

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

TRUMP ENTERTAINMENT RESORTS,
INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 14-12103 (KG)

Jointly Administered

Requested Objection Deadline:
December 16, 2014 at 4:00 p.m. (ET)

Requested Hearing Date:
December 19, 2014 at 10:00 a.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER, PURSUANT TO
SECTION 105(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019,
APPROVING SETTLEMENT AGREEMENT BY AND AMONG THE DEBTORS
AND FERTITTA ACQUISITIONSCO LLC, D/B/A ULTIMATE GAMING**

Trump Entertainment Resorts, Inc. and its above-captioned affiliated debtors and debtors in possession (each, a “**Debtor**,” and collectively, the “**Debtors**”) hereby submit this motion (this “**Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”), pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), approving that certain Settlement Agreement by and among the Debtors and Fertitta Acquisitionsco LLC, d/b/a Ultimate Gaming, dated as of December 3, 2014 (the “**Settlement Agreement**”), a copy of which is attached as Exhibit 1 to the Proposed Order. In support of this Motion, the Debtors respectfully state as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Trump Entertainment Resorts, Inc. (8402), Trump Entertainment Resorts Holdings, L.P. (8407), Trump Plaza Associates, LLC (1643), Trump Marina Associates, LLC (8426), Trump Taj Mahal Associates, LLC (6368), Trump Entertainment Resorts Development Company, LLC (2230), TER Development Co., LLC (0425) and TERH LP Inc. (1184). The mailing address for each of the Debtors is 1000 Boardwalk at Virginia Avenue, Atlantic City, NJ 08401.

Jurisdiction and Venue

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

Background

A. General Background

2. On September 9, 2014 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ cases are being jointly administered for procedural purposes pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

3. On September 23, 2014, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed the Official Committee of Unsecured Creditors (the “**Committee**”) in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code.

4. Additional information about the Debtors’ business and the events leading up to the Petition Date can be found in the *Declaration of Robert Griffin in Support of Debtors’ Chapter 11 Petitions and First-Day Motions and Applications* [Docket No. 2], which is incorporated herein by reference.

B. The Ultimate Gaming Online Gaming Agreement

5. In 2013, the New Jersey Legislature passed, and Governor Christie signed, a bill legalizing online gambling in the State of New Jersey and restricting the operation of the online gaming websites to Atlantic City's casinos. In October 2013, the New Jersey Division of Gaming Enforcement issued an internet gaming permit to each of Debtor Trump Taj Mahal Associates, LLC ("**Taj Associates**") and Trump Plaza Associates, LLC ("**Plaza Associates**") to conduct internet gaming in the State of New Jersey.

6. On June 24, 2013, Taj Associates entered into a ten (10) year online gaming operation agreement (the "**Online Gaming Agreement**") with Fertitta Acquisitionsco LLC, doing business as Ultimate Gaming ("**Ultimate Gaming**").² Pursuant to the Online Gaming Agreement, Ultimate Gaming agreed to host, manage, operate and support internet gambling games in New Jersey under the internet gaming permit granted to Taj Associates. In exchange, Ultimate Gaming agreed to share a certain percentage of the online gaming revenues (after the deduction of certain player-related costs, gaming taxes and obligations owed to the Casino Reinvestment Development Authority) with Taj Associates. In addition, Ultimate Gaming contributed \$8 million to Taj Associates as an "Advancement Fee".

7. In connection with the Online Gaming Agreement, the Debtors established and maintained five bank accounts (the "**Online Gaming Accounts**") at Bank of America Merrill Lynch (last four digits of account numbers: 3572, 3608, 3611, 3585 and 3598).³

² On June 27, 2013, Plaza Associates also entered into a ten (10) year online gaming operation agreement with Betfair Interactive US LLC.

³ As of November 17, 2014, there was approximately \$1.49 million (before outstanding checks) on deposit in the Online Gaming Accounts.

8. On August 22, 2014, Ultimate Gaming delivered a written notice of default under the Online Gaming Agreement. Thereafter, through a letter dated September 3, 2014, Ultimate Gaming purported to terminate the Online Gaming Agreement.

9. Following the commencement of these chapter 11 cases and in connection with the *Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to the Secured Parties, and (C) Granting Related Relief* [Docket No. 342] (the “**Cash Collateral Order**”), Ultimate Gaming asserted, but the Debtors disputed that the (i) cash deposited in the Online Gaming Accounts pursuant to the Online Gaming Agreement, and (ii) certain cash identified in the budget attached to the Cash Collateral Order in the line item “Internet Gaming Balance” that is attributable to the Online Gaming Agreement is (a) not property of the Debtors’ estates, (b) is not Cash Collateral (as defined in the Cash Collateral Order), and (c) is held in trust for the benefit of Ultimate Gaming and/or the UG Players (as defined in the Online Gaming Agreement) pursuant to the Online Gaming Agreement. Cash Collateral Order at ¶ 25. Furthermore, each of the Debtors and Ultimate Gaming expressly agreed, among other things, that pending further order of the Court, the funds in the Online Gaming Account would remain segregated and the Debtors would not be permitted to use any of those funds in their possession for general operational purposes. *Id.*

C. The Ultimate Gaming Settlement Agreement

10. The Debtors deny a number of arguments asserted by Ultimate Gaming in connection with the Online Gaming Agreement. In the interest of preserving estate assets, the Debtors and Ultimate Gaming (together, the “**Parties**”) have engaged in extensive discussions regarding the Online Gaming Agreement and the various disputes between the Parties, in a concerted effort to avoid the expense, delay, and risk associated with litigation.

11. As a result of these settlement discussions, the Parties have reached a resolution of their disputes with respect to the Online Gaming Agreement and certain related issues, which resolution is embodied in the Settlement Agreement and presented for the Court's approval through this Motion.

12. A summary of the key terms of the Settlement Agreement is as follows:⁴

- **Settlement Transaction:** The Settlement encompasses a settlement of all claims and causes of action by and between the Debtors' estates and Ultimate Gaming, including, without limitation, with respect to: (a) the Online Gaming Agreement and the UG Casino; (b) ownership of the Ultimate Customer Data and TM Customer Data; (c) the cash deposited in the Online Gaming Accounts; and (d) all other amounts due and payable by the Debtors to Ultimate Gaming, or by Ultimate Gaming to the Debtors, pursuant to the Online Gaming Agreement as of the date of commencement of the Chapter 11 Cases or as of the date hereof, except with respect to the right to enforce the Settlement Agreement.
- **Support of the Motion:** The Parties each agree to support this Motion and to exercise commercially reasonable efforts to seek the Bankruptcy Court's prompt approval of the Motion. Notwithstanding anything to the contrary set forth in the Settlement Agreement, except as set forth in Paragraph 1(b) of the Settlement Agreement, the respective obligations of the Parties under this Settlement Agreement are subject to the approval of this Settlement Agreement pursuant to the Proposed Order.
- **Cease Operations:** Within one (1) business day after entry of the Settlement Order by the Court (the "**Settlement Effective Date**"), Ultimate Gaming shall cease any and all remaining operations in connection with the UG Casino.
- **Payment of Gaming Related Expenses:** On or at any time within five (5) business days after the Settlement Effective Date, the Debtors shall be permitted to apply any and all funds available in the Online Gaming Accounts to pay, or reimburse the Debtors (if previously paid by the Debtors) for, fees, costs and expenses (including, without limitation, (i) gaming taxes, (ii) expenses of the Debtors required to be reimbursed in accordance with the Online Gaming Agreement (but without giving effect to any expense cap contained therein), (iii) player withdrawals funded by the Debtors with their cage cash and (iv) fees payable to the New Jersey Division of Gaming

⁴ The summary of the Settlement Agreement provided for herein is provided solely for the convenience of the Court, and is not intended to be a comprehensive recitation of all of the terms of the Settlement Agreement. The summary is qualified in its entirety by the actual terms of the Settlement Agreement, and to the extent that there is any inconsistency between the summary provided for herein and the actual terms of the Settlement Agreement, the actual terms of the Settlement Agreement shall control. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to such terms in the Settlement Agreement.

Enforcement or other fees relating to online gaming) incurred by the Debtors in connection with the UG Casino prior to the Settlement Effective Date and not previously paid or reimbursed by Ultimate Gaming.

- **Allocation of Remaining Funds:** Following the application of the funds in the Online Gaming Accounts to pay fees, costs and expenses incurred by the Debtors as set forth in Paragraph 1(d) of the Settlement Agreement (and subject to the terms of the Proposed Order), Ultimate Gaming shall be entitled to receive \$500,000 of the total amount remaining in the Online Gaming Accounts (or the balance in the Online Gaming Accounts, if less) and Taj Associates shall be entitled to any remaining balance in the Online Gaming Accounts.
- **Termination of the Online Gaming Agreement:** Upon the Settlement Effective Date the Online Gaming Agreement shall be deemed terminated, effective as of September 3, 2014, except to the extent specific terms of the Online Gaming Agreement continue in effect in accordance with the express terms of this Settlement Agreement or any other written agreement between Ultimate Gaming and Taj Associates entered into after the date of the Settlement Agreement.
- **Mutual Releases:** On and as of the Settlement Effective Date, the Debtors and Ultimate Gaming (and each of the Debtors' and Ultimate Gaming's officers, directors, employees, agents, professionals, affiliates, and related persons or entities) shall be deemed to mutually release any and all Settlement Claims, including, without limitation, any and all Debtor and Debtor estate claims against Ultimate Gaming and related releases under applicable bankruptcy and non-bankruptcy law, including, without limitation, under chapter 5 of the Bankruptcy Code, and arising under, in connection with, or relating to the Online Gaming Agreement *provided, however*, that nothing in the Settlement Agreement shall release impair or modify any of the Parties' rights and obligations arising under the Settlement Agreement.

Relief Requested

13. By this Motion, the Debtors request the Court enter the Proposed Order, approving the Settlement Agreement, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

Basis for Relief

14. Bankruptcy Rule 9019, which governs the approval of compromises and settlements by a debtor, provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. P. 9019. Further, section

105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

15. A starting point in analyzing any proposed settlement agreement is the general policy of encouraging settlements and favoring compromises. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996). To approve a settlement, a bankruptcy court must determine that such settlement is in the best interest of a debtor’s estate. *Law Debenture Trust Co. of New York v. Kaiser Aluminum Corp. (In re Kaiser Aluminum Corp.)*, 339 B.R. 91, 95–96 (D. Del. 2006). In addition, a court must,

“assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal” in light of four factors: (1) the probability of success in the litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it, and (4) the paramount interests of the creditors.

Id. at 96 (quoting *Martin*, 91 F.3d at 393). The United States District Court for the District of Delaware has explained that a court’s ultimate inquiry is whether a settlement is fair, reasonable, and in the best interest of a debtor’s estate. *In re Marvel Entm’t Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (quoting *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997)).

16. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). A court need not decide the numerous issues of law and fact raised by the settlement and it need not be convinced that the proposed settlement is the best possible, rather “[t]he court need only conclude that the settlement falls within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness.” *In re Nutritional Sourcing*

Corp., 398 B.R. 816, 833 (Bankr. D. Del. 2008) (quoting *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004)).

17. In the Debtors' business judgment, the Settlement Agreement is reasonable and in the best interests of the Debtors, their estates and creditors and other parties in interest in these chapter 11 cases. The compromise embodied in the Settlement Agreement is the product of extensive and good faith arm's length-negotiations between the Parties. The Settlement Agreement provides for a fair and practical resolution of numerous complex issues between the Parties and, if approved, will be another step towards the Debtors' expeditious and successful prosecution of these chapter 11 cases. By resolving these matters through the terms of the Settlement Agreement, the Debtors and their estates avoid potentially protracted litigation and the related uncertainties inherent in such litigation. In addition, the Settlement Agreement provides access to the Debtors of approximately \$1.01 million to reimburse certain third-party expenses and for operational use. Moreover, the Debtors' secured lenders support the Settlement Agreement.

18. Absent their entry into the Settlement Agreement, the Debtors would be forced to litigate the considerable disputes between the Parties, a process that could be costly, time-consuming and disruptive to the Debtors and their chapter 11 efforts, while providing an uncertain outcome, at a juncture when the Debtors' time, energy and resources are best focused on working diligently towards approval of a disclosure statement and confirmation of a plan of reorganization. Moreover, a review of the above-referenced *Martin* factors demonstrates that the terms of the Settlement Agreement are more than reasonable under the circumstances.

19. For these reasons, among others, the Debtors submit that the Settlement Agreement (i) is fair, equitable and in the best interests of the Debtors, their estates and creditors

and other parties in interest in these chapter 11 cases, (ii) represents an exercise of the Debtors' sound business judgment, and (iii) should be approved pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

Notice

20. Notice of this Motion has been provided to the following parties: (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) counsel to the First Lien Agent; (iv) counsel to Ultimate Gaming; and (v) all parties that, as of the filing of this Motion, have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

21. The Debtors have not previously sought the relief requested herein from this or any other Court.

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Conclusion

WHEREFORE, the Debtors request entry of the Proposed Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: December 4, 2014
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Robert F. Poppiti, Jr.

Matthew B. Lunn (No. 4119)
Robert F. Poppiti, Jr. (No. 5052)
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Counsel to the Debtors and Debtors-in-Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

TRUMP ENTERTAINMENT RESORTS,
INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 14-12103 (KG)

Jointly Administered

Requested Objection Deadline:
December 16, 2014 at 4:00 p.m. (ET)

Requested Hearing Date:
December 19, 2014 at 10:00 a.m. (ET)

NOTICE OF MOTION

TO: (I) THE U.S. TRUSTEE; (II) COUNSEL TO THE COMMITTEE; (III) COUNSEL TO THE FIRST LIEN AGENT; (IV) COUNSEL TO ULTIMATE GAMING; AND (V) ALL PARTIES THAT, AS OF THE FILING OF THE MOTION, HAVE REQUESTED NOTICE IN THESE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002

PLEASE TAKE NOTICE that Trump Entertainment Resorts, Inc. and its above-captioned affiliated debtors and debtors in possession (each, a “Debtor,” and collectively, the “Debtors”) have filed the attached **Debtors’ Motion for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving Settlement Agreement By and Among the Debtors and Fertitta Acquisitionsco LLC, d/b/a Ultimate Gaming** (the “Motion”).

PLEASE TAKE FURTHER NOTICE that, contemporaneously with the filing of the Motion, the Debtors have filed a motion (the “**Motion to Shorten**”) requesting that a hearing to consider the Motion be held on **December 19, 2014 at 10:00 a.m. (ET)** (the “**Hearing**”) before the Honorable Kevin Gross, in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that pursuant to the Motion to Shorten, the Debtors have requested that any objections to the Motion must be filed on or before **December 16, 2014 at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 N. Market Street, Wilmington,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Trump Entertainment Resorts, Inc. (8402), Trump Entertainment Resorts Holdings, L.P. (8407), Trump Plaza Associates, LLC (1643), Trump Marina Associates, LLC (8426), Trump Taj Mahal Associates, LLC (6368), Trump Entertainment Resorts Development Company, LLC (2230), TER Development Co., LLC (0425) and TERH LP Inc. (1184). The mailing address for each of the Debtors is 1000 Boardwalk at Virginia Avenue, Atlantic City, NJ 08401.

Delaware 19801. At the same time, you must serve a copy of any objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

Dated: December 4, 2014
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Robert F. Poppiti, Jr.

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Counsel to the Debtors and Debtors-in-Possession

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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	:	
In re:	:	Chapter 11
	:	
TRUMP ENTERTAINMENT RESORTS, INC., et al.,¹	:	Case No. 14-12103 (KG)
	:	
Debtors.	:	Jointly Administered
	:	
	:	Ref. Docket No. _____
	-X	

**ORDER, PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, APPROVING
SETTLEMENT AGREEMENT BY AND AMONG THE DEBTORS
AND FERTITTA ACQUISITIONSCO LLC, D/B/A ULTIMATE GAMING**

Upon consideration of the motion (the “**Motion**”)² of the Debtors for the entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, approving that certain Settlement Agreement by and among the Debtors and Fertitta Acquisitionsco LLC, d/b/a Ultimate Gaming, dated as of December 3, 2014 (the “**Settlement Agreement**”), a copy of which is attached hereto as Exhibit 1; and upon consideration of the Motion and all pleadings related thereto; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Trump Entertainment Resorts, Inc. (8402), Trump Entertainment Resorts Holdings, L.P. (8407), Trump Plaza Associates, LLC (1643), Trump Marina Associates, LLC (8426), Trump Taj Mahal Associates, LLC (6368), Trump Entertainment Resorts Development Company, LLC (2230), TER Development Co., LLC (0425) and TERH LP Inc. (1184). The mailing address for each of the Debtors is 1000 Boardwalk at Virginia Avenue, Atlantic City, NJ 08401.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors and is an appropriate exercise of the Debtors' business judgment; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, the Settlement Agreement is approved, and the terms and conditions of the Settlement Agreement (including the releases set forth therein) are incorporated into this Order as if fully set forth herein.
3. The Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate, to implement and effectuate the relief granted by this Order.
4. This Order shall bind the Debtors, their estates and any successors thereto, including, any subsequently appointed chapter 7 trustee in respect of the Debtors and their estates.
5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: December ____, 2014
Wilmington, Delaware

Kevin Gross
United States Bankruptcy Judge

EXHIBIT 1

Settlement Agreement

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Settlement Agreement") is entered into as of December 3, 2014 by and among Trump Taj Mahal Associates, LLC ("Taj Associates") and its affiliated debtors (collectively, the "Debtors"), in the Debtors' chapter 11 cases (the "Chapter 11 Cases") pending in the United States Bankruptcy Court for the District of Delaware (the "Court"), Case No. 14-12103 (KG) (Jointly Administered) and Fertitta Acquisitionsco LLC, doing business as Ultimate Gaming ("UG" and together with the Debtors, the "Parties" and individually a "Party").

Recitals

WHEREAS, on June 24, 2013, Taj Associates and UG entered into a ten-year online gaming operations agreement (the "UG Online Gaming Agreement");

WHEREAS, pursuant to the UG Online Gaming Agreement, UG operated an online gaming service under the internet gaming permits granted to Taj Associates (the "UG Casino");

WHEREAS, in connection with the UG Casino, Taj Associates opened certain bank accounts at Bank of America Merrill Lynch (last four digits of account numbers: 3572, 3608, 3611, 3585 and 3598) into which the cash earned and utilized with respect to the UG Casino was deposited (the "Online Gaming Accounts");

WHEREAS, on or about August 22, 2014, UG delivered a written notice of default to Taj Associates under the UG Online Gaming Agreement;

WHEREAS, on September 3, 2014, UG purported to terminate the UG Online Agreement by notice to Taj Associates;

WHEREAS, on September 9, 2014, the Debtors commenced the Chapter 11 Cases;

WHEREAS, UG asserts, and the Debtors dispute, that the (i) cash deposited in the Online Gaming Accounts pursuant to the UG Online Gaming Agreement, and (ii) certain cash identified in the budget attached to the *Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to the Secured Parties, and (C) Granting Related Relief* [Docket No. 342] (the "Final Cash Collateral Order") in the line item "Internet Gaming Balance" that is attributable to the UG Online Gaming Agreement is (a) not property of the Debtors' estates, (b) is not Cash Collateral (as defined in the Final Cash Collateral Order), and (c) is held in trust for the benefit of UG and/or the UG Players (as defined in the UG Online Gaming Agreement) pursuant to the UG Online Gaming Agreement; and

WHEREAS, the Parties desire to permanently settle all claims and causes of action by and between the Debtors and UG with respect to: (a) the UG Online Gaming Agreement and the UG Casino; (b) the cash deposited in the Online Gaming Accounts; and (c) all other amounts due and payable by the Debtors to UG, or by UG to the Debtors, pursuant to the UG Online Gaming Agreement as of the date of commencement of the Chapter 11 Cases or as of the date hereof, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Agreement**

(a) The above recitals are true and correct and are hereby incorporated herein, as if fully set forth in this Paragraph 1(a).

(b) As soon as possible following the execution and delivery of this Settlement Agreement by the Parties hereto, the Debtors shall file with the Court a motion (the "Settlement Motion"), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, in a form reasonably acceptable to the Parties, seeking the entry of an order, in the form attached hereto as Exhibit A, approving this Settlement Agreement and its terms (the "Settlement Order"). The Parties each agree to support the Settlement Motion and to exercise commercially reasonable efforts to seek the Bankruptcy Court's prompt approval of the Settlement Motion. Notwithstanding anything to the contrary set forth in this Settlement Agreement, except as set forth in this Paragraph 1(b), the respective obligations of the Parties under this Settlement Agreement are subject to the approval of this Settlement Agreement pursuant to the Settlement Order.

(c) Within one (1) business day after entry of the Settlement Order by the Court (the "Settlement Effective Date"), UG shall cease any and all remaining operations in connection with the UG Casino.

(d) On or at any time within five (5) business days after the Settlement Effective Date, the Debtors shall be permitted to apply any and all funds available in the Online Gaming Accounts to pay, or reimburse the Debtors (if previously paid by the Debtors) for, fees, costs and expenses (including, without limitation, (i) gaming taxes, (ii) expenses of the Debtors required to be reimbursed in accordance with the UG Online Gaming Agreement (but without giving effect to any expense cap contained therein), (iii) player withdrawals funded by the Debtors with their cage cash and (iv) fees payable to the New Jersey Division of Gaming Enforcement or other fees relating to online gaming) incurred by the Debtors in connection with the UG Casino prior to the Settlement Effective Date and not previously paid or reimbursed by UG.

(e) Following the application of the funds in the Online Gaming Accounts to pay fees, costs and expenses incurred by the Debtors as set forth in Paragraph 1(d) above (and subject to the terms of the Settlement Order), UG shall be entitled to receive \$500,000 of the total amount remaining in the Online Gaming Accounts (or the balance in the Online Gaming Accounts, if less) and Taj Associates shall be entitled to any remaining balance in the Online Gaming Accounts.

(f) Upon the Settlement Effective Date the UG Online Gaming Agreement shall be deemed terminated, effective as of September 3, 2014, except to the extent specific terms of the UG Online Gaming Agreement continue in effect in accordance with the express terms of this Settlement Agreement or any other written agreement between UG and Taj Associates entered into after the date hereof.

(g) The Parties acknowledge (i) that UG owns all Ultimate Customer Data (as defined in the UG Online Gaming Agreement) and Taj Associates confirms that any and all current and future rights in such Ultimate Customer Data that may have been acquired by Taj Associates in connection with the UG Casino are assigned to UG; (ii) that Taj Associates shall not, and shall not permit any Person to, transfer or disclose any Ultimate Customer Data to any other Person without the prior written consent of UG, unless required by law; (iii) that Taj Associates owns all TM Customer Data (as defined in the UG Online Gaming Agreement) and UG confirms that any and all current and future rights in such TM Customer Data that may have been acquired by UG in connection with the UG Casino are assigned to Taj Associates; and (iv) that UG shall not, and shall not permit any Person to, transfer or disclose any TM Customer Data to any other Person without the prior written consent of Taj Associates, unless required by law. Notwithstanding the foregoing, for the avoidance of doubt, (i) UG shall retain all rights to use information related to the TM Customers (as defined in the UG Online Gaming Agreement) which UG has acquired outside of the UG Casino or the UG Online Gaming Agreement, and (ii) Taj Associates shall retain all rights to use information related to the Ultimate Customers (as defined in the UG Online Gaming Agreement) which Taj Associates has acquired outside of the UG Casino or the UG Online Gaming Agreement.

2. Releases

For the consideration herein recited, and effective as of the Settlement Effective Date, UG, on the one hand, and the Debtors, on the other hand, each on behalf of themselves, and on behalf of each of their respective past, present and future parent and subsidiary corporations, officers, directors, shareholders, managers, members, insurers, agents, employees, affiliates, predecessors, successors and assigns, and each of them, hereby fully and unconditionally remise, release, acquit, satisfy and forever discharge each other and all of their respective past, present and future parent and subsidiary corporations, their officers, directors, shareholders, managers, members, insurers, agents, attorneys, employees, affiliates, predecessors, successors and assigns, and each of them, jointly and severally, from any and all claims, actions, demands or causes of action (including, without limitation, any obligation, whether under the UG Online Gaming Agreement or otherwise, for fees, costs or expenses, including attorneys' fees and any and all other fees, costs or expenses incurred in connection with the UG Online Agreement and incurred in the negotiation, preparation and execution of this Settlement Agreement) which the Parties ever had, now have, or may have, or which any predecessor, successor, or assign of the Parties have, shall have, or may have, of any nature and description whatsoever, whether based on state law, federal law, common law, legal or equitable in nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, accrued or hereinafter accruing, absolute or contingent, based on, arising under, or in connection with the facts, events, causes of action or claims arising under the UG Online Gaming Agreement; *provided, however*, that nothing herein shall release, impair or modify any of the Parties' rights and obligations arising under this Settlement Agreement.

3. **Representations and Warranties**

Each Party (severally and not jointly) represents, covenants and warrants to the other Parties, only as to itself and not as to each of the others, that the following statements are true and correct as of the date hereof with respect to such Party:

- (a) Each Party has the requisite power and corporate, limited liability company, limited partnership or similar authority to enter into this Settlement Agreement and perform all of the obligations under this Settlement Agreement, and the execution, delivery and performance of this Settlement Agreement by such Party has been duly authorized by all necessary corporate, limited liability company, limited partnership or similar action on the part of such Party, and the person executing this Settlement Agreement on behalf of such Party is duly authorized to do so and thereby bind that Party.
- (b) The execution, delivery and performance of this Settlement Agreement by such Party does not and shall not (i) violate any provision of law, rule or regulation applicable to it or its organizational documents or (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligations to which it is a party or under its organizational documents.
- (c) This Settlement Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights, and benefits hereof shall be binding upon and shall inure to the benefit of the undersigned Parties and their respective representatives, affiliated companies, predecessors, parent companies, subsidiaries, successors, and assigns.

4. **Miscellaneous.**

(a) Choice of Law. This Settlement Agreement shall be governed by and construed under and in accordance with the laws of the State of New York, without regard to the conflicts of laws principles thereof. The Bankruptcy Court shall retain jurisdiction over any action or proceeding arising out of or relating to this Settlement Agreement, and all claims in respect of such action or proceeding may be heard and determined in such Court. **EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO A JURY TRIAL FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS SETTLEMENT AGREEMENT.**

(b) Successors and Assigns. The agreements, terms and provisions contained in this Settlement Agreement shall be binding upon, and inure to the benefit of, each of the Parties and their respective legal representatives, beneficiaries, predecessors, successors and assigns.

(c) No Admission; Reservation of Rights. The Parties understand and agree that any claim, cause of action or defense that any Party may have against another in connection with the UG Online Gaming Agreement or the subject matter thereof is disputed, and that the Parties are entering into this Settlement Agreement for the purpose of settling such disputes by compromise in order to avoid further litigation. Neither the execution nor delivery of this Settlement Agreement shall constitute an admission of any wrongdoing or liability whatsoever on the part of any of the Parties. If the Bankruptcy Court does not enter the Settlement Order or the Settlement

Order does not become a Final Order, then nothing in this Settlement Agreement shall in any way limit, modify or affect, or be deemed to limit, modify or affect, any of the rights, claims or defenses of the Parties in the Adversary Proceeding or the Appeal.

(d) Cooperation/Further Assurances. The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional action which may be reasonably necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

(e) Construction. No Party shall be deemed the drafter of any part of this Settlement Agreement; the rule that any ambiguity in a contract shall be construed against the drafter of the contract shall not apply to any part of this Settlement Agreement. The headings herein are solely for the convenience of the Parties and do not form a substantive part of this Settlement Agreement.

(f) Mutually Dependent Provisions; Waivers. All of the provisions of this Settlement Agreement are mutually dependent and each provision hereof shall be binding and enforceable only if all provisions hereof are all binding and enforceable to the full extent provided for herein; *provided, however*, that, as to any particular provision or condition hereof, a Party enjoying the rights of such provision or condition or to whom the benefits of such provision or condition inure, may waive in writing another Party's compliance with such provision or the occurrence of such condition.

(g) Entire Agreement. This Settlement Agreement constitutes the entire agreement and understanding among the Parties with respect to the subject matter hereof, sets forth all terms and conditions of this Settlement Agreement, and cancels and supersedes any and all prior agreements, representations, and/or understandings, whether written or oral, among the Parties relating to the subject matter of this Settlement Agreement.

(h) Amendments. Neither this Settlement Agreement nor any terms hereof may be amended, changed, waived, discharged, or terminated unless such amendment, change, waiver, discharge or termination is in a writing signed by all the Parties hereto.

(i) Representation by Counsel. The Parties acknowledge that they have each relied upon the professional advice rendered by independent legal counsel of their own selection prior to entering into this Settlement Agreement. The Parties further acknowledge that the terms of this Settlement Agreement have been completely reviewed and explained to them by their attorneys, and those terms are fully understood and voluntarily accepted by each Party.

(j) Counterparts. This Settlement Agreement may be executed in counterparts. Each counterpart shall be deemed an original, all of which together shall constitute a single agreement. Any of the signatures to this Settlement Agreement may be delivered by facsimile or electronically mailing a portable data format ("PDF") copy, and such facsimile or electronically mailed PDF copy signature shall be fully binding on the person or party tendering the facsimile or PDF signature and shall serve as an original executed copy for all purposes.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the date first written above.

TRUMP ENTERTAINMENT RESORTS, INC.
on behalf of itself and its affiliated Debtors.



Name: ROBERT GRIFFIN
Title: CEO

FERTITTA ACQUISITIONSCO LLC,
d/b/a Ultimate Gaming

Name:
Title:

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the date first written above.

TRUMP ENTERTAINMENT RESORTS, INC.
on behalf of itself and its affiliated Debtors.

Name:
Title:

FERTITTA ACQUISITIONSCO LLC,
d/b/a Ultimate Gaming



Name:
Title: