaining Investors.~~

9. Effectiveness Notices. -

~~This Agreement shall not become effective and binding on the Investors unless and until the date (the "Effective Date") on which counterpart signature pages to this~~

~~Agreement shall have been executed and delivered by Investors committing to purchase, in the aggregate, 100% of the Unsubscribed Shares.~~

~~10. — Notices.~~ All notices and other communications in connection with this Agreement will be in writing and will be deemed given (and will be deemed to have been duly given upon receipt) if delivered personally, sent via electronic facsimile (with confirmation), mailed by registered or certified mail (return receipt requested) or delivered by an express courier (with confirmation) to the parties at the following addresses (or at such other address for a party as will be specified by like notice):

(a) If to ~~Investors~~any Creditor, to ~~each of the undersigned Investors at the addresses~~the address listed on the signatures pages hereto:

with copies to:

~~StroockWhite & Stroock & Lavan LLP~~  
~~180 Maiden Lane~~  
~~New York, Case LLP~~  
1155 Avenue of the Americas,  
New York ~~10038~~  
New York 10036  
Attention: ~~Kristopher Hansen~~ Thomas E Lauria, Esq.  
Fax: (212) ~~806-6006~~ 354-8113

and

[Brown Rudnick LLP  
One Financial Center  
Boston, MA 02111  
Attention: Jeffrey L. Jonas, Esq.  
Fax: (617) 856 8201]

(b) If to TER LLC and TER Corp, to:

~~Trump Entertainment Resorts, Inc.~~  
Trump Entertainment Resorts Holdings, L.P.  
TER Corporation  
15 South Pennsylvania Avenue  
Atlantic City, New Jersey 08401  
Attention: General Counsel  
Fax: (609) 449-6705  
With a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Attention: Ted S. Waksman, Esq.  
Fax: (212) 310-8677

10. ~~11.~~ Assignment; Third Party Beneficiaries.

(a) ~~Subject to sections 8(b) and 13(b) of this Agreement, neither~~Neither this Agreement nor any of the rights, interests or obligations under this Agreement will be assigned by any of the parties (whether by operation of law or otherwise) ~~without the prior written consent of the Required Investors.~~ Notwithstanding the previous sentence, (i) ~~the Investors~~each Creditor may transfer ~~Secured Notes held by them~~its right, title and/or interest in the First Lien Credit Agreement in accordance with the provisions of Section 1(d) hereof, and (ii) ~~the Investors' Backstop Commitments~~in connection with any such transfer, each Creditor may assign such some or all of such Creditor's Backstop Commitment and related obligations hereunder to the transferee provided that the pro rata portion of the Creditor's Backstop Commitment that is assigned may not exceed the pro rata portion of the Creditor's interest in the First Lien Credit Agreement that is transferred, and (iii) in addition to the foregoing, each Creditor's Backstop Commitment and other obligations hereunder may be assigned, delegated or transferred, in whole or in part, by ~~any Investor~~such Creditor to any ~~Affiliate~~affiliate (as defined in Rule 12b-2 under the Exchange Act) of ~~such Investor~~the Creditor over which ~~such Investor~~the Creditor or any of its affiliates exercises investment authority, including, without limitation, with respect to voting and dispositive rights; ~~provided, that any such assignee assumes the obligations of the assigning Investor hereunder and agrees in writing.~~ In connection with any assignment, delegation or transfer pursuant to subsection (ii) or (iii) hereof, the party to whom rights and obligations under this Agreement are being assigned shall enter into a joinder agreement prior to such assignment ~~assuming its pro rata portion of the obligations of the transferring Creditor hereunder and agreeing~~ to be bound by the terms of this Agreement in the same manner as the ~~assigning Investor~~Creditor. Schedule 1 hereto shall be amended to indicate each Creditor's pro rata portion of the Backstop Commitment and each Creditor assigning its obligations hereunder shall be released to the extent of the obligations so assigned. TER Corp and/or TER Holdings, as applicable, agree to enter into such agreements and execute such documents, including the aforementioned joinder agreement, as are reasonably necessary or desirable to effect the assignment, delegation or transfer of a Creditor's Backstop Commitment in accordance with the terms hereof. Notwithstanding the foregoing or any other provisions herein, no such assignment by ~~an Investor~~a Creditor to an affiliate will relieve the ~~assigning Investor~~Creditor of its obligations hereunder if such assignee fails to perform such obligations.

(b) Except as provided in Section 6 with respect to the Indemnified Persons, this Agreement (including the documents and instruments referred to in this Agreement) is not intended to and does not confer upon any person or entity (other than the parties hereto) any rights or remedies under this Agreement.

~~12. — Action by, or Consent or Approval of, the Requisite Investors.~~

~~Whenever this Agreement refers to any action to be taken by, or any consent or approval to be given by, the Investors, unless otherwise expressly provided in any particular instance, such reference shall be deemed to require the action, consent or approval of Investors representing at least 66 2/3% of the Backstop Commitments hereunder (the "Requisite Investors").~~

11. ~~13.~~ Waivers and Amendments .-

(a) This Agreement may be amended, modified, superseded, cancelled, renewed or

extended, and terms and conditions of this Agreement may we waived, only by a written instrument signed by the ~~Requisite Investors~~Creditors and subject, to the extent required, to the approval of the Bankruptcy Court; ~~provided, however, that (i) any modification of, or amendment or supplement to, this Agreement that would have the effect of increasing the amount of an Investor's Backstop Commitment as set forth on Exhibit A shall require the prior written consent of such Investor, and (ii) subject to Section 13(b) hereof, any material modification of, or amendment or supplement to, the Noteholder Plan or any modification, amendment or supplement to this Agreement that would have the effect of modifying this sentence shall require the prior written consent of all the Investors.~~

~~(b) — If, at the close of business on the third (3rd) business day following the receipt by any Investor (a "Non-Consenting Investor") of written notice of a proposed material modification of, or amendment or supplement to, this Agreement or the Noteholder Plan that requires the consent of each Investor under the previous paragraph (a) and that has been approved by the Requisite Investors, and such Non-Consenting Holder has objected in writing (or failed to consent) to such modification, amendment or supplement, then one or more of the remaining Investors shall have the right, in their sole discretion, to commit in writing to assume the Backstop Commitment of such Non-Consenting Investor (on a pro rata basis in proportion to their respective Backstop Commitments or on such other basis as such remaining Investors may agree), in which event such modification, amendment or supplement shall be deemed to have become effective, the Non-Consenting Investor shall cease to be an Investor hereunder and shall no longer have any rights or obligations under this Agreement, and this Agreement shall continue in effect with respect to the remaining Investors.~~

~~(b)~~ (e) No delay on the part of any party in exercising any right, power or privilege pursuant to this Agreement will operate as a waiver thereof, nor will any waiver on the part of any party of any right, power or privilege pursuant to this Agreement, nor will any single or partial exercise of any right, power or privilege pursuant to this Agreement, preclude any other or further exercise thereof or the exercise of any other right, power or privilege pursuant to this Agreement. The rights and remedies provided pursuant to this Agreement are cumulative and are not exclusive of any rights or remedies which any party otherwise may have at law or in equity.

~~14. —~~

12. **Prior Negotiations; Entire Agreement.** This Agreement (including the agreements attached as exhibits to and the documents and instruments referred to in this Agreement) constitutes the entire agreement of the parties and supersedes all prior agreements, arrangements or understandings, whether written or oral, between the parties with respect to the subject matter of this Agreement, except that the parties hereto acknowledge that any confidentiality agreements heretofore executed among the parties will continue in full force and effect.

13. ~~15.~~ **GOVERNING LAW; VENUE.** THIS AGREEMENT WILL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK. THE ~~INVESTORS~~CREDITORS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF, AND VENUE IN, THE BANKRUPTCY COURT AND WAIVE ANY OBJECTION BASED ON *FORUM NON CONVENIENS*.

14. ~~16.~~ **Counterparts.** This Agreement may be executed in any number of counterparts, all of which will be considered one and the same agreement and will become effective when counterparts have been signed by each of the parties and delivered to the other party (including via facsimile or other electronic transmission), it being understood that each party need not sign the same counterpart.

15. ~~17.~~ **Headings.** The headings in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

16. ~~18.~~ **Specific Performance.** The parties acknowledge and agree that any breach of terms of this Agreement would give rise to irreparable harm for which money damages would not be an adequate remedy, and, accordingly, the parties agree that, in addition to any other remedies, each will be entitled to enforce terms of this Agreement by a decree of specific performance without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting bond.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed  
by their duly authorized representatives, as of the date set forth above.

*~~{Signature Pages Follow}~~*

By: TRUMP ENTERTAINMENT  
RESORTS HOLDINGS, L.P.

By: Trump Entertainment Resorts, Inc.,  
its general partner

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

15 South Pennsylvania Avenue  
Atlantic City, New Jersey 08401  
Fax: (609) 449-6705

By: TER CORPORATION

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_ Address:

15 South Pennsylvania Avenue

Atlantic City, New Jersey 08401

Fax: (609) 449-6705

By: BEAL BANK NEVADA

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

Name:

Title:

Address:

1970 Village Center Circle, Suite 1

Las Vegas, NV 89134

Fax: 702-598-3570

By: ICAHN PARTNERS LP, ICAHN  
PARTNERS MASTER FUND LP,  
ICAHN PARTNERS MASTER FUND  
II LP AND ICAHN PARTNERS  
MASTER FUND III LP

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

Name:

Title:

Address:

[\_\_\_\_\_]

Fax: [\_\_\_\_\_]

Schedule 1

Allocation of Backstop Commitment

<u>Creditor</u>	<u>Backstop Percentage</u>
<u>Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Partners Master Fund II LP and Icahn Partners Master Fund III LP</u>	<u>51%<sup>(1)</sup></u>
<u>Beal Bank Nevada</u>	<u>49%<sup>(2)</sup></u>

- (1) In the event the Put Option or Call Option is exercised, this backstop percentage will increase to 100%.
- (2) In the event the Put Option or Call Option is exercised, this backstop percentage will decrease to 0%.

[Exhibit A](#)

[Plan](#)

Document comparison done by Workshare DeltaView on Monday, December 14, 2009 1:00:32 AM

Input:	
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Document 2	interwovenSite://NYDMS/NEWYORK/7410521/20
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Moved to	
Style change	
Format change	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	325
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Moved to	6
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Format changed	0
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