

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:	: Chapter 11
	:
TRUMP ENTERTAINMENT RESORTS,	: Case No. 14-12103 (KG)
INC., et al.,¹	:
	: Jointly Administered
Debtors.	:
	: Ref. Docket Nos. 1192 and <u>1242</u>
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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**”)² 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

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

² Capitalized terms used but not otherwise defined herein 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. Notwithstanding anything to the contrary in the Motion, the Settlement Agreement or this Order, upon entry of this Order, the first sentence of Paragraph 2 of the Settlement Agreement shall be deemed amended and restated as follows:

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 \$27,496,374.87 (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 \$16,673,783.65 (the "**Plaza General Unsecured Claim**").

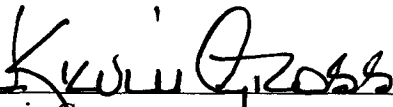
4. Subject to the terms of the Settlement Agreement, to the extent applicable, the vesting with the Debtors of all right, title, and interest in and to the Disputed Taj Mahal Equipment shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax pursuant to section 1146 of the Bankruptcy Code, as it is being implemented and authorized under Section 14.1 of the Plan.
5. The releases set forth in the Settlement Agreement are approved.
6. 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.

7. 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.

8. 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.

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

Dated: April 21, 2015
Wilmington, Delaware



Kevin Gross
United States Bankruptcy Judge

EXHIBIT 1

Settlement Agreement

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.,¹ :
: (Jointly Administered)
Debtors. :
:
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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,

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.

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).² 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

² 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**”),³ 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.

³ 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: Patrick W Jowlin

Name: PATRICK TOWBIN

Title: VP ASSET MGT.

Date: March 31, 2015

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

By: D. McFadden

Name: Daniel McFadden

Title: Chief Financial Officer

Date: March 31, 2015

EXHIBIT 1

Disputed Taj Mahal Equipment

<u>Item</u>	<u>Location</u>	<u>Description</u>
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