IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Case No. 14-12103 (KL)
TRUMP ENTERTAINMENT RESORTS, INC., *ET AL.*[1],	Chapter 11
	(Jointly Administered)
Debtors.	**Re: Docket Nos. 13, 52 and 56**

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO ENTRY OF FINAL ORDER PURSUANT TO 11 U.S.C. §§ 361, 362, 363, 364 AND 507, (A) AUTHORIZING USE OF CASH COLLATERAL, (B) GRANTING ADEQUATE PROTECTION TO SECURED CREDITORS, AND (C) GRANTING RELATED RELIEF

The Official Committee of Unsecured Creditors (the "Committee") of Trump Entertainment Resorts, Inc. and its affiliated chapter 11 debtors and debtors-in-possession (collectively, the "Debtors"), by and through its proposed counsel, hereby submits this objection (this "Objection") to the Debtors' motion seeking the entry of a final order: (a) authorizing the Debtors to use Cash Collateral; (b) providing adequate protection with respect to the diminution of value, if any, of the interests of the Secured Parties (as defined below) as may result from the Debtors' use of Cash Collateral to the extent set forth in the Motion or any final Order of this Court on the Motion; and (c) granting related relief (Doc. No. 13) ("Cash Collateral Motion")[2] and respectfully represents as follows:

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

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Cash Collateral Motion.

PRELIMINARY STATEMENT

1. The Debtors' chapter 11 cases already suffer from having too many fires and not enough buckets to put them out. Thoughtful triage is a necessity—prioritizing the matters that cannot wait, and deferring those that can.

2. The final hearing on the Cash Collateral Motion is not only a matter than can wait, but a matter that will benefit greatly from a deferral. The Debtors' proposed Final Order (A) Authorizing Post-petition Use of Cash Collateral, (B) Granting Adequate Protection to the Secured Parties, and (C) Granting Related Relief ("Proposed Final Cash Collateral Order") contains several provisions that would be highly prejudicial to the interests of unsecured creditors. It is premature for the Court to consider (much less grant final approval for) this relief, which would severely undermine the potential for unsecured creditors to obtain a meaningful recovery in these cases, where they are being offered nothing under the chapter 11 plan recently filed by the Debtors. *See Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 165] (the "Plan").

3. This is particularly true in light of the imminent "fork in the road" that the Debtors and the Secured Parties have identified with respect to the continued operation of the Taj Mahal. By the third week in October (only a matter of days after the October 6 hearing), the Debtors' chapter 11 cases may have transitioned from (a) an extremely volatile "melting ice cube" scenario, where the paramount concern is to preserve the going concern value of the operating business, to (b) a straight liquidation of two dark casino properties, which could proceed in a measured and orderly fashion without significant risk of further dissipating value.

4. The Committee understands that the Debtors, and particularly the Secured Parties, want to put cash collateral issues behind them. However, the desire to "move on" does not justify granting unwarranted and preemptive relief that would irreversibly impair the interests of

unsecured creditors only a few weeks after the Petition Date. Indeed, there is no urgent need for the entry of the Proposed Final Cash Collateral Order now—adjourning the final hearing for a couple of weeks until the dust settles will put the Court and the parties in a much better position to assess the crucial issues posed in connection with the Proposed Final Cash Collateral Order.

5. Therefore, the Committee respectfully requests that the Court adjourn the final hearing on the Cash Collateral Motion and enter a second interim order with certain technical changes described in Section D, *infra*. If the Court is inclined to proceed with the final hearing on the Cash Collateral Motion, then the Committee respectfully requests that the Court condition any final approval on modifications to Proposed Final Cash Collateral Order that are consistent with the discussion in Section B, *infra* for the reasons set forth therein.

BACKGROUND

A. CASE BACKGROUND

6. On September 9, 2014 (the "Petition Date"), the Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are operating their businesses and managing their assets as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. The Debtors filed the Cash Collateral Motion on the Petition Date. [Docket No. 13]

8. On September 10, 2014, the Court entered an order ("Interim Cash Collateral Order") granting the Cash Collateral Motion on an interim basis [Doc. No. 52] and scheduled a hearing to consider the Cash Collateral Motion on a final basis for October 6, 2014. [Docket No. 56]

9. On September 23, 2014, the Office of the United States Trustee for the District of Delaware appointed 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 Jersey Paper Products; and (vii) Conner Strong & Buckelew Companies, Inc.

10. On October 1, 2014, the Debtors filed the Plan. The Plan provides for a debt-for-equity swap whereby the Debtors' secured lenders will take ownership, and general unsecured creditors will receive nothing.

B. THE SECURED OBLIGATIONS

11. The Debtors have stipulated in the Proposed Final Cash Collateral Order that they are parties to that certain Amended and Restated Credit Agreement, dated as of July 16, 2010 (as amended, supplemented, or modified prior to the date hereof, the "First Lien Credit Agreement," and together with the Loan Documents, as defined in the First Lien Credit Agreement, the "First Lien Credit Documents"), by and between Trump Entertainment Resorts Holdings, L.P. and Trump Entertainment Resorts, Inc., as Borrowers; the guarantor parties thereto, as Guarantors; Icahn Partners LP, Icahn Partners Master Fund LP, and IEH Investments I LLC, as lenders (the "First Lien Lenders"); and Icahn Agency Services, LLC, as Administrative Agent and Collateral Agent for the First Lien Lenders (in such capacity, the "First Lien Agent" and, together with the First Lien Lenders, the "Secured Parties"), in the original principal amount of $356,374,965.32. The Secured Parties contend that, as of the Petition Date, the Debtors were severally indebted and liable to the Secured Parties under the First Lien Credit Documents in the aggregate principal amount of not less than approximately $292,257,374.79, which includes both unpaid principal and principal added on account of interest amounts that accrued but were unpaid as of the Petition Date (the "Secured Obligations").

12. The Debtors have further stipulated in the Proposed Final Cash Collateral Order that, in connection with the First Lien Credit Agreement, the Debtors entered into that certain

Amended and Restated Security Agreement, dated as of July 16, 2010 (as amended, supplemented, or modified, the "First Lien Security Agreement"), by and between the Debtors and the other grantors identified therein, as Grantors, and the First Lien Agent, as agent for the First Lien Lenders. Pursuant to the First Lien Security Agreement, each Debtor granted a security interest (the "Prepetition Liens") in all of the Debtors' assets (the "Prepetition Collateral") to the First Lien Agent as security for the Secured Obligations.

ARGUMENT

A. THE FATE OF THE DEBTORS' CASES HANGS IN THE BALANCE.

13. The Debtors have made no secret of the fact that the negative cash flow from their operations will only allow them to keep the Taj Mahal open until mid-November at the latest without significant labor and tax concessions and contributions from other parties. The Plaza is closed and the Debtors are seeking approval to sell off the fixtures, furniture and equipment. *See* [Docket No. 94]. The Debtors have filed their motion under section 1113 to modify the collective bargaining agreement for the Taj Mahal, and obtained an emergency hearing *today*, on less than one week's notice for their request to terminate their participation under that agreement in the multi-employer pension plan ("MEPP"). In part the Debtors obtained this emergency hearing based upon their stated concern that they could be subject to an administrative claim increasing by more than $100,000 for each day that they remain a participating member of the MEPP.

14. The remaining relief sought in the Debtors' section 1113 motion is set for hearing on October 14, 2014 and may continue to October 17, 2014. The Debtors have requested that the Court issue a bench ruling on the 1113 motion if possible. The Debtors have advised that absent the relief they are requesting in the 1113 motion, they will need to begin shutting down operations at the Taj Mahal almost immediately after the scheduled October 17, 2014 hearing.

The Debtors have further advised that the Secured Parties will not agree to provide the Debtors with any additional financing unless and until the Debtors obtain tax and labor concessions, including the concessions that are the subject of the 1113 motion. Indeed, the Plan is conditioned on, *inter alia*, (i) the Debtors obtaining $175 million in financial support from state and local government, with a minimum of $55 million of such financial support to be received in conjunction with consummation of the Plan, (ii) entry of an order satisfactory to the Secured Parties which provides for the withdrawal of the Debtors from the MEPP and elimination of the Debtors obligations to contribute to the MEPP, and (iii) a finding by the Court (in form and substance satisfactory to the Secured Parties) of an unspecified maximum amount of administrative expense claim for the MEPP with respect to the Debtors' withdrawal liability.

15. Based on everything that the Debtors and the Secured Parties have said, the next two weeks will be a watershed period for the Debtors' cases. If the Debtors are able to satisfy an extraordinary number of difficult conditions, they may be able to continue to operate the Taj Mahal into November and beyond. But if the Debtors are unable to satisfy any one of these difficult conditions, then in all likelihood they will cease operations and immediately shift their cases into full liquidation mode before Thanksgiving.

B. IT IS PREMATURE TO CONSIDER CERTAIN RELIEF REQUESTED IN THE PROPOSED FINAL ORDER THAT WOULD BE HIGHLY PREJUDICIAL TO THE INTERESTS OF UNSECURED CREDITORS.

16. The Proposed Final Cash Collateral Order contains several provisions that would be highly prejudicial to the interests of unsecured creditors. [3] It is premature for the Court to consider (much less grant final approval for) this relief, which would severely undermine the potential for unsecured creditors to obtain a meaningful recovery in these cases.

[3] Indeed, most, if not all, of the provisions that are the Committee raises in connection with the Cash Collateral Motion are provisions that are required to be highlighted and justified by the Debtors under Local Rule 4001-2.

17. Thus, for the reasons set forth below, the Court should defer a final ruling on several critical provisions of the Proposed Final Cash Collateral Order pending a clearer determination of whether the Debtors will continue to operate the Taj Mahal (and if so, on what terms).

(i) Adequate Protection Lien on Avoidance Actions

18. The Proposed Final Cash Collateral Order would extend the Adequate Protection Liens granted in favor of the Secured Parties to cover Avoidance Actions, in addition to all other pre- and post-petition assets of the Debtors' estates. Yet Avoidance Actions may be one of the few sources of recovery for unsecured creditors, particularly if the Debtors cease operations at the Taj Mahal and proceed with a straight liquidation. Indeed, the Secured Parties contend (and the Debtors have stipulated) that the 2010 Confirmation Order grants the Secured Parties a perfected and valid first priority lien on all of the Debtors' assets, regardless of whether such a lien could otherwise have been granted and perfected under applicable non-bankruptcy law.[4]

19. The purpose of adequate protection "is to insure that the creditor receives the value for which he bargained prebankruptcy." *In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987). Adequate protection is, therefore, a protection for the creditor to assure its collateral is not depreciating or diminishing in value and is made on a case-by-case basis. *Id.* at 1397; *see also United Savings Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370 (1988).

20. Secured creditors are only entitled to adequate protection to protect against diminution in value of the secured collateral during the bankruptcy case. *See In re First South Savings Assoc.*, 820 F.2d 700, 710 (5th Cir. 1987); *In re Gallegos Research Group, Corp.*, 193 B.R. 577, 584 (Bankr. D. Col. 1995). Thus, any diminution in value for which adequate

[4] The Committee is investigating this issue and many others involving the extent of the Secured Parties' liens and claims, and reserves all rights with respect thereto.

protection would be required is determined relative to the extent of the Secured Parties' "value of their interest in collateral as of the Petition Date." *Off. Comm. Unsec. Creds. V. UMB Bank, N.A. (In re Residential Capital, LLC),* 501 B.R. 549, 592 (S.D.N.Y. 2013) (emphasis added) (citing *United States Savings Ass'n v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 382, (1988)).

21. It is well-settled that adequate protection is not to be granted absent a showing of diminution in value. *In re Continental Airlines, Inc.*, 146 B.R. 536, 539 (D. Del. 1992) ("Post-*Timbers* courts have uniformly required a movant seeking adequate protection to show a decline in value of its collateral.") (citing *United States Savings Ass'n v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 382, (1988)); *In re Saypol*, 31 B.R. 796, 800 (Bankr. S.D.N.Y. 1983) ("In the context of the automatic stay, Congress believed the existence *vel non* of such a decline [in the value of the secured creditor's interest] to be almost decisive in determining the need for adequate protection."). For these reasons, the secured creditor "must, therefore, prove this decline in value -- or the threat of a decline -- in order to establish a prima facie case." *In re Gunnison Ctr. Apts., LP*, 320 B.R. 391, 396 (Bankr. D. Colo. 2005); *Save Power Ltd v. Pursuit Athletic Footwear (In re Pursuit Athletic Footwear)*, 193 B.R. 713, 718 (Bankr. D. Del. 1996) ("[The secured creditor] has the initial burden in proving a prima facie case of cause, which if proved, must be rebutted . . . if the stay is not to be lifted."); *In re Elmira Litho, Inc.*, 174 B.R. 892, 902 (Bankr. S.D.N.Y. 1994).

22. As of the Petition Date, the Debtors were already in the process of shutting down the Plaza. The Debtors also made it public no later than the Petition Date that the shutdown of the Taj Mahal was imminent unless the Debtors could obtain significant labor and tax concessions in the first few weeks after the Petition Date. The Plan makes it clear that the only

restructuring option the Debtors are actively pursuing is a debt-for-equity swap with the Secured Parties, and that the Secured Parties have imposed several conditions, including with respect to labor and tax concessions, that must be satisfied in order for the Secured Parties to consider financing the Plan.

23. All of this leads to the practical conclusion that the Debtors' estates did not have any going concern value as of the Petition Date. To the contrary, the Debtors' own projections and description of the litany of obstacles to regaining profitability confirm that the Debtors' operations as a going concern had a significant negative value as of the Petition Date. While the Debtors are attempting to use the breathing space and other tools afforded by chapter 11 to restructure around the Taj Mahal, they readily acknowledge that their business was far from viable as of the Petition Date and will require extraordinary relief and contributions from several different constituencies in order for the Debtors to have any prospects as a going concern.

24. The direct corollary of this conclusion is that the value of the Secured Parties' interest in collateral as of the Petition Date is limited to the liquidation value of their collateral, and that the Secured Parties are only entitled to adequate protection for any diminution in this liquidation value that results from the imposition of the automatic stay and the Debtors' use of the collateral. When properly viewed from this perspective, it is clear that the Secured Parties only stand to benefit from the Debtors' use of their cash collateral (at least in this key initial stage of the cases) because it is the only way to preserve any potential going concern value of the Debtors' business above and beyond the liquidation value of the assets.

25. If the Debtors are able to make significant progress in the next few weeks in their efforts to re-establish a going concern value for their business, then any risk of diminution in value of the Secured Parties' interest in the liquidation value of the assets will greatly diminish,

with a corresponding reduction in the potential need for adequate protection. Conversely, if the Debtors are not able to maintain operations at the Taj Mahal, then these cases will shift quickly into full liquidation mode and the need to use any of the Secured Parties' cash collateral will sharply decrease (and be primarily directed at preserving the liquidation value of the assets).

26. Therefore, because there is no credible likelihood of a diminution in the liquidation value of the Secured Parties' collateral, the Court should refuse to grant Adequate Protection Liens on Avoidance Actions.

(ii) Waiver of Section 506(c) Surcharge Rights Combined With Insufficient Carve-Out For Creditors' Committee

27. The Final Cash Collateral provides for a complete waiver of the Debtors' right to assert "a claim under section 506(c) of the Bankruptcy Code for any costs and expenses incurred with the preservation, protection or enhancement of, or realization by the Secured Parties on the Prepetition Collateral."

28. Section 506(c) "surcharge" waivers typically go hand-in-hand with the secured creditor's agreement to provide a "carve-out" from their liens to allow the payment of various costs of administering the estate. *See, e.g., Off. Comm. Unsec. Creds. V. UMB Bank, N.A. (In re Residential Capital, LLC)*, 501 B.R. 549 at 597 ("Where cash collateral use is permitted according to an approved budget, and the cash collateral order includes a section 506(c) waiver, the two provisions work in tandem. Unless the remaining value of the cash and non-cash collateral at the effective date falls below the value of the collateral on the petition date, the creditor is not entitled to compensation for the amount of cash collateral spent under the approved budget. But the debtor does not get to charge the secured creditor again for any costs of preserving or enhancing the collateral.").

29. Thus, the exchange of a 506(c) waiver in favor of the secured creditor in return for an agreed "carve-out" for the benefit of the estate effectively substitutes a stipulated up-front surcharge under section 506(c) in lieu of later negotiation or litigation. However, in order for this exchange to avoid prejudicing the estate and its creditor constituents, the "carve-out" must be properly structured to reasonably approximate the costs of administering the secured creditor's collateral.

30. Here, the Carve-Out in the Proposed Final Cash Collateral does not reasonably approximate the costs of administering the Secured Parties' collateral because the amount allocated to the Committee is completely disproportionate to both (i) the responsibilities that the Committee has under sections 1102 and 1103 of the Bankruptcy Code, and (ii) the amount allocated to the Debtors' professionals and the Secured Parties' professionals.

31. At a minimum, the Committee's responsibilities in the Debtors' cases will include:

(a) investigating the liens and claims of the Secured Parties, and asserting a challenge to the extent appropriate;

(b) evaluating the Plan (which provides for unsecured creditors to receive nothing) and any other plans that may be proposed, and negotiating or litigating with respect to the treatment provided for unsecured creditors to the extent appropriate;

(c) ensuring that notice and procedures for submitting and determining the allowance of unsecured claims is fair and sufficient;

(d) providing access to information for unsecured creditors, and soliciting and receiving input from unsecured creditors;

(e) reviewing requests for relief asserted by the Debtors and other parties, and negotiating or litigating to the extent necessary to protect the interests of unsecured creditors.

32. In order to fulfill these responsibilities, the Committee needs the assistance of legal and financial professionals. Although the Debtors and the Secured Parties contend that the

Committee's constituents are "out of the money", these as-yet unproven assertions are not a basis to hamstring the Committee's professionals with a *de minimis* Carve-Out amount.

33. Yet that is exactly what the Proposed Final Cash Collateral Order would do—it provides for a total Carve-Out for the Committee's professionals (and out-of-pocket expenses of any Committee members) of $150,000 -- $50,000 per month for October, November and December.[5] At a very reasonable blended rate of $500/hour, this implies that the Committee's professionals will need to spend only 300 hours in total assisting the Committee during the first 3+ months of the Debtors' cases—a time period during which the Proposed Final Cash Collateral Order requires the Debtors to propose and confirm a chapter 11 plan. Indeed, confirmation of a chapter 11 plan appears to be the Secured Parties' preferred method for resolving the Debtors' cases.

34. The punitive nature of the proposed Carve-Out for the Committee is even more apparent when compared to the Carve-Out amounts for the Debtors' professionals and the Secured Parties' professionals. The Carve-Out amount for the Debtors' professionals exceeds **$1,000,000 per month** for September, and it exceeds **$1,200,000 per month** for October, November and December. The Carve-Out amount for the Secured Parties' counsel alone is **$275,000 per month**, notwithstanding that the Secured Parties have been negotiating with the Debtors for months and are already well up to speed on the issues involved in the Debtors' attempted restructuring.

35. Thus, the proposed Carve-Out for Committee professionals would be **less than 3.3%** of the Carve-Out for the Debtors' professionals, and **only 14%** of the Carve-Out for the Secured Parties' counsel alone. Moreover, the Secured Parties' rejected the Committee's

[5] Despite the fact that the Committee was appointed on September 24, 2014, the Proposed Final Cash Collateral Order does not provide any Carve-Out for the Committee for the month of September.

proposal that any unused portion of the Carve-Out for one Case Professional could be reallocated to the other Case Professionals.

36. The Secured Parties' positions on the Carve-Out would unduly hinder and inhibit the Committee's ability to fulfill its statutory duties. If the Secured Parties are not willing to consent to a reasonable Carve-Out for the Committee in the face of their clear desire to obtain the benefits of the Bankruptcy Code and a confirmed chapter 11 plan, then the Secured Parties are not entitled to a waiver of the Debtors' surcharge rights under section 506(c).

37. The Committee recognizes that the need for the services of all professionals subject to the Carve-Out (for the Debtors, Secured Parties and the Committee) may change significantly depending on whether the Debtors are able to maintain operations at the Taj Mahal versus shifting into full liquidation mode. Thus, in few weeks the Court (and parties in interest) likely will be in a much better position to weigh final approval of a proposed Carve-Out against a section 506(c) surcharge waiver. Until then, the Court should defer any ruling on final approval of the requested section 506(c) surcharge waiver based on the insufficient and punitive nature of the proposed Carve-Out.

(iii) Unjustified Waiver of Section 552(b)(1) "Equities of the Case" Exception

38. The Proposed Final Cash Collateral Order includes a provision that would pre-emptively determine that the "equities of the case" exception under section 552(b)(1) of the Bankruptcy Code shall not apply to the Secured Parties. This provisions is completely unjustified based upon the record as it currently stands.

39. Section 552(a) provides a general rule that "property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case." 11 U.S.C.

§ 552(a). However, section 552(b)(1) creates an exception to this general rule, which exception preserves a secured creditor's lien on post-petition "proceeds, products, offspring, or profits" of pre-petition collateral as long as the security agreement so provides. 11 U.S.C. § 552(b)(1).[6] This section 552(b)(1) exception to the general rule is subject to a further exception (which would eliminate the secured creditor's lien on post-petition proceeds, products, offspring, or profits of pre-petition collateral) "to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise." 11 U.S.C. § 552(b)(1).

40. The purpose of the "equities of the case" exception is to balance the need to preserve valid security interests in proceeds and the like with the need to protect the interests of unsecured creditors. *See, e.g., In re Photo Promotion Associates, Inc.,* 61 B.R. 936, 939-40 (Bankr. S.D.N.Y. 1986)*; In re Muma Servs.,* 322 B.R. 541, 558-59 (Bankr. D. Del. 2005) (J. Walrath) (citing *Photo Promotion Associates, Inc.*); *In re Patio & Porch Sys., Inc*. 194 B.R. 569, 575 (Bankr. D. Md. 1996) (citing authorities). For example, a debtor or other contributing parties may provide value that is used in combination with a secured creditor's collateral to generate assets (often cash) that could be considered proceeds of the secured creditor's collateral. *See In re Photo Promotion Associates, Inc.,* 61 B.R. at 939-40. In this circumstance, the "equities of the case" exception allows the court to allocate value to the estate in order to avoid a windfall to the secured creditor. *See id.*; *cf. In re Timothy Dean Rest. & Bar*, 342 B.R. 1, 23-24 (Bankr. D.D.C. 2006) (room service charges not proceeds of food inventory). *But see All Points Capital Corp. v. Laurel Hill Paper Co. (In re Laurel Hill Paper Co.*), 393 B.R. 89, 94-95 (Bankr.

[6] Notably, the section 552(b)(1) exception to the general rule of section 552(a) is limited to proceeds, *et al.* generated by prepetition collateral, and does not apply to "after-acquired" property obtained by the debtor or the estate postpetition that is not proceeds of prepetition collateral. *See In re Barbara K Enters. Inc.,* 2008 Bankr. LEXIS 1917, at *36-37 (Bankr. S.D.N.Y. June 16, 2008); *Shearer v. Tepsic (In re Emergency Monitoring Techs., Inc.)*, 366 B.R. 476, 500 (Bankr. W.D. Pa. 2007).

M.D.N.C. 2008) (debtor's marketing and selling efforts do not warrant limiting secured creditor's claim to proceeds).

41. The Debtors' cases present exactly the scenario where the "equities of the case" exception could have particular relevance and crucial importance for the ability of unsecured creditors to obtain a meaningful recovery. The Debtors' casino operation generates revenues that are the result of a wide amalgamation of personal property, real property, goods, and services. Indeed, the Taj Mahal cannot function without the expert services provided by the Debtors' labor force, including croupiers, dealers, waitstaff, and all of the other key personnel who serve the Debtors' patrons. See *Debtor's Motion for an Order, Pursuant to Sections 105(a), 363(b), 507(a)(4) and 507(a)(5) of the Bankruptcy Code, (A) Authorizing (I) Payment of Prepetition Employee Wages, Salaries and Other Compensation [. . .]*, ¶ 8. [Docket No. 11]. As much the Secured Parties might like to ignore the Thirteenth Amendment, they do not have a lien on the Debtors' employees, and value generated by the Debtors' employees is not proceeds of the Secured Parties' collateral. *See, e.g., In re Cafeteria Operators, L.P., et al.*, 299 B.R. 400, 409-10 (Bankr. N.D. Tex. 2003) (finding that restaurant revenues are not proceeds of secured creditor collateral to the extent attributable to the services of debtor's employees); *Far East Nat'l Bank v. United States Tr. (In re Premier Golf Props., LP)*, 477 B.R. 767, 776 (B.A.P. 9th Cir. 2012) (finding that golf course greens fees and range fees are not proceeds of secured creditor real and personal property collateral because they are the result of the debtor's labor and own operational resources).

42. Therefore, there is a very real and significant question as to what portion (if any) of the Debtors' post-petition revenues can be considered proceeds of the Secured Parties' prepetition collateral. And to the extent that the answer is mixed, with revenues being generated

from a combination of prepetition collateral (such as inventory) and services provided by the Debtors' employees, the "equities of the case" exception is an indispensable protection to ensure that the estate (and its unsecured creditor constituents) are not prejudiced by a rote application of the initial section 552(b) exception.

43. Yet the Proposed Final Cash Collateral would preemptively eliminate this key protection only a few weeks into the Debtors' cases. Particularly in the early stages of a case, the preemptive waiver of a statutory protection founded on equitable principles is inappropriate:

> . . . the waiver of an equitable rule is not a finding of fact (an agreement or stipulation among the Debtors and their various lenders, perhaps) and the Court, in its discretion, declines to waive prospectively an argument that other parties in interest may make. If . . . the Committee or any other party [in] interest argues that the equities of the case should apply to curtail a particular lenders' rights, the Court will consider it.

In re Metaldyne Corp., 2009 WL 2883045 *6 (Bankr. S.D.N.Y. June 23, 2009) (sustaining creditors' committee objection to proposed waiver of section 552(b)(1) "equities of the case" exception in connection with order approving post-petition financing and use of cash collateral). *Cf. In re Ridgeline Structures, Inc.*, 154 B.R. 831, 832 (Bankr. D. N. H. 1993) (stipulation purporting to waive § 506(c) expenses "no matter what action, inaction, or acquiescence by [the secured party] might occur" to be against public policy and unenforceable *per se*, noting that the court "is not authorized to and never would insulate any party from the consequences of their conduct no matter how egregious.").

44. Moreover, even if such a preemptive waiver might be warranted at some theoretical point in the Debtors' cases, that point has not yet arrived. It is entirely possible that the Debtors may cease operations in the next few weeks, and that the impetus for them doing so may very well be that they were unable to negotiate sufficient labor, tax and other concessions to

satisfy the demands of the Secured Parties. In addition, the Committee has only just begun its investigation of the Secured Parties' liens and claims, and is not yet in a position to conclusively determine whether there is any conduct of the Secured Parties (equitable or inequitable) that might be relevant to an "equities of the case" analysis. Particularly considering that section 552(b)(1) refers to the equities of the "case", the Court needs a more developed record before it can properly consider the proposed waiver of this provision.

(iv) Improper Debtor and Third Party Releases

45. The Proposed Final Cash Collateral Order contains overbroad, improper and unwarranted releases of the Secured Parties.

46. First, the Proposed Final Cash Collateral Order provides that upon expiration of the Challenge Period, "any and all claims or causes of action against either the First Lien Agent and/or any First Lien Lenders shall be released by the Debtors' estates, all creditors, interest holders, and other parties in interest to the Cases and any successor Cases." (emphasis added). Thus, the proposed release is not limited to only derivative claims on behalf of the Debtors' estates, and it is not even limited to claims against the Secured Parties related to the Debtors. Instead, the proposed release apparently would release the Secured Parties from claims that their parties might hold in matters completely unrelated to the Debtors' cases.

47. The Secured Parties have not satisfied the standard required in the Third Circuit for the very limited subset of non-consensual third party releases that may be permissible under the right circumstances. *See In re Continental Airlines*, 203 F.3d 203, 214 n.11 (3d Cir. 2000) (leaving open the possibility that non-consensual third-party releases might be approved where the release is "both necessary [to the plan of confirmation] and given in exchange for fair consideration"). The Secured Parties have not provided any evidence to support specific factual

findings of fairness and necessity to the Debtors' reorganization for the proposed releases. *Id.* at 214. Nor could they at this very early stage of the Debtors' cases.

48. Similarly, the Debtors' stipulations that would become binding on all parties in interest upon the expiration of the Challenge Period include a waiver of any claims by the Debtors against the Secured Lenders and, *inter alia*, their "affiliates," "subsidiaries," and "funds", plus the "affiliates," "subsidiaries," and "funds" of a laundry list of the Secured Parties' representatives. This formulation is so broad that it arguably pulls in any party that has any connection to the Secured Parties whatsoever, regardless of whether that connection is related to the Secured Obligations in any way.

49. In order to avoid the risk of releasing an unknown universe of claims against an unknown universe of parties to the prejudice of the Debtors' estates and creditor constituents, the Committee requested that the Secured Parties provide a list of the proposed entities to be released. When the Secured Parties declined to do so, the Committee requested that the Secured Parties agree to delete "affiliates," "subsidiaries," and "funds" from the places they appear in the release. The Secured Parties declined this request as well.

50. Therefore, the Court should refuse to approve the overbroad and improper releases sought by the Secured Parties in connection with the Proposed Final Cash Collateral Order.

(v) Unnecessarily Restrictive Milestones for Disclosure Statement Approval and Plan Confirmation

51. The Proposed Final Cash Collateral Order provides for events of default if (a) the Debtors do not obtain approval for a disclosure statement by November 23, 2014, or (b) the Debtors do not confirm a plan by December 23, 2014.

52. These deadlines are extremely tight, and exacerbate the already significant burden on the Debtors' estates (and on the Committee) that has resulted from the accelerated nature of the cases thus far. Accordingly, the Committee requested that the Secured Parties agree to extend the disclosure statement and plan deadlines by an additional thirty (30) days each. The Committee was informed that due to the Debtors' operational cash shortfalls, the Secured Parties insisted on maintaining the November and December dates.

53. While the Committee understands that the Debtors' operational shortfalls demand a "time is of the essence approach", the urgency will be reduced dramatically if the Debtors cease operations at the Taj Mahal. Yet the Committee was informed that the Secured Parties would not agree to provide for extended disclosure statement and plan deadlines even in that circumstance.

54. The Committee recognizes that the Secured Parties can always agree to extend the disclosure statement and plan deadlines depending on the facts and circumstances as they evolve. However, locking in these deadlines now would give the Secured Parties a complete stranglehold over the cases, which could unnecessarily restrict negotiation and development of a plan or other case exit that would maximize the value for all creditor constituents. The parties and the Court will be in a much better position to gauge the appropriate timing for disclosure statement and plan approval once the prospects for the continued operation of the Taj Mahal become clearer, and the Court should not grant final approval for these restrictive milestones now.

(vi) Unnecessarily Short Challenge Period

55. The Proposed Final Cash Collateral Order provides for the Challenge Period applicable to the Committee to expire sixty (60) days after the Committee's appointment. The Committee understands that this is consistent with the minimum time period contemplated by the Local Rules.

56. However, the minimum time period under the Local Rules is not always the fair and appropriate time period. Here, the Secured Parties are seeking to have the Committee complete its investigation of the Secured Parties' claims and liens by November 23, 2014, which is also the deadline for approval of the Debtors' disclosure statement. During this same period, the Committee must also evaluate the Debtors' motion under section 1113 to modify its collective bargaining agreements and the consequences once the 1113 motion has been resolved. Moreover, the Secured Parties declined the Committee's request to be granted standing to pursue a challenge, instead requiring that the Committee file a motion and obtain standing before it can assert a challenge. The Secured Parties suggested that they might be willing to toll the Challenge Period until a period of time after a standing motion was resolved so long as such motion was filed before the expiration of the Challenge Period. However, this does not resolve the issue of the Committee having to complete its investigation and prepare a standing motion in the next six (6) weeks all while the Debtors seek sweeping emergency relief and approval for the disclosure statement related to the Plan (which provides nothing for unsecured creditors).

57. If the Debtors cease operations at the Taj Mahal, then for the same reasons that the disclosure statement and plan deadlines should be extended, the Secured Parties' urgency with respect to the Challenge Period is greatly reduced. Therefore, the Court should either require that the Challenge Period be extended, or defer a final determination as to the length of the Challenge Period until the likely course of the Debtors' cases becomes clearer.

C. THERE IS NO URGENT NEED FOR ENTRY OF THE PROPOSED FINAL CASH COLLATERAL ORDER.

58. In addition to all of the foregoing reasons why the Court and parties in interest will benefit greatly from deferring final approval for the Debtors' use of cash collateral for a few

weeks hence, there is no urgent need for the Secured Parties to obtain approval for the Proposed Final Cash Collateral Order at the October 6, 2014 hearing.

59. The Interim Cash Collateral Order provides for a Termination Date of October 14, 2014 unless the Proposed Final Cash Collateral Order has been entered. As noted above, the Debtors' 1113 motion is set for hearing to commence on October 14, with potential carryover to October 17. In addition, the initial cash collateral Budget runs through the week of November 7, 2014. There is an omnibus hearing set for November 5, 2014. The Secured Parties would only need to extend the deadline for entry of the Final Cash Collateral Order by approximately three (3) weeks to allow the final hearing on cash collateral to take place after the 1113 motion has been heard and parties have had the opportunity to deal with the results of that process.

60. For these reasons, the Committee requested that the Secured Parties agree to adjourn the final hearing on the Cash Collateral Motion from October 6 to November 5. The Secured Parties and the Debtors declined this request without identifying any urgent need for entry of the Proposed Final Cash Collateral Order.

D. THE COURT SHOULD ENTER A SECOND INTERIM ORDER TO REFLECT CERTAIN TECHNICAL CHANGES REQUESTED BY THE COMMITTEE.

61. If the Court is inclined to defer the final hearing on the Cash Collateral Motion, then the Committee requests that the Court enter a second interim order to reflect certain technical changes most, if not all, of which the Committee understands are agreeable to the Debtors and the Secured Parties. These technical changes include clarifying language and procedural protections to ensure due process notice to the Committee and an opportunity to be heard, as reflected in redline form in Exhibit 1 attached to this objection (the "Proposed Second Interim Order"). In the event the Court is inclined to grant the relief sought pursuant to the

Proposed Final Cash Collateral Order, the Committee requests that the Court require conforming modifications to be made as reflected in the Proposed Second Interim Order.

RESERVATION OF RIGHTS

62. In the event that any further versions of the Proposed Final Cash Collateral Order (or any versions of a Proposed Second Interim Order proposed by a party other than the Committee) are submitted to the Bankruptcy Court prior to the hearing, the Committee reserves all of its rights to object to any and all provisions of such orders.

WHEREFORE, the Committee respectfully requests that this Court (i) sustain the Objection, (ii) decline to enter the Proposed Final Cash Collateral Order, (iii) enter the Committee's Proposed Second Interim Order, (iii) adjourn the final hearing on the Cash Collateral Motion to the omnibus hearing scheduled for November 5, 2014, and (v) and grant such other and further relief as the Court deems just and proper.

Dated: October 2, 2014
Wilmington, Delaware

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Proposed Co-Counsel to the Official Committee of Unsecured Creditors

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
TRUMP ENTERTAINMENT RESORTS, INC., et al.,[1]	:	**Case No. 14–12103 (KG)**
	:	**(Jointly Administered)**
Debtors.	:	**Ref. Docket No. 13**

SECOND INTERIM ORDER (A) AUTHORIZING POSTPETITION USE OF CASH COLLATERAL, (B) GRANTING ADEQUATE PROTECTION TO THE SECURED PARTIES, (C) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(B), AND (D) GRANTING RELATED RELIEF

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 this interim order (this "Interim Order"): (a) authorizing the Debtors to use the Cash Collateral as defined herein; (b) providing adequate protection with respect to the diminution in value, if any, of the interests of the Secured Parties (as defined below) as may result from the use of the Cash Collateral

[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.

to the extent set forth herein; (c) scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the "Final Hearing") granting the relief requested in the Motion on a final basis pursuant to the final order (the "Final Order"); and (d) granting related relief:

The Court having considered the Motion, the First Day Declaration, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on September 10, 2014 (the "Interim Hearing"); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014; and the Interim Hearing to consider the interim relief requested in the Motion having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and the Court having determined to adjourn the Final Hearing to November 5, 2014; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable, in the best interests of the Debtors, their estates, and their creditors, and equity holders, and essential for the continued operation of the Debtors' remaining business, subject to certain modifications as requested by the Creditors' Committee (as defined below) reflected herein; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

IT IS HEREBY APPROVED AND ORDERED BY THE COURT, AS FOLLOWS:

A. Petition Date. On September 9, 2014, (the "Petition Date"), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code (such chapter 11 cases, the "Cases").

B. Debtors in Possession. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

C. Jurisdiction and Venue. This Court has jurisdiction over these proceedings, and the persons and properties affected hereby, pursuant to 28 U.S.C. § 157 and 1334. Venue is proper pursuant to 28 U.S.C. § 1408 and 1409. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b) and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

D. Creditors' Committee. ~~As of the date hereof~~On September 23, 2014, the United States Trustee for the District of Delaware (the "U.S. Trustee") ~~has not yet~~ appointed an official committee of unsecured creditors in the Cases pursuant to section 1102 of the Bankruptcy Code (~~a~~the ''Creditors' Committee").

E. Debtors' Representations. Subject to Paragraph 4 hereof, without prejudice to any other party's rights to assert claims, counterclaims or causes of actions, objections, contests, or defenses prior to the expiration of the Challenge Period (as defined herein), the Debtors represent, admit, stipulate, and agree (collectively, the "Debtors' Stipulations") as follows:

a. Cash Collateral. Any and all of the Debtors' cash, including cash and other amounts on deposit or maintained in any account or accounts by the Debtors and any amounts generated by the collection of accounts receivable or other disposition of the Prepetition Collateral (as defined herein) existing as of the Petition Date, and the proceeds of any of the foregoing is the Secured Parties' (as defined herein) cash collateral within the meaning of section 363(a) of the Bankruptcy Code (the "Cash Collateral").

b. Prepetition First Lien Facility. The Debtors are parties to that certain Amended and Restated Credit Agreement, dated as of July 16, 2010 (as amended, supplemented, or modified prior to the date hereof, the "First Lien Credit Agreement," and together with the Loan Documents, as defined in the First Lien Credit Agreement, the "First Lien Credit Documents"), by and between Trump Entertainment Resorts Holdings, L.P. and Trump Entertainment Resorts, Inc., as Borrowers; the guarantor parties thereto, as Guarantors; Icahn Partners LP, Icahn Partners Master Fund LP, and IEH Investments I LLC, as lenders (the "First Lien Lenders"); and Icahn Agency Services, LLC, as Administrative Agent and Collateral Agent for the First Lien Lenders (in such capacity, the "First Lien Agent" and, together with the First Lien Lenders, the "Secured Parties"), in the original principal amount of $356,374,965.32. As of the Petition Date, the Debtors, without defense, counterclaim, or offset of any kind, were jointly and severally indebted and liable to the Secured Parties under the First Lien Credit Documents in the aggregate principal amount of not less than approximately $292,257,374.79, which includes both the original principal and principal on account of interest amounts that accrued but were unpaid as of the Petition Date (the "Secured Obligations").

c. First Lien Security Agreement. In connection with the First Lien Credit Agreement, the Debtors entered into that certain Amended and Restated Security Agreement, dated as of July 16, 2010 (as amended, supplemented, or modified, the "First Lien Security Agreement"), by and between the Debtors and the other grantors identified therein, as Grantors, and the First Lien Agent, as agent for the First Lien Lenders. Pursuant to the First Lien Security Agreement, each Debtor granted a security interest (the "Prepetition Liens") in all of the Debtors' assets (the "Prepetition Collateral") to the First Lien Agent as security for the Secured Obligations.

d. Secured Obligations. The Secured Obligations constitute the legal, valid, and binding obligations of the Debtors, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code). No portion of the Secured Obligations or any payment made to either the First Lien Agent or the First Lien Lenders or applied to the obligations owing under the First Lien Credit Documents prior to the Petition Date is subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or "claim" (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or other applicable law.

e. Prepetition Liens. The Prepetition Liens granted to the Secured Parties in the Prepetition Collateral pursuant to and in connection with the First Lien Credit Documents, (i) are valid, binding, perfected, and enforceable liens and security interests on all of the Debtors' assets, (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or "claim" (as defined in the Bankruptcy Code) of any kind, (iii) are subject and/or subordinate only to (x) the Carve-Out (as defined herein) and (y) valid, perfected, and unavoidable liens and security interests permitted under the First Lien Credit Documents but only to the extent such liens and security interests are permitted by the First Lien Credit Documents to be senior to the applicable Prepetition Liens, and (iv) constitute the legal, valid, and binding obligation of the Debtors, enforceable in accordance with the terms of the applicable First Lien Credit Documents.

f. Adequate Protection for Secured Parties. As a result of the Debtors' authorization to use the Cash Collateral, and the imposition of the automatic stay, the Secured Parties are entitled to receive adequate protection pursuant to sections 361, 362, and 363 of the Bankruptcy Code for and solely to the extent of any decrease in the value as of the Petition Date (to be determined by the

Court after notice and a hearing) of their respective interests in the Prepetition Collateral (including the Cash Collateral) resulting from the automatic stay or from the Debtors' use, sale, lease of the Prepetition Collateral (including the Cash Collateral), or otherwise during these Cases. As adequate protection, the Secured Parties will receive the Adequate Protection (as defined herein) described in this Interim Order. In light of such Adequate Protection, each of the ~~Secured Parties~~ Secured Parties has consented to the Debtors' use of the Cash Collateral, solely on the terms set forth in this Interim Order. The Adequate Protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary to obtain such consent.

h. No Claims. Subject to entry of the Final Order, the Debtors hold no valid or enforceable "claims" (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, or setoff rights of any kind against either the First Lien Agent or any of the First Lien Lenders, or their respective officers, directors, equityholders, members, shareholders and affiliates (collectively, the "Releasees"). Subject to entry of the Final Order, each Debtor hereby forever waives and releases any and all "claims" (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, or setoff rights against either the First Lien Agent, each of the First Lien Lenders, and each of their respective officers, directors, equityholders, members, partners, subsidiaries, affiliates, funds, managers, managing members, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultant, agents, and other representatives (including their respective officers, directors, equityholders, members, partners, subsidiaries, affiliates, funds, managers, managing members, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultant, agents, and other representatives), whether arising at law or in equity, including any recharacterization,

subordination, avoidance, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law; *provided, however,* that nothing herein shall operate as a release or waiver of any claims or causes of action held by any party (including, without limitation, any of the Debtors) against any Debtor, any "affiliate" of any Debtor (as defined in the Bankruptcy Code) or any officer, director, or direct or indirect shareholder (or affiliate thereof) of any Debtor; *provided further, however*, that nothing herein shall operate as a release or waiver of any claims or causes of action against the Releasees solely on account of any act taken after the Petition Date.

i. Section 552(b); Section 506(c). Subject to entry of the Final Order, each of the Secured Parties is entitled to a waiver of (a) any "equities of the case" exception under section 552(b) of the Bankruptcy Code and (b) the provisions of section 506(c) of the Bankruptcy Code.

BASED ON THE RECORD OF THE INTERIM HEARING, THE FIRST DAY DECLARATION, THE MOTION AND THE DEBTORS' STIPULATIONS, THE COURT FINDS THAT:

A. Necessity for Relief Requested; Immediate and Irreparable Harm. The Debtors requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The Debtors have an immediate need to use the Cash Collateral to, among other things, preserve and maintain the going concern value of the Debtors, absent which immediate and irreparable harm will result to the Debtors, their estates, and their creditors. The preservation and maintenance of the Debtors' assets and business is necessary to maximize value. Absent the Debtors' ability to use Cash Collateral, the Debtors would not have sufficient available sources of working capital or financing and would be unable to pay their operating expenses or maintain their assets, to the severe detriment of their estates and creditors. Accordingly, the relief requested in the Motion and the terms herein are (i) critical to the Debtors' ability to maximize the value of these chapter 11 estates, (ii) in the best interests of the Debtors and their estates, and (iii) necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors, their creditors, and their assets, remaining business, goodwill, and reputation.

B. Good Cause. Good cause has been shown for entry of this Interim Order, and the entry of this Interim Order is in the best interests of the Debtors and their estates and creditors. Among other things, the relief granted herein will minimize disruption of the Debtors' business and permit the Debtors to preserve and maintain the going concern value of the Debtors. The stipulated terms of the Debtors' use of Cash Collateral and proposed adequate protection arrangements, as set forth in this Interim Order, are fair and reasonable under the circumstances, and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

C. Good Faith. The Debtors' use of Cash Collateral has been negotiated in good faith and at arms' length among the Debtors and the Secured Parties and the Secured Parties' consent to the Debtors' use of Cash Collateral shall be deemed to have been made in "good faith."

D. Notice. The Debtors have caused notice of the Motion, the relief requested therein, and the Interim Hearing to be served by facsimile, email, overnight courier, or hand delivery on (collectively, the "Notice Parties"): (a) the U.S. Trustee; (b) the holders of the largest unsecured claims against the Debtors (on a consolidated basis); (c) the United States Attorney's Office for the District of Delaware; (d) the Internal Revenue Service; (e) counsel to the Consenting First Lien Parties; (f) all parties who are known, after reasonable inquiry, to have asserted a lien, encumbrance, or claim in the Prepetition Collateral; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested therein, and of the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b), (c), and (d).

BASED UPON THE STIPULATED TERMS SET FORTH HEREIN, AND FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Motion Granted. The Motion is GRANTED to the extent provided herein on an interim basis. Any objection to the Motion to the extent not withdrawn or resolved is hereby overruled.

2. Authorization to Use Cash Collateral. Until the Termination Date (as defined below), the Debtors are authorized to use the Cash Collateral pursuant to the terms and conditions provided herein.

3. Budget.

(a) Except as otherwise provided herein, the Debtors may only use Cash Collateral for, among other things, (i) working capital requirements, (ii) general corporate

purposes, and (iii) the costs and expenses of administering the chapter 11 cases (including making adequate protection payments, the payment of the allowed fees and expenses of Case Professionals (defined below) and payments under the Carve-Out as provided herein), in each case, pursuant to and solely in accordance with the 9-week cash collateral budget, including the monthly professional fee accrual schedule made part thereof (the "Fee Schedule") attached as **Exhibit 1** hereto (as the same may be updated in accordance with the terms of this Interim Order, the "Budget"), and the Budget is hereby approved by the Secured Parties.

(b) No less frequently than every four weeks commencing on November 3, 2014, the Debtors shall deliver an updated Budget for the following 7-week period (each, a "Proposed Budget") (with the first Proposed Budget to be delivered no later than the week of October 6, 2014) simultaneously to the Secured Parties and counsel for the Creditors' Committee.[3] The Proposed Budget shall become the Budget upon the written consent of the Consenting First Lien Parties; *provided however* that, notwithstanding the foregoing, with respect to the period from and after the Petition Date through and including December 31, 2014, every Proposed Budget and every approved Budget shall incorporate the Fee Schedule and paragraph 8(d) hereof.

(c) Commencing on the first Monday following the Petition Date (or the next business day if such day is not a business day), and continuing every week thereafter, the Debtors shall be required to deliver to the Secured Parties and the Creditors' Committee, a weekly variance report from the previous week comparing the actual receipts and disbursements of the Debtors with the receipts and disbursements in the Budget (the "Budget Variance

[3] For purposes hereof, the term "Consenting First Lien Parties" shall mean those First Lien Lenders holding, in the aggregate, in excess of a majority of the principal amount of the First Lien Debt outstanding as of the applicable reference date.

Report"). The Debtors shall ensure that at no time shall an unfavorable variance by 10% or more from the "Total Operating Disbursements", tested every other week on a cumulative rolling four (4) week basis (such cumulative rolling basis to begin on the fifth week) occur, *provided that*, in any week that "Total Operating Disbursements" are less than the budgeted amount for such week, the amount by which "Total Operating Disbursements" are less may be carried forward and added to the subsequent period, *provided further that*, "Total Operating Disbursements" shall include disbursements made by the Debtors (including, but not limited to, any payments, expenditures or advances) other than (a) professional fees and expenses related to adequate protection and (b) professional fees and expenses related to administration of these Cases. Each Proposed Budget shall be of no force and effect unless and until it is approved by the Consenting First Lien Parties in accordance with the last sentence of the preceding paragraph, and until such approval is given, the prior approved Budget shall remain in effect.

(d) During any Cure Period (as defined below), the Debtors may only use Cash Collateral to pay only the following amounts and expenses solely in accordance with the respective Budget line items: (i) the Carve-Out~~;~~ (as defined below); (ii) obligations that the Debtors have determined in good faith are in the ordinary course and are necessary expenses and are critical to the preservation of the Debtors and their estates; and (iii) such other obligations subject to the prior consent of the Consenting First Lien Parties.

(e) Notwithstanding anything to the contrary set forth in this Interim Order, the Cash Collateral and the Carve-Out may not be used: (i) to investigate (except as expressly provided herein), initiate, prosecute, join, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, or other litigation of any type (A) against the First Lien Agent or the First Lien Lenders or seeking

relief that would impair the rights and remedies of the First Lien Agent or the First Lien Lenders under the First Lien Credit Documents or this Interim Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or ~~any~~the Creditors' Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration, or similar relief that would impair the ability of the First Lien Agent or the First Lien Lenders to recover on the Secured Obligations or seeking affirmative relief against the First Lien Agent or the First Lien Lenders; (B) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the Secured Obligations or Secured Parties' liens or security interests in the Prepetition Collateral; or (C) for monetary, injunctive, or other affirmative relief against the First Lien Agent, the First Lien Lenders, or their respective liens on or security interests in the Prepetition Collateral that would impair the ability of the First Lien Agent or the First Lien Lenders to assert or enforce any lien, claim, right, or security interest or to realize or recover on the Secured Obligations; (ii) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of each of the First Lien Agent or the First Lien Lenders; (iii) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions (as defined herein) against the First Lien Agent or the First Lien Lenders; or (iv) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Liens or any other rights or interests of the First Lien Agent or the First Lien Lenders; *provided*, that, no more than $50,000 of the ~~proceeds of~~

~~the~~Carve-Out, any Prepetition Collateral, and Cash Collateral or proceeds thereof may be used by the Creditors' Committee~~, if appointed~~, solely to investigate the foregoing matters within the Challenge Period (as defined herein).

4. Effect of Stipulation on Third Parties.

(a) Subject to Paragraph 4(b) hereof, each stipulation, admission, and agreement contained in this Interim Order including, without limitation, the Debtors' Stipulations, shall be binding upon the applicable Debtors, their estates and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) under all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined herein) as of the Petition Date.

(b) Nothing in this Interim Order shall prejudice the rights of ~~any~~the Creditors' Committee or any other party in interest, if granted standing by the Court, to seek, solely in accordance with the provisions of this Paragraph 4, to assert claims against ~~either~~any of the ~~First Lien Agent~~Secured Parties or ~~the First Lien Lenders~~their successors or assigns in these Cases, on behalf of the Debtors or the Debtors' creditors or to otherwise challenge any of the Debtors' Stipulations, including, but not limited to those in relation to (i) the validity, extent, priority, or perfection of the mortgages, security interests, and liens of ~~the First Lien Agent or any First Lien Lenders~~any of the Secured Parties or their successors or assigns in these Cases, (ii) the validity, allowability, priority, or amount of the Secured Obligations, or (iii) any liability of ~~either~~any of the ~~First Lien Agent and/~~Secured Parties or ~~any First Lien Lenders~~their successors or assigns in these Cases with respect to anything arising from the First Lien Credit Documents. ~~Any~~The Creditors' Committee or any other party in interest must, after obtaining standing approved by the Bankruptcy Court, commence a contested matter ~~or~~, adversary

proceeding or other action raising such claim, objection, or challenge, including, without limitation, any claim or cause of action against ~~either~~any of the ~~First Lien Agent~~Secured Parties or ~~any First Lien Lenders~~their successors or assigns in these Cases (each, a "Challenge") no later than (a) with respect to ~~any~~the Creditors' Committee, the date that is sixty (60) days after the Creditors' Committee's formation, or (b) with respect to other parties in interest, no later than the date that is seventy-five (75) days after the entry of this Interim Order (~~collectively,~~such time period, as applicable, shall be referred to as the "Challenge Period"). The Challenge Period may only be extended with the written consent of the First Lien Agent or the Consenting First Lien Parties, as applicable, prior to the expiration of the Challenge Period, or by further order of the Court for good cause shown. Only those parties in interest who properly commence a Challenge within the Challenge Period may prosecute such Challenge. As to (x) any parties in interest, including ~~any~~the Creditors' Committee, who fail to file a Challenge within the Challenge Period, or if any such Challenge is filed and ~~overruled~~finally adjudicated, or (y) any and all matters that are not expressly the subject of a timely Challenge: (1) any and all such Challenges by any party (including, without limitation, ~~any~~the Creditors' Committee, any chapter 11 trustee, any examiner or any other estate representative appointed in the Debtors' Cases, or any chapter 7 trustee, any examiner or any other estate representative appointed in any successor Case), shall be deemed to be forever waived and barred, (2) all of the findings, Debtors' Stipulations, waivers, releases, affirmations, and other stipulations hereunder as to the priority, extent, and validity as to either the First Lien Agent's and each First Lien Lender's claims, liens, and interests shall be of full force and effect and forever binding upon the applicable Debtors' bankruptcy estates and all creditors, interest holders, and other parties in interest in the Cases and any successor Cases, and (3) any and all claims or causes of action against either the First Lien

Agent and/or any First Lien Lenders shall be released by the Debtors' estates, all creditors, interest holders, and other parties in interest in the Cases and any successor Cases.

(c) Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including ~~any~~the Creditors' Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any Challenge with respect to the First Lien Credit Documents or the Secured Obligations.

5. Termination Date. The Debtors' authorization, and the Secured Parties' consent, to use Cash Collateral shall terminate on the earliest to occur of (the "Termination Date"): (i) the first business day that is thirty-five (35) days after the Petition Date (unless such period is extended by the Consenting First Lien Parties) if the Final Order in form and substance acceptable to the Consenting First Lien Parties (which shall include a schedule of valid, perfected, and unavoidable liens and security interests permitted under the First Lien Credit Documents which schedule shall be in form and substance reasonably acceptable to the Consenting First Lien Parties and as to which the Creditors' Committee shall receive notice and an opportunity to object) has not been entered by this Court on or before such date; (ii) the termination or modification of this Interim Order or the failure of this Interim Order to be in full force and effect; (iii) the entry of an order of this Court terminating the Debtors' right to use Cash Collateral; (iv) December 31, 2014; (v) the dismissal of any of the Cases or the conversion of any of the Cases to cases under chapter 7 of the Bankruptcy Code; (vi) the appointment in any of the Cases of a trustee or an examiner with expanded powers; (vii) the failure to obtain the written consent of the Consenting First Lien Parties by November 13, 2014 to the Proposed Budget; and (viii) the expiration of the Cure Period following the delivery of a Default Notice (as defined herein) by the Secured Parties, as set forth in Paragraph 11 below.

6. Reporting Requirements/Access to Records. The Debtors shall simultaneously provide the First Lien Agent and the Creditors' Committee with all reporting and other information required to be provided to the First Lien Agent under the First Lien Credit Documents. In addition to, and without limiting, whatever rights to access the First Lien Lenders have under the First Lien Credit Documents, subject to existing confidentiality agreements, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall permit representatives, agents, and employees of the First Lien Lenders and the Creditors' Committee to: (i) have access to and inspect the Debtors' assets; (ii) examine the Debtors' books and records, and (iii) to discuss the Debtors' affairs, finances, and condition with the Debtors' officers and financial advisors.

7. Insurance. At all times the Debtors shall maintain casualty and loss insurance coverage for the Prepetition Collateral on substantially the same basis as maintained prior to the Petition Date.

8. Adequate Protection.

(a) Adequate Protection Liens. Subject to the Carve-Out in all respects and the terms of this Interim Order, pursuant to sections 361, 363(e) and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection for any postpetition diminution in value of the Secured Parties' interests in the Debtors' interests in the Prepetition Collateral (including the Cash Collateral) (any "Diminution in Value"), the First Lien Agent, for the benefit of itself and the First Lien Lenders, is hereby granted, to the extent of any Diminution of Value~~,~~ as of the Petition Date (to be determined by the Court after notice and a hearing), additional and replacement valid, binding, enforceable, non-avoidable, and automatically perfected postpetition security interests in and liens (the

"Adequate Protection Liens"), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all property, whether now owned or hereafter acquired or existing and wherever located, of each Debtor and each Debtor's "estate" (as created pursuant to section 541(a) of the Bankruptcy Code), of any kind or nature whatsoever, real or personal, tangible or intangible, and now existing or hereafter acquired or created, including, without limitation, all cash, accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, contracts, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and equipment, real property, leases (and proceeds thereof), all of the issued and outstanding capital stock of each Debtor~~,~~ (other than Trump Entertainment Resorts, Inc.), other equity or ownership interests, including equity interests in subsidiaries and non-wholly-owned subsidiaries, money, investment property, and causes of action (including causes of action arising under section 549 of the Bankruptcy Code), and subject to entry of the Final Order, any causes of action (except as provided above) under sections 502(d), 544, 545, 547, 548, 550, 551 or 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code (collectively, the "Avoidance Actions") and proceeds thereof or property or cash recovered pursuant to Avoidance Actions, and all products, proceeds and supporting obligations of the foregoing, whether in existence on the Petition Date or thereafter created, acquired, or arising and wherever located (collectively, the "Collateral"), having the priority set forth in

Paragraph 8(b) below. To the extent the Secured Parties' liens are by subsequent final, nonappealable order of the Court deemed not to be valid, binding, enforceable, non-avoidable, or perfected, the adequate protection liens authorized herein may be subject to avoidance.

(b) Priority of Adequate Protection Liens.

(i) Subject to the terms of this Interim Order, the Adequate Protection Liens shall be junior only to the (A) Carve-Out, (B) the Prepetition Liens of the Secured Parties, and (C) other unavoidable liens, if any, existing as of the Petition Date that are senior in priority to the Prepetition Liens of the Secured Parties. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or (subject to the Carve-Out) claims against any of the Collateral (including any lien or security interest other than the Secured Parties' liens that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code).

(ii) Subject to the Carve-Out in all respects and the terms of this Interim Order, the Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates, and any successors thereto.

(c) Carve-Out. For purposes hereof, the "Carve-Out" shall mean the sum of: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (ii) subject to subparagraph (d) below, all allowed and unpaid professionals fees, expenses and disbursements incurred prior to the Termination Date (whenever allowed) by (x) professionals of the estates retained by order of the Court, including professionals of the Debtors employed under sections 327, 328, 330 or 363 of the Bankruptcy Code ("Estate Professionals") up to the amount provided for such Estate Professionals for such period in the Fee Schedule (subject to permitted

variances and carry forward contained in paragraph 8(d) hereof) and (y) professionals of ~~a~~the Creditors Committee retained by order of the Court ("Creditors Committee Professionals" and, together with the Estate Professionals, the "Case Professionals"), and all reasonable unpaid expenses of the members of the Creditors Committee ("Committee Members"), if any, up to the aggregate amount provided for such Creditors Committee Professionals and Committee Members for such period in the Fee Schedule (subject to permitted variances and carry forward set forth in paragraph 8(d) hereof) (this clause (ii) being referred to as the "Pre-Termination Date Carve-Out"); *provided however* that to the extent that the Termination Date occurs during any month, each Case Professional (other than Houlihan Lokey) shall be subject to the following pro-ration rule with respect to such month: if the Termination Date occurs on or before the 15th day of the calendar month, then the Pre-Termination Date Carve-Out for each such Case Professional shall include 50% of the applicable monthly amount listed on the Fee Schedule for said month, and if the Termination Date occurs on or after the 16th day of the calendar month, then the Pre-Termination Date Carve-Out for each such Case Professional shall include 100% of the applicable monthly amount listed on the Fee Schedule for said month; and (iii) the allowed and unpaid professional fees, expenses and disbursements under section 327 or 1103(a) of the Bankruptcy Code incurred on or after the Termination Date, in the aggregate amount not to exceed $450,000 for Estate Professionals and $50,000 for Creditors Committee Professionals and Committee Members (this clause (iii) being referred to as the "Post-Termination Date Carve-Out").

(d) Payment of Professional Fees. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Case Professionals or shall affect the right of the Secured Parties to object to the allowance and payment of such fees and

expenses. The Secured Parties shall not be responsible for the payment or reimbursement of any fees or disbursements of any Case Professionals incurred in connection with the Cases or any successor Cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the Secured Parties in any way to pay compensation to or to reimburse expenses of any Case Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Notwithstanding anything to the contrary herein, the Debtors shall ensure that, for the period from and after the Petition Date through and including December 31, 2014 (but prior to the occurrence of a Termination Date), the Debtors shall not make payments to the Case Professionals and the Secured Parties' counsel for any fees and expenses incurred by the Case Professionals and the Secured Parties' counsel, respectively, in any month in excess of the monthly amounts corresponding to each of the respective Case Professionals and the Secured Parties' counsel listed in the Fee Schedule, as applicable; *provided, however*, that Young Conaway, Stroock & Stroock & Lavan LLP, Creditors' Committee counsel, and the Secured Parties' counsel shall each be entitled to a 10% permitted variance, and any unused Fee Schedule amounts in any month and amounts billed in excess of such monthly amounts in respect of the fees and expenses of each of Young Conaway, Stroock & Stroock & Lavan LLP, Creditors' Committee counsel and the Secured Parties' counsel, respectively, may be carried over on a cumulative basis (and any such amounts may be utilized or applied in any subsequent period).

(e) Payment of Carve-Out Expenses After Termination Date. Any payment or reimbursement made on or after the occurrence of the Termination Date in respect of any allowed fees and expenses of Case Professionals shall permanently reduce the Pre-Termination Date Carve-Out or the Post-Termination Date Carve-Out, as applicable, on a dollar-for-dollar

basis; *provided however* that the application of any unused retainer held by any Case Professional shall permanently reduce only the Post-Termination Date Carve-Out in respect of such Case Professional.

~~(e)~~(f) No Disgorgement. The Secured Parties waive any right to seek disgorgement of allowed fees, expenses and disbursements paid to the Case Professionals pursuant to the Carve-Out.

9. Adequate Protection Superpriority Claims.

(a) Adequate Protection Superpriority Claim. Subject to the Carve Out in all respects and the terms of this Interim Order, as further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the First Lien Agent is hereby granted, for the benefit of itself and the First Lien Lenders, an allowed administrative expense claim in the Debtors' Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of any postpetition Diminution in Value (the "Adequate Protection Superpriority Claim").

(b) Priority of Adequate Protection Superpriority Claims. Subject to the Carve-Out in all respects, the Adequate Protection Superpriority Claim will not be junior to any claims or administrative expenses.

10. Other Adequate Protection. As further adequate protection, the Debtors shall pay, without further Court order, the reasonable and documented costs and expenses, whether incurred before or after the Petition Date, of the First Lien Agent and the First Lien Lenders, including reasonable and documented attorneys' fees and expenses, to the extent provided under the First Lien Credit Documents (including without limitation the reasonable and documented attorneys' fees and expenses of Dechert LLP and Morris, Nichols, Arsht & Tunnell LLP (the

"Adequate Protection Fees"). After delivery of a monthly statement for such fees and expenses (which shall include the number of hours billed and a reasonably detailed description of services provided redacted for privilege), the Debtors are authorized and directed to pay such fees, costs, and expenses within ten (10) business days of delivery of an invoice to the Debtors, the Office of the United States Trustee and ~~any statutory committee appointed in these cases.~~the Creditors' Committee; provided that if any of the Debtors, the Office of the U.S. Trustee or the Creditors' Committee makes a written objection to an invoice prior to such deadline, then the Debtors shall not pay any amounts that are the subject of the objection pending agreement of the parties or an order of the Court.. All amounts paid as adequate protection are deemed permitted uses of Cash Collateral.

11. Events of Default. The occurrence of any of the following events, unless waived in writing by the First Lien Agent or the Consenting First Lien Parties, shall constitute an event of default (each, an "Event of Default"):

(a) the Debtors' failure to (i) comply with the Budget (including the Fee Schedule), subject in each case to any permitted variances permitted hereunder, or (ii) perform, in any material respect, any of their obligations under this Interim Order, including but not limited to failure to make any payments required under Paragraph 10 hereof, in each case where such failure shall have continued unremedied for three (3) business days following receipt of written notice to the Debtors, the Office of the United States Trustee and any statutory committee appointed in these cases, from the First Lien Agent or the Consenting First Lien Lenders of such failure;

(b) dismissal of any of these Cases, conversion of any of these Cases to chapter 7, or the appointment of a chapter 11 trustee or examiner with expanded powers in any of these Cases;

(c) an order shall be entered staying, reversing, vacating, amending, or rescinding any of the terms of this Interim Order without the consent of the Consenting First Lien Parties (other than in accordance with the Final Order);

(d) the Debtors' failure to timely comply with any of the following milestones:

(i) file a plan of reorganization in form and substance acceptable to the Requisite Consenting First Lien Parties (the "Plan") and a disclosure statement in form and substance acceptable to the Requisite Consenting First Lien Parties (the "Disclosure Statement") no later than thirty (30) days after the Petition Date;

(ii) obtain entry of the an order of the Bankruptcy Court approving the Disclosure Statement in form and substance acceptable to the Requisite Consenting First Lien Parties no later than seventy-five (75) days after the Petition Date; and

(iii) obtain entry of the an order of the Bankruptcy Court in form and substance acceptable to the Requisite Consenting First Lien Parties confirming the Plan pursuant to section 1129 of the Bankruptcy Code no later than one-hundred-five (105) days after the Petition Date.

(e) the Debtors shall have filed with this Court a plan of reorganization or modified any previously filed plan of reorganization, in each case without the prior written approval of the Consenting First Lien Parties;

(f) the Total Cash & Cash Equivalents shall be less than $7.5 million at any time; or

(g) the entry of an order or judgment by this Court or any other court in any of the Cases: (i) modifying, limiting, subordinating, or avoiding the priority of the obligations of the Debtors under this Interim Order, the obligations of the Debtors under the First Lien Credit Agreement and the other First Lien Credit Documents, or the perfection, priority, or validity of the Prepetition Liens, or the Adequate Protection Liens; (ii) imposing, surcharging, or assessing against the Secured Parties' claims, the Prepetition Collateral, or the Collateral any costs or expenses, whether pursuant to section 506(c) of the Bankruptcy Code or otherwise; (iii) impairing the Secured Parties' right to credit bid; or (iv) the obtaining of credit or the incurrence of indebtedness that is secured by a security interest, mortgage, or other lien on all or any portion of the Prepetition Collateral which is equal or senior to any security interest, mortgage, or other lien of the Secured Parties, or entitled to administrative expense priority status which is equal or senior to that granted to the Secured Parties herein.

Upon the occurrence and at any time during the continuation of an Event of Default, the First Lien Agent or the Consenting First Lien Parties may deliver a written notice of an Event of Default (a "Default Notice"), and the automatic stay is hereby vacated to allow the delivery of Default Notices, which Default Notice shall be given by email, facsimile, or other electronic means simultaneously to counsel to the Debtors, the U.S. Trustee, and counsel to the Creditors' Committee~~, if any.~~.. The Debtors shall have five (5) business days from the date of delivery of such Default Notice to cure such Event of Default (the "Cure Period"). Except as set forth in

Paragraph 3 above, the Debtors' right to use, and the Secured Parties' consent to the Debtors' use of, Cash Collateral shall cease as of the expiration of the Cure Period; *provided, however*, that if the Debtors timely cure the Event of Default, the First Lien Agent or the Consenting First Lien Parties shall provide consent, and the Debtors shall thereby be permitted to continue to use Cash Collateral thereafter only as set forth in the Budget and the terms of this Interim Order. None of the Secured Parties shall object to a request by the Debtors, the Creditors' Committee~~, if any~~, or a party in interest for an expedited hearing before the Court to determine whether an Event of Default has in fact occurred.

12. Reversal, Modification, Vacatur, or Stay. Any reversal, modification, vacatur, or stay of any or all of the provisions of this Interim Order (other than in accordance with the Final Order) shall not affect the validity or enforceability of any Adequate Protection Lien, or any claim, lien, security interest, or priority authorized or created hereby with respect to any Adequate Protection Lien, incurred prior to the effective date of such reversal, modification, vacatur, or stay. Notwithstanding any reversal, modification, vacatur, or stay (other than in accordance with the Final Order), (a) this Interim Order shall govern, in all respects, any use of Cash Collateral or Adequate Protection Lien or Adequate Protection Superpriority Claim incurred by the Debtors prior to the effective date of such reversal, modification, vacatur, or stay, and (b) the First Lien Agent and the First Lien Lenders shall be entitled to all the benefits and protections granted by this Interim Order with respect to any such use of Cash Collateral or such Adequate Protection Lien or Adequate Protection Superpriority Claim incurred by the Debtors.

13. Reservation of Rights. Notwithstanding anything to the contrary herein, the entry of this Interim Order and the transactions contemplated hereby shall; (a) be without prejudice to (i) the Debtors' rights to seek the continuing use of Cash Collateral; (ii) any of the First Lien

Agent's and First Lien Lenders' rights to seek to modify or oppose the same; (b) not constitute an admission nor be deemed an admission by the Debtors, the Creditors' Committee or any other party in interest that the terms and conditions of this Interim Order are required to adequately protect any of the Secured Parties in the event the Debtors seek to use Cash Collateral without the consent of any of the Secured Parties; and (c) not constitute an admission nor be deemed an admission by any of the Secured Parties that absent their consent to the Debtors' use of Cash Collateral under this Interim Order their interests in the Prepetition Collateral would be adequately protected. Except as otherwise expressly set forth herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the Secured Parties' rights to seek any other or supplemental relief in respect of the Debtors including the right to seek additional adequate protection at the Final Hearing; (b) any of the rights of any of the Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of any of the Secured Parties to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases, conversion of any of the Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers in any of the Cases, (iii) seek to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the Secured Parties.

14. No Waiver for Failure to Seek Relief. The failure or delay of any of the Secured Parties to seek relief or otherwise exercise any of their rights and remedies under this Interim Order, the First Lien Credit Agreement or the other First Lien Credit Documents, or applicable

law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise, by any or all of the Secured Parties.

15. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to any of the Secured Parties hereunder is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Secured Parties, that the adequate protection granted herein does in fact adequately protect any of the Secured Parties against any diminution in value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

16. Section 552(b) Waiver. Subject to entry of the Final Order, the Secured Parties shall be entitled to all of the rights and benefits of Bankruptcy Code section 552(b) and the "equities of the case" exception shall not apply.

17. Section 506(c) Waiver. Subject to entry of the Final Order, the Debtors shall not assert a claim under Bankruptcy Code section 506(c) for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Secured Parties upon the Prepetition Collateral.

18. No Marshalling/Application of Proceeds. The First Lien Agent shall be entitled to apply any payments or proceeds of the Prepetition Collateral paid by the Debtors to the First Lien Agent in accordance with the provisions of the First Lien Credit Documents, and in no event shall any of the Secured Parties be subject to the equitable doctrine of "marshalling" or any other similar doctrine with respect to any of the Prepetition Collateral.

19. Good Faith. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, pursuant to sections 105, 361, 363, and 364(e) of the Bankruptcy Code, the Debtors, the First Lien Agent, and the First Lien Lenders are hereby found to be entities that have acted in "good faith" in connection with the negotiation and entry of this Interim Order, and the Debtors, the First Lien Agent, and the First Lien Lenders are entitled to the protections provided to such entities under sections 363(m) and 364(e) of the Bankruptcy Code.

20. Findings of Fact and Conclusions of Law. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon the entry thereof. 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.

21. Final Hearing. A hearing on the Debtors' request for a Final Order approving the Motion is scheduled for ~~_____,~~November 5, 2014, at ~~__:__ _.~~11:00 a.m. (prevailing Eastern time) before this Court. Within three (3) business days after entry of this Interim Order, the Debtors shall serve, or cause to be served, by first class mail or other appropriate method of service, a copy of the Motion (to the extent the Motion was not previously served on a party) and this Interim Order on (i) the Notice Parties, and (ii) counsel to any Creditors' Committee. Any responses or objections to the Motion shall be made in writing, conform to the applicable Bankruptcy Rules and Local Rules, be filed with the Bankruptcy Court, set forth the name of the objecting party, the basis for the objection, and the specific grounds therefor, and be served so as to be actually received no later than ~~_____,~~October 29, 2014, at 4:00 p.m.

(prevailing Eastern time) by the following parties: (a) counsel for the Debtors, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038, Attn: Kristopher M. Hansen and Erez E. Gilad, (b) the U.S. Trustee for the District of Delaware; (b) counsel for the Consenting First Lien Parties, Dechert LLP, 1095 Avenue of the Americas, New York, NY, 10036, Attn: Allan S. Brilliant and Craig P. Druehl; ~~and~~ (c) co-counsel for the Consenting First Lien Parties, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Wilmington, DE 19801, Attn: Robert J. ~~Dehney~~Dehney; and (d) co-counsel for the Creditors' Committee, Gibbons P.C., One Gateway Center, Newark, NJ 07102-5310, Attn: Karen A Giannelli.

22. Order Effective Upon Entry. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

23. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Interim Order.

Dated: ~~September 10~~October 6, 2014

_____
KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1