

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
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TRUMP ENTERTAINMENT RESORTS, : Case No. 14-12103 (KG)
INC., et al.,<sup>1</sup> :
: (Jointly Administered)
Debtors. :
:
: **Hearing Date: April 22, 2015 at 10:00 a.m. (ET)**
: **Objection Deadline: April 15, 2015 at 4:00 p.m. (ET)**
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**DEBTORS’ MOTION FOR ENTRY OF AN ORDER, PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, APPROVING THE RELEASE AND SETTLEMENT AGREEMENT BY AND AMONG THE DEBTORS AND THERMAL ENERGY LIMITED PARTNERSHIP I**

Trump Entertainment Resorts, Inc. and its above-captioned affiliated debtors and debtors in possession (each, a “**Debtor**,” and collectively, the “**Debtors**”) hereby submit this motion (this “**Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”), and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), approving that certain *Release and Settlement Agreement By and Among the Debtors and Thermal Energy Limited Partnership I* (the “**Settlement Agreement**”), a copy of which is attached as Exhibit 1 to the Proposed Order. In support of this Motion, the Debtors respectfully state as follows:

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

### **Jurisdiction and Venue**

1. This court (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019.

### **Background**

#### **A. General Background**

2. On September 9, 2014 (the “**Petition Date**”), the Debtors each filed a voluntary petition in the Court for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned chapter 11 cases (collectively, the “**Chapter 11 Cases**”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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

4. On March 12, 2015, the Court entered an order [Docket No. 1123] (the “**Confirmation Order**”) confirming the *Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code As Modified* (as may be amended, modified, or

supplemented from time to time, the “**Plan**,” a copy of which is attached to the Confirmation Order as Exhibit A).<sup>2</sup> The Effective Date has not yet occurred.

**B. Energy Services Agreements**

5. Prior to the Petition Date, (i) Debtor Trump Entertainment Resorts Holdings, L.P. (“**TER Holdings**”) and Thermal Energy Limited Partnership I (“**Thermal Energy**,” and together with the Debtors, the “**Parties**”), through their respective predecessors in interest, entered into that certain Thermal Energy Service Agreement, dated as of June 30, 1996 (as may have been amended, modified, extended or supplemented from time to time, the “**Taj Mahal Energy Services Agreement**”), and (ii) TER Holdings and Thermal Energy, through their respective predecessors in interest, entered into that certain Thermal Energy Service Agreement, dated as of September 26, 1996 (as may have been amended, modified, extended or supplemented from time to time, the “**Plaza Energy Services Agreement**,” and together with the Taj Mahal Energy Services Agreement, the “**Energy Services Agreements**”). As a result of certain extension agreements, the terms of the Taj Mahal Energy Services Agreement and the Plaza Energy Services Agreement have been extended until the end of December 2027 and October 2036, respectively. Pursuant to the Energy Services Agreements, Thermal Energy sells to TER Holdings steam and chilled water for the Trump Taj Mahal Casino Resort (the “**Taj Mahal**”), in the case of the Taj Mahal Energy Services Agreement, and for the Trump Plaza Hotel and Casino (the “**Trump Plaza**”), in the case of the Plaza Energy Services Agreement, that is used to heat and cool these properties.

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<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Plan.

6. Subsequent to the Petition Date, the Debtors and Thermal Energy entered into a stipulation (the “**Adequate Assurance Stipulation**”) providing Thermal Energy with adequate assurance of future payment under section 366 of the Bankruptcy Code.

7. On February 20, 2015, the Debtors filed a motion [Docket No. 954] (the “**Rejection Motion**”) for the entry of an order, pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, (i) authorizing the Debtors to reject the Energy Service Agreements, effective as of the date set forth in a signed letter provided by the Debtors to Thermal Energy stating that Thermal Energy is no longer required to perform under the applicable Energy Service Agreement as of such date, which date shall not be (a) less than five (5) business days after the date of the applicable letter and (b) later than the Effective Date, and (ii) granting the Debtors certain related relief necessary and appropriate to implement and effectuate the rejection of the Energy Services Agreements, including, without limitation, terminating the Adequate Assurance Stipulation.

8. Subsequent to the filing of the Rejection Motion and prior to the Confirmation Hearing, as set forth on the record at the Confirmation Hearing, the Debtors reached a global settlement in principle with Thermal Energy regarding the relief requested in the Rejection Motion, a new thermal energy agreement for the Trump Plaza, and the allowance and treatment of certain proofs of claim filed by Thermal Energy against the Debtors in the Chapter 11 Cases and mutual releases in connection therewith.

9. Pursuant to an order of the Court dated March 12, 2015 [Docket No. 1118] (the “**Rejection Order**”), to which Thermal Energy consented as part of a global settlement with the Debtors, the Debtors rejected the Energy Services Agreements effective as of March 31, 2015 (the “**Rejection Effective Date**”). Except with respect to the True-up Process (as defined in the

Adequate Assurance Stipulation) as it pertains to the Taj Mahal Energy Services Agreement, Thermal Energy shall have no obligations whatsoever under the Taj Mahal Energy Services Agreement after the Rejection Effective Date.

10. On the date hereof, Thermal Energy and Trump Plaza Associates, LLC (“**Plaza Associates**”) entered into a new thermal energy agreement for the Trump Plaza (the “**New Plaza Energy Agreement**”),<sup>3</sup> pursuant to which Thermal Energy will produce, deliver, and sell heating, cooling, and other energy products to Plaza Associates, and Plaza Associates will receive and pay for the same. Under the New Plaza Energy Agreement, there will be a \$3,000,000.00 reduction in annual capacity costs as compared to those under the Plaza Energy Services Agreement, a limit on annual escalation of capacity rates, a mutual right to terminate the New Plaza Energy Agreement within sixty (60) days written notice provided that neither Plaza Associates nor Thermal Energy is permitted to provide such notice on or before August 1, 2015, and continued access until October 1, 2015 for Thermal Energy to the existing piping located at the Trump Plaza which interconnects Thermal Energy’s district heating and cooling system in Atlantic City, New Jersey to Boardwalk Hall in Atlantic City, New Jersey. Unless otherwise agreed in writing by Plaza Associates and Thermal Energy, in the event that the Court does not enter the Proposed Order on or before April 30, 2015, the New Plaza Energy Agreement shall terminate at 11:59 p.m. (ET) on April 30, 2015.

**C. Thermal Energy Proofs of Claim**

11. Subsequent to the Petition Date, Thermal Energy filed the following proofs of claim against the Debtors in the Chapter 11 Cases:

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<sup>3</sup> This summary of the New Plaza Energy Services Agreement is qualified in its entirety by the actual terms and conditions of the New Plaza Energy Services Agreement. In the event this summary and the actual terms and conditions of the New Plaza Energy Services Agreement conflict, the actual terms and conditions of the New Plaza Energy Services Agreement shall control.

- a. claim numbered 472, a general unsecured claim against Debtor Trump Taj Mahal Associates, LLC (“**Taj Mahal Associates**”) in the amount of \$2,332,436.09 (the “**Claim 472**”);
- b. claim numbered 481, a claim pursuant to section 503(b)(9) of the Bankruptcy Code against Taj Mahal Associates in the amount of \$476,634.78 (the “**Taj Mahal 503(b)(9) Claim**”);
- c. claim numbered 496, a general unsecured claim against Plaza Associates in the amount of \$1,631,889.61 (“**Claim 496**”);
- d. claim numbered 501, a claim pursuant to section 503(b)(9) of the Bankruptcy Code against Plaza Associates in the amount of \$339,053.04 (the “**Plaza 503(b)(9) Claim**”);
- e. claim numbered 815, a post-petition administrative expense claim against Taj Mahal Associates in a contingent and unliquidated amount based on the Debtors’ proposed rejection of the Taj Mahal Energy Services Agreement (the “**Taj Mahal Administrative Claim**”); and
- f. claim numbered 816, a post-petition administrative expense claim against Plaza Associates in a contingent and unliquidated amount based on the Debtors’ proposed rejection of the Plaza Energy Services Agreement (the “**Plaza Administrative Claim**”, and, together with Claim 472, the Taj Mahal 503(b)(9) Claim, Claim 496, the Plaza 503(b)(9) Claim, and the Taj Mahal Administrative Claim, the “**Thermal Energy Proofs of Claim**”).

#### **D. Settlement Agreement**

12. In the interest of preserving and maximizing estate assets, reaching a consensual resolution resolving the Thermal Energy Proofs of Claim, and realizing significant savings with respect to their ongoing thermal energy needs at the Trump Plaza, the Debtors engaged in extensive good faith and arm’s length negotiations with Thermal Energy regarding the Thermal Energy Proofs of Claim and the New Plaza Energy Agreement. As a result of these negotiations, the Parties have agreed upon the terms set forth in the Settlement Agreement, which is presented for the Court’s approval through this Motion.

13. Although the Debtors believe that the New Plaza Energy Services Agreement is an ordinary course business transaction for the Debtors and therefore not subject to the approval

of the Court, as set forth above, unless otherwise agreed in writing by Plaza Associates and Thermal Energy, in the event that the Court does not enter the Proposed Order on or before April 30, 2015, the New Plaza Energy Agreement shall terminate at the end of April 2015.

14. A summary of the key terms of the Settlement Agreement is as follows:<sup>4</sup>
- a. In full and final satisfaction of any and all general unsecured claims against the Debtors, including, without limitation, claims for damages arising from the Debtors' rejection of the Energy Services Agreements, Thermal Energy shall be entitled to (a) amend Claim 472 to assert a general unsecured claim against Taj Mahal Associates in the aggregate amount of \$32,496,374.87 (the "**Taj Mahal General Unsecured Claim**"), and (b) amend Claim 496 to assert a general unsecured claim against Plaza Associates in the aggregate amount of \$21,673,783.65 (the "**Plaza General Unsecured Claim**"). The Taj Mahal General Unsecured Claim and the Plaza General Unsecured Claim shall be Allowed Class 4 General Unsecured Claims entitled to receive treatment as Class A Distribution Trust Beneficial Interests as a result of not exercising the Opt-Out Election, and shall not be subject to further objection, defense, dispute, right of setoff, reduction, avoidance, or disallowance (including under section 502 of the Bankruptcy Code) or any other defense or counterclaim.
  - b. In full and final satisfaction and resolution of the (i) the Taj Mahal 503(b)(9), (ii) the Plaza 503(b)(9) Claim, (iii) the Taj Mahal Administrative Expense Claim, and (iv) the Plaza Administrative Expense Claim, such claims shall be treated pursuant to and accordance with the terms of the Plan as follows:
    - i. the Taj Mahal 503(b)(9) Claim shall be an Allowed Administrative Expense Claim pursuant to section 503(b)(9) of the Bankruptcy Code in the amount of \$287,500.00, which claim shall not be subject to further objection, defense, dispute, right of setoff, reduction, avoidance, or disallowance (including under section 502 of the Bankruptcy Code) or any other defense or counterclaim;
    - ii. the Plaza 503(b)(9) Claim shall be an Allowed Administrative Expense Claim pursuant to section 503(b)(9) of the Bankruptcy Code in the amount of \$287,500.00, which claim shall not be subject to further objection, defense, dispute, right of setoff,

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<sup>4</sup> The summary of the Settlement Agreement provided for herein is provided solely for the convenience of the Court, and is not intended to be a comprehensive recitation of all of the terms set forth in the Settlement Agreement. The summary is qualified in its entirety by the actual terms of the Settlement Agreement, and to the extent that there is any inconsistency between the summary provided for herein and the actual terms of the Settlement Agreement, the actual terms of the Settlement Agreement shall control.

- reduction, avoidance, or disallowance (including under section 502 of the Bankruptcy Code) or any other defense or counterclaim;
- iii. the Taj Mahal Administrative Claim shall be disallowed and expunged in its entirety; and
  - iv. the Plaza Administrative Claim shall be disallowed and expunged in its entirety.
- c. Within three (3) business days of the entry of the Proposed Order, the Debtors shall make payment (the “**Disputed Taj Mahal Equipment Payment**”) to Thermal Energy in the aggregate amount of \$81,000.00, by wire transfer of immediately available funds to the account to which the Debtors make payments to Thermal Energy in the ordinary course of business, which payment shall (a) vest the Debtors with all right, title, and interest in and to the Disputed Taj Mahal Equipment (as defined in the Settlement Agreement) and (b) be in full and final satisfaction and resolution of any and all claims of Thermal Energy with respect to title and ownership of the Thermal Energy Production Facilities (as defined in the Taj Mahal Energy Services Agreement), including, without limitation, the Disputed Taj Mahal Equipment; provided, however, that within one (1) business day of the execution by the Debtors and Thermal Energy of the Settlement Agreement, Thermal Energy shall reinstall the Disputed Taj Mahal Equipment.
- d. Thermal Energy shall not file or assert any further claims, as defined in section 101(5) of the Bankruptcy Code, including, without limitation, any general unsecured, secured, administrative or priority claims, against the Debtors and their estates; provided, however, that Thermal Energy is not waiving any of its rights to enforce (a) the Settlement Agreement or (b) the New Plaza Energy Agreement.
- e. The Parties shall continue to perform pursuant to and in accordance with the terms of the Energy Services Agreements and the Adequate Assurance Stipulation through and including March 31, 2015; provided, however, that the Debtors shall not be required to remit to Thermal Energy the prepayment due under the Adequate Assurance Stipulation for the Energy Services Agreements on March 30, 2015, provided that, for the avoidance of doubt, any undisputed amounts due under the Energy Services Agreements for March 30-31, 2015 shall be governed by the Adequate Assurance Stipulation, including, without limitation, the True-up Process provided for therein.
- f. For the consideration recited in the Settlement Agreement, and effective as of the entry of the Proposed Order, the Debtors and their estates, on the one hand, and Thermal Energy, on the other hand, each on behalf of themselves, and on behalf of each of their respective past, present, and



future parent and subsidiary corporations, officers, directors, shareholders, managers, members, insurers, advisors, agents, attorneys, employees, affiliates, predecessors and permitted successors and assigns, hereby fully and unconditionally remise, release, acquit, satisfy, and forever discharge each other and all of their respective past, present, and future parent and subsidiary corporations, officers, directors, shareholders, managers, members, insurers, advisors, agents, attorneys, employees, affiliates, predecessors and permitted successors and assigns, jointly and severally, from any and all claims, actions, demands, or causes of action that the Parties ever had, now have, or may have, or which any predecessor or permitted successor or assign of the Parties ever had, now has, or may have, of any nature and description whatsoever, whether based on state law, federal law, common law, legal or equitable in nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, accrued or hereinafter accruing, absolute or contingent, arising from or related to the Energy Services Agreements and the Thermal Energy Proofs of Claim, including, without limitation, any claims under chapter 5 of the Bankruptcy Code, provided, however, that nothing in the Settlement Agreement shall release, impair, or modify any rights and obligations of the Parties under (a) the Settlement Agreement, (b) the Adequate Assurance Stipulation and the Rejection Order with respect to the True-up Process, and (c) the New Plaza Energy Agreement.

### **Relief Requested**

15. By this Motion, the Debtors request that the Court enter the Proposed Order, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019, approving the Settlement Agreement.

### **Basis for Relief**

#### **I. The Settlement Agreement Should be Approved Pursuant to Bankruptcy Rule 9019(a)**

16. Bankruptcy Rule 9019, which governs the approval of compromises and settlements by a debtor, provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019. Further, section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

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

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

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

18. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). A court need not decide the numerous issues of law and fact raised by the settlement and it need not be convinced that the proposed settlement is the best possible, rather “[t]he court need only conclude that the settlement falls within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness.” *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 833 (Bankr. D. Del. 2008) (quoting *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004)).

19. In the Debtors' business judgment, the resolution embodied in the Settlement Agreement is reasonable and in the best interest of the Debtors, their estates and creditors and other parties in interest in the Chapter 11 Cases. The Settlement Agreement provides for a fair and practical resolution of the Thermal Energy Proofs of Claim, including substantial claims asserted by Thermal Energy against the Debtors' estates pursuant to section 503(b)(9) of the Bankruptcy Code which, if litigated, would consume unnecessary amounts of the Debtors' limited resources. The Settlement Agreement is the product of significant and lengthy discussions and negotiations between the Parties regarding, among other things, the Thermal Energy Proofs of Claim and the Disputed Taj Mahal Equipment, culminating in a global settlement that falls well within the range of reasonable litigation outcomes as to these matters. Furthermore, absent the entry of the Proposed Order, the New Plaza Energy Agreement will terminate at the end of April 2015, leaving the Debtors without the necessary thermal energy for the Trump Plaza.

20. In addition, as discussed below, each of the applicable *Martin* factors weighs heavily in favor of approving the Settlement Agreement, and the First Lien Agent has consented to the entry of the Proposed Order and the entry by Plaza Associates into the New Plaza Energy Agreement.

**A. The Probability of Success in Litigation**

21. Had the Parties failed to reach the consensual resolution provided for in the Settlement Agreement, at a minimum, the Debtors would have been forced to litigate the issues raised by the Taj Mahal 503(b)(9) Claim and the Plaza 503(b)(9) Claim, at a significant cost and risk to the Debtors and their estates. By contrast, the terms of the Settlement Agreement provide complete certainty to the Debtors, their estates and creditors with respect to (a) the allowed amount and classification of these administrative claims, as well as all other claims of Thermal

Energy against the Debtors and their estates, and (b) the Disputed Taj Mahal Equipment. In light of the foregoing, the first *Martin* factor weighs significantly in favor of approving the Settlement Agreement.

**B. The Complexity of the Litigation Involved, and the Expense, Inconvenience, and Delay Necessarily Attending It**

22. A litigated resolution of the claims addressed by the Settlement Agreement would potentially be complex and involve discovery. Such litigation, along with the related uncertainty, would be at a significant expense to the Debtors' estates and creditors and other parties in interest in these Chapter 11 Cases, both in terms of the cost of the litigation itself, and in terms of the cost of a potential delay in going effective under the Plan given the cap on the allowed amount of certain Administrative Expense Claims and Priority Non-Tax Claims provided for in the Plan. By resolving the Taj Mahal 503(b)(9) Claim and the Plaza 503(b)(9) Claim pursuant to the terms of the Settlement Agreement, the Debtors, their estates and creditors are afforded certainty with respect to the allowed amount of two of the more significant Administrative Expense Claims asserted against the Debtors' estates, thereby moving these Chapter 11 Cases toward consummation of the Plan. Accordingly, the third *Martin* factor also weighs in favor of approving the Settlement Agreement.

**C. The Paramount Interest of Creditors**

23. Here, the paramount interest of creditors (and other parties in interest in the Chapter 11 Cases) will undoubtedly be best served by approving the Debtors entry into the Settlement Agreement, thereby resolving significant claims against the Debtors' estates. Furthermore, approval of the Settlement Agreement will resolve the Thermal Energy Proofs of Claim (and any other claims that Thermal Energy could assert against the Debtors and their estates) and any disputes between the Debtors and Thermal Energy regarding title and ownership

of the Thermal Energy Production Facilities, including, without limitation, the Disputed Taj Mahal Equipment, without the need for potentially costly and time-consuming litigation. Finally, entry of the Proposed Order will not only ensure that the Debtors continue to receive thermal energy under the New Plaza Energy Agreement, but that they will do so on terms and conditions that are favorable to the Debtors and their estates. Therefore, the Court's approval of the Settlement Agreement is beneficial to the Debtors' reorganization efforts, and in the best interests of the Debtors, their estates and creditors and other parties in interest in these Chapter 11 Cases; accordingly, the fourth *Martin* factor weighs in favor of approving the Settlement Agreement.

**II. The Debtors Should Be Authorized to Make the Disputed Taj Mahal Equipment Payment Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code**

24. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

25. Although section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the debtor's use of estate property, courts in this Circuit and others, in applying this section, have required that decisions regarding the disposition of assets outside the ordinary course of business be based upon the debtor's sound business judgment and a finding of "good faith." See *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986) (requiring a finding of "good faith" to approve a sale under section 363(b)); *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee's judgment concerning use of property under section 363(b) when there is a legitimate business justification); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R.

147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions.”); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (examining the history of the standard required for a pre-confirmation sale of assets under section 363(b) and opining that the Third Circuit has implicitly abandoned the “emergency” test under earlier precedent and has adopted the “sound business judgment” test as utilized by other courts).

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

27. As set forth more fully above, through the Settlement Agreement, the Debtors, their estates and creditors will obtain complete certainty with respect to, among other things, title and ownership of the Thermal Energy Production Facilities, including the Disputed Taj Mahal Equipment. Furthermore, the Settlement Agreement is the result of extensive arms’ length and good faith negotiations between the Parties regarding, among other things, the Disputed Taj Mahal Equipment, culminating in a global settlement that falls well within the range of reasonable litigation outcomes. Moreover, the Disputed Taj Mahal Equipment Payment provided for in the Settlement Agreement reflects a sound exercise of the Debtors’ business judgment, and will facilitate the Debtors’ operation of their production facilities at the Taj Mahal on a stand-alone, in house basis, in order to achieve a substantial reduction in the significant costs incurred by the Debtors under the Taj Mahal Energy Services Agreement.

28. Accordingly, the Debtors submit that the Disputed Taj Mahal Equipment Payment should be authorized and approved by the Court pursuant to sections 105(a) and 363(b) of the Bankruptcy Code.

### **Conclusion**

29. A review of the *Martin* factors, to the extent they are applicable, clearly demonstrates that approval of the Settlement Agreement is in the best interests of the Debtors, their estates and creditors, as well as other parties in interest in these Chapter 11 Cases. The compromise embodied in the Settlement Agreement is the product of extensive good faith and arm's length negotiations between the Parties regarding a number of issues, including the Thermal Energy Proofs of Claim and the New Plaza Energy Agreement. The Settlement Agreement provides for a fair and practical resolution of all claims of Thermal Energy against the Debtors and their estates, will be another step towards the Debtors' successful prosecution of these cases and ensures that the Debtors will continue to receive thermal energy under the New Plaza Energy Agreement. Additionally, the Disputed Taj Mahal Equipment Payment represents a sound exercise of the Debtors' business judgment.

30. In light of the foregoing, the Debtors entry into the Settlement Agreement should be approved pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019.

### **Notice**

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

**No Prior Request**

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

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

Dated: March 31, 2015  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Robert F. Poppiti, Jr.

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*Counsel to the Debtors and Debtors-in-Possession*



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

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In re: : Chapter 11
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TRUMP ENTERTAINMENT RESORTS, : Case No. 14-12103 (KG)
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: **Hearing Date: April 22, 2015 at 10:00 a.m. (ET)**
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**NOTICE OF MOTION**

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

**PLEASE TAKE NOTICE** that Trump Entertainment Resorts, Inc. and its above-captioned affiliated debtors and debtors in possession (each, a “Debtor,” and collectively, the “Debtors”) have filed the attached **Debtors’ Motion for Entry of an Order, Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving the Release and Settlement Agreement By and Among the Debtors and Thermal Energy Limited Partnership I** (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that any objections to the Motion must be filed on or before **April 15, 2015 at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 N. Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

**PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON APRIL 22, 2015 AT 10:00 A.M. (ET) BEFORE THE HONORABLE KEVIN GROSS, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF**

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

DELAWARE, 824 N. MARKET STREET, 6<sup>TH</sup> FLOOR, COURTROOM NO. 3,  
WILMINGTON, DELAWARE 19801.

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

Dated: March 31, 2015  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

*/s/ Robert F. Poppiti, Jr.*

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Matthew B. Lunn (No. 4119)  
Robert F. Poppiti, Jr. (No. 5052)  
Ian J. Bambrick (No. 5455)  
Ashley E. Markow (No. 5635)  
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-and-

STROOCK & STROOCK & LAVAN LLP  
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180 Maiden Lane  
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*Counsel to the Debtors and Debtors-in-Possession*

**EXHIBIT A**

**Proposed Order**

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

-----X  
:
:
**In re:** : **Chapter 11**
:
:
**TRUMP ENTERTAINMENT RESORTS,** : **Case No. 14–12103 (KG)**
**INC., et al.,<sup>1</sup>** :
:
: **Jointly Administered**
**Debtors.** :
:
: **Ref. Docket No. \_\_\_\_\_**
-----X

**ORDER, PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY  
CODE AND BANKRUPTCY RULE 9019, APPROVING THE RELEASE  
AND SETTLEMENT AGREEMENT BY AND AMONG THE DEBTORS  
AND THERMAL ENERGY LIMITED PARTNERSHIP I**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the Debtors for the entry of an order, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019, approving the Settlement Agreement, a copy of which is attached hereto as Exhibit 1; and upon consideration of the Motion and all pleadings related thereto; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors and is an appropriate exercise of the Debtors’ business judgment; and

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

it appearing that the releases provided for in the Settlement Agreement are supported by good and valuable consideration; and after due deliberation and sufficient cause appearing therefor, **IT**

**IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019, the Settlement Agreement is approved, and the terms and conditions of the Settlement Agreement are incorporated into this Order as if fully set forth herein.
3. Subject to the terms of the Settlement Agreement, to the extent applicable, the vesting with the Debtors of all right, title, and interest in and to the Disputed Taj Mahal Equipment shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax pursuant to section 1146 of the Bankruptcy Code, as it is being implemented and authorized under Section 14.1 of the Plan.
4. The releases set forth in the Settlement Agreement are approved.
5. The Debtors are authorized to execute and deliver such other instruments or documents, and take such other action as may be necessary or appropriate, to implement and effectuate the relief granted by this Order.
6. The claims agent in these Chapter 11 Cases is authorized to amend the claims register for these Chapter 11 Cases to comport with the entry of this Order and the terms and conditions of the Settlement Agreement.
7. This Order shall bind the Debtors, their estates, and any successors thereto, including any subsequently appointed chapter 7 trustee in respect of the Debtors and their estates.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: April \_\_\_\_, 2015  
Wilmington, Delaware

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Kevin Gross  
United States Bankruptcy Judge

**EXHIBIT 1**

**Settlement Agreement**

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

	-----X	
	:	
	:	
In re:	:	Chapter 11
	:	
TRUMP ENTERTAINMENT RESORTS, INC., et al., <sup>1</sup>	:	Case No. 14–12103 (KG)
	:	
Debtors.	:	(Jointly Administered)
	:	
	-----X	

**RELEASE AND SETTLEMENT AGREEMENT BY AND AMONG THE  
DEBTORS AND THERMAL ENERGY LIMITED PARTNERSHIP I**

**THIS RELEASE AND SETTLEMENT AGREEMENT** (this “**Settlement Agreement**”) is entered into by and among Trump Entertainment Resorts, Inc., on behalf of itself and its above-captioned affiliated debtors and debtors in possession (collectively, the “**Debtors**”), and Thermal Energy Limited Partnership I (“**Thermal Energy**”). The parties hereto are individually referred to in this Settlement Agreement as a “**Party**” and together referred to herein as the “**Parties**”.

**RECITALS**

**I. General Background**

A. On September 9, 2014 (the “**Petition Date**”), the Debtors each filed a voluntary petition in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), thereby commencing the above-captioned chapter 11 cases (collectively,

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<sup>1</sup> 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.



the “**Chapter 11 Cases**”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. On March 12, 2015, the Court entered an order [Docket No. 1123] (the “**Confirmation Order**”) confirming the *Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code As Modified* (as may be amended, modified, or supplemented from time to time, the “**Plan**,” a copy of which is attached to the Confirmation Order as Exhibit A).<sup>2</sup> The Effective Date has not yet occurred.

## **II. Energy Services Agreements**

C. Prior to the Petition Date, (i) Debtor Trump Entertainment Resorts Holdings, L.P. (“**TER Holdings**”) and Thermal Energy, through their respective predecessors in interest, entered into that certain Thermal Energy Service Agreement, dated as of June 30, 1996 (as may have been amended, modified, extended or supplemented from time to time, the “**Taj Mahal Energy Services Agreement**”), and (ii) TER Holdings and Thermal Energy, through their respective predecessors in interest, entered into that certain Thermal Energy Service Agreement, dated as of September 26, 1996 (as may have been amended, modified, extended or supplemented from time to time, the “**Plaza Energy Services Agreement**,” and together with the Taj Mahal Energy Services Agreement, the “**Energy Services Agreements**”). As a result of certain extension agreements, the terms of the Taj Mahal Energy Services Agreement and the Plaza Energy Services Agreement have been extended until the end of December 2027 and October 2036, respectively. Pursuant to the Energy Services Agreements, Thermal Energy sells to TER Holdings steam and chilled water for the Trump Taj Mahal Casino Resort, (the “**Taj Mahal**”) in the case of the Taj Mahal Energy Services Agreement, and for the Trump Plaza

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<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Plan.

Hotel and Casino (the “**Trump Plaza**”), in the case of the Plaza Energy Services Agreement, that is used to heat and cool these properties.

D. Subsequent to the Petition Date, the Debtors and Thermal Energy entered into a stipulation (the “**Adequate Assurance Stipulation**”) providing Thermal Energy with adequate assurance of future payment under section 366 of the Bankruptcy Code.

E. On February 20, 2015, the Debtors filed a motion [Docket No. 954] (the “**Rejection Motion**”) for the entry of an order, pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, (i) authorizing the Debtors to reject the Energy Service Agreements, effective as of the date set forth in a signed letter provided by the Debtors to Thermal Energy stating that Thermal Energy is no longer required to perform under the applicable Energy Service Agreement as of such date, which date shall not be (a) less than five (5) business days after the date of the applicable letter and (b) later than the Effective Date, and (ii) granting the Debtors certain related relief necessary and appropriate to implement and effectuate the rejection of the Energy Services Agreements, including, without limitation, terminating the Adequate Assurance Stipulation.

F. Subsequent to the filing of the Rejection Motion and prior to the Confirmation Hearing, as set forth on the record at the Confirmation Hearing, the Debtors reached a global settlement in principle with Thermal Energy regarding the relief requested in the Rejection Motion, a new thermal energy agreement for the Trump Plaza, and the allowance and treatment of certain proofs of claim filed by Thermal Energy against the Debtors in the Chapter 11 Cases and mutual releases in connection therewith.

G. Pursuant to an order of the Court dated March 12, 2015 [Docket No. 1118] (the “**Rejection Order**”), to which Thermal Energy consented as part of this global settlement with

the Debtors, the Debtors rejected the Energy Services Agreements effective as of March 31, 2015 (the “**Rejection Effective Date**”). Except with respect to the True-up Process (as defined in the Adequate Assurance Stipulation) as it pertains to the Taj Mahal Energy Services Agreement, Thermal Energy shall have no obligations whatsoever under the Taj Mahal Energy Services Agreement after the Rejection Effective Date.

H. On the date hereof, Thermal Energy and Trump Plaza Associates, LLC (“**Plaza Associates**”) entered into a new thermal energy agreement for the Trump Plaza (the “**New Plaza Energy Agreement**”),<sup>3</sup> pursuant to which Thermal Energy will produce, deliver, and sell heating, cooling, and other energy products to Plaza Associates, and Plaza Associates will receive and pay for the same. Under the New Plaza Energy Agreement, there will be a \$3,000,000.00 reduction in annual capacity costs as compared to those under the Plaza Energy Services Agreement, a limit on annual escalation of capacity rates, a mutual right to terminate the New Plaza Energy Agreement within sixty (60) days written notice provided that neither Plaza Associates nor Thermal Energy is permitted to provide such notice on or before August 1, 2015, and continued access until October 1, 2015 for Thermal Energy to the existing piping located at the Trump Plaza which interconnects Thermal Energy’s district heating and cooling system in Atlantic City, New Jersey to Boardwalk Hall in Atlantic City, New Jersey. Unless otherwise agreed in writing by Plaza Associates and Thermal Energy, in the event that the Court does not enter the Settlement Order (as defined below) on or before April 30, 2015, the New Plaza Energy Agreement shall terminate at 11:59 p.m. (ET) on April 30, 2015.

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<sup>3</sup> This summary of the New Plaza Energy Services Agreement is qualified in its entirety by the actual terms and conditions of the New Plaza Energy Services Agreement. In the event this summary and the actual terms and conditions of the New Plaza Energy Services Agreement conflict, the actual terms and conditions of the New Plaza Energy Services Agreement shall control.

**III. Thermal Energy Proofs of Claim**

I. Subsequent to the Petition Date, Thermal Energy filed the following proofs of claim against the Debtors in the Chapter 11 Cases:

i. claim numbered 472, a general unsecured claim against Debtor Trump Taj Mahal Associates, LLC (“**Taj Mahal Associates**”) in the amount of \$2,332,436.09 (the “**Claim 472**”);

ii. claim numbered 481, a claim pursuant to section 503(b)(9) of the Bankruptcy Code against Taj Mahal Associates in the amount of \$476,634.78 (the “**Taj Mahal 503(b)(9) Claim**”);

iii. claim numbered 496, a general unsecured claim against Plaza Associates in the amount of \$1,631,889.61 (“**Claim 496**”);

iv. claim numbered 501, a claim pursuant to section 503(b)(9) of the Bankruptcy Code against Plaza Associates in the amount of \$339,053.04 (the “**Plaza 503(b)(9) Claim**”);

v. claim numbered 815, a post-petition administrative expense claim against Taj Mahal Associates in a contingent and unliquidated amount based on the Debtors’ proposed rejection of the Taj Mahal Energy Services Agreement (the “**Taj Mahal Administrative Claim**”); and

vi. claim numbered 816, a post-petition administrative expense claim against Plaza Associates in a contingent and unliquidated amount based on the Debtors’ proposed rejection of the Plaza Energy Services Agreement (the “**Plaza Administrative Claim**”, and together with Claim 472, the Taj Mahal 503(b)(9) Claim, Claim 496, the Plaza 503(b)(9) Claim,

the Taj Mahal Administrative Claim, and the Plaza Administrative Claim, the “**Thermal Energy Proofs of Claim**”).

### **SETTLEMENT AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Settlement Agreement and other good and valuable consideration, the sufficiency of which is acknowledged, and with the intent to be legally bound as provided for in this Settlement Agreement, the Parties do hereby agree as follows:

1. Except with respect to Thermal Energy’s Reinstallation Obligation (as defined below), this Settlement Agreement is conditioned upon the Court’s entry of an order approving this Settlement Agreement. The Parties shall use their commercially reasonable efforts to obtain, on or before April 30, 2015, entry of an order of the Court providing such approval in a form reasonably acceptable to the Parties (the “**Settlement Order**”) and on such notice and after such hearing as the Court may require.

2. In full and final satisfaction of any and all general unsecured claims against the Debtors, including, without limitation, claims for damages arising from the Debtors’ rejection of the Energy Services Agreements, Thermal Energy shall be entitled to (a) amend Claim 472 to assert a general unsecured claim against Taj Mahal Associates in the aggregate amount of \$32,496,374.87 (the “**Taj Mahal General Unsecured Claim**”), and (b) amend Claim 496 to assert a general unsecured claim against Plaza Associates in the aggregate amount of \$21,673,783.65 (the “**Plaza General Unsecured Claim**”). The Taj Mahal General Unsecured Claim and the Plaza General Unsecured Claim shall be Allowed Class 4 General Unsecured Claims entitled to receive treatment as Class A Distribution Trust Beneficial Interests as a result of not exercising the Opt-Out Election, and shall not be subject to further objection, defense,

dispute, right of setoff, reduction, avoidance, or disallowance (including under section 502 of the Bankruptcy Code) or any other defense or counterclaim.

3. In full and final satisfaction and resolution of the (i) the Taj Mahal 503(b)(9), (ii) the Plaza 503(b)(9) Claim, (iii) the Taj Mahal Administrative Expense Claim, and (iv) the Plaza Administrative Expense Claim, such claims shall be treated pursuant to and accordance with the terms of the Plan as follows:

(a) the Taj Mahal 503(b)(9) Claim shall be an Allowed Administrative Expense Claim pursuant to section 503(b)(9) of the Bankruptcy Code in the amount of \$287,500.00, which claim shall not be subject to further objection, defense, dispute, right of setoff, reduction, avoidance, or disallowance (including under section 502 of the Bankruptcy Code) or any other defense or counterclaim;

(b) the Plaza 503(b)(9) Claim shall be an Allowed Administrative Expense Claim pursuant to section 503(b)(9) of the Bankruptcy Code in the amount of \$287,500.00, which claim shall not be subject to further objection, defense, dispute, right of setoff, reduction, avoidance, or disallowance (including under section 502 of the Bankruptcy Code) or any other defense or counterclaim;

(c) the Taj Mahal Administrative Claim shall be disallowed and expunged in its entirety; and

(d) the Plaza Administrative Claim shall be disallowed and expunged in its entirety.

4. Within three (3) business days of the entry of the Settlement Order, the Debtors shall make payment to Thermal Energy in the aggregate amount of \$81,000.00, by wire transfer of immediately available funds to the account to which the Debtors make payments to Thermal Energy in the ordinary course of business, which payment shall (a) vest the Debtors with all right, title, and interest in and to the equipment identified on Exhibit 1 attached hereto (collectively, the “**Disputed Taj Mahal Equipment**”) and (b) be in full and final satisfaction and resolution of any and all claims of Thermal Energy with respect to title and ownership of the Thermal Energy Production Facilities (as defined in the Taj Mahal Energy Services Agreement), including, without limitation, the Disputed Taj Mahal Equipment; provided, however, that within

one (1) business day of the Parties' execution of this Settlement Agreement, Thermal Energy shall reinstall the Disputed Taj Mahal Equipment (the "**Reinstallation Obligation**").

5. Thermal Energy shall not file or assert any further claims, as defined in section 101(5) of the Bankruptcy Code, including, without limitation, any general unsecured, secured, administrative or priority claims, against the Debtors and their estates; provided, however, that Thermal Energy is not waiving any of its rights to enforce (a) this Settlement Agreement or (b) the New Plaza Energy Agreement.

6. The Parties shall continue to perform pursuant to and in accordance with the terms of the Energy Services Agreements and the Adequate Assurance Stipulation through and including March 31, 2015; provided, however, that the Debtors shall not be required to remit to Thermal Energy the prepayment due under the Adequate Assurance Stipulation for the Energy Services Agreements on March 30, 2015, provided that, for the avoidance of doubt, any undisputed amounts due under the Energy Services Agreements for March 30-31, 2015 shall be governed by the Adequate Assurance Stipulation, including, without limitation, the True-up Process (as defined in the Adequate Assurance Stipulation) provided for therein.

7. For the consideration herein recited, and effective as of the entry of the Settlement Order, the Debtors and their estates, on the one hand, and Thermal Energy, on the other hand, each on behalf of themselves, and on behalf of each of their respective past, present, and future parent and subsidiary corporations, officers, directors, shareholders, managers, members, insurers, advisors, agents, attorneys, employees, affiliates, predecessors and permitted successors and assigns, hereby fully and unconditionally remise, release, acquit, satisfy, and forever discharge each other and all of their respective past, present, and future parent and subsidiary corporations, officers, directors, shareholders, managers, members, insurers, advisors, agents,

attorneys, employees, affiliates, predecessors and permitted successors and assigns, jointly and severally, from any and all claims, actions, demands, or causes of action that the Parties ever had, now have, or may have, or which any predecessor or permitted successor or assign of the Parties ever had, now has, or may have, of any nature and description whatsoever, whether based on state law, federal law, common law, legal or equitable in nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, accrued or hereinafter accruing, absolute or contingent, arising from or related to the Energy Services Agreements and the Thermal Energy Proofs of Claim, including, without limitation, any claims under chapter 5 of the Bankruptcy Code, provided, however, that nothing in this Settlement Agreement shall release, impair, or modify any rights and obligations of the Parties under (a) this Settlement Agreement, (b) the Adequate Assurance Stipulation and the Rejection Order with respect to the True-up Process (as defined in the Adequate Assurance Stipulation), and (c) the New Plaza Energy Agreement.

8. The Recitals stated above constitute and form an integral part of this Settlement Agreement and are incorporated by reference as if set forth herein in full.

9. This Settlement Agreement is entered into solely for the convenience of the Parties, and the Parties shall not offer this Settlement Agreement or the fact of its execution into evidence in any proceeding other than a proceeding to approve this Settlement Agreement or enforce any of its terms.

10. The Parties shall bear their own attorneys' fees and costs with respect to the execution and delivery of this Settlement Agreement and the Settlement Order.

11. The Debtors, subject to the entry of the Settlement Order, and Thermal Energy have the power and authority to execute, deliver and perform their obligations under this Settlement Agreement, and the execution, delivery and performance by the Parties of this



Settlement Agreement and the consummation of the transactions contemplated herein have been duly authorized by all necessary action on the part of the Parties. Each of the undersigned are duly authorized and empowered to execute this Settlement Agreement.

12. Thermal Energy represents and warrants to the Debtors that, as of its execution of this Settlement Agreement, Thermal Energy (a) is the holder of the Thermal Energy Proofs of Claim, and (b) has not sold, assigned, pledged or otherwise transferred the Thermal Energy Proofs of Claim, and Thermal Energy shall not sell, assign, pledge or otherwise transfer the Thermal Energy Proofs of Claim prior to the entry of the Settlement Order.

13. The Parties have participated in and jointly consented to the drafting of this Settlement Agreement, and any claimed ambiguity shall not be construed for or against either of the Parties on account of such drafting.

14. This Settlement Agreement and all of its terms shall be binding upon and shall inure to the benefit of both of the Parties and their respective executors, heirs and permitted successors and assigns and all persons and entities claiming by or through the Parties.

15. During the pendency of the Chapter 11 Cases, the Parties expressly consent and submit to the exclusive jurisdiction of the Court over any actions or proceedings relating to the enforcement or interpretation of this Settlement Agreement and any Party bringing such action or proceeding shall bring such action or proceeding in the Court. The Parties consent to the Court entering a final judgment determining such matter and agree that a final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

16. This Settlement Agreement and all claims and disputes arising out of or in connection with this Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Delaware and the Bankruptcy Code, as applicable, without regard to choice of law principles to the extent such principles would apply a law other than that of the State of Delaware or the Bankruptcy Code, as applicable.

17. This Settlement Agreement constitutes the entire agreement of the Parties concerning the subject matter hereof, and supersedes any and all prior or contemporaneous agreements among the Parties concerning such subject matter. The Parties acknowledge that this Settlement Agreement is not being executed in reliance on any oral or written agreement, promise or representation not contained herein. Any amendment to this Settlement Agreement must be in a writing signed by the Parties.

18. This Settlement Agreement may be executed in counterparts, each of which constitutes an original, and both of which, together, constitute only one (1) agreement. The signatures of the Parties need not appear on the same counterpart.

19. If any provision of this Settlement Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect only if the essential terms and conditions of this Settlement Agreement applicable to each Party remain valid, binding and enforceable

***SIGNATURE PAGE FOLLOWS***

IN WITNESS WHEREOF, the undersigned have made and entered into this Settlement Agreement as of the day and year stated below, effective as of the entry of the Settlement Order.

**Thermal Energy Limited Partnership I**

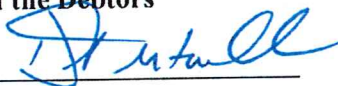
By: 

Name: PATRICK TOWBIN

Title: VP ASSET MGT.

Date: March 31, 2015

**Trump Entertainment Resorts, Inc., on  
behalf of the Debtors**

By: 

Name: Daniel McFadden

Title: Chief Financial Officer

Date: March 31, 2015

**EXHIBIT 1**

## Disputed Taj Mahal Equipment

<b><u>Item</u></b>	<b><u>Location</u></b>	<b><u>Description</u></b>
Eaton Cutler Hammer Drives	Located in the Taj Mahal Boiler Room	New low rise secondary pumps 1 & 3
Vacon Drive	Located in the Taj Mahal Boiler Room	New low rise secondary pump 2
Eaton Cutler Hammer Drives	Located in the Taj Mahal Boiler Room	New high rise secondary pumps 1, 2 & 3
Allen Bradley Drives	Located in the Taj Mahal Boiler Room	3 Allen Bradley Flex 400 Drives. Existing HR Secondary Pumps 1, 2 & 3