

**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

Ref. Docket No. 928

**NOTICE OF FILING OF MODIFIED EXHIBITS 6 AND 8 TO PLAN SUPPLEMENT
FOR DEBTORS' THIRD AMENDED JOINT PLAN OF REORGANIZATION
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE that on February 15, 2015, Trump Entertainment Resorts, Inc. and its above-captioned affiliated debtors and debtors in possession (each, a “**Debtor**,” and collectively, the “**Debtors**”) filed the *Notice of Filing of Plan Supplement for Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 840] (the “**Plan Supplement Notice**”). Attached as Exhibit A to the Plan Supplement Notice was the Plan Supplement.²

PLEASE TAKE FURTHER NOTICE that in connection with the Plan Supplement, the Debtors hereby file blacklines reflecting certain modifications to the following documents contained in the Plan Supplement: (a) Exhibit 6 – Form of Distribution Trust Agreement;³ and (b) Exhibit 8 – List of Reorganized Debtors' Officers and Directors. Copies of

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 defined herein shall have the meanings ascribed to them in *Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code As Modified* [Docket No. 993] (as amended, modified or supplemented from time to time, the “**Plan**”).

³ Therein, Nathan A. Schultz, of the Law Office of Nathan A. Schultz, P.C., has been identified as the Distribution Trustee.

these blacklines are attached hereto as Exhibit A and Exhibit B, respectively. Subject to the terms and conditions of the Plan and the prior approval of the Consenting First Lien Lenders, the Debtors reserve all rights to amend, revise or supplement any of the documents contained in the Plan Supplement at any time before the Effective Date of the Plan, or any such other date as may be permitted by the Plan or by order of the Court.

Dated: March 11, 2015
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Robert F. Poppiti, Jr.

Matthew B. Lunn (No. 4119)

Robert F. Poppiti, Jr. (No. 5052)

Ian J. Bambrick (No. 5455)

Ashley E. Markow (No. 5635)

Rodney Square

1000 North King Street

Wilmington, Delaware 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

-and-

STROOCK & STROOCK & LAVAN LLP

Kristopher M. Hansen

Erez E. Gilad

Gabriel E. Sasson

180 Maiden Lane

New York, New York 10038-4982

Telephone: (212) 806-5400

Facsimile: (212) 806-6006

Counsel to the Debtors and Debtors-in-Possession

EXHIBIT A

DISTRIBUTION TRUST AGREEMENT

DISTRIBUTION TRUST AGREEMENT, dated as of [*], 2015 (this “Agreement”), between the Debtors (as hereinafter defined) and [*][Nathan A. Schultz, of the Law Office of Nathan A. Schultz, P.C.](#), in ~~his~~^{her} capacity as the Distribution Trustee of the TER Trust (the “Distribution Trustee”).

RECITALS

WHEREAS, on September 9, 2014, Trump Entertainment Resorts, Inc., Trump Entertainment Resorts Holdings, L.P., Trump Plaza Associates, LLC, Trump Marina Associates, LLC, Trump Taj Mahal Associates, LLC, Trump Entertainment Resorts Development Company, LLC, TER Development Co., LLC, and TERH LP Inc. (collectively, the “Debtors”) commenced chapter 11 cases (collectively, the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

WHEREAS, by order of the Bankruptcy Court dated September 9, 2014 [Docket No. 42], the Chapter 11 Cases were consolidated for procedural purposes and jointly administered under Case No. 14-12103 (KG);

WHEREAS, on January 30, 2015, the Debtors filed with the Bankruptcy Court the *Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 840] (including all exhibits thereto and as amended, modified or supplemented from time to time and as confirmed, the “Plan”);

WHEREAS, by order of the Bankruptcy Court dated [*], 2015, the Bankruptcy Court confirmed the Plan;

WHEREAS, the Plan and the Confirmation Order provide for the creation of a Distribution Trust and the appointment of a Distribution Trustee for such trust;

WHEREAS, the primary purposes of the TER Trust are to administer, liquidate, monetize and distribute the Distribution Trust Assets transferred to the TER Trust as provided for in the Plan, the Confirmation Order, and this Agreement;

WHEREAS, the Plan and the Confirmation Order provide for the appointment of the Distribution Trustee for the purposes set forth in the Plan, the Confirmation Order, and this Agreement;

WHEREAS, the Distribution Trustee has accepted such appointment and has agreed to serve in such capacity under the terms and conditions set forth in the Plan, the Confirmation Order and this Agreement; and

NOW THEREFORE, in accordance with the Plan and the Confirmation Order, and in consideration of the premises and mutual covenants and agreements contained herein, the Debtors and the Distribution Trustee agree as follows:

DECLARATION OF TRUST

The Debtors and the Distribution Trustee enter into this Agreement to effectuate the distribution of the Trust Assets (as hereinafter defined) to the Distribution Trust Beneficiaries pursuant to the Plan, the Confirmation Order, and this Agreement;

Pursuant to the Plan, the Confirmation Order, and this Agreement, as of the Effective Date, all right, title and interest in, under, and to the Distribution Trust Assets are absolutely and irrevocably assigned to the TER Trust and to its successors in trust and its successors and assigns, free and clear of all Claims, Liens, encumbrances, charges, and other Interests, except as provided in the Plan or the Confirmation Order;

TO HAVE AND TO HOLD unto the Distribution Trustee and any successors in trust to the Distribution Trustee appointed pursuant to the terms of this Agreement; and

IT IS HEREBY FURTHER COVENANTED AND DECLARED, that the Trust Assets are to be held by the TER Trust and applied on behalf of the TER Trust by the Distribution Trustee on the terms and conditions set forth in the Plan, the Confirmation Order, and herein, solely for the benefit of the Distribution Trust Beneficiaries and for no other party.

ARTICLE I

DEFINITIONS

Section 1.1 *Certain Terms Defined.* Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to such terms in the Plan. As used herein, the following terms have the respective meanings specified below:

“Available Cash” shall mean all Cash held by the TER Trust from time to time on and after the Effective Date, including, without limitation, any Proceeds.

“Distributions” shall mean the distributions of the Trust Assets required to be made by the Distribution Trustee to Distribution Trust Beneficiaries pursuant to and in accordance with Section 5.4 of the Plan, in the form and manner provided for in the Plan, the Confirmation Order and this Agreement.

“Proceeds” shall mean all proceeds or recoveries realized or received from the prosecution, settlement or compromise of the Avoidance Actions, the liquidation or monetization of the Distribution Trust Assets, and any income earned from any Permitted Investments.

“Trust Assets” shall mean all of the assets of the TER Trust, including, without limitation, the Distribution Trust Assets transferred by the Debtors to the TER Trust through the Plan and the Confirmation Order on the Effective Date and any Available Cash.

Section 1.2 *Interpretation.*

- (a) When a reference is made in this Agreement to a Section, such reference shall be to a Section of this Agreement unless otherwise clearly indicated to the contrary.
- (b) Whenever the words “include”, “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “without limitation.”
- (c) The words “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated in this Agreement, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement.
- (d) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.
- (e) A reference to any party to this Agreement or any other agreement or document shall include such party’s successors and permitted assigns.
- (f) A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or reenactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.
- (g) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.
- (h) Any reference in this Agreement to \$ shall mean U.S. dollars.

ARTICLE II

CREATION AND TERMINATION OF THE DISTRIBUTION TRUST

Section 2.1 *Creation of the TER Trust.* The TER Trust is hereby constituted and created, in accordance with Treasury Regulations Section 301.7701-4(d) and Revenue Procedure 94-45, to (i) distribute the Distribution Trust Interests to holders of Allowed General Unsecured Claims in accordance with the terms of the Plan, the Confirmation Order, and this Agreement, (ii) have the power and authority to hold, manage, convert to Cash, and distribute the Trust Assets, including maintaining, prosecuting, settling and dismissing the Avoidance Actions, (iii) hold the Trust Assets for the benefit of the Distribution Trust Beneficiaries, (iv) hold, manage, and distribute Cash or non-Cash assets obtained through the exercise of the Distribution Trustee’s power and authority, and (v) take such other actions consistent with the terms of this Agreement or as directed by the Distribution Trust Advisory Board as is necessary and appropriate to administer and implement the Plan and the Confirmation Order.

(a) *Purpose of TER Trust.* The TER Trust is established for the sole purpose of liquidating (including by prosecution and settlement of Avoidance Actions) the Distribution Trust Assets, in accordance with Treasury Regulation Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. All parties are required to treat the TER Trust as a liquidating trust, subject to contrary definitive guidance from the Internal Revenue Service. For U.S. federal income tax purposes, the Debtors, the Distribution Trustee and the Distribution Trust Beneficiaries will treat the transfer of the Distribution Trust Assets to the TER Trust as a transfer by the Debtors of the Distribution Trust Assets to the Distribution Trust Beneficiaries, followed by a transfer of such Distribution Trust Assets by the Distribution Trust Beneficiaries to the TER Trust. Accordingly, for U.S. federal income tax purposes, it is intended that the TER Trust shall be treated as one or more grantor trusts, and the Distribution Trust Beneficiaries receiving Distribution Trust Interests shall be treated as the grantors and deemed owners of the TER Trust.

(b) This Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The TER Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Distribution Trustee or the Distribution Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Distribution Trust Beneficiaries to the Distribution Trustee shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Agreement.

Section 2.2 *Appointment and Acceptance of the Distribution Trustee.*

[\[*\]Nathan A. Schultz, of the Law Office of Nathan A. Schultz, P.C.](#), is hereby appointed to act and serve as the Distribution Trustee of the TER Trust. [\[*\]Nathan A. Schultz, of the Law Office of Nathan A. Schultz, P.C.](#) hereby accepts the appointment as the Distribution Trustee of the TER Trust, and, in such capacity, agrees to hold the Trust Assets, in trust, in accordance with the terms of this Agreement and to administer the TER Trust pursuant to the terms and conditions of this Agreement, the Plan and the Confirmation Order.

Section 2.3 *Name of the Trust.* The trust established through the Plan and pursuant to this Agreement shall bear the name “TER Trust.” In connection with the exercise of the Distribution Trustee’s powers under this Agreement, the Distribution Trustee may use this name or such variation thereof as the Distribution Trustee, in the Distribution Trustee’s discretion, may determine.

Section 2.4 *Transfer of Distribution Trust Assets to the TER Trust.* Pursuant to the Plan and the Confirmation Order, on the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, the Distribution Trust Assets shall vest in the TER Trust, free and clear of all Claims, Liens, encumbrances, charges, and other Interests, except as provided in the Plan or the Confirmation Order. The TER Trust hereby accepts all such Distribution Trust Assets free and clear of all Claims, Liens, encumbrances, charges, and other Interests, and agrees to hold and administer the Distribution Trust Assets and the remainder of the TER Trust (including any Proceeds) for the benefit of the Distribution Trust Beneficiaries, subject to the terms and conditions of the Plan, the Confirmation Order, and this Agreement. Subject to the terms of the

Plan, any Proceeds shall constitute Trust Assets for purposes of Distributions. Upon the vesting of the Distribution Trust Assets in the TER Trust, except as otherwise provided in the Plan, the Confirmation Order or herein, the TER Trust shall succeed to all of the Debtors' right, title, and interest in and to the Distribution Trust Assets, and the Debtors will have no further interest in or with respect to the Distribution Trust Assets or the TER Trust. For the avoidance of doubt, the Distribution Trustee shall not have any authority to exercise any rights of the Debtors or Reorganized Debtors to setoff or recoupment.

Section 2.5 *Capacity of TER Trust.* Notwithstanding any state or federal law to the contrary or anything herein, the TER Trust shall itself have the capacity, in its own right and name, to act or refrain from acting, including the capacity to sue and be sued and to enter into contracts. The TER Trust may alone be the named movant, respondent, party plaintiff, or defendant, or the like in all adversary proceedings, contested matters, and other state or federal proceedings brought by or against it, and may settle and compromise all such matters in its own name.

Section 2.6 *Maintenance of Available Cash.* Any and all Available Cash shall be maintained by the Distribution Trustee in an account designated for such purposes.

Section 2.7 *Fiscal Year.* The fiscal year of the TER Trust shall be the calendar year.

Section 2.8 *Termination of TER Trust.* The TER Trust shall automatically terminate upon the date that all of the following have occurred: (i) the final Distributions; and (ii) the preparation and delivery of a final report regarding the Trust Assets to the Distribution Trust Advisory Board, which may be verbally conveyed; provided, however, that the TER Trust shall be dissolved no later than three (3) years from the Effective Date, unless the Bankruptcy Court orders otherwise.

Section 2.9 *Establishment and Maintenance of the Disputed General Unsecured Claims Reserve.* On the Effective Date or as soon thereafter as is reasonably practicable, the Distribution Trustee shall set aside and reserve, from the Distribution Trust Assets, for the benefit of each holder of a Disputed General Unsecured Claim, Cash in an amount equal to the Plan Distribution to which the holder of such Disputed Claim would be entitled if such Disputed Claim were an Allowed Claim, in an amount equal to (i) the amount of such Claim as estimated by the Bankruptcy Court pursuant to an Estimation Order, (ii) if no Estimation Order has been entered with respect to such Claim, the amount in which such Disputed Claim is proposed to be allowed in any pending objection filed by the Debtors, or (iii) if no Estimation Order has been entered with respect to such Claim, and no objection to such Claim is pending on the Effective Date, (A) the amount listed in the Schedules or (B) if a timely filed proof of Claim or application for payment has been filed with the Bankruptcy Court or Claims Agent, as applicable, the amount set forth in such timely filed proof of Claim or application for payment, as applicable. The Distribution Trustee, in its discretion, may increase the amount reserved as to any particular Disputed Claim. Such reserved amounts, collectively, shall constitute the "Disputed General Unsecured Claims Reserve". For the avoidance of doubt, the Distribution Trustee shall not be required to reserve any Cash or other consideration on account of any Disputed General Unsecured Claim that the Distribution Trustee reasonably

believes is covered by insurance. The Disputed General Unsecured Claims Reserve shall be maintained by the Distribution Trustee. After all Disputed General Unsecured Claims have been either Allowed or Disallowed, any Cash remaining in the Disputed General Unsecured Claims Reserve shall become available for purposes of making Distributions to holders of Allowed General Unsecured Claims in accordance with the terms of the Plan.

Section 2.10 *Status of TER Trust.* Except as otherwise provided in the Plan, the Confirmation Order or this Agreement, the TER Trust will be the successor-in-interest to the Debtors with respect to any Avoidance Action, which was or could have been commenced by the Debtors prior to the Effective Date and shall be deemed substituted for the same as the party in any such litigation, and the Distribution Trustee, on behalf of the TER Trust, will be the representative of the Debtors' Estates and will have the rights and powers provided in the Bankruptcy Code in addition to any rights and powers granted in the Plan, the Confirmation Order and this Agreement. Except as otherwise provided in the Plan, the Confirmation Order or this Agreement, all Avoidance Actions are preserved and retained and may be enforced by the Distribution Trustee, on behalf of the TER Trust, as the representative of the Debtors' Estates. Subject to the terms of the Plan, the Confirmation Order, and this Agreement, after the Effective Date, only the Distribution Trustee shall have the authority to maintain, prosecute, settle, dismiss, abandon or otherwise dispose of the Avoidance Actions; provided that, for the avoidance of doubt and as provided for in the Plan, the Distribution Trustee shall not have any authority to exercise any rights of the Debtors or Reorganized Debtors to setoff or recoupment. Subject to the terms of the Plan, the Confirmation Order, and this Agreement, the Distribution Trustee may enter into and consummate settlements and compromises of the Avoidance Actions without notice to or approval by the Bankruptcy Court.

ARTICLE III

DISTRIBUTION TRUST ADVISORY BOARD

Section 3.1 *Distribution Trust Advisory Board.*

(a) There is hereby established and created a special advisory board (the "Distribution Trust Advisory Board") to monitor and oversee the Distribution Trustee, and the liquidation, distribution, and other activities required in connection with the management of the Trust Assets and the performance of the Distribution Trustee's obligations under the Plan, the Confirmation Order, and this Agreement. Subject to the provisions of this Agreement, the Distribution Trust Advisory Board shall be responsible for any termination and replacement of the Distribution Trustee pursuant to the terms of this Agreement.

(b) As of the Effective Date, the members of the Distribution Trust Advisory Board shall be: (i) ~~[*]~~the National Retirement Fund; (ii) ~~[*]~~UNITE HERE Local 54; and (iii) ~~[*]~~. Each member of the Distribution Trust Advisory Board may designate, in writing to the Distribution Trustee, one or more designees to fulfill such member's duties under this Agreement. Any or all members of the Distribution Trust Advisory Board may resign from the Distribution Trust Advisory Board at any time by written notice of resignation to the Distribution Trustee. A member of the Distribution Trust Advisory Board shall be deemed to be immediately removed as a member of the Distribution Trust Advisory Board in the event that (A) a

Distribution Trust Advisory Board member or the company for which it is a representative (i) sells, transfers, or assigns all of that member's rights to or interest in that member's General Unsecured Claim and no longer holds such General Unsecured Claim, or (ii) receives payment of its Allowed General Unsecured Claim in full; or (B) such Distribution Trust Advisory Board member (i) dies, resigns, or becomes incapacitated, or (ii) otherwise fails or refuses to serve. In the event of a Distribution Trust Advisory Board member's resignation or removal, the Distribution Trust shall have the right to nominate, and the remaining Distribution Trust Advisory Board members, if any, shall have the right to approve, ~~an additional~~ a substitute member of the Distribution Trust Advisory Board holding a General Unsecured Claim (unless all such General Unsecured Claims have been paid in full). In the event that there are no members of the Distribution Trust Advisory Board, the Distribution Trust may, but is not required to, appoint a Person to serve as a member of the Distribution Trust Advisory Board. There shall be no minimum number of members of the Distribution Trust Advisory Board to retain its function; provided, however, if there shall have been no Distribution Trust Advisory Board for a period of thirty (30) consecutive days, then the Distribution Trust may, during such vacancy, and thereafter, ignore any reference in the Plan, the Confirmation Order or this Agreement to the Distribution Trust Advisory Board, and all such references in the Plan, the Confirmation Order or this Agreement shall be null and void.

(c) The Distribution Trust shall provide the Distribution Trust Advisory Board members with such reports as the members shall reasonably request from time to time. Members of the Distribution Trust Advisory Board shall not be entitled to receive compensation for their service, but shall be entitled to reimbursement of reasonable out of pocket expenses (but not including attorneys' fees except as otherwise provided in this Agreement) incurred in connection with and related to serving on the Distribution Trust Advisory Board solely from the Trust Assets. The Distribution Trust Advisory Board may, but shall not be required to, adopt by-laws addressing the conduct of the Distribution Trust Advisory Board. In the event of a dispute or conflict with the Distribution Trust, the Distribution Trust Advisory Board shall have the right to retain counsel of its choice and the reasonable fees of such counsel shall be paid by the TER Trust. Any disputes with respect to such counsel fees shall be decided by the Bankruptcy Court through the filing of a motion on proper notice.

(d) In the event there is an act required to be taken pursuant to the terms of this Agreement, the Plan or the Confirmation Order by the Distribution Trust Advisory Board and the Distribution Trust Advisory Board cannot act because of a voting deadlock, the deadlock shall be broken by the vote of the Distribution Trust. If the Distribution Trust determines not to vote, the matter shall be decided by the Bankruptcy Court through the filing of a motion on proper notice.

Section 3.2 *Limitation of Distribution Trust Advisory Board Liability.*

Notwithstanding anything in this Agreement to the contrary, and without limiting anything in the Plan or the Confirmation Order to the contrary, neither the Distribution Trust Advisory Board, nor any member of the Distribution Trust Advisory Board, nor their respective firms, companies, affiliates, partners, officers, directors, members, employees, professionals, advisors, attorneys, financial advisors, or agents, nor any of such person's successors and assigns, shall incur any responsibility or liability by reason of any error of law or fact or of any matter or thing done or suffered or omitted to be done under or in connection with this Agreement or their participation

on the Distribution Trust Advisory Board, whether sounding in tort, contract, or otherwise, except for willful misconduct, gross negligence or fraud. The Distribution Trust Advisory Board may, in connection with the performance of the Distribution Trust Advisory Board's functions, and in the Distribution Trust Advisory Board's sole discretion, consult with counsel, accountants, and any other professionals, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith and in accordance with advice or opinions rendered by such counsel, accountants, or other professionals, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, the Distribution Trust Advisory Board shall be under no obligation to consult with counsel, accountants or other professionals, and the Distribution Trust Advisory Board's determinations to not do so shall not result in the imposition of liability on the Distribution Trust Advisory Board or the Distribution Trust Advisory Board's members or designees, unless such determination is based on willful misconduct, gross negligence or fraud.

Section 3.3 *Conflicts of Interest.*

(a) Distribution Trust Advisory Board members shall be required to disclose any actual and potential conflicts of interest in connection with any matter arising during the administration of the TER Trust. The existence of a conflict of interest shall be determined by the affirmative vote of a majority (in number) of members of the Distribution Trust Advisory Board, excluding the member(s) having the apparent conflict of interest. Any member with a conflict of interest will be recused from participation in meetings regarding, or from voting on, such matters.

(b) The Distribution Trustee shall disclose to the Distribution Trust Advisory Board any conflicts of interest that the Distribution Trustee has with respect to any matter arising during administration of the TER Trust. In the event that the Distribution Trustee cannot take any action by reason of an actual or potential conflict of interest, the Distribution Trust Advisory Board acting by majority (in number) shall (i) be authorized to take any such action(s) in the Distribution Trustee's place and stead, including without limitation the retention of professionals (which may include professionals retained by the Distribution Trustee) for the purpose of taking such actions, or (ii) appoint a disinterested person to take such action.

(c) The Bankruptcy Court shall hear and finally determine any disputes arising out of this Section.

ARTICLE IV

DISTRIBUTION TRUST BENEFICIARIES; DISTRIBUTIONS

Section 4.1 *Distribution Trust Beneficiaries.* The beneficiaries of the TER Trust shall be the Distribution Trust Beneficiaries (i.e., the holders of Allowed General Unsecured Claims).

Section 4.2 *Distribution Trust Interests.* The Distribution Trust Beneficiaries beneficial interests in the Trust Assets (i.e., the Distribution Trust Interests) shall consist of the Class A Distribution Trust Beneficial Interests and the Class B Distribution Trust Beneficial

Interests, as provided for in the Plan and the Confirmation Order. The ownership of a Distribution Trust Interest hereunder shall not entitle any Distribution Trust Beneficiary to any title in or to the Trust Assets or to any right to call for a partition or division of Trust Assets or to require an accounting.

Section 4.3 *No Suits by Distribution Trust Beneficiaries.* No Distribution Trust Beneficiary shall have any right by virtue of any provision of this Agreement to institute any action or proceeding, at law or in equity, against any Person, including the Distribution Trustee or Distribution Trust Advisory Board, with respect to the Trust Assets.

Section 4.4 *Recording of Distribution Trust Interests.* As soon as practical after the creation of the TER Trust, the Distribution Trustee or a duly authorized agent of the Distribution Trustee shall record all ownership of Distribution Trust Interests in a register (the “Register”) maintained by the Distribution Trustee (or a duly authorized agent of the Distribution Trustee) for such purpose.

Section 4.5 *Non-Transferability of Distribution Trust Interests.* The Distribution Trust Interests shall not be certificated and no physical certificates shall be issued representing the Distribution Trust Interests. The Distribution Trust Interests shall not be transferable, assignable, pledged, sold, or hypothecated, in whole or in part, except with respect to a transfer by will or under the laws of descent and distribution. Any such transfer, however, will not be effective until and unless the Distribution Trustee receives written notice of such transfer. Other than with respect to transfers by will or under the laws of descent and distribution, neither the Distribution Trustee nor any Persons affiliated with the TER Trust or the Debtors will take any action to cause, facilitate or encourage any trading in or transfer of the Distribution Trust Interests or any instrument or interest tied to the value of the Distribution Trust Interests. Notwithstanding the foregoing, there shall be no prohibition on holders of Distribution Trust Interests entering into contractual assignments of such interests with third parties, it being understood that the Distribution Trustee is not obligated to recognize such transaction.

Section 4.6 *Notice of Change of Address; Requirements for Distributions; Unclaimed Distributions.* Each Distribution Trust Beneficiary shall be responsible for providing the Distribution Trustee with written notice of any change in address. Except as otherwise provided in the Plan, the Confirmation Order, or this Agreement, the Distribution Trustee shall have no obligation to attempt to locate any Distribution Trust Beneficiary other than by reviewing the Debtors’ books and records or proofs of Claim filed against the Debtors, as reflected on the claims register maintained by the Claims Agent.

(a) Subject to Section 8.4 of the Plan and Bankruptcy Rule 9010, the Distribution Trustee shall make all Distributions to any Distribution Trust Beneficiary as and when required by the Plan at: (i) the address of such Distribution Trust Beneficiary on the books and records of the Debtors or their agents; or (ii) at the address in any written notice of address change delivered to the Distribution Trust Beneficiary, including any addresses included on any filed proofs of Claim or transfers of Claim filed pursuant to Bankruptcy Rule 3001. In the event that any Distribution to any Distribution Trust Beneficiary is returned as undeliverable, no Distribution to such Distribution Trust Beneficiary shall be made unless and until the

Distribution Trustee has been notified of the then current address of such Distribution Trust Beneficiary, at which time or as soon as reasonably practicable thereafter such Distribution shall be made to such Distribution Trust Beneficiary without interest, provided, however, such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration ~~of the later~~ of one ~~year from (x) the Effective Date and (y) the first Distribution Date after such Distribution Trust Beneficiary's General Unsecured Claim is first Allowed~~ hundred and eighty (180) days from the mailing of the final Distribution made by Distribution Trustee, and all such unclaimed property or interests in property shall revert to the TER Trust for purposes of making Distributions to other Distribution Trust Beneficiaries or as otherwise permitted under this Agreement.

(b) In connection with all Distributions, the Distribution Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Distributions shall be subject to any such withholding and reporting requirements. The Distribution Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of any Distribution to generate sufficient funds to pay applicable withholding taxes or establishing any other mechanisms the Distribution Trustee believes are reasonable and appropriate, including requiring a Distribution Trust Beneficiary to submit appropriate tax and withholding certifications. Prior to making any Distribution to a Distribution Trust Beneficiary, the Distribution Trustee shall require that the Distribution Trust Beneficiary furnish all documents required by applicable tax law or other government regulation as a condition to the making of a Distribution (the "Required Reporting Documents"). If (i) a Distribution Trust Beneficiary fails to furnish the Required Reporting Documents within ninety (90) days, or such longer period agreed to by the Distribution Trustee in writing, of a written request for the Required Reporting Documents, or (ii) a Distribution made to a Distribution Trust Beneficiary is not negotiated within ninety (90) days from the mailing of such Distribution, then (x) the Distribution Trustee ~~shall~~ may treat such Distribution (or Distribution to be made) as forfeited and return the funds to the TER Trust for purposes of making Distributions to other Distribution Trust Beneficiaries or as otherwise permitted under this Agreement, and ~~(y) thereafter~~ the Distribution Trust Beneficiary shall receive no further Distributions and shall forfeit its rights to collect any amounts under the Plan, the Confirmation Order and this Agreement.

Section 4.7 *Distributions.*

(a) In accordance with Section 5.4 of the Plan, on the later of the Effective Date and the first Distribution Date after the applicable General Unsecured Claim becomes an Allowed Claim, or as soon after such date as is reasonably practicable, subject to Section 7.10 of the Plan, if applicable, except to the extent that a holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Claims, such holder's Pro Rata Share of the Class A Distribution Trust Beneficial Interests or the Class B Distribution Trust Beneficial Interests as applicable based on whether or not each such holder validly exercised the Opt-Out Election; provided, however, that in no event shall such Distribution be in excess of 100% of the amount of such holder's Allowed General Unsecured Claim. Prior to making any ~~such~~ Distributions, the Distribution Trustee may retain such

amounts (i) as are reasonably necessary to meet contingent liabilities, to fund the Dispute General Unsecured Claims Reserve or other appropriate reserves, and to maintain the value of the Trust Assets during the liquidation, (ii) to pay reasonable expenses (including, but not limited to, the TER Trust Expenses and any taxes imposed on the TER Trust or in respect of the Trust Assets), and (iii) to satisfy other liabilities incurred by the TER Trust in accordance with the Plan and this Agreement.

(b) ~~At least annually, the~~The Distribution Trustee shall, at such time(s) determined by the Distribution Trustee (in consultation with the Distribution Trust Advisory Board) to be efficient and cost-effective, make Distributions to the Distribution Trust Beneficiaries of all Available Cash in accordance with this Agreement (including any Cash received from the Debtors on the Effective Date) except such amounts (i) that would be distributable to a holder of a Disputed Claim if such Disputed Claim had been Allowed prior to the time of such Distribution (but only until such Claim is resolved), (ii) that are reasonably necessary to meet contingent liabilities (including to fund the Disputed General Unsecured Claims Reserve) and to maintain the value of the assets of the Distribution Trust during liquidation, (iii) that are necessary to pay reasonable expenses (including any taxes imposed on the TER Trust or in respect of its assets), and (iv) that are necessary to satisfy other liabilities incurred by the TER Trust in accordance with the Plan, the Confirmation Order or this Agreement.

(c) On each Distribution Date (or such earlier date as determined by the Distribution Trustee, in its sole discretion but subject to this Section), the Distribution Trustee will make Distributions on account of any Disputed General Unsecured Claim that has become an Allowed Claim since the occurrence of the previous Distribution Date. The Distribution Trustee shall distribute in respect of such newly Allowed General Unsecured Claims the Distributions to which holders of such Allowed General Unsecured Claims would have been entitled under the Plan if such newly Allowed General Unsecured Claims were fully or partially Allowed, as the case may be, on the Effective Date, less direct and actual expenses, fees, or other direct costs of maintaining the Trust Assets on account of such Disputed General Unsecured Claims.

ARTICLE V

TAX AND SECURITIES MATTERS

Section 5.1 *Tax Treatment.* The Distribution Trust is established for the sole purpose of liquidating (including by prosecution and settlement of Avoidance Actions) the Trust Assets, in accordance with Treasury Regulation Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. All parties are required to treat the Distribution Trust as a liquidating trust, subject to contrary definitive guidance from the Internal Revenue Service. For U.S. federal income tax purposes, the Debtors, the Distribution Trustee and the Distribution Trust Beneficiaries will treat the transfer of the Distribution Trust Assets to the Distribution Trust as a transfer by the Debtors of the Distribution Trust Assets to the Distribution Trust Beneficiaries, followed by a transfer of such Distribution Trust Assets by the Distribution Trust Beneficiaries to the Distribution Trust. Accordingly, for U.S. federal income tax purposes, it is intended that the Distribution Trust shall be treated as one or more grantor

trusts, and the Distribution Trust Beneficiaries receiving Distribution Trust Interests shall be treated as the grantors and deemed owners of the Distribution Trust. The Distribution Trustee shall determine the fair market value of the Trust Assets as soon as possible after the Effective Date, and the Distribution Trust Beneficiaries and the Distribution Trustee shall consistently use this valuation for all U.S. federal income tax purposes, including for determining gain, loss, or tax basis.

Section 5.2 *Tax Basis.* For all federal income tax purposes, a Distribution shall be allocated first to the principal amount of the Allowed General Unsecured Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Allowed General Unsecured Claim, to such other amounts.

Section 5.3 *Required Reporting Documents.* The Distribution Trustee shall require any Distribution Trust Beneficiary entitled to a Distribution to furnish the Required Reporting Documents as a condition precedent to making a Distribution to any such Distribution Trust Beneficiary. The failure to provide the Required Reporting Documents will result in a forfeiture of Distributions by the respective Distribution Trust Beneficiary as provided for in the Plan, the Confirmation Order, and this Agreement.

Section 5.4 *Withholding Taxes.* Notwithstanding any other provision of the Plan, the Confirmation Order, or this Agreement: (i) each Distribution Trust Beneficiary that is to receive a Distribution shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations on account of such Distribution; and (ii) no Distributions shall be required to be made to or on behalf of such Distribution Trust Beneficiary unless and until such Distribution Trust Beneficiary has made arrangements satisfactory to the Distribution Trustee for the payment and satisfaction of such tax obligations or has, to the Distribution Trustee's satisfaction, established an exemption therefrom.

Section 5.5 *Securities Laws.* Under section 1145 of the Bankruptcy Code, the issuance of Distribution Trust Interests in the TER Trust under the Plan, the Confirmation Order, and this Agreement shall be exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration of securities. If the Distribution Trustee determines, with the advice of counsel, that the TER Trust is required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Distribution Trustee shall take any and all actions to comply with such reporting requirements and file periodic reports with the Securities and Exchange Commission.

Section 5.6 *Treatment of Disputed General Unsecured Claims Reserve.* The Distribution Trustee may, in the Distribution Trustee's sole discretion, determine the best way to report for tax purposes with respect to the Disputed General Unsecured Claims Reserve, including (i) filing a tax election to treat the Disputed General Unsecured Claims Reserve as a Disputed Ownership Fund ("DOF") within the meaning of Treasury Income Tax Regulation Section 1.468B-9 for federal income tax purposes rather than to tax such reserve as part of the TER Trust, or (ii) electing to report as a separate trust or sub-trust or other entity. If an election is made to report the Disputed General Unsecured Claims Reserve as a DOF, the TER Trust shall

comply with all federal and state tax reporting and tax compliance requirements of the DOF, including the filing of a separate federal tax return for the DOF and the payment of federal and/or state income tax due.

Section 5.7 *Tax Filings and Notices.* The Distribution Trustee shall prepare and file, or cause to be prepared and filed, all tax returns and other filings, including all federal, state and local tax returns for the TER Trust, as may be required under the Internal Revenue Code, the Plan, Confirmation Order, this Agreement or applicable law. In connection with the Distribution Trustee's performance of its duties pursuant to this Section, the Distribution Trustee may require any Distribution Trust Beneficiary to furnish to the Distribution Trustee its employer or taxpayer identification number as assigned by the Internal Revenue Service, together with such other information, returns or forms as the Distribution Trustee may determine are required, and the Distribution Trustee may condition any Distribution to any Distribution Trust Beneficiary upon such receipt of such identification number, any other information and returns and forms as are required for the Distribution Trustee to comply with Internal Revenue Service requirements. As provided in this Agreement and of the Plan, the failure to provide the Required Reporting Documents ~~will~~may result in a forfeiture of Distributions by the respective Distribution Trust Beneficiaries. The Distribution Trustee shall be permitted to communicate and deliver notices to Distribution Trust Beneficiaries contemplated by this Agreement electronically and/or make available such notices on a website to which Distribution Trust Beneficiaries have access, in the Distribution Trustee's sole discretion.

ARTICLE VI

POWERS OF AND LIMITATIONS ON THE DISTRIBUTION TRUSTEE

Section 6.1 *Powers of the Distribution Trustee.* In connection with the administration of the TER Trust, subject to the terms of the Plan, the Confirmation Order, and this Agreement, the Distribution Trustee is authorized to perform any and all acts necessary and desirable to accomplish the purposes of the TER Trust. On the Effective Date, except as otherwise provided in the Plan, the Confirmation Order or this Agreement, the Distribution Trustee shall succeed to all rights of the Debtors that constitute Distribution Trust Assets and shall be authorized to perform any and all acts necessary to protect, conserve and liquidate all such assets. Without limiting, but subject to, the foregoing, the Distribution Trustee shall be expressly authorized to:

- (a) hold, manage, convert to Cash, and distribute the Trust Assets;
- (b) object to, prosecute any objection to, request estimation of, compromise or settle General Unsecured Claims;
- (c) maintain, prosecute, settle, dismiss, abandon or otherwise dispose of the Avoidance Actions, provided that the Distribution Trustee may enter into and consummate settlements and compromises of the Avoidance Actions only as provided for herein;
- (d) retain such professionals and hire such employees as are necessary and appropriate in furtherance of its fiduciary obligations under the Plan, the Confirmation Order and

this Agreement and compensate such professionals and employees without further approval of or application to the Bankruptcy Court;

(e) open and maintain bank accounts in the name of the TER Trust, draw checks and drafts thereon on the sole signature of the Distribution Trustee, and terminate such accounts as the Distribution Trustee deems appropriate;

(f) execute any documents and pleadings, and take any other actions related to, or in connection with, the liquidation of the Trust Assets and the exercise of the Distribution Trustee's powers granted by the Plan, the Confirmation Order and this Agreement;

(g) protect and enforce the rights to the Trust Assets vested in the TER Trust by this Agreement by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(h) make any necessary filings in accordance with any applicable law, statute, or regulation, including, if necessary, appropriate tax returns;

(i) pay any expenses, satisfy any undisputed liabilities created, incurred, or assumed by the TER Trust, and make any other payments in connection with administering the TER Trust without further order of the Bankruptcy Court;

(j) invest Available Cash in accordance with this Agreement;

(k) utilize Trust Assets to obtain, purchase and maintain all appropriate insurance policies and pay all insurance premiums and costs the Distribution Trustee deems necessary or advisable to insure the acts and omissions of the Distribution Trustee, and if the Distribution Trust Advisory Board deems appropriate, the Distribution Trust Advisory Board;

(l) use, sell at public or private sale, assign, transfer, abandon or otherwise dispose of the Trust Assets or convert the same to Cash without Bankruptcy Court approval, but subject to the provisions of this Agreement; and

(m) to perform such other acts and undertake such other conduct as the Distribution Trustee believes, in exercising the Distribution Trustee's fiduciary duties under this Agreement, are necessary or advisable to carry out the purpose and intent of the TER Trust;

Section 6.2 *Abandonment.* If, in the Distribution Trustee's reasonable judgment any non-Cash Trust Assets cannot be sold in a commercially reasonable manner or the Distribution Trustee believes, in good faith, that such property has inconsequential value to the TER Trust or the Distribution Trust Beneficiaries, then the Distribution Trustee shall have the right to cause the TER Trust to abandon or otherwise dispose of such Trust Assets, including by donation of such Trust Assets to a charity selected by the Distribution Trustee.

Section 6.3 *Limitations on Distribution Trustee.* The Distribution Trustee shall not at any time, on behalf of the TER Trust or the Distribution Trust Beneficiaries, (i) enter into or engage in any trade or business, or (ii) take any actions that are not related, directly or

indirectly, to the purposes of this Agreement and the TER Trust or the administration or implementation of the terms hereof.

Section 6.4 *Holding and Investment of Available Cash.* The Distribution Trustee may invest any Available Cash pending the Distribution of such Cash in short-term, tax-exempt investments (“Permitted Investments”). Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Distribution Trustee of a private letter ruling if the Distribution Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Distribution Trustee), the Distribution Trustee shall (i) treat the Available Cash and other Trust Assets held by the Distribution Trustee as held in a single trust for federal income tax purposes in accordance with the trust provisions of the Internal Revenue Code (sections 641 *et seq.*), and (ii) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. The Distribution Trustee may invest the Available Cash only in those investments that a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury regulations or any Internal Revenue Service guidance. The Distribution Trustee shall not be liable in any way for any loss or other liability arising from any investment, or the sale or other disposition of any investment, made in accordance with this Section, except for any such loss or liability arising from the Distribution Trustee’s gross negligence, willful misconduct or fraud.

Section 6.5 *Payment of Expenses of the TER Trust.* In accordance with this Agreement, the Distribution Trustee shall pay solely from the Trust Assets all claims, fees, costs, expenses, charges, liabilities, and obligations of the TER Trust, including without limitation, all fees and expenses of the Distribution Trustee and its retained professionals and all expenses of the Distribution Trust Advisory Board, as contemplated by the Plan, the Confirmation Order, and this Agreement and as required by law (collectively, the “TER Trust Expenses”). For the avoidance of doubt, the Reorganized Debtors shall have no liability for any claims, fees, costs, expenses, charges, liabilities, and obligations of the TER Trust.

Section 6.6 *Application of Trust Assets.* The Liquidation Trustee shall apply the Trust Assets as follows: *first*, to pay, in full, all TER Trust Expenses; and *second*, after establishing the Disputed General Unsecured Claims Reserve, to make Distributions.

Section 6.7 *Non-Cash Trust Assets.* To the extent the Trust Assets consist of property other than Cash or Permitted Investments, the Distribution Trustee shall reduce such Trust Assets to Cash and Permitted Investments. The Distribution Trustee shall determine the preferred timing of reducing such Trust Assets to Cash and Permitted Investments.

Section 6.8 *Books and Records.* The Distribution Trustee shall maintain, in respect of the TER Trust and the Distribution Trust Beneficiaries, books and records relating to the assets and the income of the TER Trust and the payment of expenses of the TER Trust, in such detail and for such period of time as may be necessary to enable the Distribution Trustee to make full and proper reports in respect thereof in accordance with the provisions of this Agreement. The Distribution Trust Advisory Board shall have the right upon five (5) business days’ notice to the Distribution Trustee to inspect such books and records, subject to the Distribution Trustee’s right to deny access in a reasonable effort to preserve privileged or

confidential information. Any books and records determined by the Distribution Trustee, in the Distribution Trustee's sole discretion, not to be reasonably necessary for administering the TER Trust or for the Distribution Trustee's compliance with this Agreement may, to the extent not prohibited by applicable law, be destroyed.

Section 6.9 *Cash Payments.* All payments required to be made by the Distribution Trustee under the Plan, including Distributions and payments on account of TER Trust Expenses, shall be made, at the sole discretion of the Distribution Trustee, in either cash, check, or wire transfer and, if in check form, drawn on a domestic bank selected by the Distribution Trustee.

Section 6.10 *Settlement of Avoidance Actions.* The Distribution Trustee shall be authorized to compromise or settle the Avoidance Actions as follows:

(a) Without notice to any party, including the Distribution Trust Advisory Board, or approval of the Bankruptcy Court, where the amount demanded or asserted is equal to or less than \$250,000; and

(b) With written notice to the Distribution Trust Advisory Board, but without Bankruptcy Court approval, where the amount demanded or asserted is in excess of \$250,000. If the Distribution Trust Advisory Board members fail to respond to the Distribution Trustee within five (5) business days after notice to the Distribution Trust Advisory Board of a proposed compromise or settlement of an Avoidance Action, the Distribution Trust Advisory Board shall be deemed to have consented to such proposed compromise or settlement. If the Distribution Trust Advisory Board timely notifies the Distribution Trustee that the Distribution Trust Advisory Board does not consent to a proposed compromise or settlement of an Avoidance Action, the Distribution Trustee shall only be authorized to effectuate such proposed compromise or settlement upon filing a motion with notice to the Distribution Trust Advisory Board and entry of a Final Order by the Bankruptcy Court approving such proposed compromise or settlement.

Section 6.11 *Objections to Claims.* Pursuant to Section 9.1 of the Plan and subject to the terms of the Plan, the Confirmation Order, and this Agreement, only the Distribution Trustee shall have the authority to object to, prosecute any objection to, request estimation of, compromise or settle General Unsecured Claims. The Distribution Trustee shall be authorized to compromise or settle objections to General Unsecured Claims that were pending on the Effective Date or initiated after the Effective Date as follows:

(a) Without Bankruptcy Court approval or notice to any party, including the Distribution Trust Advisory Board, where the asserted amount of the General Unsecured Claim is either unliquidated (in whole or part) or equal to or less than \$250,000; and

(b) With written notice to the Distribution Trust Advisory Board, but without Bankruptcy Court approval, where the asserted amount of the General Unsecured Claim is in excess of \$250,000. If the Distribution Trust Advisory Board members fail to respond to the Distribution Trustee within five (5) business days after notice to the Distribution Trust Advisory Board of a proposed compromise or settlement of an objection to a General Unsecured Claim, the

Distribution Trust Advisory Board shall be deemed to have consented to such proposed compromise or settlement. If the Distribution Trust Advisory Board timely notifies the Distribution Trustee that the Distribution Trust Advisory Board does not consent to a proposed compromise or settlement of an objection to a General Unsecured Claim, the Distribution Trustee shall only be authorized to effectuate such proposed compromise or settlement upon filing a motion with notice to the Distribution Trust Advisory Board and entry of a Final Order by the Bankruptcy Court approving such proposed compromise or settlement.

Section 6.12 *Estimation of Claims.* The Distribution Trustee may request that the Bankruptcy Court enter an Estimation Order with respect to any General Unsecured Claim, pursuant to section 502(c) of the Bankruptcy Code, for purposes of determining the Allowed amount of such General Unsecured Claim regardless of whether any Person has previously objected to such General Unsecured Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any General Unsecured Claim for purposes of determining the allowed amount of such General Unsecured Claim at any time.

Section 6.13 *Sale of Trust Assets.* The Distribution Trustee may sell Trust Assets as follows:

(a) Without Bankruptcy Court approval or notice to any party, including the Distribution Trust Advisory Board, where the sales price is equal to or less than \$50,000;

(b) With written notice to the Distribution Trust Advisory Board, but without Bankruptcy Court approval, where the sales price is in excess of ~~\$100,000~~ \$50,000. If the Distribution Trust Advisory Board members fail to respond to the Distribution Trustee within five (5) business days after notice to the Distribution Trust Advisory Board of a proposed sale, the Distribution Trust Advisory Board shall be deemed to have consented to such proposed sale. If the Distribution Trust Advisory Board timely notifies the Distribution Trustee that the Distribution Trust Advisory Board does not consent to a proposed sale, the Distribution Trustee shall only be authorized to effectuate such proposed sale upon filing a motion with notice to the Distribution Trust Advisory Board and entry of a Final Order by the Bankruptcy Court approving such proposed sale.

Section 6.14 *Minimum Distributions.* In the event that any final Distribution to a Distribution Trust Beneficiary is less than ~~\$50.00~~ \$100.00 in Cash, the Distribution Trustee shall be authorized, but not required, to tender such final Distribution (together with any other such final Distributions) to a charity selected by the Distribution Trustee.

Section 6.15 *Fractional Cents.* Notwithstanding any other provision of this Agreement to the contrary, if it would be administratively burdensome to do so, then the Distribution Trustee shall have the right, at the sole discretion of the Distribution Trustee, not to make payment of fractions of cents for Distributions, in which case whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent.

ARTICLE VII

CONCERNING THE DISTRIBUTION TRUSTEE

Section 7.1 *Generally.* The Distribution Trustee accepts and undertakes to discharge the TER Trust created by this Agreement upon the terms and conditions hereof. The Distribution Trustee shall exercise such of the rights and powers vested in the Distribution Trustee by this Agreement, and use the same degree of care and skill in the Distribution Trustee's exercise as a prudent person would exercise or use under the circumstances in the conduct of Distribution Trustee's own affairs. No provision of this Agreement shall be construed to relieve the Distribution Trustee or the Distribution Trustee's employees, affiliates, officers, directors, principals, attorneys, accountants, experts, and agents (collectively with the Distribution Trustee, the "Trustee Parties") from liability for that Trustee Party's own gross negligence, willful misconduct or fraud, except that:

(a) the Trustee Parties shall not be liable for any action taken in good faith in reliance upon the advice of attorneys, accountants, and other professionals;

(b) the Trustee Parties undertake to perform such duties and only such duties as are specifically set forth in the Plan, the Confirmation Order, or this Agreement, and to the fullest extent permitted by applicable law no implied covenants or obligations shall be read into this Agreement against the Trustee Parties;

(c) the Trustee Parties shall not be liable for any error of judgment made in good faith; and

(d) the Trustee Parties shall not be liable with respect to any action taken, suffered or omitted to be taken by the Trustee Parties in good faith in accordance with the direction of the Distribution Trust Advisory Board.

Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee Parties shall be subject to the provisions of this Section.

Section 7.2 *Certain Rights of the Distribution Trustee.* Except as otherwise provided in the Plan, the Confirmation Order, or this Agreement:

(a) the Distribution Trustee may conclusively rely and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the Distribution Trustee to be genuine and to have been signed or presented by the proper party or parties;

(b) the Distribution Trustee may consult with counsel, and the advice or opinion of counsel shall be full and complete protection to the Distribution Trustee in respect of any action taken, suffered, or omitted by the Distribution Trustee in good faith and in reliance on, or in accordance with, such advice or opinion;

(c) persons dealing with the Distribution Trustee shall look only to the Trust Assets to satisfy any liability incurred by the Distribution Trustee to such person in carrying out the terms of this Agreement and the Distribution Trustee shall have no personal or individual obligation to satisfy any such liability;

(d) whenever, in the administration of this Agreement, the Distribution Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Distribution Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on the part of the Distribution Trustee, rely upon an opinion of counsel or certificate furnished to the Distribution Trustee by or on behalf of the Distribution Trust Beneficiaries or the Distribution Trust Advisory Board;

(e) the Distribution Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, or other paper or document, but the Distribution Trustee, in the Distribution Trustee's discretion, may make such further inquiry or investigation into such facts or matters as the Distribution Trustee may see fit, and, if the Distribution Trustee shall determine to make such further inquiry or investigation, the Distribution Trustee shall be entitled to examine the books, records and premises of the relevant person or entity, personally or by agent or attorney; and

(f) the Distribution Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Distribution Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by the Distribution Trustee hereunder.

Section 7.3 *Liability of Third Persons.* Except with regard to Trust Assets erroneously or improperly received or held by such Distribution Trust Beneficiary, no Distribution Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract, or otherwise, to any Person in connection with the Trust Assets or the affairs of the TER Trust, except for such Distribution Trust Beneficiary's own gross negligence, ~~wilful~~willful misconduct, or fraud.

Section 7.4 *Indemnity.* The Trustee Parties shall be indemnified by the TER Trust from any losses, claims, damages, liabilities, or expenses (including reasonable attorneys' fees, disbursements, and related expenses) that such Trustee Parties may incur or to which such Trustee Parties may become subject in connection with any action, suit, proceeding, or investigation brought by or threatened against such Trustee Parties on account of the acts or omissions of such Trustee Parties in connection with the TER Trust or this Agreement; provided, however, that the TER Trust shall not be liable to indemnify the Trustee Parties for any such Trustee Parties' acts or omissions constituting gross negligence, willful misconduct or fraud; and, provided further, that nothing in this Section shall be deemed to restrict any Trustee Parties' rights to receive indemnity based on acts or omissions taken in accordance with the provisions of Sections 7.1 and 7.2 of this Agreement, as applicable. The Distribution Trust Advisory Board shall approve any indemnification payments under this Section and the TER Trust shall reasonably promptly pay all amounts subject to indemnification after submission of invoices for

such amounts. For the avoidance of doubt, the Reorganized Debtors shall have no liability for any indemnification obligations of the TER Trust.

Section 7.5 *Compensation and Reimbursement.*

(a) The Distribution Trustee shall be entitled to, payable solely from the Trust Assets, (i) compensation at the ~~normal and customary hourly rates of [*] and other employees of [*], as set from time to time, for services rendered as a trustee, which, as of the date hereof is a blended hourly rate of \$[*]~~ discounted hourly rate of \$495, subject to such other terms as may be agreed by the Distribution Trustee and the Distribution Trust Advisory Board; and (ii) reimbursement of actual, reasonable and necessary out-of-pocket expenses from time to time incurred by the Distribution Trustee and ~~[*]~~ in rendering services as Distribution Trustee. For the avoidance of doubt, the Reorganized Debtors shall have no liability for such compensation or expenses.

(b) The Distribution Trustee may retain counsel, accountants, or other professionals, including, but not limited to, those previously retained by the Debtors or the Creditors' Committee, without further approval by the Bankruptcy Court, on a contingency fee basis or on such other terms, including but not limited to, terms requiring payment of fees at hourly rates, as the Distribution Trustee determines to be reasonable. The reasonable fees and expenses of any such professionals retained by the Distribution Trustee shall be (i) deemed an expense of the TER Trust, and (ii) paid by the TER Trust solely from Trust Assets in accordance with any applicable retention agreements without any requirement of approval by or notice the Bankruptcy Court of the retention, fees or expenses payable to such professionals. For the avoidance of doubt, the Reorganized Debtors shall have no liability for such fees or expenses.

Section 7.6 *Exculpatory Provisions.*

(a) If (i) in performing the Distribution Trustee's duties under this Agreement the Distribution Trustee is required to decide between alternative courses of action, or (ii) the Distribution Trustee is unsure of the application of any provision of this Agreement, then the Distribution Trustee may seek direction and instruction from the Distribution Trust Advisory Board with respect to any such course of action. If the Distribution Trustee does not receive such written direction or instruction within five (5) Business Days after the Distribution Trustee requested direction and instruction, the Distribution Trustee may, but shall be under no duty to, take or refrain from taking such action not inconsistent with the Plan, the Confirmation Order, or this Agreement as the Distribution Trustee shall deem advisable.

(b) The Distribution Trustee shall not have any obligation, responsibility or liability for: (i) the validity, execution (except the Distribution Trustee's own execution), enforceability, legality, or sufficiency of this Agreement; and (ii) taking any action under this Agreement, if taking such action (x) would subject the Distribution Trustee to a tax in any jurisdiction where the TER Trust is not then subject to a tax, or (y) would require the TER Trust to qualify to do business in any jurisdiction where it is not then so qualified, unless the Distribution Trustee receives an indemnity satisfactory to the Distribution Trustee against such tax (or equivalent liability), or any liability resulting from such qualification.

ARTICLE VIII

REMOVAL OF DISTRIBUTION TRUSTEE; SUCCESSOR TRUSTEES

Section 8.1 *Resignation or Removal.* The Distribution Trustee may resign and be discharged by giving at least 60 days prior written notice thereof to the Distribution Trust Advisory Board or, in the event the Distribution Trust Advisory Board is no longer in existence, to each Distribution Trust Beneficiary. Such resignation shall become effective on the later to occur of (i) the date specified in such written notice and (ii) the effective date of the appointment of a successor Distribution Trustee in accordance with Section 8.3 of this Agreement and such successor's acceptance of such appointment.

Section 8.2 *Removal.* After the payment of all outstanding fees and expenses of the Distribution Trustee and the professionals retained by the TER Trust through such date, the Distribution Trustee may be removed, with or without cause, by the Distribution Trust Advisory Board by vote of at least a majority (in number) of the members of the Distribution Trust Advisory Board or, in the event the Distribution Trust Advisory Board is no longer in existence, by the written consent of at least a majority (in number) of the Distribution Trust Beneficiaries whose General Unsecured Claims have not been fully satisfied prior to the date thereof. Such removal shall become effective on the later to occur of (i) the date such action is taken by the Distribution Trust Advisory Board or the requisite Distribution Trust Beneficiaries, as the case may be, and (ii) the effective date of the appointment of a successor Distribution Trustee in accordance with Section 8.3 of this Agreement and such successor's acceptance of such appointment.

Section 8.3 *Appointment of Successor.* In the event of the death, resignation, or removal of the Distribution Trustee, a vacancy shall be deemed to exist and a successor Distribution Trustee shall be appointed by a vote of at least a majority (in number) of the members of the Distribution Trust Advisory Board or, in the event the Distribution Trust Advisory Board is no longer in existence, by the vote of at least a majority (in number) of the Distribution Trust Beneficiaries whose General Unsecured Claims have not been fully satisfied prior to the date thereof, and such appointment shall be subject to Bankruptcy Court approval upon motion to the Bankruptcy Court.

Section 8.4 *Acceptance of Appointment by Successor Distribution Trustee.* The death, resignation, or removal of the Distribution Trustee shall not operate to terminate the TER Trust created by this Agreement or to revoke any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the Distribution Trustee. Any successor Distribution Trustee appointed hereunder shall execute an instrument accepting such successor Distribution Trustee's appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing, and, in case of the Distribution Trustee's resignation or removal, to the Distribution Trustee who resigned or was removed. Upon Bankruptcy Court approval under Section 8.3 of this Agreement, thereupon, such successor Distribution Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion, and privileges of the predecessor Distribution Trustee with like effect as if originally named Distribution Trustee.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1 *Construction.* This Agreement and the TER Trust created hereby shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to choice of law principles. The Distribution Trustee's interpretation of the provisions of this Agreement shall be deemed conclusive in the absence of a contrary interpretation of a court of competent jurisdiction.

Section 9.2 *Jurisdiction.* The parties agree that the Bankruptcy Court shall have jurisdiction to determine all controversies and disputes arising under or in connection with this Agreement.

Section 9.3 *Severability.* In the event any provision of this Agreement shall be determined by Final Order of a court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 9.4 *Notices.* Any notice, consent, approval or other communication required or permitted to be given in accordance with this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by facsimile or mailed by first class mail to the following address (it being understood that any party may change its address by similar written notice to the other party):

- (i) if to the Distribution Trustee:

[*]
[The Law Office of Nathan A. Schultz, P.C.](#)
[Attn: Nathan A. Schultz, Esq.](#)
[10621 Craig Road](#)
[Traverse City, MI 49686](#)

With a copy to:

[*][Gibbon PC](#)
[Attn: Natasha M. Songonuga, Esq.](#)
[1000 N. West Street, Suite 1200](#)
[Wilmington, DE 19801-1058](#)

- (ii) if to the Reorganized Debtors:

[*]

With a copy to:

[*]

Section 9.5 *Entire Agreement.* This Agreement, including the recitals hereof (with the Plan and the Confirmation Order), constitutes the entire agreement by and among the parties with respect to the subject matter hereof, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan, and in the Confirmation Order. This Agreement (together with the Plan and the Confirmation Order) supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, if any, of the parties hereto relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, nothing in this Agreement is intended or shall be construed to confer upon or to give any Person other than the parties hereto and the Distribution Trust Beneficiaries any rights or remedies under or by reason of this Agreement. This Agreement shall be binding on the parties hereto and their successors, including any chapter 11 trustee or chapter 7 trustee appointed in the Chapter 11 Cases.

Section 9.6 *Relationship Created.* Nothing contained herein shall be construed to constitute any relationship created by this Agreement as an association, partnership, or joint venture of any kind.

Section 9.7 *Effective Date.* This Agreement shall become effective as of the Effective Date.

Section 9.8 *Amendment.* This Agreement may from time to time be amended, supplemented or modified by the Distribution Trustee, but only with (i) the approval of the Bankruptcy Court through the filing of a motion on proper notice (including written notice to the Reorganized Debtors and the members of the Distribution Trust Advisory Board) or (ii) the written consent of the Reorganized Debtors and of at least a majority (in number) of the members of the Distribution Trust Advisory Board; provided that upon seven (7) business days advance written notice to the Reorganized Debtors, consent of the Reorganized Debtors shall not be required with respect to any amendment, supplement or modification that does not adversely impact the Reorganized Debtors.

Section 9.9 *Headings.* The headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.

Section 9.10 *Counterparts.* This Agreement may be executed in facsimile and in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 9.11 *No Bond.* The Distribution Trustee shall serve without a bond.

Section 9.12 *Relationship to the Plan and the Confirmation Order.* The principal purpose of this Agreement is to aid in the implementation of the Plan and the Confirmation Order, and therefore this Agreement incorporates the provisions of the Plan and the Confirmation Order. To that end, the Distribution Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan, the Confirmation Order, and this Agreement, and to seek any orders from the Bankruptcy Court in

furtherance of the implementation of the Plan, the Confirmation Order, and this Agreement. Section 14.12 of the Plan and the Confirmation Order shall govern any conflict or inconsistency between or among the Plan, the Confirmation Order, the Disclosure Statement, the Plan Documents, any exhibit to the Plan or any other instrument or document created or executed pursuant to the Plan, including, without limitation, this Agreement.

Section 9.13 *Confidentiality*. The Distribution Trustee and the members of the Distribution Trust Advisory Board shall, during the period that such Distribution Trustee or Distribution Trust Advisory Board member serves as Distribution Trustee or Distribution Trust Advisory Board member under this Agreement and for a period of twelve (12) months following the termination of this Agreement or such Distribution Trustee's or Distribution Trust Advisory Board member's removal or resignation hereunder, hold strictly confidential and not use for personal gain, any non-public information of or pertaining to any entity to which any of the Trust Assets relates or of which such Distribution Trustee has become aware in that Distribution Trustee's capacity as Distribution Trustee, except as otherwise required by law. In furtherance of section 7.11(i) of the Plan, the Distribution Trustee and the members of the Distribution Trust Advisory Board shall enter into such additional confidentiality protections as may be reasonably requested by the Reorganized Debtors.

Section 9.14 *Cooperation*. The Reorganized Debtors shall preserve all records and documents (including electronic records or documents) related to the Distribution Trust Assets for a period of three (3) years after the Effective Date. Upon written request from the Distribution Trustee, the Reorganized Debtors shall provide commercially reasonable cooperation, and shall supply, at the Distribution Trust's sole expense and subject to confidentiality protections reasonably acceptable to the Reorganized Debtors, all reasonable information, records, and documentation, to the Distribution Trustee required to promptly, diligently and effectively evaluate, file, prosecute and settle the Avoidance Actions and prosecute objections to, or otherwise reconcile, General Unsecured Claims. Additionally, upon request by the Distribution Trustee, the Reorganized Debtors shall use commercially reasonable efforts to make available personnel with information relevant to the Avoidance Actions and General Unsecured Claims.

Signature page follows

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

DISTRIBUTION TRUSTEE

By: _____

Name: [Nathan A. Schultz](#)

~~Title:-~~

TRUMP ENTERTAINMENT RESORTS, INC., on behalf of itself and the other Debtors

By: _____

Name: Robert Griffin

Title: Chief Executive Officer

EXHIBIT B

A. Board of Directors of Reorganized Debtors

As of the Effective Date, the board of directors of the Reorganized Debtors will consist of the following individuals:

<u>Patricia Agnello</u>
<u>Denise Barton</u>
<u>SungHwan Cho</u>
<u>Hunter Gary</u>
<u>Courtney Mather</u>
<u>Peter Shea</u>
<u>Jack Wasserman</u>

Patricia Agnello is the Chief Human Resources Officer & Employment Counsel for Insight Portfolio Group LLC (formerly Icahn Sourcing LLC), an entity formed and controlled by Carl C. Icahn. In this capacity, Ms. Agnello provides Human Resources guidance to a group of entities which Mr. Icahn either owns or otherwise has a relationship. Previously, Ms. Agnello held senior Human Resources positions at Integro Insurance Brokers, North Fork Bank, Marsh & McLennan Companies, Inc., PriceWaterhouseCoopers, and the Exxon Corporation. Ms. Agnello serves on the Board of Directors and Compensation Committee of PSC Metals, Inc., is on the Group Advisory Board of Blue Cross and Blue Shield of Alabama, and has served as an Arbitrator for the Civil Court of the City of New York. Ms. Agnello is an Associate Adjunct Professor of Professional Responsibility at NYU's Stern School of Business. Previously, Ms. Agnello taught Human Resources and business courses at Baruch and Marymount Manhattan Colleges. Ms. Agnello has a J.D. from St. John's University School of Law and is licensed to practice law in New York, Connecticut, and Washington, D.C. Ms. Agnello also holds an MBA in Human Resources Management from Adelphi University and a BA in Liberal Arts from Marymount Manhattan College.

Denise Barton has served as Chief Financial Officer for Land Holdings I, LLC, the developer of a casino hotel resort in D'Iberville, Mississippi, since March 2012. From March 2009 to March 2012, Ms. Barton was an independent consultant, providing services on a number of projects, including preparation and review of small-cap company financial statements, fraud investigations and due diligence projects. Ms. Barton previously served as the Senior Vice President, Chief Financial Officer, Treasurer and Secretary of American Entertainment Properties Corp., American Casino & Entertainment Properties Finance Corp. and American Casino & Entertainment Properties LLC, each of which was controlled by affiliates of Carl C. Icahn at the time, from inception through September 2008. Ms. Barton was also Senior Vice President and Chief Financial Officer of each of the Stratosphere, Arizona Charlie's Decatur and Arizona Charlie's Boulder, each of which was controlled by affiliates of Carl C. Icahn, from February 2003 to February 2008. From December 2003 to December 2008, Ms. Barton served as Vice President, Chief Financial Officer and Principal Accounting Officer of GB Holdings, Inc., an entity controlled by

affiliates of Carl C. Icahn that filed for Chapter 11 bankruptcy protection on September 29, 2005. From December 2003 to November 2006, she served as Vice President, Chief Financial Officer and Principal Accounting Officer of Atlantic Coast Entertainment Holdings, Inc., an entity controlled by affiliates of Carl C. Icahn. From February 1999 to June 2002, she served as Chief Financial Officer for Lowestfare.com, a travel company controlled by affiliates of Carl C. Icahn. Ms. Barton was employed by KPMG LLP, certified public accountants, from January 1990 to February 1999. Ms. Barton is a certified public accountant. Ms. Barton has been licensed by the Nevada State Gaming Control Commission.

SungHwan Cho has served as Chief Financial Officer of Icahn Enterprises L.P., a diversified holding company engaged in a variety of businesses, including investment, automotive, energy, gaming, railcar, food packaging, metals, real estate and home fashion, since March 2012. Prior to that time, he was Senior Vice President and previously Portfolio Company Associate at Icahn Enterprises since October 2006. Mr. Cho has been a director of: American Railcar Leasing LLC, a lessor and seller of specialized railroad tank and covered hopper railcars, since September 2013; CVR Refining, LP, an independent downstream energy limited partnership, since January 2013; Icahn Enterprises L.P., since September 2012; CVR Energy, Inc., a diversified holding company primarily engaged in the petroleum refining and nitrogen fertilizer manufacturing industries, since May 2012; CVR Partners LP, a nitrogen fertilizer company, since May 2012; Federal-Mogul Corporation, a supplier of automotive powertrain and safety components, since May 2012; XO Holdings, a competitive provider of telecom services, since August 2011; American Railcar Industries, Inc., a railcar manufacturing company, since June 2011 (and has been Chairman of the Board of American Railcar Industries since July 2014); WestPoint Home LLC, a home textiles manufacturer, since January 2008; PSC Metals Inc., a metal recycling company, since December 2006; and Viskase Companies, Inc., a meat casing company, since November 2006. Mr. Cho was previously a director of Take-Two Interactive Software Inc., a publisher of interactive entertainment products, from April 2010 to November 2013. American Railcar Leasing, CVR Refining, Icahn Enterprises, CVR Energy, CVR Partners, Federal-Mogul, XO Holdings, American Railcar Industries, WestPoint Home, PSC Metals and Viskase Companies each are indirectly controlled by Carl C. Icahn. Mr. Icahn also had a non-controlling interest in Take-Two Interactive Software through the ownership of securities. Mr. Cho received a B.S. in Computer Science from Stanford University and an MBA from New York University, Stern School of Business.

Jack Wasserman
Peter Shea
Denise Barton
Courtney Mather
Hunter Gary
SungHwan Cho
Patricia Agnello

Hunter C. Gary has served as Senior Vice President of Icahn Enterprises L.P. (a diversified holding company engaged in a variety of businesses, including investment, automotive,

energy, gaming, railcar, food packaging, metals, real estate and home fashion) since November 2010. Prior to that time, Mr. Gary has been employed by Icahn Associates Corporation, an affiliate of Icahn Enterprises L.P., in various roles since June 2003, most recently as the Chief Operating Officer of Icahn Sourcing LLC. Mr. Gary has been a director of: Herbalife Ltd., a nutrition company, since April 2014; Cadus Corporation, a company engaged in the acquisition of real estate for renovation or construction and resale, since February 2014, and as President and Chief Executive Officer of Cadus since March 2014; Federal-Mogul Corporation, a supplier of automotive powertrain and safety components, since October 2012; Viskase Companies Inc., a meat casing company, since August 2012; PSC Metals Inc., a metal recycling company, since May 2012; XO Holdings, a competitive provider of telecom services, since September 2011; Tropicana Entertainment Inc., a company that is primarily engaged in the business of owning and operating casinos and resorts, since March 2010; Tropicana Entertainment Cayman Holdings Co. Ltd. since January 2011; American Railcar Industries, Inc., a railcar manufacturing company, since January 2008; Voltari Corporation, a mobile data services provider, since October 2007; and WestPoint Home LLC, a home textiles manufacturer, since June 2007. Federal-Mogul, Viskase Companies, PSC Metals, XO Holdings, Tropicana Entertainment, American Railcar Industries and WestPoint Home each are indirectly controlled by Carl C. Icahn. Mr. Icahn also has non-controlling interests in Cadus, Herbalife and Voltari through the ownership of securities. Mr. Gary is married to Mr. Carl Icahn's wife's daughter. Mr. Gary received his B.S. with senior honors from Georgetown University as well as a certificate of executive development from Columbia Graduate School of Business.

Courtney Mather has served as a Managing Director of Icahn Capital LP, the entity through which Carl C. Icahn manages investment funds, since April 2014. Mr. Mather is responsible for identifying, analyzing, and monitoring investment opportunities and portfolio companies for Icahn Capital. Prior to joining Icahn Capital, Mr. Mather was Managing Director at Goldman Sachs & Co, where he served in various investment roles from 1998 to 2012. He was a director of the Loan Syndications and Trading Association (LSTA), an organization that develops policies and market practices with firms transacting in loans and related claims, in 2011. Mr. Mather has been a director of: American Railcar Industries, Inc., a railcar manufacturing company, since July 2014; CVR Refining, LP, an independent downstream energy limited partnership, since May 2014; and CVR Energy, Inc., a diversified holding company primarily engaged in the petroleum refining and nitrogen fertilizer manufacturing industries, since May 2014. American Railcar Industries, CVR Refining and CVR Energy are each indirectly controlled by Carl C. Icahn. Mr. Mather received a B.A. in Political Science from Rutgers College and attended the United States Naval Academy.

Peter K. Shea is a private equity advisor. He is a Director of Viskase Companies (since 2006), CVR Partners (since 2014), Sitel Worldwide (since 2012) and Give and Go Prepared Foods (since 2012). Viskase Companies and CVR Partners are each indirectly controlled by Carl C. Icahn. Mr. Shea is also Chairman of each of Feradyne Outdoors (since 2014) and Teasedale Foods (since 2014). Mr. Shea was previously a Director of Hennessy Capital (2014 to 2015) and CTI Foods (2010 to 2013). He was President of Icahn Enterprises L.P. and Head of Portfolio Company Operations for Icahn Associates from 2006 to 2009. In

connection therewith, Mr. Shea previously served as a director from 2006 to 2009 of each of the following companies, each of which Carl C. Icahn has a controlling interest in through the ownership of securities: XO Holdings, American Rail Car Industries, and WestPoint International Inc. Mr. Shea has been an independent consultant to various companies and an advisor to private equity firms since 2002. Mr. Shea also has served as a director, Executive Chairman, Chairman, Chief Executive Officer, President or Managing Director of a variety of companies, including, H.J. Heinz Company in Europe, Specialty Meats Group, John Morrell & Company, United Brands Company, Grupo Polymer United, Premium Standard Farms and New Energy Company of Indiana. Mr. Shea holds a BBA from Iona College and an MBA from University of Southern California.

Jack Wasserman has practiced law as a solo practitioner since September 2001. From 1966 until September 2001, he was a senior partner with the law firm of Wasserman, Schneider, Babb & Reed and its predecessors, New York, NY. Mr. Wasserman also serves as a director of Cadus Corporation (in which Carl C. Icahn has a non-controlling interest), as a director of Icahn Enterprises G.P., Inc., the general partner of Icahn Enterprises L.P., and as a director of The Wendy's Company. Mr. Wasserman's extensive law practice and service on boards of directors of numerous public companies have involved him in a wide range of business activities for domestic and foreign companies. Mr. Wasserman's law firm concentrated its practice in international trade and related corporate matters, primarily for Fortune 500-type companies operating in a broad range of industries, and he has substantial experience in trans-border transactions. His experience includes currently serving as Chairman of the audit committee of the board of directors of Icahn Enterprises, a diversified holding company engaged in a variety of business segments. In 2007, Mr. Wasserman received a professional Certificate in Financial Analysis from New York University. As a result of his education and professional experience, Mr. Wasserman is proficient in understanding financial statements and provides valuable knowledge and experience in evaluating business strategies and advising managements on complex business issues and transactions. Mr. Wasserman has served on numerous not-for-profit boards of directors.

B. Officers of Reorganized Debtors

As of the Effective Date, the officers of the Reorganized Debtors will consist of the following individuals, to the extent they continue to serve as officers immediately prior to the Effective Date:¹

Officer	Title
Robert Griffin	Chief Executive Officer
Dan McFadden	Chief Financial Officer
Mike Mellon	Senior Vice President of Hotel Operations
Kathleen McSweeney	Senior Vice President of Marketing
Mario DiGuiseppe	General Manager of Trump Plaza
Mimi Jennings-Benvenuti	Director of Finance
Judy Fisher	Executive Director of Human Resources

¹ The officers employed by the Reorganized Debtors as of and after the Effective Date will continue to receive the same base salaries and substantially the same other compensation that those officers received during the Chapter 11 Cases and will have such other benefits and other terms and conditions of employment as shall be agreed between such officers and the representatives of the holders of First Lien Credit Agreement Claims.