

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105(a), 362, and 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

BACKGROUND

2. On September 9, 2014 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

3. The Debtors have continued in possession of their properties and have continued to operate and maintain their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. No request has been made for the appointment of a trustee or examiner, and on September 23, 2014, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed the Committee of Unsecured Creditors (the “**Committee**”) in these chapter 11 cases.

5. On October 1, 2014, the Debtors filed the *Disclosure Statement for Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 166] (the “**Proposed Disclosure Statement**”) and *Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 165]. A hearing to consider the adequacy of the information contained in the Proposed Disclosure Statement is currently scheduled for November 5, 2014 at 11:00 a.m. (ET).

6. Additional information about the Debtors' business and the events leading up to the Petition Date can be found in the *Declaration of Robert Griffin In Support of Debtors' Chapter 11 Petitions and First-Day Motions and Applications* [Docket No. 2] (the "**First Day Declaration**"), which is incorporated herein by reference.

RELIEF REQUESTED

7. By this Motion, the Debtors request the Court enter the Proposed Order authorizing the Debtors to resolve the De Minimis Claims by settlement pursuant to the procedures outlined below in order to minimize expenses and thus maximize the value of the Debtors' estates. The Debtors request the authority to settle De Minimis Claims up to a maximum value of \$500,000 pursuant to such procedures. For the purposes of determining the applicable value of a De Minimis Claim (the "**Settled Value**"), the Debtors propose that the Settled Value equal the value of the performance agreed to by the Debtors and the Settling Party (as defined below) to resolve such De Minimis Claim.

THE DE MINIMIS CLAIMS

8. As with any large organization, the Debtors are, at any given time, a party to lawsuits, disputed accounts payable or accounts receivable claims, administrative proceedings, arbitrations and other proceedings brought or threatened by or against various individuals and entities. These individuals and entities include hotel and casino patrons, vendors, employees, agencies and departments of various levels of government, personal injury claimants, and contract counterparties, among others. The amounts at issue in many such claims are minimal given the size and complexity of the Debtors' business, and the Debtors routinely settle such minimal-value claims in the ordinary course of their business.

9. If the Debtors were required to obtain the Court's prior approval to settle each De Minimis Claim, the Debtors would incur significant costs associated with preparing,

filing, and serving separate motions with the Court for each proposed settlement. The Debtors also would suffer delays normally associated with obtaining such approval while complying with required notice periods and available hearing schedules and, in some instances, could lose negotiating leverage in resolving such claims.

10. Accordingly, the Debtors seek to establish the procedures proposed herein that will allow settlements to be consummated on a more cost-effective and expeditious basis, while at the same time preserving an oversight function for key parties-in-interest in these chapter 11 cases.

THE SETTLEMENT PROCEDURES

11. The Debtors propose that the following settlement procedures apply to De Minimis Claims brought or threatened by (a) non-insider third parties (each, a “**Settling Party**,” and collectively, the “**Settling Parties**”)² against any of the Debtors or (b) any of the Debtors against the Settling Parties, as well as any cross-claims and counter-claims asserted against any of the Debtors by the Settling Parties or against the Settling Parties by any of the Debtors in connection with such De Minimis Claims (collectively, the “**Settlement Procedures**”):

- (a) no settlement of a De Minimis Claim will be agreed to unless it is reasonable in the sound business judgment of the affected Debtor upon consideration of (i) the probability of success if the De Minimis Claim is litigated or arbitrated, (ii) the complexity, expense and likely duration of any litigation or arbitration with respect to the De Minimis Claim, (iii) other factors relevant to assessing the prudence of the settlement, and (iv) the fairness of the settlement to such Debtor’s estate and creditors;
- (b) no settlement will be effective unless it is executed by an authorized representative of both the Debtors and the Settling Party and authorized under these Settlement Procedures;
- (c) if the Settled Value does not exceed \$500,000 on a per-De Minimis Claim basis, the Debtors shall provide written notice (the “**Settlement Notice**”)

² For purposes hereof, a “non-insider” means any Settling Party that is not an “insider,” as such term is defined in section 101(31) of the Bankruptcy Code.

to (i) the U.S. Trustee, (ii) counsel to the First Lien Agent, and (iii) proposed counsel to the Committee (collectively, the “**Notice Parties**”) of the terms of the proposed settlement (a “**Proposed Settlement**”) by overnight delivery, electronic mail, facsimile, or hand delivery. The Settlement Notice shall include a description of the De Minimis Claim that is the subject and the terms of such Proposed Settlement;

- (d) The Notice Parties shall have seven (7) days (unless extended by agreement from the Debtors) after the Settlement Notice is served to advise the Debtors and counsel to the Debtors in writing with specific and particular bases that they object to the Proposed Settlement described in such Settlement Notice (the “**Objection Deadline**”). If no written objection is received by the Objection Deadline, the Debtors may consummate the Proposed Settlement and execute any necessary documents in connection therewith, including, without limitation, a stipulation of settlement and/or release, without further notice to any other party and without the need for a hearing, and such Proposed Settlement will be deemed fully authorized by the Court;
- (e) If a written objection to a Proposed Settlement is timely received by the Objection Deadline, the Debtors will not proceed with the Proposed Settlement unless (i) the objection is withdrawn or otherwise resolved or (ii) the Court approves the Proposed Settlement at the next regularly scheduled omnibus hearing that is at least seven (7) days after receipt by the Debtors of a Notice Party’s objection, or at the next omnibus hearing that is agreed to by the objecting party and the Debtors.

12. If a Proposed Settlement calls for payment by the Debtors, such payment shall be made by the Debtors’ agreement to an allowed prepetition claim in these chapter 11 cases, except with respect to claims deemed to be administrative expense or priority claims in accordance with the terms of the settlement or under sections 503 or 507 of the Bankruptcy Code, and with respect to such administrative expense or priority claims only in the Debtors’ sole discretion; *provided, however*, that a Proposed Settlement may provide for (i) equitable relief with respect to any De Minimis Claim and (ii) offsets in favor of or against the Debtors and their estates, subject to the limits on Settled Value contained in the Settlement Procedures.

BASIS FOR RELIEF REQUESTED

- 13. The Debtors seek approval of the Settlement Procedures and authority for

them to agree to settle De Minimis Claims pursuant to Bankruptcy Rule 9019(b) and sections 105 and 363 of the Bankruptcy Code.

14. Bankruptcy Rule 9019(b) provides that “[a]fter a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.” Fed. R. Bankr. P. 9019(b). Thus, Bankruptcy Rule 9019(b) authorizes the streamlining of settlements in the manner proposed herein.

15. Most of the case law regarding settlements under Bankruptcy Rule 9019 addresses proposed settlements under Bankruptcy Rule 9019(a). Before approving a settlement under Bankruptcy Rule 9019(a), a court must determine that the proposed settlement is in the best interests of the estate. See Myers v. Martin (In re Martin), 91 F.3d 389, 394 (3d Cir. 1996); In re Marvel Entertainment Group, Inc., 222 B.R. 243, 249 (D. Del. 1998) (“[T]he ultimate inquiry [is] whether ‘the compromise is fair, reasonable, and in the interest of the estate.’”) (citation omitted). To reach this determination, the court must assess the value of the claim that is being settled and balance it against the value to the estate of the approval of the settlement. See Martin, 91 F.3d at 393. This requires court consideration of the following criteria: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” Id. Settlements should only be rejected if they fall “below the lowest point in the range of reasonableness.” In re Wash. Mut., Inc., 442 B.R. 314, 328 (Bankr. D. Del. 2011) (citing In re Coram Healthcare Corp., 315 B.R. 321, 330 (Bankr. D. Del. 2004)).

16. Section 105(a) of the Bankruptcy Code provides, in pertinent part, that

“[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

17. Section 363(b) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Under the applicable case law in this and other Circuits, if a debtor’s proposed use of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on the part of the debtor, such use should be approved. See, e.g., Martin, 91 F.3d at 395 (citing In re Schipper (Fulton State Bank v. Schipper), 933 F.2d 513, 515 (7th Cir. 1991)); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); In re Lionel Corp. (Comm. of Equity Security Holders v. Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Delaware & Hudson R.R. Co., 124 B.R. 169, 176 (D. Del. 1991) (courts have applied the “sound business purpose” test to evaluate motions brought pursuant to section 363(b)).

18. As described above, in the ordinary course of business, a number of De Minimis Claims have been threatened or brought by or against the Debtors. As the Debtors believe that most of the De Minimis Claims ordinarily would be resolved consensually, the process of drafting, filing, serving and conducting hearings on each individual settlement of a De Minimis Claim, as otherwise would be required under Bankruptcy Rule 9019(a), would be impractical, unduly expensive, and administratively burdensome for the Debtors’ estates and the Court. The Debtors seek approval of the Settlement Procedures to allow for the settlement of De Minimis Claims, within the parameters set forth herein, in a cost-effective and streamlined manner. Moreover, authorization to settle the De Minimis Claims in accordance with the Settlement Procedures will encourage parties to resolve as many of the De Minimis Claims as possible, thereby further eliminating unnecessary time, cost and expense with respect to those

claims.³

19. Furthermore, the notice and objection procedures contained in the Settlement Procedures are reasonable and justified under the circumstances. The Settlement Procedures are designed to allow the Debtors to resolve the De Minimis Claims in a manner that minimizes expenses and thus maximizes the value of the Debtors' estates. Because the De Minimis Claims are expected to be of a relatively *de minimis* value, the usual process of obtaining Court approval of each individual settlement would impose unnecessary administrative burdens on the Court, would be prohibitively expensive to the Debtors' estates, and in some instances may hinder the Debtors' ability to take advantage of settlement opportunities that are available only for a limited time.

20. Additionally, the manner of notice proposed in the Settlement Procedures is more than appropriate and preserves interested parties' due process rights. The Debtors will serve notice of each Proposed Settlement on the Notice Parties as provided for in the Settlement Procedures. As such, all of the key constituencies in these chapter 11 cases will receive adequate notice. Finally, the "notice and a hearing" requirement contained in section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 is satisfied absent a hearing where there is an opportunity for a hearing and no party in interest timely requests a hearing. 11 U.S.C. § 102(1).

21. Accordingly, the Debtors believe that approval of the Settlement Procedures is in the best interests of the Debtors' and their estates, and will not prejudice the rights of any party in interest in these chapter 11 cases.

³ "The settlement of time consuming and burdensome litigation is encouraged, especially in bankruptcy cases." In re Helder Indus., Inc., 131 B.R. 578, 583 (Bankr. D.N.J. 1991) (citing Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414 (1968)).

NOTICE

22. Notice of this Motion will be provided to: (i) the U.S. Trustee; (ii) proposed counsel to the Committee; (iii) counsel to the First Lien Agent; and (iv) all parties that, as of the filing of this Motion, have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

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

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CONCLUSION

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

Dated: October 15, 2014
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Ashley E. Markow

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Counsel for the Debtors and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : **Chapter 11**
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TRUMP ENTERTAINMENT RESORTS, : **Case No. 14-12103 (KG)**
INC., et al.,¹ :
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: **Jointly Administered**
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: **Debtors.** :
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: **Hearing Date: November 5, 2014 at 11:00 a.m. (ET)**
: **Objection Deadline: October 29, 2014 at 4:00 p.m. (ET)**
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NOTICE OF MOTION

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (II) PROPOSED COUNSEL TO THE COMMITTEE; (III) COUNSEL TO THE FIRST LIEN AGENT; AND (VI) ALL PARTIES THAT, AS OF THE FILING OF THIS NOTICE, HAVE REQUESTED NOTICE IN THESE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002

PLEASE TAKE NOTICE that Trump Entertainment Resorts, Inc. and its above-captioned affiliated debtors and debtors-in-possession (collectively, the “**Debtors**”) have filed the attached **Debtors’ Motion for an Order Authorizing and Approving Procedures for Settling Certain Claims and Causes of Action Brought or Threatened By or Against the Debtors** (the “**Motion**”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **October 29, 2014 at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON **NOVEMBER 5, 2014 AT 11:00 A.M. (ET)** BEFORE THE HONORABLE KEVIN GROSS AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 6TH FLOOR, COURTROOM NO. 3, WILMINGTON, DELAWARE 19801.

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.

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

Dated: October 15, 2014
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Ashley E. Markow

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Counsel to the Debtors and Debtors-in-Possession

EXHIBIT A

Proposed Order

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

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	:	
In re:	:	Chapter 11
	:	
TRUMP ENTERTAINMENT RESORTS, INC., et al.,¹	:	Case No. 14-12103 (KG)
	:	
Debtors.	:	Jointly Administered
	:	
	:	Ref. Docket No. _____
	-X	

**ORDER AUTHORIZING AND APPROVING PROCEDURES
FOR SETTLING CERTAIN CLAIMS AND CAUSES OF ACTION
BROUGHT OR THREATENED BY OR AGAINST THE DEBTORS**

Upon consideration of the motion (the “**Motion**”)² of Trump Entertainment Resorts, Inc. and its above-captioned affiliated debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of an order, pursuant to sections 105(a), 362, and 363 of the Bankruptcy Code and Bankruptcy Rule 9019, authorizing and approving procedures for settlement of De Minimis Claims brought or threatened by or against the Debtors; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of

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.

the Debtors, their estates, and creditors; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.

2. The Debtors are authorized to settle De Minimis Claims brought or threatened by (a) Settling Parties against any of the Debtors or (b) any of the Debtors against the Settling Parties, as well as any cross-claims and counter-claims asserted against any of the Debtors by the Settling Parties or against the Settling Parties by any of the Debtors in connection with such De Minimis Claims, in accordance with the following Settlement Procedures (collectively, the “**Settlement Procedures**”):

- (a) no settlement of a De Minimis Claim will be agreed to unless it is reasonable in the sound business judgment of the affected Debtor upon consideration of (i) the probability of success if the De Minimis Claim is litigated or arbitrated, (ii) the complexity, expense and likely duration of any litigation or arbitration with respect to the De Minimis Claim, (iii) other factors relevant to assessing the prudence of the settlement, and (iv) the fairness of the settlement to such Debtor’s estate and creditors;
- (b) no settlement will be effective unless it is executed by an authorized representative of both the Debtors and the Settling Party and authorized under these Settlement Procedures;
- (c) if the Settled Value does not exceed \$500,000 on a per-De Minimis Claim basis, the Debtors shall provide written notice (the “**Settlement Notice**”) to (i) the U.S. Trustee, (ii) counsel to the First Lien Agent, and (iii) proposed counsel to the Committee (collectively, the “**Notice Parties**”) of the terms of the proposed settlement (a “**Proposed Settlement**”) by overnight delivery, electronic mail, facsimile, or hand delivery. The Settlement Notice shall include a description of the De Minimis Claim that is the subject and the terms of such Proposed Settlement;
- (d) The Notice Parties shall have seven (7) days (unless extended by agreement from the Debtors) after the Settlement Notice is served to advise the Debtors and counsel to the Debtors in writing with specific and particular bases that they object to the Proposed Settlement described in such Settlement Notice (the “**Objection Deadline**”). If no written objection is received by the Objection Deadline, the Debtors may consummate the Proposed Settlement and execute any necessary documents in connection therewith, including, without limitation, a

stipulation of settlement and/or release, without further notice to any other party and without the need for a hearing, and such Proposed Settlement will be deemed fully authorized by the Court;

- (e) If a written objection to a Proposed Settlement is timely received by the Objection Deadline, the Debtors will not proceed with the Proposed Settlement unless (i) the objection is withdrawn or otherwise resolved or (ii) the Court approves the Proposed Settlement at the next regularly scheduled omnibus hearing that is at least seven (7) days after receipt by the Debtors of a Notice Party's objection, or at the next omnibus hearing that is agreed to by the objecting party and the Debtors.

3. If a Proposed Settlement calls for payment by the Debtors, such payment shall be made by the Debtors' agreement to an allowed prepetition claim in these chapter 11 cases, except with respect to claims deemed to be administrative expense or priority claims in accordance with the terms of the settlement or under sections 503 or 507 of the Bankruptcy Code, and with respect to such administrative expense or priority claims only in the Debtors' sole discretion; *provided, however*, that a Proposed Settlement may provide for (i) equitable relief with respect to any De Minimis Claim and (ii) offsets in favor of or against the Debtors and their estates, subject to the limits on Settled Value contained in the Settlement Procedures.

4. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

5. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

6. Nothing in the Motion or this Order shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, a waiver of the right to dispute any claim, or an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

7. Notwithstanding any applicability of Bankruptcy Rules 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Dated: November ____, 2014
Wilmington, Delaware

Kevin Gross
United States Bankruptcy Judge