

**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)

Hearing Date: October 14, 2014 at 1:00 p.m. (ET)

Objection Deadline: October 7, 2014 at 4:00 p.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF
ORDER (I) REJECTING COLLECTIVE BARGAINING
AGREEMENT BETWEEN TRUMP TAJ MAHAL ASSOCIATES, LLC
AND UNITE HERE LOCAL 54 PURSUANT TO 11 U.S.C. § 1113(C) AND
(II) IMPLEMENTING TERMS OF DEBTORS' PROPOSAL UNDER 11 U.S.C. § 1113(B)**

IMPORTANT NOTICE TO UNION MEMBERS:

IF YOU HAVE QUESTIONS ABOUT HOW THIS MOTION MAY IMPACT YOU, PLEASE CONTACT YOUR UNION REPRESENTATIVE. THE DEBTORS HAVE ALSO ESTABLISHED A WEBSITE TO ANSWER FREQUENTLY ASKED QUESTIONS. THAT WEBSITE ADDRESS IS: [HTTPS://CASES.PRIMECLERK.COM/TER](https://cases.primeclerk.com/ter).

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.

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Trump Entertainment Resorts, Inc. (“TER”) 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, pursuant to section 1113(c) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), (i) authorizing the Debtors to reject the collective bargaining agreement by and between Trump Taj Mahal Associates, LLC and UNITE HERE Local 54 (“Local 54” or the “Union”), dated November 11, 2011 (including any and all amendments, modifications, side letters, memoranda of understanding, documents incorporated by reference, attachments and exhibits thereto, the “CBA”); and (ii) implementing the terms of the Debtors’ proposal to Local 54 dated September 17, 2014 (the “Proposal”) for purposes of 11 U.S.C. § 1113(b), a copy of which is attached hereto as Exhibit B.

In support of the Motion, the Debtors rely and upon and incorporate by reference the *Declaration of Robert Griffin in Support of Debtors’ Chapter 11 Petitions and First Day Motions and Applications* [Docket No. 2] (the “Griffin Declaration”), as well as the *Declaration of William H. Hardie, III in Support of Debtors’ Section 1113 Motion*, dated September 26, 2014 (the “Hardie Declaration”), the *Declaration of Craig Keyser in Support of Debtors’ Section 1113 Motion*, dated September 26, 2014 (the “Keyser Declaration”) and the *Declaration of Howard S. Lavin in Support of Debtors’ Section 1113 Motion*, dated September 26, 2014 (the “Lavin Declaration”), filed concurrently herewith.

Further, the Debtors also move pursuant to § 1113(c) for the immediate entry of an order eliminating the Debtors’ obligation under the CBA to contribute to the Local 54 multiemployer

pension plan (the “National Retirement Fund”), *effective immediately*, and thereby resulting in the Debtors’ complete withdrawal from the National Retirement Fund.²

In further support of the Motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. For many years, the destination resort city of Atlantic City, known for its lavish casinos, beach and boardwalk, had long enjoyed a veritable monopoly on gaming in the Northeast Corridor, and the Debtors’ casinos stood as an indelible component of the Atlantic City landscape. Unfortunately, Atlantic City’s fortunes turned for the worse along with the national economy because of, among other things, increased competition from surrounding states, including Pennsylvania, New York, Maryland, Connecticut and Delaware. Atlantic City casino revenues fell by roughly half, from a 2006 peak of \$5.2 billion to \$2.8 billion last year. Emblematic of the City’s decline, three casinos closed earlier this year, including the \$2.4 billion Revel Casino Hotel (the “Revel”) which opened just two years ago.

2. The Debtors have been particularly impacted by the decline in the Atlantic City market. Since 2010, the Debtors’ EBITDA fell from positive \$32 million in 2011 to negative \$6.1 million in 2013, driven in part by significant operational losses at the Trump Plaza Hotel and Casino (the “Plaza”). These losses accelerated in 2014, with LTM EBITDA of negative \$25.7 million as of June 30, 2014. Consequently, the Plaza, one of the City’s marquee landmarks since 1984, was forced earlier this month to shut its doors. The fate of the Debtors’ remaining property, the Taj Mahal Casino Hotel (the “Taj Mahal”), now hangs in the balance.

² The Debtors seek such immediate relief to avoid potential significant harm to their estates that may prohibit them from successfully reorganizing pursuant to chapter 11. Should the Court not make an *immediate* determination with respect to the National Retirement Fund, such delay would increase the risk to the Debtors of a potentially crippling administrative claim. The longer the Debtors have an obligation to contribute to the National Retirement Fund, the greater the risk that the pension fund argues that the Debtors have a significant administrative claim (which the Debtors will almost certainly dispute). Therefore, the Debtors request that the Court grant the Debtors an expedited hearing on the issue of withdrawal from the pension plan.

Absent the relief requested in the Motion and other concessions requested from several other stakeholders, the Debtors will be forced to close the Taj Mahal and liquidate.

3. The Taj Mahal is quickly running out of cash to fund operations. The Debtors do not have post-petition financing and are currently funding operations with cash collateral. As the initial cash collateral budget has shown, in the first two months of the Debtors' bankruptcy cases, the Debtors expect to spend approximately \$12 million of cash. A substantial portion of that amount represents labor costs associated with the Local 54 CBA. Historically, the Debtors have paid \$14 to \$15 million per year in pension, benefit and other amounts for just the Taj Mahal under the Local 54 CBA. At the current rate, the Debtors are expected to run out of cash by mid-December, and may imminently be forced to close the Taj Mahal consistent with previously-issued WARN notices, resulting in the loss of thousands of jobs in the already beleaguered Atlantic City market.

4. Thus, the Debtors face an extremely narrow window of opportunity to formulate a chapter 11 plan that would allow the Debtors to reorganize around the Taj Mahal. To that end, the Debtors have prepared a chapter 11 plan of reorganization (the "Plan"), to be filed soon with this Court, pursuant to which the Debtors' secured lenders (the "First Lien Lenders") would agree to equitize a portion of their existing senior secured debt (which totals approximately \$286 million plus \$6 million in pre-petition accrued but unpaid interest) and exchange the remainder of that debt for new debt requiring no cash interest payments, thereby approximately eliminating \$38 million in annual debt-service payments. In addition, under the Plan, the First Lien Lenders would invest \$100 million in new capital. However, as can be reasonably expected because of forecasted shortfalls and significant capital expenditure needs, any such capital investment would be conditioned upon the Debtors obtaining additional investments, obtaining tax relief and

extricating themselves from the excessively costly multi-employer pension plan and unsustainable labor costs associated with the Local 54 CBA.

5. Consequently, the Debtors submitted formal requests for concessions from each of its main constituents, including not just Local 54, but also the First Lien Lenders, the City of Atlantic City and the State of New Jersey, in an effort to build support for and implement the to-be-filed Plan. As an essential step in that process, on September 17, 2014, the Debtors presented Local 54 with the Proposal, detailing proposed modifications to the CBA and describing the economic impact of and rationale behind each of those changes. The Debtors also shared with the Union financial data, including a cash flow forecast and two sets of projections that depict the Debtors' declining performance trajectory, both with and without the requested concessions. Those projections readily demonstrate that under the current *status quo* (with the Local 54 CBA remaining in place), the Debtors are projected to suffer substantial EBITDA losses of \$35 million to \$49 million in fiscal years 2015 through 2019. In anticipation of information requests that the Union might have concerning the Proposal, the Debtors prepared an online data site, uploaded with thousands of pages of additional information (although the Union has not made a written or specific request for documentation).

6. The Debtors also requested that authorized Union representatives with decision-making authority meet within the week due to the Debtors' dwindling liquidity position and the imminent risk of the closure of the Taj Mahal. The Union, belying any sense of urgency, agreed to meet the Debtors only on the latest suggested date, September 24, 2014. During that meeting (the "September 24 Bargaining Session"), the Debtors reiterated the precarious financial condition of the Debtors and the necessity to any reorganization of the concessions. The Debtors emphasized their common desire to keep the Taj Mahal open and save Union members' jobs.

The Debtors again advised the Union that other constituents beyond the Union were being asked to make significant sacrifices necessary for the Debtors to reorganize. In fact, the Debtors demonstrated that the Union concessions, standing alone, would be insufficient for the Debtors to avoid liquidation, *even with* the \$100 million capital injection that the First Lien Lenders would agree to provide.

7. Furthermore, the Debtors demonstrated that, pursuant to the Proposal, Union employees (a) would likely experience *greater* retirement investment security by switching to a company-sponsored 401(k) with matching contributions, rather than remain with the distressed multi-employer plan, (b) were *not* being asked for wage reductions (other than discrete work rule changes), and (c) could retain their jobs by avoiding the closure of the Taj Mahal. In short, the Debtors demonstrated that their labor cost structure is unsustainable, that the Debtors will be unable to attract the necessary capital to enable the Debtors to reorganize, and absent such concessions and funding, the Taj Mahal will close within the next few weeks and all Union members' jobs will be lost.

8. Despite these compelling considerations, the Union did not take a position at the September 24 Bargaining Session as to whether it was accepting or rejecting various material terms of the Proposal. Instead, the Union indicated that it might need certain other information that the Union could have easily requested, and the Debtors would have promptly provided, in the days between when the Proposal was submitted to the Union on September 17, 2014 and the September 24 Bargaining Session.

9. It was not until hours prior to the filing of this Motion – which Motion the Union was advised at the September 24 Bargaining Session would be filed today – did the Union provide the Debtors with a written request for information (much of which is wholly unrelated to

the Proposal) and additional questions and certain purported counter-proposals to the modifications sought by the Debtors. Although the Union response (such as it was) was late in arriving, the Union did not delay in distributing flyers urging its members to “fight back,” “march” and rally against the Debtors. Thus, the circumstances of the Union’s response to the Proposal and the Union’s refusal to timely and urgently negotiate, notwithstanding repeated requests by the Debtors, demonstrate an absence of good faith by the Union.

10. The Debtors respectfully submit that the Motion should be granted because the modifications contained in the Debtors’ Proposal are the minimum necessary to allow the Debtors to reorganize and avoid liquidation, the Proposal and the to-be-filed Plan each treat all parties fairly and equitably, and the balance of the equities clearly favor rejection of the CBA and implementation of the Proposal pursuant to section 1113 of the Bankruptcy Code.

BACKGROUND

I.

PROCEDURAL BACKGROUND

11. On September 9, 2014 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”) before this Court. The Debtors have continued in possession of their properties and have continued to operate and maintain their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

12. No request has been made for the appointment of a trustee or examiner. On September 23, 2014, the Office of the United States Trustee formed the official committee of unsecured creditors (the “Committee”), consisting of the following members: (i) Thermal Energy Limited Partnership I; (ii) Bally Gaming, Inc.; (iii) Unite Here Local 54; (iv) National

Retirement Fund; (v) Atlantic City Linen Supply, LLC; (vi) South New Jersey Paper Products; and (vii) Conner Strong & Buckelew Companies, Inc.

13. A detailed description of the Debtors' businesses and the events leading to the commencement of these Chapter 11 Cases are set forth in the Griffin Declaration, which is incorporated herein by reference. However, a brief summary of certain facts pertinent to this Motion are set forth below.

II.

OPERATIONAL BACKGROUND

14. As of the Petition Date, the Debtors owned and operated two casino hotels located in Atlantic City, New Jersey: the Taj Mahal and the Plaza.³

A. Debtors' Properties

15. The Taj Mahal is located on the northern end of Atlantic City's boardwalk and is situated on 35.9 acres of beachfront property. (Griffin Declaration ¶ 9.) The Taj Mahal is one of the largest casinos in Atlantic City and features over 2,000 hotel rooms, including the Chairman Tower and the original hotel tower, the Taj Tower, sixteen dining locations (including Il Mulino New York), five cocktail lounges, approximately 162,000 square feet of gaming space, an approximately 20,000 square-foot multi-purpose entertainment complex known as the "Xanadu Theater," a 35,000 square-foot Scores gentlemen's club, the Casbah nightclub, the Mark G. Etes Arena, featuring approximately 63,000 square feet of exhibition and entertainment space, a health club, spa and fitness center with an indoor pool, a parking garage for approximately 6,750 cars, a six-bay bus terminal and a roof-top helipad. (*Id.*)

³ As described in more detail below, on September 16, 2014, the Debtors closed the Plaza. The Plaza's historical under-performance and continued operational losses, against the backdrop of the Debtors' severe liquidity constraints, rendered the Plaza's ongoing operations unsustainable.

16. The Plaza is located at the center of the boardwalk at the end of the Atlantic City Expressway (the main highway into the city), and is situated on 10.9 acres, with direct access to Boardwalk Hall (an entertainment and sporting venue owned and operated by the New Jersey Sports and Exposition Authority). (*Id.* at ¶ 11) Prior to closing on September 16, 2014, the Plaza featured approximately 906 hotel rooms and approximately 87,000 square feet of casino space, approximately 18,000 square feet of conference space, a 750-seat cabaret theater, two cocktail lounges, seven restaurants, a players club, a seasonal beach bar and restaurant, health spa, an indoor pool, and retail outlets, as well as a parking garage that could accommodate thirteen buses and approximately 2,700 cars. (*Id.*)

B. Debtors' Employee Mix⁴

17. As of September 13, 2014, the Debtors (including the Plaza, prior to its closure) had 4,185 employees, including 2,929 full-time employees, 1,133 part-time, on call, seasonal or temporary employees, and 123 employees on leave of absence. (Hardie Declaration at ¶ 13). The Taj Mahal had 2,953 employees, including 2,041 full time employees, 825 part-time, on call, seasonal or temporary employees, and 87 employees on leave of absence (these figures exclude approximately 138 corporate-level employees). (*Id.*)

18. Of those Taj Mahal employees, 1,486 employees were non-unionized and 1,467 were unionized and the terms of their employment are subject to collective bargaining agreements between a union and the Debtors. (*Id.*) The largest of the unions is Local 54, which is party to two separate collective bargaining agreements with the Debtors: one with Trump Plaza Associates, LLC with respect to the Plaza (and that covered 425 Plaza employees prior to

⁴ Employee-related information is current as of on or about September 13, 2014.

its closure), and the CBA that is the subject of this Motion, which covers 1,136 Taj Mahal employees.⁵ (*Id.*)

C. The Debtors' Pre-petition Efforts to Restore Profitability

19. Notwithstanding the significant reduction in debt that occurred following the Debtors' emergence from their prior bankruptcy cases in 2010, the Debtors still confronted a number of challenges. The Debtors owed approximately \$346.5 million of first lien debt. (Griffin Declaration ¶ 29.) In addition, it soon became apparent to management that the Debtors needed to reduce their footprint and rationalize their cost structure in order to remain competitive. (*Id.*) Accordingly, the Debtors' management team undertook a number of initiatives beginning in 2010 to attempt to restore the Debtors' financial stability. (*Id.*)

1. Sale of Under-Performing and Non-Core Assets

20. As part of an effort to stem losses and boost liquidity, the Debtors monetized their under-performing and non-core assets. (*Id.* at ¶ 30) For example, in 2011, the Debtors sold the Trump Marina Hotel and Casino, which experienced sustained operational losses and was in need of substantial cap-ex funding, to Golden Nugget Atlantic City, LLC (the "Golden Nugget") (an affiliate of Landry's, Inc.) for approximately \$38 million in cash and the assumption of certain liabilities. (*Id.*) The Debtors also agreed to remove a deed provision restricting the development of gaming activities on real property previously sold by the Debtors to Boardwalk Florida Enterprises, LLC in exchange for a payment of approximately \$5.5 million in cash. (*Id.*) Since 2011, the Debtors sold other non-core assets, including: (a) the Steel Pier, an approximately 425,000 square-foot pier located across the boardwalk from the Taj Mahal, for approximately \$4.3 million in cash; (b) the "skybridge," which extends over the boardwalk and

⁵ The remaining 331 unionized Taj Mahal employees are organized under several other unions, including 277 Painters (5 employees), 623 Carpenters (16 employees), 69f Engineers (47 employees), 917 Entertainment On Call (245 employees) and 68A Entertainment (18 employees). (*Id.*)

connects the Taj Mahal to the Steel Pier, for approximately \$250,000 in net cash proceeds; (c) an off-site warehouse for approximately \$1.9 million in net cash proceeds, (d) the Debtors' former corporate offices for approximately \$3.1 million in cash; and (e) the sale of an unused parcel of land located near the Plaza for approximately \$1.3 million in cash.⁶ (*Id.*)

2. Realization of Cost-Savings and Cost Containment

21. The Debtors also took steps to reduce operational expenses in order to realign operations to appropriately function within reduced business volumes in light of the then-current economic and competitive conditions. (*Id.* at ¶ 32) These steps included staffing reductions, improving labor and other operational efficiencies, varying the availability of certain amenities to match current demand, and certain other cost-cutting measures. (*Id.*)

22. In 2011, the Debtors successfully negotiated with several unions, including Local 54, to achieve concessions (resulting in the CBA that is the subject of the Motion). (*Id.*) Specifically, as part of those negotiations, the Union agreed to a wage freeze, a fifty-percent (50%) reduction in vacation time, a reduction in the number of personal days for each employee and the elimination of a provision requiring the payment of wages to employees on holidays regardless of whether work was performed. (Keyser Declaration at ¶ 5; Griffin Declaration at ¶ 32) These concessions, a majority of which originated from ancillary benefit costs, resulted in an aggregate of \$4 million in cost-savings per year over the three-year term of the CBA. (Keyser Declaration at ¶ 5; Griffin Declaration at ¶ 32) Importantly, the Atlantic City gaming market was generating revenues of \$3,316 billion on an annualized basis in 2011, which is seventeen

⁶ As noted in the Griffin Declaration, the Debtors also attempted to sell the Plaza due to its sustained under-performance and substantial capital expenditure needs. Beginning in July 2011, the Debtors retained CBRE Richard Ellis, who conducted a marketing process with respect to the Plaza. Only one party submitted a formal bid, though the bidder did not enter into a formal purchase agreement until February 2013. However, the Debtors were unable to consummate a sale transaction with respect to the Plaza because of their inability to obtain a release of the security interests in the Plaza.

percent (17%) greater than current revenues for the LTM as of August 31, 2014. (Hardie Declaration at ¶ 14)

3. Property Improvements

23. The Debtors embarked upon a number of capital projects and obtained significant tenant and state-funded investments in the Debtors' properties in order to compete with the other casino hotels located in Atlantic City and neighboring states on the basis of customer service, quality and the extent of available amenities and promotional offers. (Griffin Declaration at ¶ 33) During 2011, the Debtors added several new amenities to their properties, including the addition of the famous White House Sub Shop and a Panda Express on the Taj Mahal's Spice Road. (*Id.*) In addition, the Taj Mahal entered into lease agreements for the tenant-funded development of a 35,000 square-foot gentlemen's club, the first of its kind in an Atlantic City casino, as well as Robert's Steak House, a high-end restaurant. (*Id.*) The Debtors also obtained \$7 million in state funding to restore the Taj Mahal's façade, and upgraded the Taj Mahal's computer room, including enhancements to the hotel and casino's HVAC system, electrical capacity and sprinkler systems. (*Id.* at ¶ 34)

4. Online Gaming Agreements

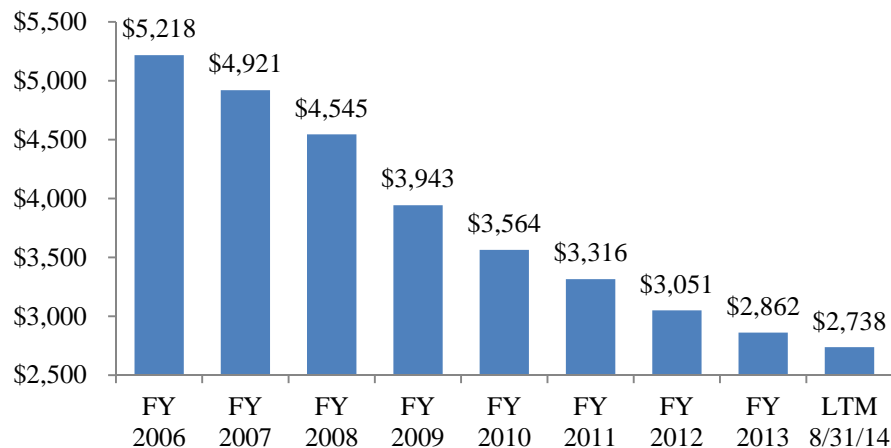
24. In an effort to boost net revenue, the Debtors obtained permits to engage in online gaming and entered into online operating agreements with Fertitta Acquisitionsco LLC ("UG") and Betfair Interactive US LLC ("Betfair"), respectively, pursuant to which each of UG and Betfair agreed to operate internet gaming sites under the internet gaming permits granted to the Debtors. (*Id.* at ¶ 35) In exchange, UG and Betfair contributed \$8 million and \$7.5 million, respectively, to the Debtors and further agreed to share a certain percentage of the net online gaming revenues with the Debtors. (*Id.*)

D. Competitive and Financial Challenges Currently Facing the Debtors

25. The Debtors hoped that the aforementioned measures would restore the Debtors to profitability. (*Id.* at ¶ 36) Unfortunately, the Debtors' operating results and financial condition continued to decline along with the Atlantic City market. (*Id.*)

1. Decline in Atlantic City Market

26. As depicted in the chart below, the Atlantic City gaming market has experienced a significant decline. (*Id.* at ¶ 38)

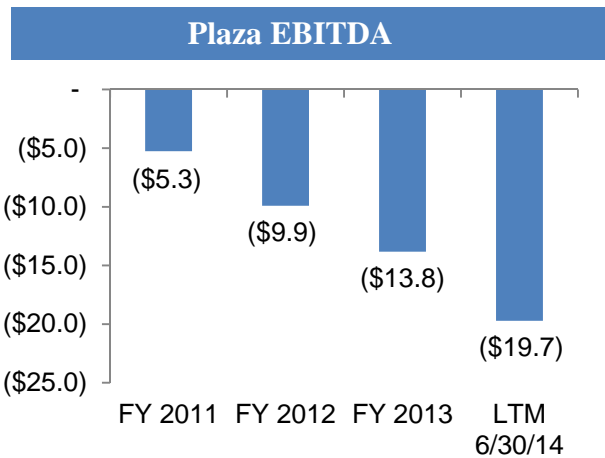
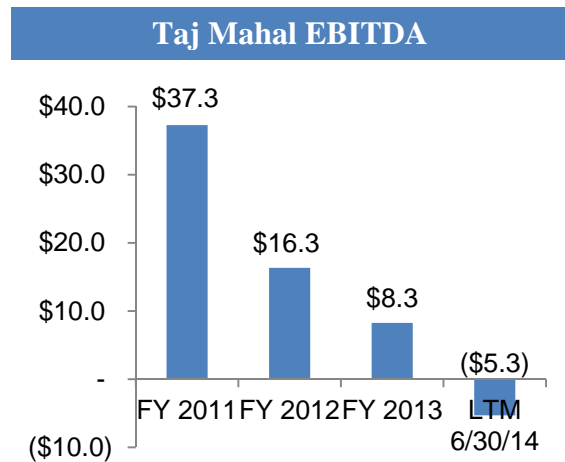
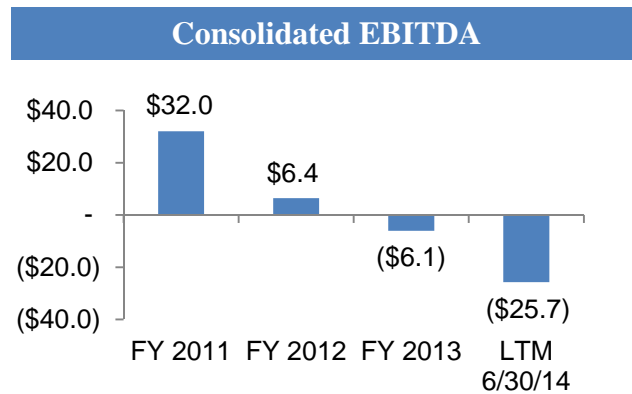


27. This decline is the result of a variety of factors, including: (a) the opening of casinos in adjoining states including Pennsylvania, Maryland, Delaware and New York), (b) the general economic decline in Southern New Jersey and the surrounding areas, (c) the change in spending patterns in the region due to decreased disposable income, and (d) the lingering effects of Superstorm Sandy and other severe storms. (*Id.* at ¶¶ 38-44) This decline is likely to be further exacerbated by, among other things, the legislative effort currently underway to legalize gambling in New Jersey outside of Atlantic City. (*Id.* at ¶ 38)

2. Decline in Debtors' Performance

28. The deterioration of the Atlantic City market and other factors, including increased competition within the Atlantic City market (*e.g.*, the opening of the Revel Casino

Hotel (the “Revel”) in April 2012, the significant property improvements made by the Golden Nugget in 2011, and the recent expansion and rebranding of Resorts Casino Hotel as Jimmy Buffet’s Margaritaville), when combined with the Debtors’ inflexible cost structure, have had a particularly negative effect upon the Debtors’ operating results. (*Id.* at ¶¶ 38-46) Specifically, since 2010, the Debtors have experienced significant EBITDA and net revenue declines, as set forth below. (Hardie Declaration at ¶ 17)



29. The Debtors’ gross gaming revenues fell from approximately \$394.8 million in 2012 to approximately \$330 million in 2013 (representing a 16.4% decline); hotel room revenues dropped from approximately \$73.3 million in 2012 to approximately \$67.2 million in 2013 (representing an 8.3% decline); and food and beverage sales plunged from approximately \$57.1

million in 2012 to approximately \$44.3 million in 2013 (representing a 22.5% decline). (Griffin Declaration at ¶ 46)

30. The Debtors' deteriorating performance continued into 2014. (*Id.* at ¶ 47) The Debtors' gross gaming revenues, which were approximately \$164.6 million in the first half of 2013, dropped to approximately \$134.6 million in the first half of 2014 (representing an 18.2% decline); hotel room revenues declined from approximately \$30.8 million in the first half of 2013 to approximately \$30.2 million in the first half of 2014 (representing a 1.9% decline); and food and beverage sales fell from approximately \$21 million in the first half of 2013 to approximately \$16 million in the first half of 2014 (representing a 23.8% decline). (*Id.*)

31. Notably, while nearly all Atlantic City casinos reported a reduction in net revenue across the board, the Debtors' casinos in particular have suffered greater net revenue reductions than their peers. (*Id.* at ¶ 48) The Atlantic City casino industry has experienced an average annual decrease in net revenue of 4.7% over the past two fiscal years (as reported to the DGE), whereas the Plaza and Taj Mahal experienced average annual net revenue decreases of 24.7% and 12.7%, respectively, over the same time period. (*Id.*)

32. Entering fiscal year 2014, the Debtors were optimistic that their strong brand name and the pent-up gaming demand following Superstorm Sandy would result in a meaningful earnings recovery. (*Id.* at ¶ 49) Unfortunately, the first eight months of 2014 have resulted in EBITDA below management's projections from a variety of factors including disappointing online gaming results, the abnormally cold 2014 winter and frequent snowstorms in the Mid-Atlantic United States, increased utility costs related to the cold, intense competition in the Atlantic City market and surrounding regional gaming markets (including the opening of the

Revel, which captured market share from the Debtors), and current economic conditions in Southern New Jersey and elsewhere. (*Id.*)

3. Continued Operational Losses Associated with Plaza

33. The Plaza's operational losses, in particular, continued to mount in the years leading up to its closure. (*Id.* at ¶ 61) The Plaza experienced EBITDA losses of approximately \$5.3 million, \$9.9 million and \$13.8 million in 2011, 2012 and 2013. (Hardie Declaration at ¶ 15) Performance continued to deteriorate in 2014 due to worsening market conditions. (*Id.* at ¶ 18) In the LTM period through June 30, 2014, the Plaza experienced EBITDA losses of approximately \$19.7 million, which reflects an increase in losses of approximately \$6 million, or approximately forty-three percent (43%), from fiscal year 2013, only six (6) months earlier. (*Id.* at ¶ 15) Moreover, the Plaza's cash burn rate was expected to dramatically increase upon the end of the summer season. (Griffin Declaration at ¶ 61) These cash flow losses made the Plaza's ongoing operations unsustainable. (*Id.*)

34. Consequently, on July 14, 2014, the Debtors issued notices pursuant to the Worker Adjustment and Retraining Notification Act (the "WARN Notices"), notifying Plaza employees of the expected closure of the Plaza. (*Id.* at ¶ 62) On August 29, 2014, the Debtors received the necessary conditional approvals from the DGE to close the Plaza, and on September 16, 2014, the Debtors completed the closure of the Plaza. (*Id.* at ¶ 63)

4. Inflexible Cost Structure – Debt, Taxes and Labor Costs

35. Against this backdrop of the Debtors' continued decline in performance and strained liquidity position, the Debtors continue to struggle with significant and mounting operating costs and expenses. Although the Debtors were able to significantly reduce since 2010 the principal balance of the first lien debt through asset sale pay downs and amortization payments, the Debtors remain highly leveraged, with a current principal balance of \$285.6

million and annual debt service expense of approximately \$38 million. (*Id.* at ¶ 37) In addition, in July 2014, the City of Atlantic City announced a 29% increase in property tax rates. Based on previous assessments of the Debtors' properties, these increased rates would result in annual real-property taxes of approximately \$41 million per year. (*Id.* at ¶ 50)

36. The Debtors have also long-suffered the burden of significantly high labor costs. (*Id.*) The collective bargaining agreements covering the Debtors' businesses historically required the Debtors, on a consolidated basis, to make contributions to the Local 54 multi-employer pension plan, the National Retirement Fund, of more than \$4 million each year, as well as an additional \$12-15 million each year in health and welfare contributions and other benefit payments, as depicted below. (Hardie Declaration at ¶ 23)

Payments Under Local 54 CBA (in millions)	2011	2012	2013	YTD 2014 Through July
Pension	\$4.48	\$4.72	\$4.61	\$2.63
Health & Welfare	\$15.22	\$13.67	\$12.18	\$6.77
Other Benefits	\$0.22	\$0.35	\$0.23	\$0.10
<i>Total Local 54 CBA Payments:</i>	<i>\$19.92</i>	<i>\$18.73</i>	<i>\$17.02</i>	<i>\$9.50</i>
<i>Consolidated EBITDA</i>	<i>\$32.0</i>	<i>\$6.4</i>	<i>\$(6.1)</i>	<i>\$(25.7)*</i>

* LTM 6/30/2014

37. The Local 54 CBA covering the Taj Mahal alone has, in the aggregate, historically required the Debtors to make contributions to the National Retirement Fund of approximately \$3.5 million each year, as well as an additional \$10 million to \$12 million in health and welfare contributions and other benefit payments each year (representing over 75% of total Local 54 CBA payments), as set forth below. (*Id.* at ¶ 27)

Payments Under Local 54 CBA with Taj Mahal Only (in millions)	2011	2012	2013	YTD 2014 Through July
Pension	\$3.33	\$3.62	\$3.69	\$2.16
Health & Welfare	\$11.28	\$10.40	\$9.70	\$5.58
Other Benefits	\$0.16	\$0.27	\$0.16	\$0.08
Total Taj Local 54 CBA Payments:	\$14.78	\$14.29	\$13.56	\$7.82
Taj Mahal EBITDA	\$37.3	\$16.3	\$8.3	\$(5.3)*

* LTM 6/30/2014

Moreover, despite the Debtors' substantial contributions made each year to the multi-employer pension plan, the National Retirement Fund has recently alleged that the Debtors' control group withdrawal liability associated with the National Retirement Fund for the current year would be approximately \$196.7 million (an amount that the Debtors dispute). (Keyser Declaration at ¶ 18)

E. Pre-Petition Negotiations with Local 54

38. The Debtors have been attempting to negotiate the terms of a renewed collective bargaining agreement with the Union since January 2014, starting nearly ten months prior to when the Union ultimately granted the Debtors a formal meeting to discuss such modifications. (Keyser Declaration at ¶ 6)

39. In early 2014, in anticipation of the impending expiration of the three-year term of the CBA, Robert Griffin, the Debtors' Chief Executive Officer, Craig Keyser, the Debtors' lead labor negotiator, and Bob McDevitt, the President of Local 54, met to discuss negotiating the terms of a new CBA. (*Id.*) Mr. Griffin and Mr. Keyser stressed to Mr. McDevitt that the Debtors needed to rationalize their cost structure as a result of, among other things, the declining market conditions in Atlantic City. (*Id.*) The Debtors raised concerns about the overwhelming

costs associated with health, welfare and other benefits and the Debtors' desire to consolidate jobs performed by Union members. (*Id.*) Further, the Debtors informed Mr. McDevitt that, in order to obtain cost savings important to the economic viability of the Debtors, the Debtors would require that Union employees transition from the existing health and welfare plan to health coverage under the Affordable Care Act (colloquially known as "ObamaCare"). (*Id.*) The Debtors did not then propose payment by the Debtors of a stipend to cover an individual's costs of such transition. In contrast, the Proposal to the Union includes a \$2,000 increase in wages per full-time employee to help cover such transition costs. (*Id.*)

40. Mr. McDevitt responded by saying that the Debtors might realize cost savings gradually over a four- to five-year period, by, for example, freezing wages of existing employees and reducing wages for new hires only. (*Id.* at ¶ 7) The Debtors informed Mr. McDevitt that time was of the essence and that cost savings needed to be realized immediately upon entry into a new CBA. (*Id.*) Although no resolution was reached, the Debtors remained hopeful that there was sufficient time to reach a new agreement, given that the current CBA did not expire for another nine months. (*Id.*)

41. By letter dated March 7, 2014, the Debtors requested the Union's availability for bargaining sessions. (*Id.* at ¶ 8) No response was received to the Debtors' request, or to a follow up letter to the same effect sent by the Debtors to Local 54 on April 10, 2014. (*Id.*) On April 30, 2014, the Union finally responded by letter, informing the Debtors that "while [the Union is] also anxious to commence bargaining, the Union is simply not ready, some five months out [from expiration of the CBA], to commence negotiations. [The Union] will, however, contact you within the next several months to schedule bargaining." (*Id.* at ¶ 9) The Debtors expressed their disappointment to the Union in a response letter to Mr. McDevitt, dated May 5, 2014, and

reiterated their request to promptly meet within the next thirty (30) days and to schedule additional bargaining dates thereafter. (*Id.*) Specifically, the Debtors expressed their concern that the Union, four months prior to the expiration of the CBA, was “not providing ample time to schedule dates in what is an extremely challenging economic environment, impacting [the Debtors’] two properties and [the Debtors’] employees.” (*Id.*) The Union did not reply in any fashion to the Debtors’ May 5 letter. (*Id.*)

42. The Debtors again requested a meeting with the Union, which ultimately resulted in an in-person meeting during or around June at the Taj Mahal between Mr. Griffin and Mr. Keyser, for the Debtors, and Mr. McDevitt, for the Union. (*Id.* at ¶ 10) At the meeting, the Debtors renewed their longstanding concern that negotiations over the terms of a new CBA with the Union had not yet commenced. (*Id.*) Mr. McDevitt did not commit to commencing a bargaining towards a new CBA and instead informed the Debtors that the Union intended to negotiate only with the Borgata Hotel Casino & Spa and Caesars Atlantic City Hotel and Casino. Accordingly, no meaningful progress was made. (*Id.*)

43. On August 20, 2014, again at the request of the Debtors, Mr. Griffin, along with William “Tuck” Hardie, of Houlihan Lokey Capital Inc. (“Houlihan Lokey”), met with Mr. McDevitt at the Taj Mahal to discuss negotiations of the new terms of a new CBA. (Hardie Declaration at ¶ 29) At the meeting, the Debtors made clear that their financial condition continued to rapidly deteriorate and Mr. Hardie stressed that, at that time, no stakeholders had come forward to provide any concessions or funding to the Debtors. (*Id.*) The Debtors stressed the imperative nature of commencing bargaining sessions with the Union over the new terms of a collective bargaining agreement. Once again, no progress was made. (*Id.*)

44. The Debtors pressed the Union to negotiate regarding the CBA. As a result of the Debtors' persistence, a meeting was held on August 28, 2014 (the "August 28 Meeting") between Mr. Griffin and Mr. Hardie, for the Debtors, and Mr. McDevitt and the President of Local 54's parent union, D. Taylor (Mr. McDevitt and Mr. Taylor collectively, the "Union Presidents"), for the Union. (*Id.* at ¶ 30) During that meeting, the Debtor proposed modifications to the CBA, as follows:

- Pension: The Debtors' obligations to make continuing contributions to the National Retirement Fund would be eliminated and replaced by a 401(k) program with the Debtors to match employee contributions in an amount to be negotiated by the Debtors and the Union.
- Health and Welfare: The Debtors' obligation to make contributions to the health and welfare fund would be eliminated and substituted with health care coverage under ObamaCare. Full-time employees would receive additional compensation of \$2,000 per year.

(*Id.*) The Debtors explained that the Debtors' non-union employees would be treated identically. (*Id.*) The Debtors also informed the Union Presidents that the Debtors needed a very quick response because of the Debtors' dire financial situation. (*Id.*) The Union Presidents were also informed that if no concessions were achieved, other stakeholders were not prepared to provide the Debtors with the funding needed to keep the Taj Mahal open and operating as a going concern. (*Id.*)

45. On September 3, 2014, Mr. McDevitt advised the Debtors that the Union was prepared to work with the Debtors to eliminate the Debtors' obligations to make pension contributions, but was not prepared to make any concessions with regard to the health and welfare provisions. (*Id.* at ¶ 31)

F. Worsening of Debtors' Financial Condition and Commencement of Debtors' Chapter 11 Cases

46. Since August 2014, the Debtors' financial condition further worsened. The Debtors were faced with third party litigation, default notices and the prospect of a creditor, a former law firm of the Debtors, attaching certain bank accounts. (Griffin Declaration at ¶¶ 52-57) Moreover, initial operational results following the closures of the Showboat Casino Hotel (the "Showboat") and the Revel suggested that those closures would likely result in decreased foot traffic to the north end of the boardwalk, where the Taj Mahal is located, and that any "bounce" for the Taj Mahal would be muted, non-existent or even negative as a result of the closures. (*Id.* at ¶ 40; Hardie Declaration at ¶ 32)

47. Most importantly, the Debtors' cash position continued to deteriorate (and was expected to worsen as the Debtors entered their off-season period). (Hardie Declaration at ¶ 33) As of September 5, 2014, the Debtors' available working capital cash for operations was merely approximately \$12 million. (*Id.*) As shown in the initial cash collateral budget, absent additional concessions from the Union (and other stakeholders), the Debtors expect to burn approximately \$12 million of cash in the next two (2) months (although the Debtors do not expect to pay interest on their senior secured debt or real estate taxes). (*Id.*) At that rate, even after taking into account the release of Plaza cage cash to fund the Debtors' operations, the Debtors projected that they would run out of working capital cash by mid-December 2014. (*Id.*) The closure of the Taj Mahal, which would allow the Debtors to tap cage cash to administer these cases, would extend the liquidity runway by only a few weeks, but not beyond early January. (*Id.*)

48. Faced with this extremely limited liquidity runway and the inability to promptly obtain certain concessions from stakeholders, including the Union, prior to filing the Chapter 11 Cases, the Debtors determined to issue WARN Notices to the employees of the Taj Mahal and

Trump Entertainment Resorts, Inc. in order to prepare for the potential closure of the Taj Mahal on or prior to November 13, 2014. (Griffin Declaration at ¶ 66)

49. On September 9, 2014, the Debtors commenced these Chapter 11 Cases.

G. Debtors' Efforts to Extend Term of the Local 54 CBA

50. As noted above, the Local 54 CBA was set to expire on September 14, 2014.

Although unable to negotiate an agreement on the comprehensive terms of the CBA, the Debtors sought to at least obtain an interim extension of the CBA. (Lavin Declaration at ¶ 2) Following several conversations between Mr. Griffin and Mr. Keyser, the Debtors prepared and signed a copy of an extension agreement that provided for the extension of the term of the CBA until thirty (30) days after either the Debtors or Union provided written notice of termination of the CBA. (*Id.* at ¶ 2) The Debtors delivered that executed copy to William Josem, counsel to the Union, via email on September 11, 2014. (*Id.*)

51. On September 15, 2014, Mr. Josem informed counsel to the Debtors by telephone that the Union was unwilling to execute the extension agreement unless the Debtors agreed that the filing of a motion pursuant to section 1113 of the Bankruptcy Code would result in the automatic termination of the extension and the lifting of the no-strike clause contained in the CBA. (*Id.* at ¶ 3) Determined not to waive the Debtors' statutory rights, counsel to the Debtors delivered a letter dated September 17, 2014 to the Union withdrawing the Debtors' offer to enter into the extension. (*Id.* at ¶ 4)

H. Debtors' Efforts to Formulate Chapter 11 Plan of Reorganization

52. Faced with mounting costs and deteriorating liquidity, the Debtors focused their strategic efforts on developing a chapter 11 plan of reorganization that would drive additional value through the preservation of significant tax attributes and allow for the reorganization of the Debtors around the Taj Mahal. To that end, the Debtors reached out to each of its significant

constituents in an effort to gain some traction with respect to the terms of a potential plan of reorganization. On September 17, 2014, the Debtors, by their counsel, sent a letter annexing the Proposal to the Union regarding concessions necessary to avoid the Debtors' liquidation. (Keyser Declaration at ¶ 11) The Debtors also submitted the Proposal on September 19, 2014 to their First Lien Lenders, seeking the lenders' support for a plan of reorganization that would result in the elimination of all cash interest payments on their senior secured debt and further seeking a commitment to inject \$100 million in capital under the to-be-filed Plan in order to defray operational shortfalls, fund necessary capital projects and provide working capital. (Hardie Declaration at ¶ 39)

53. However, as demonstrated above, the proposed union concessions and the capital injection would still prove insufficient to avoid liquidation, as additional investment and other cost-saving measures would be necessary to provide the Debtors with adequate funding upon emergence and to reduce costs going forward. (*Id.* at ¶ 41) Accordingly, on September 19, 2014, the Debtors submitted a formal written proposal to the City of Atlantic City and the State of New Jersey requesting real property tax and other relief that would have the effect of:

- (a) reducing the property level assessments of the Plaza and the Taj Mahal, previously assessed at \$248 million and \$1 billion, respectively, to \$40 million and \$300 million, respectively,
- (b) freezing the Debtors' tax rates for a period of five years, and (c) providing the Debtors with approximately \$25 million in tax credits, incentives, investments or other similar consideration from the New Jersey Casino Reinvestment Development Authority (the "CRDA") or other related quasi-governmental agencies. (*Id.* at ¶ 40) The funds sought in connection with such requests would be used, alongside the contemplated \$100 million capital infusion from the First Lien Lenders, to defray cash shortfalls and to upgrade and renovate rooms at the Taj Mahal's Taj

Tower, building façade, slot machines and interior finishes, among other potential capital improvements. (*Id.* at ¶ 41)

54. On September 23, 2014, counsel to the First Lien Lenders informed the Debtors of the lenders' support in principle for a plan of reorganization that would result in the elimination of all cash interest payments on their senior secured debt. (*Id.* at ¶ 39) Counsel further informed the Debtors that the First Lien Lenders would consider injecting \$100 million in capital, provided that the Debtors were able to obtain necessary concessions from the Union, the City of Atlantic City and the State of New Jersey. (*Id.*)

I. Debtors' Section 1113(b) Proposal to Local 54

55. On September 17, 2014, the Debtors submitted the Proposal to the Union. The Proposal was supported by a detailed summary of the proposed modifications to the CBA, as well as the rationale for each of the proposed changes.

1. Summary of Debtors' 1113(b) Proposal

56. The Proposal is as follows:⁷

- Duration: The Debtors propose to enter into a three (3) year agreement, consistent with the duration of the current CBA and so that the benefits of the proposed modifications are realized over a necessary period of time.
- Health and Welfare: The Debtors propose to withdraw from the health and welfare fund and, instead, substitute with health care coverage under ObamaCare. Full-time employees, however, would receive additional compensation of \$2,000 per year which will enable them to offset and, in some cases, completely defray the cost of obtaining health insurance now available to them and their families under ObamaCare. It is intended that non-union employees (including management) would receive identical treatment in this regard.
- Pension: The Debtors propose to cease making contributions to, and permanently withdraw from, the pension fund (National Retirement Fund) and, instead institute an employer sponsored 401(k) plan with the employer matching employee contributions up to 1% of each employee's compensation per year. This

⁷ All article or section references below are to the CBA.

modification would result in substantial cost-savings to the Debtors and enable the Debtors to attract new capital.

- Severance: The Debtors propose to eliminate future contributions to the severance fund, which will, in turn, result in cost-savings to the Debtors..
- Vacation: The Debtors propose to shorten, from three (3) months to thirty (30) days, the advance notice required for the periods during which vacation may be taken in any individual department thereby giving the employer greater flexibility over staffing assignments and enabling cost savings through greater internal efficiencies.
- Holidays: The Debtors propose to reduce the amount of pay employees receive for working on a holiday. Rather than receiving double pay (or in some cases, 2.5 times regular pay) for hours actually worked, the employee would only receive a more market-standard time-and-a-half for hours actually worked on the holiday, thereby matching the amount paid to work actually performed. Employees would still receive holiday pay, at straight time, for the portion of the employee's usual shift which the employee does not work due to the holiday.
- Hours of Work: The Debtors propose to eliminate the guarantee that employees will be paid for a full shift if they are sent home at the direction of the employer after the completion of more than half their shift. Instead, the Debtors propose that employees who are sent home at the direction of the employer prior to the completion of their full shift shall be guaranteed pay for half of their scheduled shift or the hours actually worked, whichever is greater. This would more closely link the amount paid to the time worked.
- Control, Discharge and Seniority: The Debtors propose to expand their right to direct and control employees, such as by consolidating jobs, by determining and re-determining job content and determining the assignment of work, in order to allow for a more flexible use of staff and generate cost-savings through greater efficiencies.
- Meals and Locker Facility: The Debtors propose to eliminate paid meal times. Instead, the Debtors propose that all employees working on a shift of six (6) hours or more will be provided with an unpaid, uninterrupted thirty (30) minute meal period. Accordingly, the Debtors would also require that employees clock out prior to the commencement of their assigned unpaid break and clock in upon the conclusion of their break and return to work. This modification would ensure that amounts paid will match actual work performed.
- Miscellaneous Provisions: The Debtors propose to eliminate the term "sweep" from the list of duties that hosts, hostesses, captains, food servers, cocktail servers, bus persons and banquet food servers shall not be asked to do (thereby making sweeping a job duty employees in these positions may be asked to fulfill). This modification would enable internal efficiencies and result in substantial cost

savings to the Debtors. The Debtors further propose to expand the exception for utilizing subcontractors, as set forth in set forth in Article 20.8 of the CBA, to include restaurants owned, operated by and/or affiliated with national restaurateurs. This modification will enable the Debtors to contract with national restaurateurs to open destination restaurants and attract new customers. The Debtors also propose to increase the minimum number of rooms a housekeeper will clean in a day from fourteen (14) to sixteen (16). This modification, which is in line with market standards, will enable internal efficiencies and result in cost-savings to the Debtors.

- Successors and Assigns: The Debtors propose to eliminate the successors and assigns clause, such that assumption of the CBA is not a condition of sale, assignment or transfer, which, in turn, is necessary to attract necessary capital for the Debtors to emerge from bankruptcy.
- Schedule B (Banquets): For banquet extras, the Debtors propose to eliminate the guarantee of eight (8) hours for extra bartenders and reduce that to the same four (4) hour minimum guaranteed to other banquet extras, which in turn would enable the Debtors to save costs in respect of work not actually performed.
- Attachment 3: The Debtors propose to delete “Attachment 3” to the CBA, thereby eliminating the guaranteed gratuity for food servers, cocktail servers and bartenders in limited access clubs; such gratuities may instead be paid by customers, thereby incenting improved customer-driven performance.

57. In connection with the Proposal, the Debtors also provided a presentation from Houlihan Lokey (the “Houlihan Presentation”), which, among other things, (a) further described the proposed modifications, (b) the estimated economic impact of each of the proposed modifications, (c) a cash flow forecast depicting the Debtors’ liquidity through the expiration of the WARN period in November 2014 for the Taj Mahal, and (d) two sets of financial projections: one model incorporating the proposed modifications, and the other depicting the Debtors’ need for immediate relief. (Hardie Declaration at ¶ 35) Specifically, the Houlihan Presentation describes how the Proposal seeks the minimum amount of concessions necessary in order to allow the Debtors to avoid the closure of the Taj Mahal and, therefore, liquidation. (*Id.* at ¶ 37) In particular, the Debtors have proposed monetary savings from the Union in the aggregate amount of \$14.6 million per year over the proposed three (3) year CBA period,

comprising: (i) \$3.7 million in annual savings associated with the pension termination; (ii) \$5.0 million in annual savings associated with the health and welfare amendment; and (iii) \$5.8 million in annual savings associated with certain other ancillary changes accruing significant cost savings.⁸ (*Id.*)

58. The Proposal also included a form confidentiality agreement for execution by the Union, under the expectation that the Union would seek additional information beyond the information contained in the Houlihan Presentation. (Keyser Declaration at ¶ 11) However, the Union did not execute the confidentiality agreement and did not request any additional information from the Debtors in advance of the bargaining session held on September 24, 2014. (*Id.* at ¶ 13)

2. Debtors' Good Faith Efforts to Negotiate the Proposal

59. In its September 17, 2014 cover letter to the Proposal, the Debtors' counsel reiterated to the Union that time was of the essence because of the limited liquidity available to the Debtors. The Debtors, therefore, requested a meaningful response from the Union within seven (7) calendar days. (Keyser Declaration at ¶ 11) The Debtors emphasized that their negotiating team would be prepared to meet with the Union's representatives on *any* day and at *any* place within that timeframe. (*Id.*) Furthermore, counsel to the Debtors specifically asked counsel to the Union to advise him of specific dates and times over the course of this period that would be convenient for the Union's representatives. (*Id.*)

⁸ As set forth in the Houlihan Presentation, the monetary savings related to the concessions sought from the Union represent 17.1% of the total savings sought from all the Debtors' stakeholders in the aggregate. (Houlihan Presentation at 9).

Indeed, Union members will be treated no worse than non-unionized employees. Although non-unionized employees participate in a company-sponsored 401(k) plan that provides for a discretionary employer matching contribution, the Debtors discontinued making contributions under the plan in 2009. (Keyser Declaration at ¶ 16).

60. On September 19, 2014, counsel to the Union indicated by letter that the Union would not be prepared to meet the Debtors until Wednesday, September 24, 2014 at 11:00 a.m. (the “September 24 Bargaining Session”). (*Id.* at ¶ 13) The Union did not substantively respond to the Proposal in its September 19 letter, nor did the Union request any additional information from the Debtors or their advisors. (*Id.*) The Debtors agreed to the meeting. (*Id.* at ¶ 14) Subsequently, during a telephone call with the Union’s counsel, Debtors’ counsel stressed the unique exigent economic circumstances facing the Debtors and urged the Union to submit a counter-proposal to the Debtors’ Proposal either before or at the September 24 Bargaining Session. (Lavin Declaration at ¶ 5) During the period between September 19, 2014 and the September 24 Bargaining Session, the Union made no requests for information from the Debtors and did not express any interest in being granted access to the data room the Debtors had previously set up. (Keyser Declaration at ¶ 13)

61. During the September 24 Bargaining Session, the Debtors’ representatives took the Union representatives through the Debtors’ liquidity position and financial condition, and described the nature of the changes in the Proposal, their economic impact upon the Debtors and the necessity of those changes. (*Id.* at ¶ 16) The Debtors emphasized their common desire with the Union to keep the Taj Mahal open and save Union members’ jobs. (*Id.*) The Debtors’ advisors also explained how other constituents, including non-union employees, the First Lien Lenders, the City of Atlantic City and the State of New Jersey, management, and trade creditors, would all be required to make the concessions necessary to address the dire financial situation that the Debtors currently face. (*Id.*)

62. At the meeting, the Debtors’ representatives also described how Local 54 employees would not, in the Debtors’ view, be materially negatively impacted by certain of the

terms of the Proposal, if implemented. *First*, the National Retirement Fund, to which the Debtors contribute pursuant to the CBA, is in severe distress. (Keyser Declaration at ¶ 17) The Proposal contemplates the Debtors' complete cessation of their obligation to contribute to the National Retirement Fund, and instead the Debtors would institute an employer-sponsored 401(k) plan with the employer matching employee contributions up to one percent (1%) of each employee's compensation per year. (Houlihan Presentation at 8) Since the Local 54 employees will be in charge of their investments and the 401(k) plan will be funded on an ongoing basis, this change arguably provides Local 54 employees with greater retirement security and control. In addition to increasing the security of the benefit for Local 54 employees, this change would result in approximately \$3.7 million in annual cash savings. (Hardie Declaration at ¶ 37)

63. *Second*, the Debtors' withdrawal from the health and welfare fund, even with the offering of additional compensation of \$2,000 per year (and payment of the \$2,000 penalty per employee arising under Obamacare), would result in \$5 million in annual net cash savings upon the complete cessation of their obligation to make payments to health and welfare fund as set forth in the CBA. (*Id.*) *Third*, the ancillary changes proposed will facilitate internal efficiencies and ensure that the Debtors are able to tie compensation more closely to actual work performed. Annual cash savings tied to these ancillary changes would result in \$5.8 million in annual cash savings. (*Id.*) In the aggregate, all of these changes would result in significant cost savings to the Debtors.

64. Notwithstanding that the Debtors, in their various communications to the Union, urged the Union to be prepared to negotiate over the terms of the Proposal in order to reach a resolution at the September 24 Bargaining Session, the Union did not inform the Debtors whether they accept or reject various material terms of the Proposal, including the elimination of

the health and welfare fund. (Keyser Declaration at ¶ 18) Moreover, the Union disingenuously suggested it would be willing to consider a modified version of the severance provision within the CBA that would result in significantly higher costs to the Debtors than the severance costs under the current CBA. (*Id.*)

65. Immediately following the September 24 Bargaining Session, and in response to a request made by the Union during those discussions, counsel to the Debtors sent an email to Mr. Josem advising him that the First Lien Lenders continued to require as a condition to providing new capital towards a reorganized company that the Union make the concessions set forth in the Proposal concerning, among other things, the National Retirement Fund and the health and welfare fund. (Keyser Declaration at ¶ 18; Lavin Declaration at ¶ 6)

66. In light of the lack of progress at the September 24 Bargaining Session, the Debtors advised the Union towards the close of that session that it had no choice in light of the exigent circumstances but to file this Motion by the end of the week. The Union promised at the September 24 Bargaining Session to promptly provide the Debtors with a written information request and counter-proposal, but no such documents were sent until literally hours before this Motion was filed. Although the Union delayed in providing the written response, it did not delay in trying to agitate its members. First, on September 25, it distributed at the Taj Mahal a “Contract Negotiations Exit Report” that concluded with the phrase: “Are YOU Ready to STAND UP and FIGHT BACK?” Then, this morning, September 26, it published and distributed throughout the Taj Mahal a flyer designed to organize its workers and encouraging them to “march” and rally against the Debtors, disingenuously suggesting that Union members claim that the Debtors are “breaking the law” and to call the National Labor Relations Board. (Keyser Declaration at ¶19 and exhibits annexed thereto).

67. Given the Union's lack of a substantive response to date that would allow it and the Debtors to reach a consensual resolution and avoid the imminent closure of the Taj Mahal, the Debtors were compelled to file this Motion.

REQUEST FOR RELIEF

68. By this Motion, the Debtors seek the entry of an order substantially in the form attached hereto as Exhibit A, pursuant to section 1113(c) of the Bankruptcy Code, (i) authorizing the Debtors to reject the CBA, and (ii) implementing the terms of the Debtors' Proposal. The Debtors also seek immediate relief regarding their withdrawal from the National Retirement Fund, as set forth in footnote 2, *supra*.

JURISDICTION AND VENUE

69. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the bankruptcy cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory and legal predicate for the relief sought herein is 11 U.S.C. § 1113 of the Bankruptcy Code.

LEGAL BASIS

70. Section 1113 of the Bankruptcy Code provides a debtor with the exclusive means to reject a collective bargaining agreement in bankruptcy. *See* 11 U.S.C. § 1113(c). Section 1113(b)(1) of the Bankruptcy Code requires a debtor seeking to reject a collective bargaining agreement to:

- (A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

- (B) provide . . . the representative of the employees with such relevant information as is necessary to evaluate the proposal.

11 U.S.C. § 1113(b)(1).

Furthermore, section 1113(b)(2) of the Bankruptcy Code provides that:

During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

11 U.S.C. § 1113(b)(2).

71. Section 1113(c), in turn, provides that a bankruptcy court may approve a motion to reject a collective bargaining agreement only if the court finds that:

- (1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);
- (2) the authorized representative of the employees has refused to accept such proposal without good cause; and
- (3) the balance of the equities clearly favors rejection of such agreement.

11 U.S.C. § 1113(c).

72. Generally speaking, the debtor is required to satisfy the various factors required under section 1113 by a preponderance of the evidence standard. *See, e.g., In re AMR Corp.*, 477 B.R. 384, 406 (Bankr. S.D.N.Y. 2012) (imposing preponderance of the evidence standard for all elements of section 1113) (hereinafter, “AMR”). Once a debtor has satisfied this test, the burden of proof shifts to the union representative to demonstrate that the debtor has failed to comply with such requirements. *See In re Am. Provision Co.*, 44 B.R. 907, 909-10 (Bankr. D. Minn. 1984) (hereinafter, “Am. Provision”); *In re Kentucky Truck Sales*, 52 B.R. 797, 801 (Bankr. W.D. Ky. 1985) (hereinafter, “Kentucky”). As set forth below, the Debtors have

satisfied (or, by the date and time of the hearing to consider this Motion, will have satisfied) all the requirements of section 1113 of the Bankruptcy Code.

A. The Debtors Made a Proposal Based on the Most Complete and Reliable Information Available at the Time the Proposal Was Made Pursuant to Section 1113(b)(1)(A)

73. A debtor's section 1113 proposal seeking modifications to a collective bargaining agreement must be based on the "most complete and reliable information available at the time of the proposal." 11 U.S.C. § 1113(b)(1)(A). "The debtor is simply required to gather the most complete information available at the time and to base its proposal on the information it considers reliable." *In re 710 Long Ridge Road Operating Co., II, LLC*, 2014 WL 407528, at *16 (Bankr. D.N.J. Feb. 3, 2014) (hereinafter, "Long Ridge") (citing *In re Karykeion, Inc.*, 435 B.R. 663, 678 (Bankr. C.D. Cal. 2010) (hereinafter, "Karykeion"). Courts have not required that the information be perfect or audited; rather, the debtor must make "an honest effort to compile all data relevant to making its proposal." *Long Ridge*, 2014 WL 407528, at *16 (citing *Ass'n of Flight Attendants-CWA, AFL-CIO v. Mesaba Aviation, Inc. (In re Mesaba Aviation, Inc.)*, 350 B.R. 435, 454 (D. Minn. 2006))(citations omitted).

74. Here, the Debtors readily satisfy this requirement. On September 17, 2014, the Debtors submitted the Proposal to the Union. The Proposal was supported by a detailed summary of the proposed modifications to the CBA, as well as the rationale for each of the proposed changes. In connection with their Proposal, the Debtors also included the Houlihan Presentation, which, among other things, (a) further described the proposed modifications, (b) the estimated economic impact of each of the proposed modifications, (c) a cash flow forecast depicting the Debtors' liquidity through November 13, 2014 (*i.e.*, the expiration of the WARN period with respect to the Taj Mahal), and (d) two sets of financial projections: one model

incorporating the proposed modifications, and the other depicting the need to obtain immediate relief. (Hardie Declaration at ¶ 35)

75. In preparing its analysis, Houlihan Lokey interacted with the Debtors' management team, familiarized themselves with the Debtors' operations, studied the Debtors' most recent financial information (including previous audited and unaudited financial statements, cash flow projections and budgets, and accounts receivable and accounts payable), assembled information related to the Atlantic City market, and analyzed a host of other data relevant to the Proposal. Moreover, the projections reflected in the Houlihan Presentation were prepared by the Debtors, with the assistance of their financial advisor, and reflect management's judgment, based on present circumstances, of the Company's future performance. (*Id.* at ¶ 36) Similar information in other cases has been deemed to be "complete and reliable" information for purposes of 1113(b). *See, e.g., Long Ridge*, 2014 WL 407528, at *16 (determining that the debtor satisfied this requirement by providing near- and long-term financial projections with and without the proposed modifications and cost savings resulting from such modifications).

B. The Debtors' Proposal Provides for Those Modifications that Are Necessary to Permit the Reorganization of the Debtors in Accordance with Section 1113(b)(1)(A)

76. Section 1113(b)(1)(A) requires that a debtor's proposal contains those modifications "that are necessary to permit the reorganization of the debtor." 11 U.S.C. § 1113(b)(1)(A). In the Third Circuit, "necessary modifications" refer only to those that are essential to the debtor's short-term survival or that are absolutely necessary to prevent a debtor's liquidation. *See Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of Am., AFL-CIO-CLC*, 791 F.2d 1074, 1088-89 (3d Cir. 1986) (hereinafter, "Wheeling"); *see also Long Ridge*, 2014 WL 407528, at *19.

77. In considering the necessity of the proposed changes, the “court must focus on the total impact of the changes [o]n the debtor’s ability to reorganize, not on whether any single proposed change will achieve that result.” *United Food & Commercial Workers v. Appletree Mkts., Inc. (In re Appletree Mkts., Inc.)*, 155 B.R. 431, 441 (S.D. Tex 1993) (hereinafter, “Appletree”); *see also In re Horsehead Indus., Inc.*, 300 B.R. 573, 584 (Bankr. S.D.N.Y. 2003) (“In determining ‘necessity’, the proposal must be viewed as a whole, and not by its specific elements.”). Moreover, courts have found that modifications that have a direct impact on labor costs and the debtor’s ability to avoid liquidation may be deemed necessary. *See, e.g., Nat’l Forge Co. v. Indep. Union of Nat’l Forge Emps. (In re Nat’l Forge Co.)*, 289 B.R. 803, 810-11 (Bankr. W.D. Pa. 2003) (granting section 1113 motion when debtor proposed to remove successor and assigns clause pursuant to section 363 sale based on evidence that no buyer would otherwise consummate a sale, thus forcing the debtor to liquidate); *Appletree*, 155 B.R. at 441 (deeming the modifications necessary because they “were intended to have a direct economic effect on [the debtor’s] ability to reorganize successfully by lowering its labor costs.”).

78. The decisions in *In re Bowen Enters., Inc.* and *In re Sol-Sieff Produce Co.* are particularly relevant here. *See generally Bowen Enters., Inc. v. United Food & Commercial Workers Int’l Union (In re Bowen Enters., Inc.)*, 196 B.R. 734 (Bankr. W.D. Pa. 1996) (hereinafter, “Bowen”); *In re Sol-Sieff Produce Co.*, 82 B.R. 787, 793-94 (Bankr. W.D. Pa. 1988) (hereinafter, “Sol-Sieff”). In *Bowen*, the debtor sought court approval to reject and modify its collective bargaining agreement in order to reduce and freeze the wages of its unionized employees. *See Bowen*, 196 B.R. at 742. There, the debtor’s supermarket business faced high labor costs and decreased sales as a result of intense competition. *Id.* The debtor’s initial proposal submitted to the union contained thirty-nine amendments to the collective bargaining

agreement. *Id.* at 739. The debtor met with the union six times over an approximately two-month period to negotiate the proposal. *Id.* at 739-40. The court overruled the union's objection to the debtor's section 1113 motion and found that the proposed modifications were necessary under section 1113(b)(1)(A) because maintaining the status quo would mean that the debtor "almost assuredly will have to close its doors in the very near future and undergo liquidation," and because the "need for a wage reduction and freeze will be as great several years from now as it is at present." *Id.* at 742.

79. The debtor's dire financial situation in *Sol-Sieff* is not unlike the facts presented here. In that case, prior to the filing of the 1113 motion, the debtor had maintained its operations through major capital injections from its owner, who could no longer afford to continue providing such investments. *See Sol-Sieff*, 82 B.R. at 793-94. After the debtor's financial troubles led to the closure of two of the debtor's distribution centers, the debtor began engaging in concrete negotiations with the union representative. *Id.* at 788-89. In light of the debtor's unsustainable labor costs and absent immediate concessions from the union, the debtor indicated it would be forced to liquidate and lay off its employees. *Id.* at 794. The court agreed with the debtor and found that the concessions as set forth in the debtor's proposal were necessary to the debtor's continued existence. *Id.* The court pointedly observed that "[w]hile . . . the Union wants to negotiate the best possible deal for its members, *it cannot possibly wish to leave them jobless.*" *Id.* (emphasis added).

80. Here, the Debtors readily demonstrate the necessity of the proposed changes to the CBA. As set forth in the Hardie Declaration, the Debtors' LTM EBITDA as of June 30, 2014 was negative \$(19.7) million, and the Debtors expect to burn approximately \$12 million of cash in the first two months of these Chapter 11 Cases. If the Debtors continued to operate

without the benefit of the various stakeholder-concessions sought by the Debtors under the to-be-filed Plan, the Debtors project that they would incur EBITDA losses in the amount of approximately \$(14) million in 2014, \$(35) million in 2015, \$(42) million in 2016, and \$(49) million in each of 2017, 2018 and 2019. In addition, *even if the senior secured debt were fully eliminated*, the Debtors project that they would remain cash flow *negative* by *over* \$50 million in 2015. (Hardie Declaration at ¶¶ 18, 33)

81. In particular, although the Debtors contend that the total impact of the changes, and not any specific proposed change, should be analyzed by the Court when assessing this factor, the modification in the Proposal relating to the pension warrants particular consideration. This modification seeks a cessation by the Debtors of all contributions to, and permanent withdrawal from, the National Retirement Fund and instead seeks the implementation of an employer sponsored 401(k) plan with the employer matching employee contributions up to 1% of each employee's compensation per year. As stated above, despite the Debtors' substantial contributions to the National Retirement Fund, the pension fund recently asserted that the Debtors' control group withdrawal liability associated with the fund for the current year would be approximately \$196.7 million (an amount that the Debtors dispute). (Keyser Declaration at ¶ 6) Without the Court specifically approving the pension-related modification, and helping to eliminate, at least in part, a large contingent liability of the Debtors, it is highly unlikely that the First Lien Lenders would agree to equitize a portion of their existing senior secured debt and exchange the remainder of that debt for new debt requiring no cash interest payments. It is also unlikely that any third party, including the First Lien Lenders, would agree to put any new capital into the reorganized Debtors' capital structure.

82. The cost savings associated with the Proposal alone are insufficient to ensure that the Debtors avoid liquidation. In order to ensure that the Debtors are not forced to shutter the Taj Mahal, they will also have to obtain concessions from their First Lien Lenders and New Jersey taxing authorities, while receiving capital infusions from the First Lien Lenders and the CRDA, or a related governmental authority. (*Id.* at ¶ 35) Indeed, *even with* those various stakeholder-concessions requested under the to-be-filed Plan (including \$100 million in financing and \$25 million in state/city investments), the Debtors are not expected to become cash flow positive until 2016 (once capital improvements throughout 2015 are completed), at which point the Debtors project that they would remain marginally cash flow positive through 2019 by no more than \$6.5 million annually. (Houlihan Presentation at 14).

83. Ultimately, these figures are illustrative only, as the Debtors will simply run out of cash within the next few months. The Debtors do not have DIP financing, and are funding operations solely with cash collateral. Even after the Plaza was closed on September 16, 2014 (thus freeing an additional \$4.25 million in cage cash for use in the Debtors' remaining operations), and *even without* paying real estate taxes or debt-service payments, the Debtors will likely run out of cash during the week-ending December 19, 2014. The closure of the Taj Mahal, and the release of cage cash to fund operations, offers only a limited reprieve, as the Debtors' liquidity runway would be extended only a few weeks to the first week in January 2015. (*Id.* at ¶ 35) In anticipation of the foregoing, WARN Notices were previously sent to Taj Mahal employees, notifying them of the expected closure of the Taj Mahal on or around November 13, 2014, unless the Debtors are able to obtain various stakeholder concessions prior to such time. (Griffin Declaration at ¶ 66)

84. Furthermore, the Proposal contains certain modifications that are a precondition to obtaining the financing necessary for the Debtors to reorganize. Indeed, without such changes to the CBA, including the elimination of the successors and assigns clause and the elimination of the Debtors' obligation to contribute to the National Retirement Fund, the Debtors have been informed that the \$100 million in contemplated financing will not be available to the Debtors. (Hardie Declaration at ¶ 39; Lavin Declaration at ¶ 6) Indeed, in an analogous context, a Delaware bankruptcy court found that the unwillingness of plan funders to fund absent the termination of a pension plan was sufficient grounds to terminate the pension plan under ERISA. *See In re Harry & David Holdings, Inc.*, Case No. 11-10884 (MFW) (Bankr. D. Del. Aug. 9, 2011).

85. The practical deadline is imminent by which the Debtors must determine to close the Taj Mahal. The Debtors must commence the process for obtaining necessary regulatory approvals and the winding down of certain operations well before the actual closing occurs. Future bookings and convention reservations remain in doubt unless the Debtors are able, literally as soon as possible, to demonstrate the prospect of a viable business plan. Without the immediate concessions sought, any prospective bridge financing and much-needed capital infusion will be too late and the Debtors forced to liquidate. The concessions sought from the Union, as set forth in the Proposal, are necessary to the Debtors' reorganization because, without them, the Debtors would not survive in the short term and the Debtors would be forced to close the Taj Mahal and liquidate. (Hardie Declaration at ¶¶ 11, 37) Thus, the necessity factor is satisfied.

C. The Debtors' Proposal Assures that All Creditors, the Debtor and All Affected Parties Are Treated Fairly and Equitably in Compliance with Section 1113(b)(1)(A)

86. Section 1113(b)(1)(A) of the Bankruptcy Code requires that a debtor's proposed modifications treat all creditors, the debtors and all affected parties fairly and equitably. *See* 11 U.S.C. § 1113(b)(1)(A). In the Third Circuit, "the focus of inquiry as to 'fair and equitable' treatment should be whether the [debtor's] proposal would impose a disproportionate burden on the employees." *Wheeling*, 791 F.2d at 1091-92; *Long Ridge*, 2014 WL 407528, at *18. Courts have analyzed "whether the proposed sacrifices will be borne exclusively by members of the bargaining unit or will be spread among all affected parties." *See Bowen*, 196 B.R. at 743. "Fairness and equity do not require that the proposed treatment of employees belonging to the bargaining unit be identical to the anticipated treatment of other affected parties." *Id.* at 743. Rather, "'equity means fairness under the circumstances,' and does not require that the proposal provide every constituency with the very same treatment." *See Long Ridge*, 2014 WL 407528, at *18 (citations omitted); *see also Bowen*, 196 B.R. at 743 ("The concessions sought from various parties must be examined from a realistic standpoint.").

87. The presence of concessions from other stakeholders will support fairness and equity of the proposed modifications. *See, e.g., Bowen*, 196 B.R. at 740-44 (finding that proposal satisfied fairness and equity test where proposal included waiver by certain pre-petition creditors of twenty percent (20%) of their claims, significant supplier concessions, including foregoing payment of interest on credit extended, reduction of "upcharge" on delivering of goods, and reduction in rent compared to market); *Long Ridge*, 2014 WL 407528, at *7-8 (proposal included two percent (2%) reduction in non-union wages and benefits (which "were already significantly less than those given to Union employees"), landlord waiver of \$13.3 million in cure amounts, and affiliate waiver of over \$30 million claim).

88. The Debtors have undertaken an extensive process to reduce costs and stems losses, both before and after the commencement of the Debtors' Chapter 11 Cases. (Griffin Declaration at ¶¶ 28-35, 58-66; Keyser Declaration at ¶¶ 16) Moreover, the concessions sought in the proposal reflect the minimal changes necessary to achieve a reorganization. Importantly, the Debtors are seeking concessions not just from the Union, but from all of its other stakeholders as well. Specifically, the First Lien Lenders have been asked to agree to forego further interest and debt-service payments on their \$286 million in senior secured debt. In addition, the Debtors have requested that the First Lien Lenders support the to-be-filed Plan, eliminate all of the cash interest payments on their senior secured debt, and inject \$100 million in new capital in order to fund operational shortfalls and capital expenditures and to provide working capital for the Debtors. (Hardie Declaration at ¶ 39) Even so, regrettably, general unsecured creditors would be substantially impaired under the to-be-filed Plan.

89. The Debtors also formally requested that the City of Atlantic City, Atlantic County, New Jersey and/or the State of New Jersey provide the Debtors with real-property tax and other relief that would have the effect of: (a) reducing the property level assessments of the Plaza and the Taj Mahal to \$40 million and \$300 million, respectively, and freezing the Debtors' tax rates for a period of five years, which, combined, would provide the Debtors with approximately \$29.8 million in annual cash savings during the five-year period; and (b) providing the Debtors with approximately \$25 million in tax credits, incentives, investments or other similar consideration from the CRDA or other similar quasi-governmental agencies, in order to fund much-needed capital improvements at the Taj Mahal and to provide working capital. (*Id.* at ¶ 40)

90. Importantly, the Proposal does not shift the employee burden only to Local 54 members. Non-unionized employees will be provided the same health and welfare benefits that are contained in the Proposal. Although non-unionized employees participate in a company-sponsored 401(k) plan that provides for a discretionary employer matching contribution, the Debtors discontinued making matching contributions under the plan in 2009. (Keyser Declaration at ¶ 16) Thus, the Proposal, which contains a 401(k) matching obligation of up to one percent (1%) of employee compensation for Local 54 union members, actually favors Local 54 employees in this regard. (*Id.* at ¶ 17)

91. The Debtors may also seek similar adjustments to the health care coverage for employees who are members of the Debtors' other unions. Such unions, however, cover only approximately 331 employees at the Taj Mahal combined as of September 13, 2014, and the health care coverage costs associated with those union employees is less than \$1.5 million in the aggregate. (Hardie Declaration at ¶ 6) The CBA with Local 54, however, covers 1,136 employees and involves labor costs of over \$35 million per year, including approximately \$9.6 million in annual health care coverage costs. Thus, the labor costs associated with the Debtors' other unions represent a significantly smaller proportional share of the Debtors' labor costs as compared with the costs associated with Local 54. Moreover, other unions have already agreed to modifications to their collective bargaining agreements with the Debtors in the most recent bargaining round that have resulted in increased relative cost savings to the Debtors. Additional concessions from these smaller unions would not have a significant economic impact on the Debtors.

92. Management, too, is not immune. A substantial portion of the compensation received by the Debtors' management is linked to pre-petition equity, which would be worthless

under the to-be-filed Plan. Management has not sought approval of any key employee incentive plan.

93. Although an apples-to-apples quantitative comparison of the savings by each affected constituency is not required in order to satisfy this factor, as reflected in the Hardie Declaration and as depicted below, the proposed savings resulting from the Proposal to the Union account for approximately \$14.6 million, or 17.1%, of the total savings sought from all constituents, whereby the Union accounts for over 35% of the Taj Mahal's labor costs and approximately 15% of the Taj Mahal's total operating costs. (*Id.* at ¶ 41)

Concession Components from All Stakeholders (\$ in mm)

Concession Component	Stakeholder	Annual Cash Savings	Request Summary
Local 54 Savings	Local 54	\$14.6	Includes savings discussed herein Net of ObamaCare penalty and \$2k wage increase
Non-Union Health & Welfare	Non-Union Employees	3.5	
Property Tax Relief Requested – Taj Mahal	Atlantic City	23.0	Assessments down to \$300 mm for Taj Mahal freeze rate for period of years
Property Tax Relief Requested – Plaza	Atlantic City	6.8	Assessments down to \$40 mm for Taj Mahal freeze rate for period of years
Total Savings		\$85.2	

Other Components

\$100 mm new capital contribution	First Lien Lenders	To fund capital improvements at the Taj Mahal working capital and future losses <ul style="list-style-type: none"> • – Taj Tower Room Renovations • – Building Façade • – Slot Machine Upgrades • – Interior Finishes
\$25 mm contribution from CRDA or such other state, county, or municipality as to be agreed	State of NJ	To fund capital improvements at the Taj Mahal

D. The Debtors Provided the Union Representative with Such Relevant Information as is Necessary to Evaluate the Proposal Pursuant to Section 1113(b)(1)(B)

94. Under section 1113(b)(1)(B), a debtor is obligated to provide the union representative with “such relevant information as is necessary to evaluate” the proposal. *See* 11 U.S.C. § 1113(b)(1)(B). “The debtor bears the initial burden of producing evidence of the information that it has provided to the union. The burden then shifts to the union to rebut the debtor’s explicit or implicit assertion that such evidence is sufficient to enable an evaluation of the proposal.” *Karykeion*, 435 B.R. at 680. “The breadth and scope of the information depends on the circumstances of the debtor and severity of the modifications.” *Id.* at 680-81; *see also Long Ridge*, 2014 WL 407528, at *17-18 (finding the debtors met this requirement by providing the union with access to an online data room, financial projections reflecting performance with and without the proposed modifications and details of cost savings, as well as by responding to the union’s relevant document requests); *AMR*, 477 B.R. at 439-43 (determining that debtor satisfied this requirement through extensive policy of information sharing, giving high priority to union requests, establishing an online data room, and sharing its valuations of proposed work rule changes, although it did not perform new analyses at union’s request or provide a live business plan model).

95. As set forth above, the Debtors’ Proposal includes a detailed description of each of the proposed modifications, as well as the rationale for same. In addition, the Debtors provided the Houlihan Presentation to the Union in tandem with the Proposal. That analysis (a) further described the proposed modifications, (b) the estimated economic impact of each of the proposed modifications, (c) a cash flow forecast, and (d) two sets of financial projections: one model incorporating the proposed modifications, and the other depicting all too clearly the need to obtain immediate relief. (Hardie Declaration at ¶ 35) The Houlihan Presentation satisfies this standard,

as it contains a detailed analysis of the situation before the Debtors, a summary of the proposed modifications, explanations for why each such modification is necessary and short term and long term cash flow projections justifying the validity of the Proposal.

96. Moreover, in anticipation of the Union requesting information from the Debtors above and beyond the Houlihan Presentation, and considering the urgency of the Debtors' financial circumstances, the Debtors also established an online data-site, uploaded thousands of additional pages of information for the benefit of the Union, and offered the Union a form confidentiality agreement for their review in order to facilitate immediate access. The Debtors were prepared to accord the highest priority to, and to respond to, all relevant queries from the Union. However, the Union failed to sign the confidentiality agreement (or even engage with the Debtors regarding its terms), or make a single request for additional information concerning the Proposal between September 17, 2014 and the September 24 Bargaining Session. At the September 24 Bargaining Session, the Union made various verbal diligence requests of the Debtors, and the Debtors informed the Union that they would act promptly to comply with such requests. The Debtors were able to comply with certain of the Union's requests within minutes of the conclusion of the meeting and acted swiftly to satisfy all other remaining requests. (Keyser Declaration at ¶¶ 11-18; Lavin Declaration at ¶ 6). It was only hours before the filing of this Motion that the Debtors received a written request from the Union for information, and even that request sought information that is, at best, tangentially related to the Proposal. (Keyser Declaration at ¶ 19).

97. In light of the foregoing, the Debtors submit that they have provided the Union with sufficient information to evaluate the Proposal for purposes of section 1113 of the Bankruptcy Code.

E. The Debtors Have (a) Met with the Union at Reasonable Times (b) To Confer In Good Faith in Accordance with Section 1113(b)(2)

98. Section 1113(b)(2) provides that “[d]uring the period beginning on the date of the making of a proposal . . . and ending on the date of the hearing . . . the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications” to the collective bargaining agreement. *See* 11 U.S.C. § 1113(b)(2). Courts determine whether this factor has been satisfied based on the facts and circumstances before each case. *See In re Amherst Sparkle Market, Inc.*, 75 B.R. at 847, 852 (Bankr. N.D. Ohio 1987) (concluding that two meetings was sufficient to satisfy this factor); *In re Allied Delivery Sys. Co.*, 49 B.R. 700, 701-03 (Bankr. N.D. Ohio 1985) (same); *Kentucky*, 52 B.R. at 801 (holding that four meetings was satisfactory). “[O]nce the debtor has shown that it has met with the union representatives, it is incumbent upon the union to produce evidence that the debtor did not confer in good faith.” *Long Ridge*, 2014 WL 407528, at *21 (quoting *Am. Provision*, 44 B.R. at 909).

99. Bargaining in good faith has been defined by bankruptcy courts as “conduct indicating an honest purpose to arrive at an agreement as the result of the bargaining process,” and it can be satisfied if the debtor “seriously attempts to negotiate reasonable modifications to a collective bargaining agreement prior to moving to reject it.” *Bowen*, 196 B.R. at 744 (quoting *In re Walway Co.*, 69 B.R. 967, 973 (Bankr. E.D. Mich. 1987)); *see also In re Texas Sheet Metals, Inc.*, 90 B.R. 260, 270 (Bankr. S.D. Tex. 1988).

100. Here, the facts conclusively establish that the Debtors attempted to negotiate revisions to the CBA and meet with the Union well before filing this Motion. In fact, the Debtors have made numerous and frequent attempts, since January 2014, to formally meet with the Union to discuss the renewal of and revised terms of the CBA. Indeed, the Debtors started

sending letters to the Union to this effect in March 2014 and then sent various follow up letters to the same effect. The Union did not agree to acquiesce to the Debtors' pleas until September 19, 2014, when it agreed to meet on September 24, 2014, nearly nine months after the Debtors first voiced their concerns about the upcoming expiration of the CBA. (Keyser Declaration at ¶¶ 6-13)

101. The Debtors have consistently acted with urgency concerning the CBA and the Proposal. Once the Debtors obtained first day relief in order to stabilize their operations, the Debtors immediately turned to their largest constituents to begin negotiations to attempt to avoid a closure of the Taj Mahal. On September 17, 2014, the Debtors presented the Proposal to the Union and implored the Union to meaningfully respond within seven (7) days. The Debtors also indicated they were prepared to meet with the Union's representatives on *any* day and at *any* place within that seven day period in the hopes of being able to reach a consensual resolution with the Union. The Debtors also submitted formal proposals to their First Lien Lenders as well as representatives of the City of Atlantic City and the State of New Jersey in an attempt to formulate a chapter 11 plan of reorganization that would keep the Taj Mahal open and save thousands of union jobs. (Keyser Declaration at ¶¶ 11, 16)

102. Belying any sense of urgency, the Union responded that it would not be available to meet until September 24, 2014. The Debtors unsuccessfully urged the Union to meet sooner if possible (but indicating its availability on September 24). (Keyser Declaration at ¶¶ 13, 14) Debtors' counsel also spoke by telephone with counsel to the Union in an attempt to impress upon him the need to engage in substantive negotiations at the September 24 Bargaining Session and to request that the Union provide the Debtors with a counter-proposal. (Lavin Declaration at ¶ 5)

103. Unfortunately, the Union did not respond or engage in any meaningful way with the Debtors until the September 24 Bargaining Session. That meeting was attended by representatives of the Debtors and their negotiating team with decision-making authority. As demonstrated above, the Debtors put everything on the table. Specifically, during the meeting, the Debtors' representatives took the Union representatives through the Debtors' financial condition, and described the Proposal and its economic impact upon the Debtors and the necessity of those changes. The Debtors' advisors also explained how other constituents, including non-union employees, the First Lien Lenders, the City and State, management, and trade creditors, would all be required to make the concessions necessary for the Debtors to reorganize. (Keyser Declaration at ¶¶ 13-16)

104. In short, at the September 24 Bargaining Session, the Debtors made another serious attempt to negotiate reasonable modifications to the CBA, again to no avail. The Debtors impressed upon the Union the need to make a counter-proposal. The parties took a recess so that the Union could discuss the terms of such a counter-proposal, but when the parties reconvened the Union failed to present a discrete counterproposal or to meaningfully respond on various material terms of the Proposal. (*Id.* at ¶¶ 16-18).

105. It was not until hours before this Motion was filed that the Debtors provided what it called a "proposal" in response to the Debtors' Proposal. The Union had promised at the September 24 Bargaining Session to promptly provide the Debtors with its written counter-proposal, but rather than focus its efforts in that direction, the Union instead sought to rouse its members. First, on September 25, it distributed at the Taj Mahal a "Contract Negotiations Exit Report" that concluded with the phrase: "Are YOU Ready to STAND UP and FIGHT BACK?" Then, this morning, September 26, it published and distributed throughout the Taj Mahal a flyer

designed to organize its workers and encouraging them to “march” and rally against the Debtors, disingenuously suggesting that Union members claim that the Debtors are “breaking the law” and to call the National Labor Relations Board. (Keyser Declaration at ¶19 and exhibits annexed thereto)

106. The Debtors have remained open and honest with the Union throughout the entire negotiation process in an attempt to facilitate a consensual resolution with respect to the proposed CBA modifications. No negotiated resolution appears forthcoming. In light of the foregoing, the Debtors have met, and will continue to meet, with the Union at reasonable times and in good faith in an attempt to reach mutually satisfactory modifications to the CBA.

F. The Union Refused to Accept the Proposal Without Good Cause in Compliance with Section 1113(c)(2)

107. Section 1113(c)(2) of the Bankruptcy Code provides that a bankruptcy court may grant a motion to reject a collective bargaining agreement only if the union representative “has refused to accept such proposal without good cause.” 11 U.S.C. § 1113(c)(2). Although “good cause” is not defined in the Bankruptcy Code, courts have found that this factor does not require a showing of “bad faith,” but rather requires that the union representative lacks a willingness to work with the debtor in its attempts to successfully reorganize. *See, e.g., In re Salt Creek Freightways*, 47 B.R. 835, 840-41 (Bankr. D. Wyo. 1985); *see also N.Y. Typographical Union No. 6 v. Maxwell Newspapers, Inc. (In re Maxwell Newspapers, Inc.)*, 981 F.2d 85, 90 (2d Cir. 1992) (explaining that the good cause requirement protects the debtor “from the union’s refusal to accept the changes without a good reason”); *Bowen*, 196 B.R. at 746 (considering the “totality of the circumstances surrounding negotiations between debtor and the union” in determining compliance with this factor). Once the debtor has shown that the union has refused to accept its proposal, the union must produce evidence that it was not without good cause. *See, e.g., Am.*

Provision, 44 B.R. at 909; *Truck Drivers Local 807 v. Carey Transp., Inc.*, 816 F.2d 82, 92 (2d Cir. 1987) (hereinafter, “Carey”). Although the debtor has the ultimate burden of persuasion on the matter, the union is required to supply “its reason for declining to accept the debtor’s proposal in whole or in part.” *Long Ridge*, 2014 WL 407528, at *20 (citing *Carey*, 816 F.2d at 92). “When the debtor is in need of relief, ‘intransigence by the union, in the pre-petition negotiations, may also warrant rejection.’” *Id.* (citing *In re Garofalo’s Finer Foods, Inc.*, 117 B.R. 363, 371 (Bankr. N.D. Ill. 1990) (hereinafter, “Garofalo’s”).

108. Similarly, the failure of the union to explain its reasons for declining to accept the debtor’s proposal in whole or in part during pre-hearing negotiations, or the union’s refusal to negotiate and delayed response to a proposal, would also constitute rejection without good cause. *See Long Ridge*, 2014 WL 407528, at *20 (determining that the union’s refusal to confer with the debtors or present a counterproposal constituted a rejection of the proposal without good cause); *Garofalo’s*, 117 B.R. at 371 (discussing the union’s intransigence during negotiations as an indicator of lack of good faith); *see also Bowen*, 197 B.R. at 746 (finding that “the union rejected debtor’s proposed modifications without good cause, notwithstanding its counterproposal and cost analysis,” when the “cost analysis submitted by the union was grossly unrealistic and was a sham intended to disguise the union’s intransigent unwillingness to bargain in good faith with debtor”).

109. The Union has rejected the Proposal without good cause. As an initial matter, the Union has not demonstrated a willingness to work with the Debtors in their attempt to successfully reorganize. The Debtors stressed to the Union on various occasions that time was of the absolute essence to negotiate a new CBA. The Union failed to respond with any urgency of its own. Indeed, the Union proposed a meeting date that fell at the end of the period during

which the Debtors had stated they needed a meaningful response, and the Union's behavior at that meeting evidenced no understanding of the importance of haste. In particular, the Union failed to provide the Debtors at the September 24 Bargaining Session with a specific counter-proposal from which the parties could continue to negotiate. (Keyser Declaration at ¶¶ 6-18) And, when such a counter-proposal arrived hours ago, it was late and unresponsive to the Debtors' Proposal. Moreover, although the Union suggested it would be willing to consider a modified version of the severance provision within the CBA, such modification would result in significantly higher costs to the Debtors than the severance costs under the current CBA. (Keyser Declaration at ¶ 18)

110. The Union has not accepted the Proposal set before it by the Debtors. Upon this showing, it is the Union's burden to demonstrate to the Court that the Union had good cause not to accept the Proposal. *See, e.g., Am. Provision*, 44 B.R. at 909; *Carey*, 816 F.2d at 92. Such an attempt at satisfying this standard will be futile, however, as the Union was unable to express to the Debtors its rationale for declining to accept the Proposal at any pre-hearing negotiation. Indeed, the Union demonstrated its intransigence at the September 24 Bargaining Session and in its written "proposal" dated September 26, without providing sufficient justification for its position.

111. Based on the foregoing, it is apparent that the Union is not prepared to meaningfully negotiate any counter-proposal. Accordingly, the Debtors respectfully submit that the Union's failure to accept the Proposal was without good cause.

G. The Balance of the Equities Clearly Favors Rejection Pursuant to Section 1113(c)(3)

112. Section 1113(c)(3) of the Bankruptcy Code provides that a collective bargaining agreement may be rejected only if "the balance of the equities clearly favors rejection of such agreement." 11 U.S.C. § 1113(c)(3). As part of this fact-specific inquiry, courts in the Third

Circuit have considered some or all of the following factors set forth by the Second Circuit in *Carey*:

- (i) the likelihood and consequences of liquidation if rejection is not permitted;
- (ii) the likely reduction in the value of creditors' claims if the collective bargaining agreement remains in force;
- (iii) the likelihood and consequences of a strike if the collective bargaining agreement is voided;
- (iv) the possibility and likely effect of any employee claims for breach of contract if rejection is approved;
- (v) the cost-spreading abilities of the various parties, taking into account the number of employees covered by the collective bargaining agreement and how various employees' wages and benefits compare to those of others in the industry; and
- (vi) the good or bad faith of the parties in dealing with the debtor's financial dilemma.

Carey, 816 F.2d at 93; *see also Bowen*, 197 B.R. at 747 (determining that the balance of equities clearly favors rejection where the "debtor unquestionably will have to undergo liquidation in the very near future unless it is relieved of the high labor costs imposed by the collective bargaining agreement"); *Long Ridge*, 2014 WL 407528, at *20-21 (finding that balance of the equities favored rejection where debtors produced evidence of relatively high labor costs and the imminent risk of liquidation, as well as their willingness to negotiate, but union refused to respond to the debtor's proposal).

113. Each of the factors considered by courts in determining the balance of the equities clearly favors rejection and modification of the CBA. *First*, the Debtors have presented compelling evidence that the Debtors' only alternative to relief under section 1113 is the immediate cessation of operations at the Taj Mahal, and the liquidation of the Debtors' assets. (Hardie Declaration at ¶¶ 11, 37) *Second*, creditor recoveries would be minimal if the CBA were

to remain in place, which in turn may result in a liquidation. *Third*, a strike would run counter to the interests of the Union members, given the beleaguered state of the Atlantic City market, the recent closures of the Revel and Showboat, the already high unemployment rate in the State of New Jersey, and the likelihood that a strike would have devastating financial impact on the Debtors, which would only serve to hasten their demise and result in the loss of thousands of jobs. *Fourth*, based on available information known to the Debtors, any claims submitted by the Union upon rejection of the CBA (to the extent undisputed by the Debtors, legally permitted and allowable) are unlikely to have a material impact upon the Debtors' to-be-filed Plan or the plan process. *Fifth*, the Debtors have demonstrated above the extent to which various constituencies will be asked to share in sacrifice in order to enable the Debtors to reorganize. *Sixth*, the Debtors have made repeated, good faith efforts to confer and attempt to reach consensus with the Union, both prior to and during the bankruptcy process, whereas, in the Debtors' view, the Union has not dealt with the Debtors in good faith with respect to the Proposal. (Keyser Declaration at ¶¶ 6-18)

114. In any event, the imminent likelihood of the Debtors' liquidation outweighs the consideration of other factors. *See Long Ridge*, 2014 WL 407528, at *21 (“[T]he imminent likelihood of the Debtors' liquidation (not disputed by the Union) far outweighs the Objecting Parties' asserted possibility of a strike, and thus, the balance of the equities favors rejection of the collective bargaining agreements.”); *see also Bowen*, 197 B.R. at 745. The balance of the equities clearly favors rejection of the CBA.

CONCLUSION

115. Based on the foregoing, the Debtors respectfully submit that the Debtors have satisfied the requirements of section 1113 of the Bankruptcy Code, and respectfully request entry

of an order, in the form annexed as Exhibit A, authorizing the Debtors to reject the CBA and implementing the terms of the Proposal.

NOTICE

116. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) proposed counsel to the Committee; (v) counsel to the First Lien Agent (as defined in the Interim Cash Collateral Order); (vi) the New Jersey Casino Control Commission; (vii) the New Jersey Division of Gaming Enforcement; (viii) counsel to the Union; and (ix) all parties that, as of the filing of this Motion, have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

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

RESERVATION OF RIGHTS

118. The Debtors reserve the right to supplement this Motion in any and all respects prior to the hearing.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors request entry of an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as is just and proper.

Dated: September 26, 2014
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 N. King Street
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Telephone: (302) 571-6600
Facsimile: (302) 571-1253

-and-

STROOCK & STROOCK & LAVAN LLP

Kristopher M. Hansen
Kenneth Pasquale
Erez E. Gilad
180 Maiden Lane
New York, New York 10038-4982
Telephone: (212) 806-5400
Facsimile: (212) 806-6006

*Proposed Counsel for the Debtors
and Debtors in Possession*

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

In re:

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

Debtors.

Chapter 11

Case No. 14-12103 (KG)

Jointly Administered

Hearing Date: October 14, 2014 at 1:00 p.m. (ET)

Objection Deadline: October 7, 2014 at 4:00 p.m. (ET)

NOTICE OF MOTION

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (II) THE OFFICE OF THE UNITED STATES ATTORNEY FOR THE DISTRICT OF DELAWARE; (III) THE INTERNAL REVENUE SERVICE; (IV) PROPOSED COUNSEL TO THE COMMITTEE; (V) COUNSEL TO THE FIRST LIEN AGENT (AS DEFINED IN THE INTERIM CASH COLLATERAL ORDER); (VI) THE NEW JERSEY CASINO CONTROL COMMISSION; (VII) THE NEW JERSEY DIVISION OF GAMING ENFORCEMENT; (VIII) COUNSEL TO THE UNION; AND (IX) ALL PARTIES THAT, AS OF THE FILING OF THIS NOTICE, HAVE REQUESTED NOTICE IN THESE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002

IMPORTANT NOTICE TO UNION MEMBERS:

IF YOU HAVE QUESTIONS ABOUT HOW THIS MOTION MAY IMPACT YOU, PLEASE CONTACT YOUR UNION REPRESENTATIVE. THE DEBTORS HAVE ALSO ESTABLISHED A WEBSITE TO ANSWER FREQUENTLY ASKED QUESTIONS. THAT WEBSITE ADDRESS IS: [HTTPS://CASES.PRIMECLERK.COM/TER](https://cases.primeclerk.com/ter).

PLEASE TAKE NOTICE that Trump Entertainment Resorts, Inc. and its above-captioned affiliated debtors and debtors-in-possession (collectively, the “**Debtors**”) have filed the attached **Debtors’ Motion for Entry of an Order (I) Rejecting Collective Bargaining Agreement Between Trump Taj Mahal Associates, LLC and UNITE HERE Local 54 Pursuant to 11 U.S.C. § 1113(c) and (II) Implementing Terms of Debtors’ Proposal Under 11 U.S.C. § 1113(b)** (the “**Motion**”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **October 7, 2014 at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the

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.

United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned proposed counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON OCTOBER 14, 2014 AT 1:00 P.M. (ET) BEFORE THE HONORABLE KEVIN GROSS AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 6TH 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: September 26, 2014
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)
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Telephone: (302) 571-6600
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-and-

STROOCK & STROOCK & LAVAN LLP
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*Proposed Counsel to the Debtors
and Debtors-in-Possession*

EXHIBIT A

Proposed Order

**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. _____

**ORDER GRANTING DEBTORS’ MOTION FOR ENTRY
OF ORDER (I) REJECTING COLLECTIVE BARGAINING
AGREEMENT BETWEEN TRUMP TAJ MAHAL ASSOCIATES, LLC
AND UNITE HERE LOCAL 54 PURSUANT TO 11 U.S.C. § 1113(C) AND
(II) IMPLEMENTING TERMS OF DEBTORS’ PROPOSAL UNDER 11 U.S.C. § 1113(B)**

Upon the motion (the “Motion”)² of the debtors and debtors in possession, 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 Management Co., LLC, TER Development Co., LLC, and TERH LP Inc. (collectively, the “Debtors”) for entry of an order (this “Order”): (i) rejecting collective bargaining agreement (“CBA”) with UNITE HERE Local 54 (“Local 54”); and (ii) implementing the terms of the Debtors’ proposal under 11 U.S.C. § 1113(b); and good and sufficient notice of the hearing on the Motion having been provided as evidenced by the Affidavit of Service filed with the Court [Docket No. ___]; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved, or overruled by the

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

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

Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor,

IT IS HEREBY FOUND as follows:³

A. This Court has jurisdiction to consider and adjudicate the Motion under section 1113 of the Bankruptcy Code;

B. Subsequent to the filing of the Debtors' Chapter 11 Cases, and prior to the filing of the Motion, the Debtors have made a Proposal to the authorized representative of the employees covered by the CBA, based on the most complete and reliable information available at the time of such Proposal, which provides for those necessary modifications in the employee benefits and protections that are necessary to permit the reorganization of the Debtors and assures that all creditors, the Debtors and all of the affected parties are treated fairly and equitably;

C. The Debtors have provided the representative of the employees with such relevant information as is necessary to evaluate the Proposal;

D. The Debtors' Proposal satisfies the requirements of 11 U.S.C. § 1113(c)(1);

E. The authorized representative of the employees has refused to accept such Proposal without good cause; and

F. The balance of the equities clearly favors rejection of the CBA.

G. During the period beginning on the date of the making of the Proposal and ending on the date of the hearing to consider this Motion, the Debtors have met, at reasonable times, with the authorized representative of the employees to confer in good faith in attempting to reach mutually satisfactory modifications of the CBA.

³ To the extent that any findings of fact are determined to be conclusions of law, such findings of fact shall be adopted as such; and to the extent that any conclusions of law are determined to be findings of fact, such conclusions of law shall be adopted as such.

IT IS HEREBY ORDERED as follows:

1. The Motion is GRANTED.
2. The Debtors are authorized to reject the CBA with Local 54 pursuant to 11 U.S.C. § 1113(c) *nunc pro tunc* to the Petition Date.
3. The Debtors are authorized to implement the terms and conditions of the Proposal attached hereto as Exhibit A.
4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. This Court shall retain exclusive jurisdiction over any and all matters arising from, in connection with or related to the interpretation or implementation of this Order.
6. Debtors' counsel shall serve a copy of this Order on all parties-in-interest by regular mail within seven (7) days hereof.

Dated: _____, 2014

KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposal

STROOCK

September 17, 2014

Kristopher M. Hansen
Direct Dial 212-806-6056
Fax 212-806-6006
khansen@stroock.com

VIA ELECTRONIC MAIL

Cleary, Josem & Trigiani LLP
127 Maple Avenue
Red Bank, NJ 07701
Attn: William Josem, Esq.

Re: In re Trump Entertainment Resorts Inc., et. al., Case No. 14-12103 (KG)

Dear Mr. Josem:

As you know, Trump Entertainment Resorts, Inc. (collectively, with each of its subsidiaries, the “Company” or “TER”) filed for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on September 9, 2014. As you also know, the Company’s financial condition is in dire straits. Even though the Company is no longer having to pay interest on its senior secured debt, the Company expects to lose approximately \$7 million per month between September 2014 and June 2015. Indeed, with no change to its current path, the Company will run out of money by December 2014 or earlier and will be forced to cease operations, close the Taj Mahal, and terminate its employees in accordance with the previously-issued WARN notices. In 2012 and 2013 combined, the Company lost \$105 million, and for the first six months of 2014, the Company lost \$51 million, with operating losses accelerating daily. The Company also has no financing available to it and is living off of its limited cash resources, which dwindle every day.

The Company has reached out to its significant stakeholders and other potentially interested parties, but obviously no one has expressed a serious willingness to put capital into a company that, even after the deferral of interest from its senior secured lenders, will lose approximately \$7 million per month for the foreseeable future. If the Taj Mahal and the union jobs are to survive, all constituents will have to make concessions.

Therefore, the Company is asking that:

1. Its senior secured lenders convert their \$286 million of outstanding secured debt so that the Company can be debt free on a go-forward basis, and make an immediate equity investment of \$100 million to defray cash shortfalls and to make much-needed capital expenditures;

September 17, 2014

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2. Atlantic City, Atlantic County and the State of New Jersey provide complementary life-saving relief, including substantial property tax relief; and
3. UNITE HERE Local 54 (the "Union") make significant and immediate pension, healthcare and other concessions in order to, among other things, reduce operating costs.

Unless all three of these concessions are made so that the Company can come close to becoming cash flow positive, it is self-evident that the Taj Mahal will run out of money and will have to close in November, thus preventing a reorganization of the Company.

As you are aware, prior to filing for chapter 11 relief, on August 28, 2014, representatives of the Company made requests to the Union leadership to modify the Collective Bargaining Agreement ("CBA") to provide for the termination of continuing pension obligations and to eliminate its health and welfare payments, but raising each full time employee's compensation by \$2,000 per year, enabling them to offset and, in some cases, completely defray the cost of obtaining health insurance now available to them and their families under the Affordable Care Act (colloquially known as "Obamacare"). That proposal would have provided the Company with savings of approximately \$8.7 million per year.

Unfortunately and to the Company's dismay, the Company's proposal was rejected by the Union representative, who said they would rather see the Taj Mahal shut than further discuss the proposal. This position was even further astounding given that the Union representative was made aware that (a) health coverage under Obamacare is similar to that provided under the CBA, and for the most part would be subsidized, but would defray significant Company costs and help immensely towards saving jobs, (b) employees would not have been deprived of the opportunity to receive healthcare, (c) the failure to provide this crucial relief to the Company would mean the loss of the very jobs that the Union is supposed to protect, and (d) the Company made no requests to reduce wages.

Since the Company made its initial proposal to the Union leadership, the financial situation at TER has worsened as the impact of the bankruptcy filing itself and the closings of the Revel Casino Hotel and the Showboat Casino Hotel have caused a precipitous decline in the Company's revenues, thus further hastening the need for rapid concessions from all constituencies.

In the interest of working together to create consensus, attached please find a proposal (the "Proposal") containing proposed changes to the CBA that are necessary to avoid the closing of the Taj Mahal and permit the reorganization of the Company. Also enclosed please find materials from Houlihan Lokey Capital Inc., the Company's financial advisor, showing the financial impact on TER of the proposed changes to the CBA, as well as the Company's projected cash flows, both with and without the proposed changes. We note that, despite the Company's deteriorating financial position, the Company is still not asking for wage concessions.

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This is a critical time, calling for critical action. Indeed, the Company is like a patient dying on the operating table and in need of immediate medical attention. The Union needs to be a critical part of the team of doctors necessary to rescue this patient instead of hastening the patient's demise. Saving the Company means saving the jobs and livelihoods of the Union members.

To the extent the Union believes that it requires additional information to evaluate the Proposal, please let me know promptly. The Company and its advisors are committed to providing the Union with such additional information in a prompt manner, subject to the Union's execution of a confidentiality agreement, a form of which is also attached hereto.

Due to the Company's constrained liquidity position, time is of the absolute essence, and the Company needs a comprehensive response from the Union within seven (7) calendar days, at which time the Company may be forced to seek redress from the Bankruptcy Court. The Company's negotiating team is prepared to meet with the Union representatives on any day and at any place within that timeframe. Accordingly, please advise me which dates and times over the course of the next seven (7) days are convenient for the Union representatives.

The Company and I look forward to hearing from you and the Union as soon as possible.

Very truly yours,

A handwritten signature in black ink, appearing to read "K. Hansen", with a long horizontal flourish extending to the right.

Kristopher M. Hansen

cc: Bob McDevitt, UNITE HERE Local 54
D. Taylor, UNITE HERE
Robert Griffin, Trump Taj Mahal Associates, LLC
Craig Keyser, Trump Taj Mahal Associates, LLC
John Donnelly, Esq., Trump Taj Mahal Associates, LLC

PROPOSAL

THE FOLLOWING PROPOSAL IS MADE ON BEHALF OF TRUMP ENTERTAINMENT RESORTS, INC. AND TRUMP TAJ MAHAL ASSOCIATES, LLC (THE “DEBTOR”) WITH RESPECT TO MODIFIED TERMS TO BE INCLUDED IN A NEW COLLECTIVE BARGAINING AGREEMENT (“CBA”) FOR A THREE-YEAR TERM BETWEEN TRUMP TAJ MAHAL ASSOCIATES, LLC AND UNITE HERE LOCAL 54. THE DEBTOR RESERVES THE RIGHT TO MODIFY, DELETE FROM OR ADD PROPOSALS AT ANY TIME.

ARTICLE 3—CONTROL, DISCHARGE AND SENIORITY

The Debtor proposes to expand its right to direct and control employees, such as by consolidating jobs, by determining and re-determining job content and determining the assignment of work, in order to allow for a more flexible use of staff and generate cost-savings.

ARTICLE 6—MEAL AND LOCKER FACILITY

The Debtor proposes to eliminate paid meal times. Rather than a paid meal time, the Debtor proposes that all employees working on a shift of six (6) hours or more will be provided with an unpaid, uninterrupted thirty (30) minute meal period. Accordingly, the Debtor would also require that employees clock out prior to the commencement of their assigned unpaid break and clock in upon the conclusion of their break and return to work. This modification would ensure that amounts paid will match actual work performed.

ARTICLE 9—VACATIONS

The Debtor proposes to shorten from three (3) months to thirty (30) days the advance notice required for the periods during which vacation may be taken in any individual department thereby giving the employer greater flexibility over staffing assignments and enabling cost-savings through greater internal efficiencies.

ARTICLE 11—HOLIDAYS

The Debtor proposes to reduce the amount of pay employees receive for working on a holiday. Rather than receiving straight pay (or in some cases, 1.5 times regular pay) for hours actually worked plus holiday pay, the employee would only receive a more market-standard time-and-a-half for hours actually worked on the holiday, thereby matching the amount paid to work actually performed. Employees would still receive holiday pay, at straight time, for the portion of the employee’s usual shift which the employee does not work due to the holiday.

ARTICLE 12—HOURS OF WORK

The Debtor proposes to eliminate the guarantee that employees will be paid for a full shift if they are sent home at the direction of the employer after the completion of more than half their shift. Instead, the Debtor proposes that employees who are sent home at the direction of the employer prior to the completion of their full shift shall be guaranteed pay for half of their scheduled shift

CONFIDENTIAL

or the hours actually worked, whichever is greater. This would more closely link the amount paid to the time worked.

ARTICLE 15—H&W AND PENSION & SEVERANCE

The Debtor proposes to withdraw from the Health and Welfare Fund and, instead, substitute with health care coverage under the 2010 Patient Protection and Affordable Care Act (commonly referred to as “Obamacare”). Full-time employees, however, would receive additional compensation of \$2,000 per year which will enable them to offset and, in some cases, completely defray the cost of obtaining health insurance now available to them and their families under Obamacare. Notably, it is intended that non-union employees (including management) would receive identical treatment in this regard.

The Debtor further proposes to cease making contributions to, and permanently withdraw from, the Pension Fund (National Retirement Fund) and, instead institute an employer sponsored 401(k) plan with the employer matching employee contributions up to 1% of each employee’s compensation per year. This modification would result in substantial cost-savings to the Debtor and enable the Debtor to attract new capital.

Also, in line with market standards, the Debtor also proposes to eliminate future contributions to the Severance Fund, which in turn will result in cost-savings to the Debtor.

ARTICLE 20—MISCELLANEOUS PROVISIONS

The Debtor proposes to eliminate the term “sweep” from the list of duties that hosts, hostesses, captains, food servers, cocktail servers, bus persons and banquet food servers shall not be asked to do (thereby making sweeping a job duty employees in these positions may be asked to fulfill). This modification would enable internal efficiencies and result in substantial cost savings to the Debtor.

The Debtor further proposes to expand the exception for utilizing subcontractors, as set forth in set forth in Article 20.8, to include restaurants owned, operated by and/or affiliated with national restaurateurs. This modification will enable the Debtor to contract with national restaurateurs to open destination restaurants and attract new customers.

The Debtor also proposes to increase the minimum number of rooms a housekeeper will clean in a day from fourteen (14) to sixteen (16). This modification, which is in line with market standards, will enable internal efficiencies and result in cost-savings to the Debtor.

ARTICLE 21—SUCCESSORS AND ASSIGNS

The Debtor proposes to eliminate the successors and assigns clause, such that assumption of the CBA is not a condition of sale, assignment or transfer, which, in turn, is necessary to attract necessary capital for the Debtors to emerge from bankruptcy.

ARTICLE 22—TERM OF CONTRACT

The Debtor proposes to enter into a three (3) year agreement such that the benefits of the proposed modifications are realized over a necessary period of time.

SCHEDULE B—BANQUETS

For Banquet Extras, the Debtor proposes to eliminate the guarantee of eight (8) hours for extra bartenders and reduce that to the same four (4) hour minimum guaranteed to other banquet extras, which in turn would enable the Debtor to save costs in respect of work not actually performed.

ATTACHMENT 3

The Debtor proposes to delete “Attachment 3” to the CBA, thereby eliminating the guaranteed gratuity for food servers, cocktail servers and bartenders in limited access clubs; such gratuities may instead be paid by customers, thereby incenting improved customer-driven performance.

CONFIDENTIALITY AGREEMENT

1. This Confidentiality Agreement (this “Agreement”) is entered into by and between Trump Entertainment Resorts, Inc., on behalf of itself, its subsidiaries, and their respective representatives, officers, agents, employees, and advisors (collectively, the “Company”), and UNITE HERE Local 54, on behalf of itself, its parent union, their respective affiliates, and their respective representatives, officers, agents, employees, and advisors (collectively, “Unite Here”).

2. The Company is engaged in collective bargaining with Unite Here.

3. In connection with the collective bargaining negotiations, Unite Here has requested that the Company provide it with access to that certain data site (the “Data Site”) containing non-public and/or confidential information about the Company.

4. This Agreement is necessary to preserve the Company’s business interests and prevent irreparable harm that could result from disclosure of non-public and/or confidential information about the Company.

5. The Company, without waiving any rights, is willing to provide Unite Here, under the conditions and restrictions contained herein, access to the Data Site.

6. The Company and Unite Here agree as follows:

6.1 All documents and information regarding the Company made available to Unite Here on the Data Site or otherwise shall be deemed to be, and shall be treated as, confidential information about the Company (“Confidential Information”), provided, however, that “Confidential Information” shall not include (i) documents and information that have been publicly disclosed by the Company or (ii) documents and information already in the possession of Unite Here prior to such documents and information being made available to Unite Here on the Data Site or otherwise, provided that the source of such documents and information was not bound by any confidentiality arrangement or agreement, or any other contractual or legal obligation, prohibiting the transmittal of such documents and information;

6.2 Notwithstanding anything to the contrary contained herein, all documents and information already in the possession of Unite Here prior to such documents and information being made available to Unite Here on the Data Site or otherwise shall remain subject to all applicable confidentiality arrangements and agreements, and all other contractual and legal obligations, existing as of the date of this Agreement; and

6.3 Confidential Information may not be copied by Unite Here or its representatives without prior written consent of the Company, and all such copies shall be Confidential Information subject to the provisions of this Agreement.

7. Unite Here further agrees that:

(a) Confidential Information made available to Unite Here will only be revealed to members of Unite Here’s staff, negotiating committee, and legal counsel (each, an

“Involved Person”, and collectively, the “Involved Persons”), and such Confidential Information will not be revealed in whole or part to any other person without the prior written consent of the Company;

(b) Before any Confidential Information is revealed to any Involved Person, (i) each such Involved Person must first be advised that this Agreement prevents the disclosure of the Confidential Information in whole or part to any person or entity that is not an Involved Person, (ii) each such Involved Person must agree to be bound by and sign this Agreement (or a separate non-disclosure agreement approved by the Company), and (iii) a signed copy of such executed Agreement (or such separate non-disclosure agreement) must be provided to the Company;

(c) Unite Here (i) will not disclose the Confidential Information to any person or entity that is not a party to this Agreement (or a separate non-disclosure agreement approved by the Company) and (ii) will use the Confidential Information solely for the purpose of these collective bargaining negotiations with the Company;

(d) If a wrongful disclosure of any Confidential Information occurs, Unite Here will immediately notify the Company in writing of all known details of such wrongful disclosure, including but not limited to, specific information disclosed, when and how such wrongful disclosure occurred, and the person(s) by whom and to whom it was disclosed; and

(e) If any Confidential Information is obtained (in whole or in part) by any person or entity not entitled to access such Confidential Information under the terms of this Agreement as a result of any intentional or negligent act or omission by Unite Here, Unite Here shall take all necessary steps, in cooperation with the Company, to mitigate any adverse effect on the Company and shall indemnify the Company for any and all liability, losses, and expenses (including but not limited to attorneys’ fees) that the Company may incur as a result thereof.

8. Each party to this Agreement acknowledges that this Agreement is designed solely to assist the parties in the limited disclosure and protection of certain confidential information relating to their negotiations and is not intended to limit in any way the parties’ options or bargaining prerogatives with respect to their negotiation of a collective bargaining agreement.

9. In the event that Unite Here is requested or required (i) as a result of any rule or regulation or (ii) by any governmental or regulatory agency or authority, to disclose any of the Confidential Information, Unite Here shall provide the Company with prompt written notice of any such request or requirement so that the Company may take any such action it deems advisable in connection therewith. If, after any such action by the Company, Unite Here is nonetheless advised in writing by counsel that it is legally required to disclose Confidential Information, Unite Here may, without liability under this Agreement, after written notice to the Company, disclose only that portion of the Confidential Information which Unite Here is legally required to disclose, provided that Unite Here shall exercise its best efforts to preserve the confidentiality of the Confidential Information, including but not limited to cooperating with the Company in any respect that the Company reasonably deems advisable.

10. It shall not be a violation of this Agreement for Confidential Information to be used in any document filed with the United States Bankruptcy Court for the District of Delaware in Case No. 14-12103 (KG), provided that any such document and the information contained therein shall be filed and maintained under seal and not subject to public disclosure.

11. Within ten (10) days after the ratification of the collective bargaining agreement or the termination of the parties' negotiations, whichever occurs sooner:

11.1 All Confidential Information in the possession or control of Unite Here or its representatives shall be promptly returned to the Company or destroyed; and

11.2 All notes, memoranda, summaries, and other documents and communications of any kind describing or relating to any Confidential Information shall be promptly returned to the Company or destroyed.

12. Notwithstanding anything to the contrary in this Agreement, this Agreement shall not be construed as a waiver by any party of any objections to the production of any requested documents or information.

13. In the event that it is necessary for either party to this Agreement to bring an action in any court or forum to enforce any and all provisions of this Agreement, it shall not be necessary for that party, in order to obtain injunctive relief, to establish irreparable harm as a result of any breach or violation of this Agreement.

The undersigned have executed this Agreement with the intent to be legally bound.

Trump Entertainment Resorts, Inc.,
on behalf of itself and each of its subsidiaries

By: _____
Name: _____
Title: _____
Date: _____

UNITE HERE Local 54

By: _____
Name: _____
Title: _____
Date: _____



HOULIHAN LOKEY

Trump Entertainment Resorts, Inc.

Presentation to UNITE HERE Local 54

September 2014

MERGERS & ACQUISITIONS
CAPITAL MARKETS
FINANCIAL RESTRUCTURING
FINANCIAL ADVISORY SERVICES

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Statement of Limiting Conditions

The content and analyses contained herein are the property of Houlihan Lokey and may not be copied or distributed without the express consent of Houlihan Lokey. By your receipt and review of these materials, you agree to be bound by the terms of this Statement of Limiting Conditions.

The materials contained herein (both historical and projected) have been prepared by Trump Entertainment Resorts, Inc. (the “Company”) and Houlihan Lokey, are preliminary in nature and are subject to material adjustment and reconsideration. Houlihan Lokey makes no representations as to the accuracy or completeness of the financial information contained herein and expressly disclaims any liability associated therewith. The Company and Houlihan Lokey expressly disclaim any obligation to update or revise these materials.

This Presentation contains forward-looking statements based on expectations and assumptions as of September 15, 2014. All forward-looking statements are expressly qualified in their entirety by the following cautionary statements. Forward-looking statements involve known and unknown risks and uncertainties that may cause actual results, performance or events to differ materially from those expressed or implied by the forward-looking statements. Forward-looking statements are not guarantees of future performance and undue reliance should not be placed on them.

Material non-public and/or confidential information may be contained in this Presentation (“Confidential Information”). Accordingly, any such Confidential Information obtained through your receipt of this Presentation, and any analyses of such information, is to be considered strictly confidential. Distribution of this document or disclosure of any Confidential Information set forth herein to any party other than the intended recipient of this Presentation is expressly prohibited without the prior written authorization of the Company and Houlihan Lokey.



Situation Overview

Circumstances Leading to Current Situation

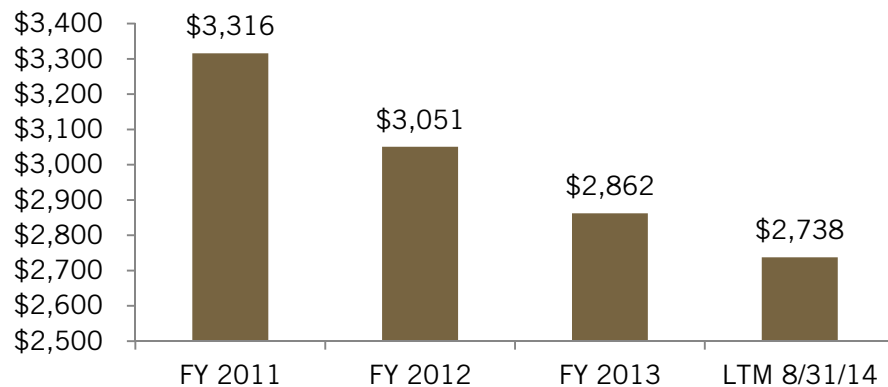
- Over the past several years, Trump Entertainment Resorts, Inc. (collectively with its subsidiaries, the “Company” or the “Debtors”) has undertaken a number of measures in an attempt to stabilize the Company’s operations and keep the Trump Taj Mahal Casino Hotel (the “Taj”) open, including:
 - Sale of certain non-core assets to raise liquidity, including the Trump Marina, the Steel Pier, the “sky-bridge”, an off-site warehouse and the Company’s former corporate offices;
 - Challenging real estate tax assessments and settling with the city for more than \$40mm of savings on a net present value basis;
 - Cost containment initiatives to match levels of staffing with the lowered market environment;
 - Making property improvements funded by (i) the Company, (ii) certain tenants at the Taj and (iii) CRDA; and
 - Signing online gaming agreements from online gaming partners who contributed \$15.5mm to the Company.

Circumstances Leading to Current Situation (cont.)

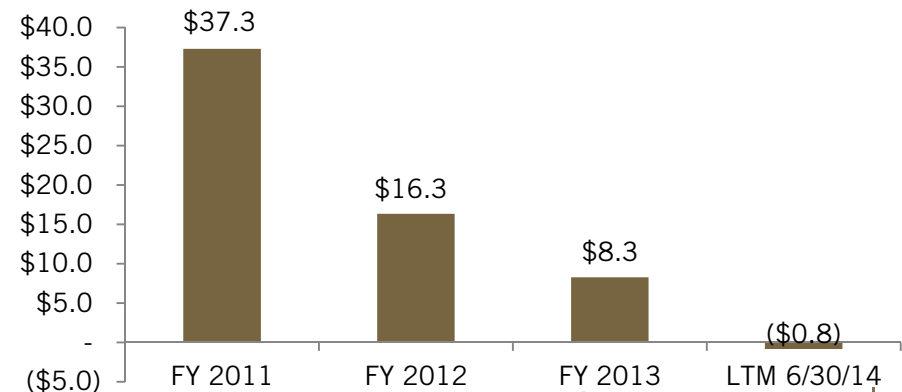
Situation Overview

- Management's initiatives, however, were insufficient in the face of the extremely difficult operating environment in Atlantic City.
 - Total casino win for the Atlantic City market has continuously declined, from \$3.3bn in 2011 (when the prior Collective Bargaining Agreement with Local 54 ("CBA") was signed) to \$2.9bn in 2013, a cumulative decrease of 13.7%.
 - 2014 YTD is down an additional 6.3%, indicating that the declines are continuing.
 - Revel opened in 2012, which has resulted in market share declines for Taj from 10.5% in 2011 to 8.8% 2014 YTD.
 - Following the recent closure of the Revel, preliminary indications are that the Revel and Showboat closures are hurting the Taj as the north end of the Atlantic City boardwalk is at least temporarily a "ghost town".
 - Superstorm Sandy hurt the Atlantic City market (a) directly in 2012 via temporary closures, and (b) indirectly due to the continuing effects on the Jersey Shore summer rental market.
 - The Atlantic City market also experienced an abnormally cold 2014 winter.
 - Internet gaming revenues have fallen far short of expectations.
 - Atlantic City recently increased property tax rates by 29%, despite earlier indications that rates would remain flat.
 - The Company faced third party litigation.
 - The Taj has been negatively impacted from a competitive standpoint because capital was not available for property maintenance and improvement. Significant capital must be invested in the Taj.

Atlantic City Market Declines (\$ in mm)



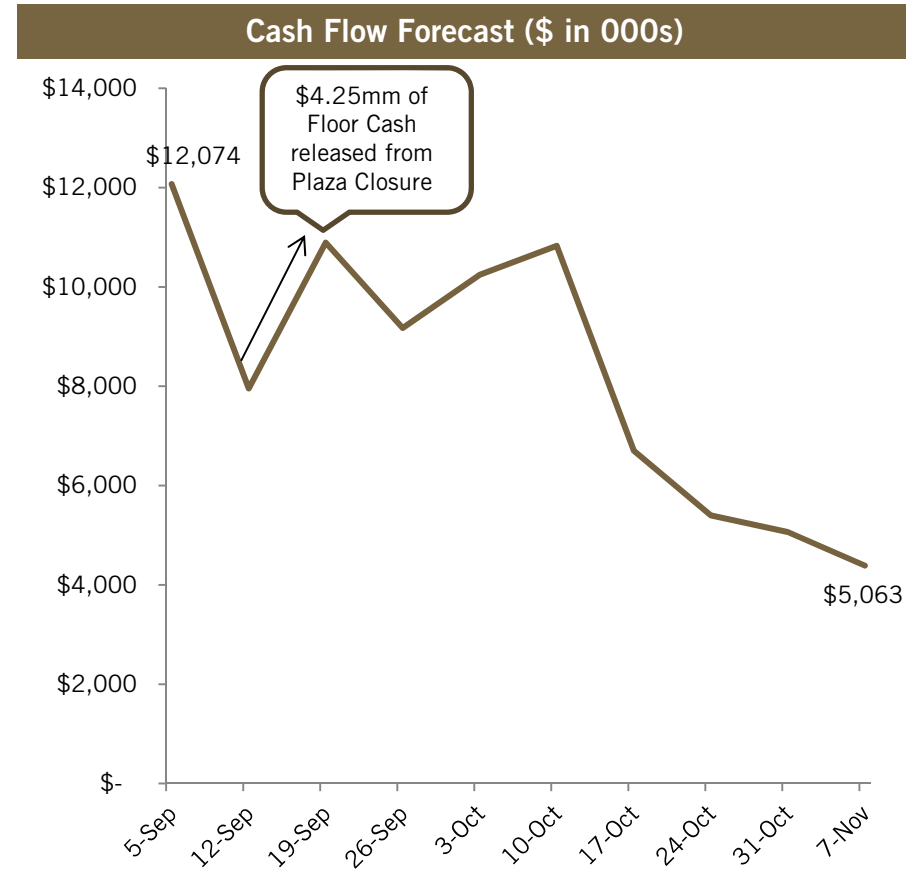
Taj Property Recent Historical EBITDA (\$ in mm) ⁽¹⁾



(1) Includes illustrative 2/3 allocation of corporate expenses.

Weekly Cash Flow Forecast

- The Company's cash balances are dwindling rapidly.
 - Available working capital cash for operations is currently approximately \$12mm as of September 5, 2014.
 - By the end of the year, even without paying any property taxes or interest payments, available cash for operations will likely be completely exhausted.
 - WARN notices were sent to the Taj employees on September 9, and the property could close by mid-November without concessions.
 - The forecast shown below already reflects a variety of actions management has already undertaken to preserve cash, such as:
 - Delaying real estate tax payments (the level of real estate taxes is currently disputed);
 - Not making any interest payments on the Company's \$286mm of secured debt;
 - Managing vendor payments; and
 - Closing the Plaza, which frees up some cash from the casino floor post-close and stems Plaza-related operating losses.
- The Company needs concessions from stakeholders very quickly to preserve cash and save the 2,000 full-time jobs (1,140 Local 54 jobs) at the Taj, otherwise the Taj property will not be able to survive.



Memo:

Cumulative CF from 9/5 to 11/7	(\$7,687)
Cumulative CF from 9/5 to 11/7 Excluding Floor Cash	(\$11,937)
Release from Plaza Closure	



Proposed CBA Concessions

Proposed Amendments to CBA

- In order to keep the Taj open, save jobs and attract the required capital necessary to reorganize, the following amendments are required to the Local 54 CBA as part of a proposed 3-year extension. Discussions of each are on the following pages.

	Amendment Description	Estimated Annual Company Savings
Pension Termination	<ul style="list-style-type: none"> Company would permanently withdraw from the multi-employer pension plan Contributions to pension plan would cease Company would begin a 401(k) program (including an employer match up to 1% of employee's compensation) for employee retirement 	<ul style="list-style-type: none"> \$3.7 million
Amend Health and Welfare Benefit	<ul style="list-style-type: none"> Company would eliminate health & welfare contributions Employees would purchase health insurance on the Affordable Care Act insurance exchange Full-time employees would receive an increase in annual compensation of \$2,000 per year to help offset or, in some cases, completely defray the cost of health insurance 	<ul style="list-style-type: none"> \$5.0 million
Certain Work Rules Changes	<ul style="list-style-type: none"> Amends certain work rules related to tips, breaks and minimum shift pay Allows the Company to have better flexibility on staffing levels Better matches work performed with pay received 	<ul style="list-style-type: none"> \$5.8 million
Other Non-Economic Changes	<ul style="list-style-type: none"> Extension of CBA by 3 years to September 2017 Elimination of successor clause 	<ul style="list-style-type: none"> n/a
TOTAL		<ul style="list-style-type: none"> \$14.6 million

- We believe that employees will not be materially negatively impacted by the proposed changes to the pension and health & welfare provisions of the CBA because, in part, the compensation increase and Affordable Care Act subsidies will help offset or, in some cases, completely defray healthcare costs.

Shared Sacrifice

- Local 54 employees would be only one of several stakeholders that are making concessions to keep the Taj alive. Without the concessions from ALL stakeholders, the Taj faces the unfortunate likelihood of closing in November 2014.
- The Company is formulating a bankruptcy plan of reorganization that will require the concessions outlined below.
 - It is worth noting that as part of the above mentioned plan of reorganization, shareholders who invested \$225 million in 2010 will likely lose all of their investment.

Concession Components from All Stakeholders (\$ in mm)

Concession Component	Stakeholder	Annual Cash Savings	Request Summary
Local 54 Savings	Local 54	\$14.6	Includes savings discussed herein
Non-Union Health & Welfare	Non-Union Employees	3.5	Net of Obamacare penalty and annual \$2k compensation increase
Property Tax Relief Requested -- Taj	Atlantic City	23.0	Assessments down to \$300mm for Taj, freeze rate for period of years
Property Tax Relief Requested -- Plaza	Atlantic City	6.8	Assessments down to \$40mm for Plaza, freeze rate for period of years
Debt Payments Relief	First Lien Lenders	37.4	Debt equitization and elimination of all cash interest payments
Total Savings		\$85.2	
Other Components			
\$100mm new capital contribution	First Lien Lenders		To fund capital improvements at the Taj, working capital and future losses <ul style="list-style-type: none"> -- Taj Tower Room Renovations -- Building Façade -- Slot Machine Upgrades -- Interior Finishes
\$25mm in credit, deduction or other investment from CRDA or such other state, county, or municipal entity as to be agreed	State of NJ		To fund capital improvements at the Taj

Bring Costs In-Line with Other Casino Markets

- Based on available data, compared to other casino markets, the Taj's employee costs are far higher, which contributes to the Atlantic City market being less competitive and flexible to changing market conditions.
 - The Nevada Gaming Commission releases an annual Gaming Abstract with aggregate payroll information, including employee benefits.
 - Both the Nevada region – which has large union representation among casino properties – and other properties shown below in a variety of other regions⁽¹⁾ have lower payroll and benefits expense both (a) on a per employee basis and (b) as a percentage of revenue.
- It is also important to note that these other regional casino properties did not have pension benefits for their employees or mandated healthcare contributions.

Labor Expense Comparison			
	Payroll & Benefits Expense (millions)	Expense Per Employee (000s)	Expense as % of Revenue
Taj 2013	\$102	\$51	29%
All Nevada Casinos 2013	\$5,798	\$41	25%
Sample Mississippi Gaming Property	\$22	\$36	28%
Sample Louisiana Gaming Property	\$19	\$34	22%
Sample Florida Gaming Property	\$15	\$32	19%
Sample Pennsylvania Gaming Property	\$57	\$32	16%
Sample 2nd Mississippi Gaming Property	\$11	\$31	27%

(1) Data from other casinos are based on recent Houlihan Lokey experience on other engagements and are confidential.

1. Pension Termination

Description / Rationale

- The Company cannot afford to continue to make the pension contributions.
- The multi-employer pension plan associated with Local 54's CBA, the National Retirement Fund, sent a letter to the Company on August 28, 2014, indicating that the Company's withdrawal liability (the "NRF Alleged Withdrawal Liability") is approximately \$197mm, although the Company disputes that amount.
 - The NRF Alleged Withdrawal Liability's growth has allegedly occurred despite the fact that (a) the stock market has performed very well in the past 3 years and (b) the Company is current on a contribution schedule meant to rehabilitate that liability.
 - This liability may grow further to the extent other employers in the National Retirement Fund withdraw from the pension.
- The Company cannot attract the capital required to reorganize without terminating its obligations to the National Retirement Fund and eliminating the withdrawal liability.
- The Company will institute a 401(k) program, including an employer match up to 1% of employee's compensation that will help employees plan for retirement.
- The 401(k), plus pension benefits on amounts vested to date, may result in a better retirement for certain Local 54 employees.

Impact

- Company withdraws from pension and NRF Alleged Withdrawal Liability discharged as part of bankruptcy process
- Company saves approximately \$3.7mm of annual pension contributions
- Employees control own retirement destiny (not subject to credit quality of the Company or other employers in multi-employer plan) through 401(k) program and employer match
- Helps attract capital necessary to reorganize (in conjunction with other concessions)

2. Health & Welfare

Description / Rationale

- Health & Welfare costs associated with Local 54 are over \$8,000 per employee per year.
- The Company believes a restructured health benefit program would both save the Company and leave Local 54 employees no worse off:
 - Employees may purchase insurance on the Affordable Care Act health insurance exchange.
 - As an employer of more than 50 employees, the Company will need to pay a \$2,000 fee per employee annually.
 - Full-time employees will receive an increase in annual compensation of \$2,000 per year to help offset or, in some cases, completely defray the cost of health insurance.
 - Most Local 54 employees will be entitled to receive a subsidy from the federal government, resulting in a net cost to the employee better or equal to current employee costs.⁽¹⁾
- The Company cannot attract the capital required to reorganize without restructuring the Local 54 Health & Welfare program.
- Non-union employees at the Taj will not be provided Company-sponsored health insurance, may also purchase health insurance on the Affordable Care Act exchange, and will not receive better health benefits than Local 54 employees in this regard.

Impact

- Company saves approximately \$5mm of annual expense for Local 54 employees (net of the compensation increase and fees paid to the federal government) and approximately \$3.5mm of annual expense for non-Local 54 employees
- Employees purchase health insurance on Affordable Care exchange
- Helps reduce costs and attract capital necessary to reorganize (in conjunction with other concessions)

(1) Actual comparative cost and subsidy amount will vary depending on a variety of factors, including income level, number of dependents on plan and plan chosen.

3. Work Rules / Other

Description / Rationale

- The Company needs more flexibility in certain work rules.
- In certain circumstances, the amount paid needs to better match the work performed, and certain uncommon provisions need to be changed to reflect market practices.

Work Rule Change Component	Annual Savings	Rationale
Change the paid half-hour meal break to an unpaid half-hour meal break	\$2.4mm	<ul style="list-style-type: none"> ■ Match amount paid to work performed ■ Non-market provision that should be removed
Job consolidations for Bartenders, Food Servers, Cooks and Utility Porters	\$2-2.5mm	<ul style="list-style-type: none"> ■ Allow employees to perform similar tasks that are currently separated
Increase Housekeeper minimum from 14 to 16 rooms per day	\$0.7mm	<ul style="list-style-type: none"> ■ 16 rooms is the minimum in many other markets ■ Number of rooms is reasonable for housekeeper to clean in a day
Holiday pay reduction	\$0.2mm	<ul style="list-style-type: none"> ■ Reduce to 1.5x normal pay
Elimination of contributions to Severance Fund	\$0.2mm	<ul style="list-style-type: none"> ■ Flexibility for Company to adjust staffing levels
Eliminate guaranteed gratuity for Servers in limited access clubs	<\$0.1mm	<ul style="list-style-type: none"> ■ Gratuity should not be guaranteed, but rather paid by customer
Reduce guaranteed pay for less than full shift worked to half day of pay	<\$0.1mm	<ul style="list-style-type: none"> ■ Match amount paid to work performed ■ In a difficult market, cannot be paying full day shift when employee not needed that day
Eliminate guaranteed minimum hours for Banquet Extras	<\$0.1mm	<ul style="list-style-type: none"> ■ Match amount paid to work performed
Expand Subcontractor prohibition exception	TBD	<ul style="list-style-type: none"> ■ Helps attract new restaurant tenants
Elimination of successor clause	TBD	<ul style="list-style-type: none"> ■ Necessary to attract capital
TOTAL	\$5.8mm (midpoint)	<ul style="list-style-type: none"> ■ Reduces costs and necessary to attract capital to keep property open

Impact

- Company saves approximately \$5.8mm of annual expense
- Reduces costs and necessary to attract capital to reorganize (in conjunction with other concessions)

Pro Forma Financial Outlook

- Set forth below are two financial forecasts:
 - The forecast to the left reflects the Company's net cash flows assuming the status quo;
 - The forecast to the right reflects the Company's net cash flows assuming the Company is successful in all of its concession requests to its various stakeholders.
- Without all of the concessions discussed on prior pages, the Company faces a dire cash flow situation that is not sustainable, and the Taj will close and liquidate, resulting in over 1,100 Local 54 jobs lost.

Financial Forecast⁽¹⁾

			Status Quo					Pro Forma					Variance: Pro Forma B/(W) Than Status Quo				
	2013A	2014E	2015E	2016E	2017E	2018E	2019E	2015E	2016E	2017E	2018E	2019E	2015E	2016E	2017E	2018E	2019E
Revenues:																	
Gaming	\$257.1	\$217.4	\$206.5	\$196.2	\$186.4	\$186.4	\$186.4	\$206.5	\$235.4	\$223.6	\$223.6	\$223.6	-	\$39.2	\$37.2	\$37.2	\$37.2
Rooms	48.8	49.3	46.9	44.5	42.3	42.3	42.3	46.9	53.4	50.7	50.7	50.7	-	8.9	8.4	8.4	8.4
Food and beverage	34.8	27.7	26.4	25.0	23.8	23.8	23.8	26.4	30.0	28.5	28.5	28.5	-	5.0	4.7	4.7	4.7
Other	13.3	11.9	11.3	10.8	10.2	10.2	10.2	11.3	12.9	12.3	12.3	12.3	-	2.1	2.0	2.0	2.0
Gross Revenues	\$353.9	\$306.4	\$291.1	\$276.5	\$262.7	\$262.7	\$262.7	\$291.1	\$331.7	\$315.1	\$315.1	\$315.1	-	\$55.2	\$52.4	\$52.4	\$52.4
Less: Promotional Allowances	(96.0)	(82.5)	(78.4)	(74.5)	(70.7)	(70.7)	(70.7)	(78.4)	(89.3)	(84.9)	(84.9)	(84.9)	-	(14.9)	(14.1)	(14.1)	(14.1)
Net revenues	\$257.9	\$223.9	\$212.7	\$202.1	\$192.0	\$192.0	\$192.0	\$212.7	\$242.4	\$230.3	\$230.3	\$230.3	-	\$40.3	\$38.3	\$38.3	\$38.3
Costs and expenses:																	
Gaming (Ex-Gaming Taxes)	(\$95.1)	(\$77.2)	(\$76.8)	(\$74.9)	(\$73.1)	(\$73.1)	(\$73.1)	(\$76.8)	(\$82.1)	(\$80.0)	(\$80.0)	(\$80.0)	-	(\$7.2)	(\$6.9)	(\$6.9)	(\$6.9)
Gaming Taxes	(23.8)	(20.1)	(19.1)	(18.2)	(17.2)	(17.2)	(17.2)	(19.1)	(21.8)	(20.7)	(20.7)	(20.7)	-	(3.6)	(3.4)	(3.4)	(3.4)
Rooms, Food, & Beverage	(29.3)	(28.8)	(27.2)	(26.6)	(26.0)	(26.0)	(26.0)	(27.2)	(29.0)	(28.3)	(28.3)	(28.3)	-	(2.4)	(2.3)	(2.3)	(2.3)
Property Taxes	(25.4)	(32.8)	(32.8)	(32.8)	(32.8)	(32.8)	(32.8)	(9.8)	(9.8)	(9.8)	(9.8)	(9.8)	23.0	23.0	23.0	23.0	23.0
General and Administrative	(71.9)	(71.7)	(71.7)	(71.7)	(71.7)	(71.7)	(71.7)	(71.7)	(71.7)	(71.7)	(71.7)	(71.7)	-	-	-	-	-
Corporate Allocation	(4.1)	(4.1)	(4.1)	(4.1)	(4.1)	(4.1)	(4.1)	(4.1)	(4.1)	(4.1)	(4.1)	(4.1)	-	-	-	-	-
Plaza Non-Operating Carry Costs	-	(2.7)	(16.0)	(16.0)	(16.0)	(16.0)	(16.0)	(9.2)	(9.2)	(9.2)	(9.2)	(9.2)	6.8	6.8	6.8	6.8	6.8
Unadjusted EBITDA	\$8.3	(\$13.5)	(\$35.0)	(\$42.2)	(\$48.9)	(\$48.9)	(\$48.9)	(\$5.3)	\$14.6	\$6.5	\$6.5	\$6.5	\$29.8	\$56.8	\$55.4	\$55.4	\$55.4
Identified Potential Savings:																	
Health & Welfare Net Savings	-	-	-	-	-	-	-	\$8.5	\$8.5	\$8.5	\$8.5	\$8.5	\$8.5	\$8.5	\$8.5	\$8.5	\$8.5
Pension Savings	-	-	-	-	-	-	-	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7
Work Rule Changes	-	-	-	-	-	-	-	5.8	5.8	5.8	5.8	5.8	5.8	5.8	5.8	5.8	5.8
Pro Forma EBITDA	\$8.3	(\$13.5)	(\$35.0)	(\$42.2)	(\$48.9)	(\$48.9)	(\$48.9)	\$12.7	\$32.6	\$24.5	\$24.5	\$24.5	\$47.8	\$74.8	\$73.4	\$73.4	\$73.4
Other Cash Flow:																	
Maintenance Capex	(\$3.9)	(\$2.0)	(\$15.0)	(\$15.0)	(\$15.0)	(\$15.0)	(\$15.0)	(\$15.0)	(\$15.0)	(\$15.0)	(\$15.0)	(\$15.0)	-	-	-	-	-
Required CRDA Investments	(3.2)	(3.0)	(3.0)	(3.0)	(3.0)	(3.0)	(3.0)	(3.0)	(3.0)	(3.0)	(3.0)	(3.0)	-	-	-	-	-
Interest & Principal Payments	(39.4)	(18.8)	(37.4)	(37.1)	(36.6)	(36.2)	(35.8)	-	-	-	-	-	37.4	37.1	36.6	36.2	35.8
Free Cash Flow	(\$38.3)	(\$37.3)	(\$90.5)	(\$97.3)	(\$103.5)	(\$103.1)	(\$102.7)	(\$5.3)	\$14.6	\$6.5	\$6.5	\$6.5	\$85.2	\$111.9	\$110.0	\$109.6	\$109.2

(1) NOTE: It is important to note that the forecasts may differ from actual performance. The Company operates in an extremely competitive environment and faces many challenges and uncertainties. The environment in which the Company operates is highly dynamic and will likely be affected by a number of factors.