UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

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In re:

TCI 2 HOLDINGS, LLC, et al.,

Debtors.

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

(Jointly Administered)

DEBTORS' OBJECTION TO THE DISCLOSURE STATEMENT FOR 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

TO THE HONORABLE JUDITH H. WIZMUR,
CHIEF UNITED STATES BANKRUPTCY JUDGE:

TCI 2 Holdings, LLC ("TCI 2") and its subsidiary and other affiliated entities, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors" or the "Company"), as and for their Objection to the Disclosure Statement for 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 (collectively, "Beal Bank"), dated December 4, 2009 [Docket No. 949] respectfully represent[1]:

PRELIMINARY STATEMENT

1. Based on recent events and a re-assessment by the Debtors of what is in the best interests of their respective estates, the Debtors are now co-proponents of the chapter 11 plan originally sponsored by an ad hoc committee of certain holders of the Debtors' 8.5% Senior Secured Notes due 2015 (the "Ad Hoc Committee"). Beal Bank, however, has filed its own competing plan of reorganization (the "Beal Plan") and disclosure statement (the "Beal Disclosure Statement"). The Debtors believe that the Beal Disclosure Statement fails to describe or explain (i) potentially crucial risks to the consummation of the Beal Plan and (ii) Beal Bank's plans for the reorganized Debtors under its proposal.

2. A chapter 11 disclosure statement is the critical document that is required by law to inform holders of impaired claims and interests exactly how they are treated under a chapter 11 plan, the value of that treatment, and the chances they will actually receive the proposed distribution. The Beal Disclosure Statement is flawed because it fails to provide information that

[1] Capitalized terms not otherwise herein defined shall have the meanings ascribed to such terms in the Beal Disclosure Statement.

is fundamental for making an informed decision as to whether to vote to accept or reject the Beal Plan.

3. First, the Beal Disclosure Statement fails to disclose or even identify federal and/or state banking regulatory issues which may result in significant delays, and further may prevent Beal Bank from either (i) ultimately consummating or effectuating its chapter 11 plan as proposed or (ii) owning a significant portion of the equity interests of the Debtors for any significant period. Specifically, the Beal Disclosure Statement contains no discussion regarding how Beal Bank, as a highly regulated banking institution, would be permitted under state and federal banking laws and regulations to indefinitely own a controlling equity interest in the reorganized Debtors.

4. Second, the Beal Disclosure Statement fails to disclose what plans (if any) Beal Bank has for the future of the Reorganized Debtors, including any assurances that Beal Bank (a) will not cause the reorganized Debtors to incur significant additional debt for the benefit of Beal Bank after the Debtors emerge from chapter 11 and (b) intends to use the new capital invested pursuant to the rights offering under the Beal Plan to benefit the reorganized Debtors and their ongoing business operations.

5. Third, the Beal Disclosure Statement fails to adequately describe the proposed equity ownership structure under the Beal Plan in a way that would allow a typical investor to make an informed decision as to whether to accept or reject the Beal Plan and as to whether to invest in the reorganized Debtors under Beal Bank's control.

6. And finally, fourth, the Beal Disclosure Statement inaccurately describes the role of the Debtors in relation to the chapter 11 plan originally sponsored by the Ad Hoc Committee. The Debtors are not merely supporters of that chapter 11 plan, as set forth in the Beal Disclosure

Statement. Rather, the Debtors are co-proponents and view that chapter 11 plan as superior to the Beal Plan for a variety of reasons, including that fact that it provides the best prospects for the Debtors to successfully emerge from chapter 11. The Beal Disclosure Statement fails to accurately set forth the Debtors position and rationale for favoring the chapter 11 plan co-sponsored by the Debtors and the Ad Hoc Committee.

7. For these and other reasons, and as more fully expressed below, the Beal Disclosure Statement is fatally flawed, and this Court should deny Beal Banks' motion for approval of the same.

BACKGROUND

8. On August 3, 2009, the Debtors filed their Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Original Debtors' Plan") and their Proposed Disclosure Statement (the "Debtors' Disclosure Statement") with respect to the Original Debtors' Plan. The Original Debtors' Plan was based on a restructuring proposal and purchase agreement (the "Purchase Agreement") made by Beal Bank and Donald Trump ("Mr. Trump"), which was selected by the Debtors over a competing proposal submitted at that time by the Ad Hoc Committee.

9. On August 31, 2009, the Court entered an order terminating the Debtors' exclusive periods to file and solicit a plan of reorganization. That same day, the Ad Hoc Committee filed its own plan of reorganization (the "AHC Plan"), with an accompanying disclosure statement (the "AHC Disclosure Statement").

10. By letter dated November 16, 2009, Mr. Trump informed the Debtors that he was exercising his rights to terminate the Purchase Agreement underlying the Original Debtors' Plan. Thereafter, Mr. Trump entered into an agreement with the Ad Hoc Committee (i) to support an amended version of the AHC Plan and (ii) to permit the Company to continue to use the

"Trump" name in connection with the Debtors' three casinos. Pursuant to such agreement, Mr. Trump will receive five per cent (5%) of the new common stock in the reorganized Debtors to be issued under the AHC Plan and warrants to purchase up to an additional five per cent (5%) of such common stock. As a result of Mr. Trump's decision to terminate the Purchase Agreement, the Debtors' Original Plan was effectively left in a state of limbo.

11. On November 25, 2009, Beal Bank filed its Motion for an Order Pursuant to Federal Rule of Bankruptcy Procedure 9006 (A) Fixing Reduced Time for Hearing on Disclosure Statement with Respect to Plan to be Proposed by Beal Bank; (b) Fixing Reduced Time for Filing Objections Thereto; (c) Temporarily Suspending Solicitation of Competing Plans and (D) Granting Related Relief (the "Beal Disclosure Statement Motion") [Docket No. 936]. Attached as Exhibit B to the Beal Disclosure Statement Motion was a term sheet for a restructuring transaction proposed by Beal Bank (the "Beal Proposal") that included *inter alia*:

- a proposed $225 million rights offering (the "Rights Offering") to holders of Second Lien Note Secured Claims and General Unsecured Claims (each as defined in the Beal Disclosure Statement) to purchase an equity stake in the Reorganized Debtors, with such Rights Offering being backstopped by Beal Bank (who will receive an the equity stake of approximately 3.829% in the Reorganized Debtors as a backstop fee in consideration for agreeing to provide financing in connection with the Beal Plan) (the "Backstop Agreement");

- a $100 million pay down of Beal Bank's first lien debt from proceeds of the Rights Offering and a conversion of Beal Bank's remaining first lien debt into equity of the Reorganized Debtors;

- a pro rata distribution of a small amount of new equity in the Reorganized Debtors or approximately $13.9 million in cash to holders of Second Lien Notes and General Unsecured Claims; and

- no recovery for old equity.

See Beal Disclosure Statement Motion, at ¶ 8.

12. Thereafter, the Debtors, Beal Bank, and the Ad Hoc Committee engaged in extensive negotiations in hopes of brokering a global settlement. While progress was made during such negotiations, the parties were ultimately unable to come to a resolution of all outstanding matters. Accordingly, after carefully reviewing all aspects of the AHC Plan and the Beal Proposal, the Debtors determined that it was in the best interests of the Company and all of their relevant creditor constituencies to join with the Ad Hoc Committee and become a co-proponent of the AHC Plan.

13. On December 4, 2009, Beal Bank filed the Beal Plan and Beal Disclosure Statement, which provided for a restructuring transaction on substantially similar terms to those set forth in the Beal Proposal.

ARGUMENT

14. Section 1125(b) of title 11 of the United States Code (the "Bankruptcy Code") requires a disclosure statement to contain adequate information to accompany any solicitation of acceptances or rejection of a plan. "Adequate information" means:

> [I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1).

15. The adequacy of the information provided to creditors is crucial to a court's or creditor's ability to evaluate a proposed plan. As the Third Circuit has stated, "[g]iven this reliance, we cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of 'adequate information.'" *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *cert. denied*, 488 U.S. 967; *see also In re Crowthers McCall*

Pattern, Inc., 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990) ("At the 'heart' of the chapter 11 process is the requirement that holders of claims in impaired classes be furnished with a proper disclosure statement 'that would enable a hypothetical reasonable investor . . . to make an informed judgment about the plan.'") (quoting H.R. Rep. No. 95-595, at 408 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6364).

16. A disclosure statement accompanying a chapter 11 plan is designed to provide sufficient information to creditors to permit them to determine whether to vote for or against the plan and "plays a pivotal role in the give and take among creditors and between creditors and the debtor that leads to a confirmed negotiated plan of reorganization by requiring adequate disclosure to the parties so they can make their own decisions on the plan's acceptability." *In re A.H. Robins Co., Inc.*, 216 B.R. 175, 180 (E.D. Va. 1997); *In re Stanley Hotel, Inc.*, 13 B.R. 926, 929 (Bankr. D. Colo. 1981) (noting that creditors need material information to make "informed choice" with respect to acceptance or rejection of plan).

17. Moreover, a disclosure statement may not serve simply as a "sales brochure" proclaiming the virtues of a particular plan, but must make a balanced presentation and include complete – and not one-sided – disclosure. *See In re Ligon*, 50 B.R. 127, 130 (Bankr. M.D. Tenn. 1985) ("Conclusory allegations or opinions without supporting facts are generally not acceptable in a disclosure statement."); *In re Egan*, 33 B.R. 672, 675-76 (Bankr. N.D. Ill. 1983) ("[A disclosure statement] is not intended to be an advertisement or a sales brochure.").

18. The Court cannot approve the Beal Disclosure Statement because it fails to or inaccurately and inadequately describes: (a) the potential state and federal banking regulatory issues that may prevent the Beal Plan from being confirmed, consummated or effectuated as proposed, (b) the proposed equity ownership structure that is contemplated under the Beal Plan,

(c) what plans (if any) that Beal Bank has for the future capital structure of the reorganized Debtors, including whether it intends to incur significant additional debt upon emergence from chapter 11, and (d) that the Debtors are co-proponents, rather than mere supporters, of the AHC Plan.

A. The Beal Disclosure Statement Does Not Adequately Disclose the Potential Banking Regulatory Issues That May Prevent the Beal Plan from Being Consummated or Confirmed

19. The Beal Disclosure Statement states that the underlying restructuring transactions described therein, including without limitation, the proposed $225 million Rights Offering, Beal Bank's commitment to backstop the proposed Rights Offering pursuant to the Backstop Agreement, and the full conversion of Beal Bank's first lien debt to common stock, are subject to various conditions precedent, including that:

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

…..

- (i) the prior receipt by Beal Bank and its affiliates of any and all required approvals or consents of the transactions contemplated by this Plan from all necessary state and federal government agencies and authorities upon terms and conditions satisfactory to Beal Bank; (ii) the expiration of all applicable waiting periods; and (iii) the approvals references in this subsection (g) and the transactions contemplated by this Plan not having been contested or threatened to be contested by any federal or state governmental authority.

See Beal Disclosure Statement, at 18.

20. Beal Bank has been virtually silent regarding the numerous limitations and uncertainties that federal and state banking rules and regulation may impose on the Beal Proposal. These limitations and uncertainties may constitute significant – if not fatal – hurdles to confirming, consummating or effectuating the Beal Plan as proposed. In this case, the regulatory

issues are all the more complex and unpredictable because Beal Bank's proposal implicates Texas and Nevada State banking law, federal banking statutes, regulations promulgated by the Federal Deposit Insurance Corporation and the Office of Thrift Supervision, and discretionary supervisory authority of state and federal regulators. For Beal Bank and its affiliates to effectively posit by their silence that they have regulatory carte blanche to own and operate a gambling casino as proposed under the Beal Plan is implausible.

21. Moreover, a core element of prudential federal and state regulation is the separation between banking and general commerce. As a rule, banks cannot directly or indirectly engage in general business activities other than those closely related to a banking function. These limitations on nonbanking activities extend not only to banks themselves, but also to their affiliates. If general manufacturing and non-financial service activities are impermissible under this regulatory regime, needless to say ownership or operation of gaming casino would be impossible.

22. While the variety of laws that apply to the Beal Plan will commonly allow for limited exceptions based on foreclosure on collateral for previously contracted debt (DPC), those exceptions hardly leave Beal Bank unfettered. In some cases, regulatory notice and/or approval may be required and, in all events, applicable law will restrict the holding period for otherwise impermissible assets or operations. The prospect of a gaming casino becoming owned by a bank pursuant to limited DPC exceptions creates unique and unresolved issues for regulatory determination. For example, it would appear that DPC ownership of a casino cannot be reconciled with federal law stating that a bank may not "deal in lottery tickets … deal in bets used as a means or substitute for participation in a lottery … [or] announce, advertise, or publicize the existence of any lottery. *See* 12 U.S.C. § 1829a(a). Moreover, beyond strict

statutory and regulatory activity limitations on banks, the state and federal regulators of Beal Bank retain extraordinary discretion to limit any bank activities that are viewed as unsafe and unsound. In the midst of the most severe banking crisis since the 1930s, it is difficult to fathom how an affiliation between a bank and a casino would not raise critical safety and soundness issues.

23. Section IX of the Beal Disclosure Statement – where Beal Bank purports to identify risk factors that should be considered by the holders of allowed claims entitled to vote on the Beal Plan – contains no discussion whatsoever of any of the aforementioned federal and/or state banking or regulatory issues that may prevent Beal Bank from ultimately consummating or effectuating the transactions set forth in the proposed Beal Plan.

24. As the Debtors believe significant banking regulatory concerns exist that may result in material delays or even still call in to question whether the Beal Plan may ultimately be confirmed, consummated or effectuated as proposed, additional and more fulsome disclosure by Beal Bank regarding such issues is necessary to provide "adequate information" as required under section 1125 of the Bankruptcy Code.

B. The Beal Disclosure Statement Does Not Adequately Describe the Equity Ownership Structure Contemplated Under the Beal Plan

25. While the Beal Plan offers the potential for holders of the Second Lien Note Secured Claims and General Unsecured Claims (as defined in the Beal Disclosure Statement) to participate in a $225 million Rights Offering for an equity ownership stake in the Reorganized Debtors' capital structure, it is by no means clear from the Beal Disclosure Statement what exactly this equity ownership stake entails.

26. Indeed, the Beal Disclosure Statement contains a convoluted description of the proposed equity structure of the Reorganized Debtors. Throughout the Beal Disclosure

Statement, Beal Bank uses conflicting terminology and definitions to describe its proposed equity structure. For example, in one instance, the Beal Disclosure Statement states that the balance of Beal Bank's first lien lender claims will be converted into an equity stake of approximately 55.538% of the Reorganized Debtors. *See* Beal Disclosure Statement, at 4. Later, however, in that same section, when describing the treatment of Beal Bank's first lien lender claims, the Beal Disclosure Statement states that Beal Bank will be receiving, among other things, in full satisfaction of its first lien lender claims, the "First Lien Conversion Membership Interests," which is defined as "60.708% of the outstanding membership Interests on a Fully Diluted Basis." *See* Id. at xviii, 6.

27. In similar fashion, in Section III of the Beal Disclosure Statement, Beal Bank sets forth a summary of the ownership of the "Membership Interests in Reorganized TER Holdings" under two scenarios where the $225 million Rights Offering is fully subscribed by eligible and participating creditors and, in the alternative, where such Rights Offering is wholly unsubscribed by such creditors. The summary as set forth in the Beal Disclosure Statement is as follows:

	Fully Subscribed	Wholly Unsubscribed
NewCo	34.462%	2.010%
Beal Bank (or its designee(s))	65.638%	97.990%
New Partner Co.	0.500%	0.500%
Reorganized TER	0.500%	0.500%

Beal Disclosure Statement, at 17-18.

28. Setting aside for the moment that neither of these scenarios as described in the Beal Disclosure Statement add up to an even 100% equity ownership interest (Fully Subscribed: 101.1% and Wholly Unsubscribed: 101%), it is nearly impossible for holders of allowed Second Lien Secured Note Claims or General Unsecured Claims to determine the actual equity interest

they will be receiving in exchange for their vote and Subscription Purchase Price should they choose to participate in the rights offering under the Beal Plan. A reader can tell virtually nothing from the statements and summaries set forth above, and looking to the defined terms provides little clarification.

29. In addition, clarification is needed with respect to the fee that Beal Back is to receive pursuant to the Backstop Agreement for agreeing to finance the Rights Offering. The Beal Disclosure Statement indicates that Beal Bank is to receive an equity stake of approximately 3.829% in the Reorganized Debtors as a backstop fee. *See* Beal Disclosure Statement, at 4. However, the Debtors have been advised by Beal Bank that they are to receive a 10% equity stake in the Reorganized Debtors as a fee under the Backstop Agreement. Moreover, the Backstop Agreement that was filed with the Court as an exhibit to the Beal Disclosure Statement is silent as to the actual equity stake that Beal Bank is to receive for agreeing to backstop the Rights Offering. *See* Beal Disclosure Statement, Exhibit F, Schedule 1.

30. Simply put, the Beal Disclosure Plan must clearly and prominently state the equity ownership structure proposed under the Beal Plan. Such information is critical where, as is the case under the Beal Plan, creditors are being offered the opportunity or right to invest in an equity stake in the Reorganized Debtors in exchange for their vote to accept a plan of reorganization.

C. The Disclosure Statement Fails to Set Forth Any Assurances Regarding the Future Capital Structure of the Reorganized Debtors Upon Emergence From Chapter 11 Protection

31. The Beal Disclosure Statement repeatedly touts that the Beal Plan will "completely deleverage" the Debtors' balance sheet and provide the best opportunity for the Company to continue to thrive upon emerging from chapter 11. *See* Beal Disclosure Statement, at 3-4, 51. However, in the event that Second Lien Noteholders or General Unsecured Creditors

holding only a small amount of those claims elect to participate in the Rights Offering under the Beal Plan, and Beal Bank, as a result, would own the vast majority of the equity of the Reorganized Debtors, the Beal Disclosure Statement fails to provide creditors and potential investors with any assurances that Beal Bank will not elect to impose significant additional debt on the Debtors should the Beal Plan be confirmed.

32. Similarly, the Beal Disclosure Statement does not contain any assurances that Beal Bank intends to use the $125 million in remaining capital invested pursuant to the Rights Offering for the benefit of the reorganized Debtors or to fund capital expenditure projects as opposed to immediately paying out such capital in the form of dividends.

33. Beal Bank cannot reasonably expect creditors to vote on a plan when the Beal Disclosure Statement does not fairly and fully disclose Beal Bank's intentions regarding the capital structure of the Reorganized Debtors.

D. The Beal Disclosure Statement Fails to Accurately Describe that the Debtors Are Co-Proponents of the AHC Plan and Believe the AHC Plan to be in the Best Interests of All Parties in Interest

34. The Beal Disclosure Statement states that the "Debtors have indicated their intent to no longer pursue the Debtors' Plan and instead intend to support the Ad Hoc Committee's Plan." Beal Disclosure Statement, at 2. However, the Beal Disclosure fails to adequately disclose the significant fact that the Debtors do not merely support the AHC Plan, but rather are co-proponents of the AHC Plan and view such plan to be in the best interests of all creditor constituencies and presents the best chance to successfully emerge from chapter 11 as a thriving enterprise.

35. The decision was not made lightly and was made only after lengthy discussions with all parties. The Debtors now firmly believe that joining the Ad Hoc Committee as co-

proponents of the AHC Plan presents the best opportunity for the Debtors to emerge from these chapter 11 cases. Such information should be disclosed to all voting creditors.

36. Similarly, as the Debtors are co-proponents to the AHC Plan and will not be supporting the Beal Plan, the Beal Disclosure Statement should disclose that the Debtors do not intend to be a party to Beal's Backstop Agreement, which, as filed with the Court, requires the Debtors to be signatories.

37. The Debtors' role as a co-proponent of the AHC Plan and their rationale for choosing to support the AHC Plan over the Beal Plan is of critical importance to creditors when asked to vote on competing plans of reorganization and should be disclosed in the Beal Disclosure Statement.

RESERVATION OF RIGHTS

38. The Debtors reserve their right to amend, modify, or supplement this Objection in response to, or as a result of, the filings of any modifications to the Beal Plan or Beal Disclosure Statement, any proposed plan supplement, and/or any submission in connection with the Beal Plan in these chapter 11 cases. The Debtors additionally reserve their right to amend, modify, or supplement this Objection in response to decisions on related matters currently pending before this Court. Debtors reserve all of their rights to assert any and all further objections in advance of confirmation of the Beal Plan.

WHEREFORE Debtors respectfully request entry of an order denying Beal Bank's motion for approval of the Beal Disclosure Statement and granting Debtors such other and further relief as is just.

Dated: December 9, 2009

Respectfully submitted,

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General Information

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