AIRA Association of Insolvency & Restructuring Advisors

Valuation Panel

What is the Market?

Advanced Plan of Reorganization Conference
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Panelists

Hon. Kevin Carey	US Bankruptcy Court, Delaware
Hon. Allan L. Gropper	U.S. Bankruptcy Court, So. Dist. New York
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Agenda

- Introductions
- Difficulties with Casinos in Bankruptcy
- Case Study
- Reading Materials

Difficulties with Casinos in Bankruptcy

- "[V]alue shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such [secured] creditor's interests." 11 U.S.C. § 506(a).
- Casinos historically considered recession-proof
- Many casinos dramatically leveraged-up before 2006 – expanded casino floor and hotel, or increased debt based on perceived stability in the cash flows
- After the 2006, casinos began experiencing substantial revenue declines -- customers had less discretionary income; impact of dramatically increased regional, state and local competition
- Significant turmoil in the gaming and hospitality industry followed
  - Station Casinos and Trump Entertainment (Chapter 11)
  - Harrah's (now Caesars) Entertainment and MGM Resorts International (complex financial engineering)
  - Countless smaller gaming companies faced restructuring: single-site Greektown in Detroit, multi-site Legends Gaming in Mississippi and Louisiana
  - Atlantic City faces significant issues
    - Loss of $2.6 Billion in gaming revenues since 2006
    - Closures in 2014 include: Trump Plaza, The Atlantic Club, Showboat and Revel
    - Trump Taj Mahal may close in mid-November

Difficulties with Casinos in Bankruptcy

- Some questions to consider:
  - When and how do you define the "market" in complex asset valuations involving casinos?
  - What happens when the property faces closure or a potential sale with repurposed assets?
  - What is appropriate -- whole enterprise valuation, sum of the parts or traditional methods?
  - Impact of regionalization and specific assets?
  - What is a market participant?
  - What constitutes comparable valuation data?
  - What is the impact of taxes?
  - How do you reconcile valuation approaches for their intended use?
  - What projections are appropriate, when?
  - What standard of value is appropriate, when?

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Case Study – Hypothetical Casino

- Current owner purchased casino in late 1990s located in middle of US; current owner renovated twice, significantly increasing size of casino floor plus hotel space
- Casino floor 60,000sf with 450 hotel rooms in 2 hotel structures plus a parking structure attached to the casino and a 1500 seat event center
- Amenities – a spa with both wet and dry full services, 5 restaurants ranging from fine dining (steak) to quick service but no buffet, 2 full service bars (one with dancing/band areas)
- Small conference facilities
- No horse track and has a simulcast area
- Standalone location; historically the main draw was its location near major roadways
- Limited license market with moderate tax rates
- Located on a state border or near state border with a state that legalized gambling in past 3 years with a new casino located within 50 miles
- Native American Casino is located 75 miles away
- Land based operation on land that was agricultural before casino
- Full slot and table gaming permitted
- Losses in revenue and cash flows as well as projections

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Case Study – Income Statements

Case Study *USD in thousands*
Historical and Projected Income Statement - Hypothetical Casino
As of September 30, 2014

	Historical FYE 12/31					Projected FYE 12/31			
	2010	2011	2012	2013	2014	2015	2016	2017	2018
Gaming	160,246	155,786	156,186	147,008	142,598	139,746	136,951	138,320	139,704
Food and Beverage	20,545	20,621	21,117	20,558	19,736	19,144	18,665	21,709	22,252
Room Revenue	9,633	9,936	9,722	9,614	9,470	9,328	9,514	9,705	9,899
Other	4,281	4,480	4,932	4,691	4,762	4,857	4,954	5,078	5,205
Total Revenue	**194,705**	**190,823**	**191,957**	**181,871**	**176,565**	**173,074**	**170,084**	**174,812**	**177,059**
Growth Rate		**-2.0%**	**0.6%**	**-5.3%**	**-2.9%**	**-2.0%**	**-1.7%**	**2.8%**	**1.3%**
Gaming	74,401	71,543	85,532	79,273	76,895	75,357	73,850	74,588	75,334
Promotional Allowances	17,122	16,347	16,670	14,713	14,419	14,275	14,560	14,851	15,148
Food and Beverage	19,326	19,803	10,536	10,603	10,179	9,874	9,627	11,197	11,477
Rooms	5,422	5,605	2,686	2,736	2,695	2,655	2,708	2,762	2,817
Other	2,306	2,079	1,584	1,481	1,504	1,534	1,564	1,604	1,644
SG&A	38,117	18,443	26,889	19,343	27,138	26,710	26,309	25,763	26,407
Maintenance & Utilities Expense	10,739	11,049	10,296	10,368	10,523	10,734	10,948	11,222	11,503
Operating Expenses	167,433	144,869	154,193	138,517	143,352	141,138	139,565	141,987	144,330
% of Total Revenue	*86.0%*	*75.9%*	*80.3%*	*76.2%*	*81.2%*	*81.5%*	*82.1%*	*81.2%*	*81.5%*
EBITDA	**27,272**	**45,954**	**37,764**	**43,354**	**33,213**	**31,937**	**30,519**	**32,825**	**32,729**
EBITDA Margin	*14.0%*	*24.1%*	*19.7%*	*23.8%*	*18.8%*	*18.5%*	*17.9%*	*18.8%*	*18.5%*
Growth Rate		*68.5%*	*-17.8%*	*14.8%*	*-23.4%*	*-3.8%*	*-4.4%*	*7.6%*	*-0.3%*
Depreciation	22,706	18,760	18,702	16,832	15,990	15,191	14,431	13,710	13,024
EBIT	**4,566**	**27,194**	**19,062**	**26,522**	**17,223**	**16,746**	**16,088**	**19,115**	**19,705**
EBIT Margin	*2.3%*	*14.3%*	*9.9%*	*14.6%*	*9.8%*	*9.7%*	*9.5%*	*10.9%*	*11.1%*
Growth Rate		*495.6%*	*-29.9%*	*39.1%*	*-35.1%*	*-2.8%*	*-3.9%*	*18.8%*	*3.1%*

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Case Study – Balance Sheets

Case Study *USD in thousands*
Historical Balance Sheet - Hypothetical Casino
As of September 30, 2014

	As of			Common Size		
	12/31/13	12/31/14	09/30/14	12/31/13	12/31/14	09/30/14
Cash	10,228	10,885	9,797	2.8%	3.1%	2.9%
Accounts Receivable	1,335	1,323	1,349	0.4%	0.4%	0.4%
Inventory	701	819	835	0.2%	0.2%	0.2%
Prepaid Expenses	880	754	769	0.2%	0.2%	0.2%
Current Assets	**13,144**	**13,781**	**12,750**	**3.6%**	**4.0%**	**3.7%**
Net PP&E	269,835	253,857	248,780	74.6%	73.3%	73.1%
Intangible Assets	77,400	77,400	77,400	21.4%	22.4%	22.8%
Goodwill	0	0	0	0.0%	0.0%	0.0%
Other Long-term Assets	1,175	1,197	1,221	0.3%	0.3%	0.4%
Total Assets	**361,554**	**346,235**	**340,151**	**100.0%**	**100.0%**	**100.0%**
Accounts Payable	3,277	2,613	2,744	0.9%	0.8%	0.8%
Accrued Payroll	3,123	3,621	3,802	0.9%	1.0%	1.1%
Other Accrued Expenses	18,813	20,393	21,413	5.2%	5.9%	6.3%
Short-term Debt	7,500	10,500	17,500	2.1%	3.0%	5.1%
Current Liabilities	**32,713**	**37,127**	**45,458**	**9.0%**	**10.7%**	**13.4%**
Long-term Debt	150,000	200,000	300,000	41.5%	57.8%	88.2%
Other Long-term Liabilities	0	0	0	0.0%	0.0%	0.0%
Partners Capital	178,841	109,108	(5,307)	49.5%	31.5%	-1.6%
Total Liabilities and Shareholder's Equity	**361,554**	**346,235**	**340,151**	**100.0%**	**100.0%**	**100.0%**

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Case Study – Income Approach

Case Study
DCF Analysis - Hypothetical Casino
As of September 30, 2014

USD in thousands

		Projected FYE 12/31					Terminal
		2014	2015	2016	2017	2018	Value
Total Revenue		176,565	173,074	170,084	174,812	177,059	178,830
Growth Rate		-2.9%	-2.0%	-1.7%	2.8%	1.3%	*1.0%*
EBITDA		33,213	31,937	30,519	32,825	32,729	33,056
Depreciation		15,990	15,191	14,431	13,710	13,024	6,259
EBIT		17,223	16,746	16,088	19,115	19,705	26,797
Income Taxes	*40%*	6,889	6,698	6,435	7,646	7,882	10,719
After-tax Operating Profit		10,334	10,048	9,653	11,469	11,823	16,078
Plus: Depreciation		15,990	15,191	14,431	13,710	13,024	6,259
Less: Capital Expenditures		6,180	6,058	5,953	6,118	6,197	6,259
Less: Change in NWC		0	0	0	0	0	0
Free Cash Flow		20,144	19,181	18,131	19,060	18,650	16,078
Terminal Value							178,649
Partial Period		0.25					
Discount Period		0.13	0.75	1.75	2.75	3.75	3.75
Discount Factor	*10%*	0.99	0.93	0.85	0.77	0.70	0.70
Present Value of Cash Flow		4,976	17,857	15,346	14,666	13,045	124,962

PV of Discrete Cash Flow	65,891
PV of Terminal Value	124,962
Plus: Depreciation Overhang	10,157
Business Enterprise Value	**201,010**
Plus: Cash	9,797
Total Invested Capital	**210,807**

Implied FY2014 EBITDA Multiple	6.1x
Implied FY2013 EBITDA Multiple	4.6x

Sensitivity (LTG Rate / Discount Rate)			
	1%	**2%**	**3%**
9%	223,611	246,040	275,945
10%	201,010	218,022	239,895
11%	182,807	196,083	212,677

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Case Study – Market Approach

Case Study
Market Approach - Hypothetical Casino
As of September 30, 2014

USD in thousands

	FY 2014	FY 2015
EBITDA	33,213	31,937
Selected Multiple	6.5x	6.0x
Indicated Value	215,883	191,620
Weighting	50%	50%
Business Enterprise Value	**203,752**	
Less: Total Debt	122,251	
Indicated Equity Value	**81,501**	
Plus: Control Premium @ 20%	16,300	
Plus: Total Debt	122,251	
Plus: Cash	9,797	
Total Invested Capital	**229,848**	

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Case Study – DCF vs. Market Approach

Case Study
Summary of Value - Hypothetical Casino
As of September 30, 2014

USD in thousands

	DCF	Market Multiple
Indicated Value	210,807	229,848
Weighting	50%	50%
Total Invested Capital	**220,327**	
Less: Total Debt	317,500	
Indicated Value of Equity	**(97,173)**	
Carrying Value of TIC (Debt + Equity)	312,193	
Carrying Value of Equity	(5,307)	

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Case Study – Cost Approach/FMV

Cost Approach
Valuation as of September 30, 2014

(US$)

Asset Code Description	Fixed Asset List Acquisition Cost (USD)	Fixed Asset List Net Book Value (USD)	Fair Market Value (USD)
Real Property			
Land	14,794,059	14,794,059	14,794,059
Site Improvements	41,986,348	3,065,219	18,195,200
Buildings	296,290,928	213,741,213	75,060,780
Subtotal Real Property:	**353,071,336**	**231,600,492**	**108,050,039**
Personal Property			
Casino Furniture & Fixtures	80,697,520	10,699,319	13,482,290
Subtotal Personal Property:	**80,697,520**	**10,699,319**	**13,482,290**
Total Property, Plant & Equipment:	**433,768,856**	**242,299,810**	**121,532,329**

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Reading Materials

A. **Panel Contact Information and Curriculum Vitae**

B. **Issues With Valuation Approaches For Casinos**

C. **Critical Valuation Issues For Casinos**

D. **Casino Bankruptcy Law and the Current Economic Crisis**, Bruce Beesley, Esq., Sean McGuinness, Esq. and Tricia Darby, Esq., *Casino Enterprise Management*, March 2009.

E. **When Gaming Goes Heads Up With The Bankruptcy Code: Unique Restructuring Issues For Gaming Businesses In Difficult Economic Times**, Dawn M. Cica and Laury M. Macauley, *UNLV Gaming Law Journal*, Vol. 3:23, Spring 2012.

F. **Gambling with Bankruptcy: Navigating A Casino Through Chapter 11 Bankruptcy Proceedings**, Robert W. Stocker II and Peter J. Kulick, 57 *Drake L. Rev.* 361, 370 (2009).

G. **In re: Trump Entertainment Resorts, Inc., et al**. -- Declaration Of Robert Griffin In Support Of Debtors' Chapter 11 Petitions And First-Day Motions And Applications

H. **In re: Revel AC, Inc., et al.** -- Disclosure Statement Relating To The Joint Chapter 11 Plan For Revel AC, Inc. And Its Affiliated Debtors

Panel Contact Information and CVs

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NOTE:
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OF THIS
SECTION
FOR SPEAKER
BIOS

ISSUES WITH VALUATION APPROACHES FOR CASINOS

Method	Benefits	Limitations	Considerations	Avoid	Issues For Casinos
Discount Cash Flow	Best reflection of future anticipated economic benefits. Can be used fordebtors with no matching guideline comparisons or peers. Initial projections may be available from the debtor. Contemporaneous projections can be adjusted depending on purpose of valuation.	Courts may be wary and may criticize adjustments as speculation. Courts often modify or diverge from an expert's analysis.	Use averages when there are multiple forecasts. Tie valuation projections to concrete evidence whenever possible. Account fairly for competitive pressures. Normalize figures for cyclical industries or short term uneven projections. Carefully evaluate what is known or knowable at the valuation date for	Assumptions that diverge greatly from others at the time of the valuation date. Cherry-picking data or biased selection of information to create a more favorable result. Impacts of favorable period in a cyclical industry.	Changes in intended use will affect cash flows and cost of capital. Defining a reliable or appropriate projection can be problematic. Application of hindsight can be a problem for retrospective projections and valuations.
Comparable Guideline Company	Can offer strong evidence of value if close matches can be found and used. Courts prefer since a valuation derived from hard, tested data is considered less subjective.	Difficult to find exact match or close peer comparable companies. Tersm of transactions may not be clear and could require adjustments making them less reliable. Court may undertake a valuation within a valuation, only the latter will not	Include multiple transactions, if possible. Omission of this method is considered suspect even if there are no good comparables available. If there are no plausible comparable transactions, don't waste the court's time.	Account for all plausible comparables even if not favorable to the client. Avoid transactions that occurred in a significantly different market context. Avoid transactions that are very old and may not be comparable.	Transactions may not be relevant.
Comparable Guideline Transactions	Offers strong evidence of the market for similar transactions. Offers strong evidence for the subject company if recently sold or if subsidiaries recently sold. Courts may prefer since evidence of a competitor transactions offers validity for a comparable valuation.	Courts likely to strictly interpret what is actually comparable. Terms of transactions may not be clear and could require adjustments making them less reliable. A lack of adequate comparables or competitor values may indicate that a valuation multiple is unsuitable. Might be difficult to access information from an outside source, especially a competitor.	Include multiple transactions, if possible. Omission of this method is considered suspect even if there are no good comparables available. If there are no plausible comparable transactions, don't waste the court's time. Provide a range of multiples to give the court discretion.	Avoid companies that are significantly older or younger than the subject of the valuation. Avoid adding subjective adjustments or using multiples besides those permitted in the analysis. Account for all plausible comparables even if not favorable to the client. Avoid transactions that occurred in a significantly	Transactions may be liquidations or real estate sales not going concern casino transactions. Transactions may involve partially complete construction or buildout of facility and be less applicable.
Market Approach	Can provide clarity through concrete evidence. Easier for court to understand.	Courts believe that the market is distorted during a bankruptcy. Market with a complex debtor is often opaque. Potential buyers are often restricted during a case.	Supplement market evidence with other valuation analysis. Using market for prepetition valuations.	Use of market evidence where parties do not have arms- length relationship. Market evidence concerning forward looking long-term securities.	May not be suitable for casinos.

Source: Based in part on Fundamentals of Valuation Analysis Part II, VALCON 2013.

CRITICAL VALUATION ISSUES FOR CASINOS

Topic	Valuation Issue	Typical Standard of Value	Other Factors	Burden of Proof	Valuation Issues From Casino Cases
362: Lift-Stay Motion	Value collateral at time relief is sought. *See In re Deep River Warehouse, Inc.* , 2005 Bankr. LEXIS 1090, 23-25 (Bankr. M.D.N.C. Mar. 14, 2005); 3 Collier on Bankruptcy P 362.07[3][b][vi]. pp. 362-91-93 (Alan N. Resnick and Henry J. Sommer eds. Matthew Bender (2004)).	*See* § 364(d) above.		Party moving for stay lift due to adequate protection concerns has burden to show lack thereof. *In re Coates* , 180 B.R. 110, 119 (Bankr. D.S.C. 1995). Party requesting relief has burden on debtor's equity (valuation), while- party opposing relief has burden on other issues. 11 U.S.C. § 362(g).	
363: Adequate Protection and Credit Bidding at a 363 Sale	Amount one is entitled to protection from depreciation at any given point is value of collateral at petition date. *See e.g.* , *Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc.),* 54 F.3d 722, 729-30 (11th Cir. 1995). Second date is flexible depending on facts of case. *In re Nice* , 355 B.R. 554, 563 (Bankr. N.D. W. Va. 2006) (plan confirmation).	Majority, modern view holds valued at fair market value. *See generally,* Salyer v. SK Foods, L.P. (In re SK Foods, L.P.), 2011 U.S. Dist. LEXIS 76467, 29-30 (E.D. Cal. July 8, 2011) (interpreting *United Savings Ass'n v. Timbers of Inwood* , 484 U.S. 365, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988)); *Bank R.I. v. Pawtuxet Valley Prescription & Surgical Ctr.* , 386 B.R. 1, 3-4 (D.R.I. 2008) (interpreting *Winthrop Old Farm Nurseries v. New Bedford Inst. for Sav. (In re Winthrop Old Farm Nurseries)* , 50 F.3d 72, 73-74 (1st Cir. 1995)).	Adequate protection is solely a function of preserving the value of the creditor's secured claim as of the petition date due to a debtor's continued use of collateral. 11 U.S.C. § 361(1)." *In re Nice* , 355 B.R. 554, 563 (Bankr. N.D. W. Va. 2006).	Debtor/Trustee has burden of proof under any § 363 hearing. 11 U.S.C. § 363(p)(1).	Over 300 secured creditors (mechanics and materialmen lien claimants) and dozens of bank mortgage lenders were not permitted to credit bid at the 363 sale of an unfinished hotel and casino to prevent delaying the sale and further erosion of the property's value. *In re Fontainebleau Las Vegas Holdings, LLC,* No. 09-2148-BKC-AJC (Bankr. S.D. Fla. Dec. 7, 2009). The debtor's proposed 363 sale with a payment to the bank of the sale proceeds, without permitting the bank to credit bid at the auction, was not the indubitable equivalent of the bank's secured claim. *In RadLAX Gateway Hotel LLC v. Amalgamated Bank* , 132 S. Ct. 2065, 2070-71 (2012).
364(d): Adequate Protection and DIP Financing	At the DIP hearing. *See In re Levitt & Sons, LLC* , 384 B.R. 630, 643-644 (Bankr. S.D. Fla. 2008).	11 U.S.C. § 506(a): the value "shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." Depends on who will use/is using the property and for what purpose. In re Creekside Senior Apts., LP, 477 B.R. 40, 54-55 (B.A.P. 6th Cir. 2012) (citing In re Heritage Highgate, Inc., 679 F.3d 132 (3d Cir. 2012)). "[T]he appropriate standard for valuing collateral must depend upon what is to be done with the property — whether it is to be liquidated, surrendered, or retained by the debtor." In re Heritage Highgate, Inc., 679 F.3d 132, 141 (3d Cir. 2012). Fair-market where debtor will use property. Id. at 142. If a sale is "fair and arm's length" then that should determine value. In re Urban Communicators PCS Ltd. P'ship, 379 B.R. 232, 242 (Bankr. S.D.N.Y. 2007) aff'd in part, rev'd in part sub nom. Urban Communicators PCS Ltd. P'ship v. Gabriel Capital, L.P., 394 B.R. 325 (S.D.N.Y. 2008) (reversed in part on other grounds); In re SW Boston Hotel Venture, LLC, 479 B.R. 210, 221-23 (B.A.P. 1st Cir. 2012) vacated, 748 F.3d 393 (1st Cir. 2014) (vacated on other grounds).		Debtor/Trustee has burden to prove that demoted creditors are adequately protected. *See In re YL West 87th Holdings I LLC* , 423 B.R. 421, 431, n. 44 (Bankr. S.D.N.Y. 2010); 11 U.S.C. § 364(d)(2).	
502(b): Allowance of Claims	*See* § 506(b) below regarding post-petition interest and fees.	*See* § 506(b) below regarding post-petition interest and fees.	*See* § 506(b) below regarding post-petition interest and fees.	*See* § 506(b) below regarding post-petition interest and fees.	Unsecured creditors allowed to recoup damages from a solvent debtor using the balance sheet test as the traditional form of solvency test. *In re Premier Entm't Biloxi LLC* , 445 B.R. 582, 640 (Bankr. S.D. Miss. 2010).

CRITICAL VALUATION ISSUES FOR CASINOS

Topic	Valuation Issue	Typical Standard of Value	Other Factors	Burden of Proof	Valuation Issues From Casino Cases
506(b): Postpetition Interest and Fees	Flexible. *TD Bank, N.A. v. Landry* , 479 B.R. 1, 4 (D. Mass. 2012) (citing *In re Abdelgadir* , 455 B.R. 896, 902 (B.A.P. 9th Cir. 2011)). Movant for interest and fees must show they are oversecured and for how long. *Financial Sec. Assur. v. T-H New Orleans Ltd. Pshp. (In re T-H New Orleans Ltd. P'shp.)* , 116 F.3d 790, 799 (5th Cir. 1997); *Prudential Ins. Co. of Am. v. City of Boston (In re SW Boston Hotel Venture, LLC)* , 479 B.R. 210, 221-22 (B.A.P. 1st Cir. 2012); see also, *In re Urban Communicators PCS Ltd. P'ship* , 379 B.R. 232, 244 (Bankr. S.D.N.Y. 2007).	*See* § 364(d) above.		Secured creditor has burden of proof of actually valuing the collateral. *In re Snejider* , 407 B.R. 46, 55 (Bankr. S.D.N.Y. 2009); *In re Heritage Highgate Inc.* , 679 F. 3d 132, 140 (3d Cir. 2012) (endorsing a burden-shifting approach). Creditor has burden of proving entitlement to interest through oversecured status and must show by how much they were oversecured and for how long. *Financial Sec. Assur. v. T-H New Orleans Ltd. Pshp. (In re T-H New Orleans Ltd. Pshp.)* , 116 F.3d 790, 798-799 (5th Cir. 1997).	Flexible valuation approach based on the purpose and date of the valuation was adopted based on T-H New Orleans Ltd. Pshp. and a default rate of interest was deemed appropriate. *In re SW Boston Hotel Venture, LLC,* 479 B.R. 210, 221-22 (B.A.P. 1st Cir. 2012) vacated, 748 F.3d 393 (1st Cir. 2014).
507(b): Failure of Adequate Protection	Adequate protection received is valued at filing date, and valuation for what creditor deserved is creditor's secured position at petition date. *Cf. Bonapfel v. Nalley Motor Trucks (In re Carpet Ctr. Leasing Co.),* 4 F.3d 940, 941 (11th Cir. 1993).	Unclear, split between liquidation and fair market value. *Compare Bank of N.Y. Trust Co. NA v. Pac. Lumber Co. (In re Scopac),* 624 F.3d 274, 285 (5th Cir. 2010) (fair market value), *with In re Modern Warehouse, Inc.,* 74 B.R. 173, 177 (Bankr. W.D. Mo. 1987) (liquidation value) (citing *In re American Mariner Indus.* , 734 F.2d 426, 435 (9th Cir. 1984)).		Unclear.	
1129: Confirmation and Cramdown Interest Rate	Assets valued at time of confirmation. *See e.g.* , *In re Cypresswood Land Partners* , I, 409 B.R. 396, 426-427 (Bankr. S.D. Tex. 2009); *Yaissle v. Unsecured Creditors Comm. (In re Heritage Highgate, Inc.)* , 449 B.R. 451, 456 (D.N.J. 2011).	Value of debtor is going concern at fair market value. *See e.g.* , *In re Cypresswood Land Partners, I* , 409 B.R. 396, 426-427 (Bankr. S.D. Tex. 2009). *Cf. Associates Commercial Corp. v. Rash* , 520 U.S. 953, 117 S. Ct. 1879, 138 L. Ed. 2d 148 (1997). *Cf*. *Chase Manhattan Bank USA NA v. Stembridge (In re Stembridge),* 394 F.3d 383, 386 (5th Cir. 2004) ("Applying a foreclosure-value standard when the cram down option is invoked attributes no significance to the different consequences of the debtor's choice to surrender the property or retain it. Where, as here, the collateral is being retained by the debtor for purposes of confirming a cram-down plan, a foreclosure standard is inappropriate.") (citation and quotation marks omitted). This applies even when debtor proposes a sale under plan. *See Heritage Highgate, Inc. v. Scagliotti* , 679 F.3d 132, 144-145 (3d Cir. 2012).		Proponent of plan bears burden of showing that plan pays the value of what creditors are entitled to, *i.e.,* proving the valuation of creditors' claims, the value of the debtor, and valuation of payouts. *See e.g.* , *In re Am. HomePatient, Inc.* , 298 B.R. 152, 167 (Bankr. M.D. Tenn. 2003).	The plan proposed to transfer a partially complete hotel where the hotel was unusable. The court found the proposed transfer did not constitute an indubitable equivalent for the bank's claim and the plan was not confirmed. *In re B.W. Alpha,* 89 B.R. 592 (Bankr. ND Tex. 1988. In the Trump Taj Mahal Casino Resort, the Trump Plaza Hotel and Casino, and the Trump Marina Hotel, the parties agreed that an efficient market existed for the loan of the kind specified in the debtor's plans. "The primary determinant utilized by all three experts was the rate of interest paid by comparable gaming companies." After review of the evidence presented, the court concluded that a 12% interest rate was appropriate. *In re TCI 2 Holdings, LLC,* 428 B.R. 117, 162-66 (Bankr. D. N.J. 2010) (Chapter 11).
547 Preference: Insolvency of the Debtor	Generally, on the date of the transfer, but courts often use "retrojection" and "projection" to determine insolvency of debtor. *In re Bruno Machinery Corp.* , 435 B.R. 819, 838 (Bankr. N.D.N.Y. 2010) (citing *Coated Sales, Inc. v. Glantz (In re Coated Sales, Inc.)* , 144 B.R. 663, 666 (Bankr. S.D.N.Y. 1992)).	Generally, fair market value is the basis of the debtor's assets. *Briden v. Foley* , 776 F.2d 379, 382 (1st Cir. 1985). If debtor is on its "deathbed" at time of transfer, liquidation value should be used rather than going concern or market value. *In re CXM, Inc.* , 336 B.R. 757, 760-61 (Bankr. N.D. Ill. 2006) ((citing *In re Taxman Clothing Co., Inc.* , 905 F.2d 166, 170 (7th Cir. 1990); *Fryman v. Century Factors, Factor for New Wave (In re Art Shirt Ltd.)* , 93 B.R. 333, 341 (E.D. Pa. 1988); *Neuger v. Casgar (In re Randall Construction)* , 20 B.R. 179, 183-84 (N.D. Ohio 1981)).	Generally, insolvency exists if "the sum of [an] entity's debts is greater than all of such entity's property..." 11 U.S.C. § 101(32)(A). Ultimately, courts use a "balance sheet test" to determine insolvency, which looks to whether the debtor's assets were exceeded by its liabilities at the time of the transfer. *In re Bruno Machinery Corp.* , 435 B.R. 819, 838 (Bankr. N.D.N.Y. 2010).	The burden of proof to establish each of the elements of § 547(b) by a preponderance of the evidence rests on the trustee in bankruptcy. *Cadle Co. v. Mangan (In re Flanagan)* , 503 F.3d 171, 180 (2d Cir. 2007) (citing *Lawson v. Ford Motor Co. (In re Roblin Indus., Inc.)* , 78 F.3d 30, 34 (2d Cir. 1996)).	

CRITICAL VALUATION ISSUES FOR CASINOS

Topic	Valuation Issue	Typical Standard of Value	Other Factors	Burden of Proof	Valuation Issues From Casino Cases
547 Preference: Hypothetical Chapter 7 Liquidation	Valuation typically as of the date of the bankruptcy filing. *In re Smith's Home Furnishings, Inc.* , 265 F.3d 959, 964 (9th Cir. 2001).		If the distribution in bankruptcy to unsecured creditors is less than 100%, then any payment to an unsecured creditor would result in that creditor getting more than it would in a hypothetical chapter 7 liquidation. *In re Lewis W. Shurtleff, Inc.* , 778 F.2d 1416, 1421 (9th Cir. 1985). Transfers to fully secured creditors are typically not preferential because secured creditors are entitled to payment of 100% of their claims in a chapter 7. *In re Smith's Home Furnishings, Inc.* , 265 F.3d 959, 964 (9th Cir. 2001). Valuation is typically the same as Bankruptcy Code § 506 valuation, since valuation is of a creditor's collateral.	The burden of proof to establish each of the elements of § 547(b) by a preponderance of the evidence rests on the trustee in bankruptcy. *Cadle Co. v. Mangan* (*In re Flanagan)* , 503 F.3d 171, 180 (2d Cir. 2007) (citing *Lawson v. Ford Motor Co. (In re Roblin Indus., Inc.)* , 78 F.3d 30, 34 (2d Cir. 1996)).	
547 Preference: Contemporaneous New Value Defense	Determination of new value must be "substantially contemporaneous," which is defined as the ten-day period specified in the relation-back provision of § 547(e)(2)(A) by some courts, with other courts making the determination on a case-by-case basis. *In re Hedrick* , 524 F.3d 1175, 1185-86 (11th Cir. 2008) (collecting cases).	Fair market value is typically the standard. *See e.g.* , *In re Adelphia Automatic Sprinkler Co.* , 184 B.R. 224, 228 (E.D. Pa. 1995).	Generally, new value is given if the contemporaneous exchange does not diminish or deplete the estate. *Velde v. Kirsch* , 543 F.3d 469, 47273 (8th Cir. 2008) (citing *Endo Steel, Inc. v. Jonas (In re JWJ Contracting Co. Inc.)* , 371 F.3d 1079, 1081 (9th Cir. 2004)).	The party against whom recovery or avoidance is sought bears the burden of proving a § 547(c) defense. *United Rentals, Inc. v. Angell* , 592 F.3d 525, 531 (4th Cir. 2010); 11 U.S.C. § 547(g).	
547 Preference: Subsequent New Value Defense	Determination of new value based on whether new value was given after the allegedly preferential transfer. *In re IRFM, Inc.* , 52 F.3d 228, 231 (9th Cir. 1995).	Valuation is same as for Bankruptcy Code § 547(c)(1), contemporaneous new value exception, *i.e* ., fair market value.	New value is value that "replenishes the estate." *Southern Tech. College, Inc. v. Hood* , 89 F.3d 1381, 1384 (8th Cir. 1996) (citing *Kroh Bros. Dev. Co. v. Continental Const. Eng'rs, Inc.(In re Kroh Bros. Dev. Co.)* , 930 F.2d 648, 652 (8th Cir. 1991)). Valuation is same as for Bankruptcy Code § 547(c)(1), contemporaneous new value exception.	The party against whom recovery or avoidance is sought bears the burden of proving a § 547(c) defense. *United Rentals, Inc. v. Angell* , 592 F.3d 525, 531 (4th Cir. 2010); 11 U.S.C. § 547(g).	
547 Preference: Security Interests in Inventory or Receivables Defense	Valuation made on the date 90 days prior to bankruptcy, and then again on the day of the petition. *In re Clark Pipe and Supply Co., Inc.* , 893 F.2d 693, 697 (5th Cir. 1990).	Valuation is same as for Bankruptcy Code § 547(c)(1), contemporaneous new value exception, i.e. fair market value.	To determine if a secured creditor improved his position, two-point net improvement test is used which evaluates (a) the loan balance outstanding ninety days prior to the bankruptcy; (b) the value of the collateral on that day; (c) the loan balance outstanding on the day the bankruptcy petition was filed; and (d) the value of the collateral on that day. *In re Clark Pipe and Supply Co., Inc.* , 893 F.2d 693, 697 (5th Cir. 1990).	The party against whom recovery or avoidance is sought bears the burden of proving a § 547(c) defense. *United Rentals, Inc. v. Angell* , 592 F.3d 525, 531 (4th Cir. 2010); 11 U.S.C. § 547(g).	
548: Fraudulent Transfers	Value is to be determined at the time of the transfer. *Jimmy Swaggert Ministries v. Hayes (In re Hannover Corp.)* , 310 F.3d 796, 802-03 (5th Cir. 2002); *In re JTS Corp.* , 617 F.3d 1102, 1109 (9th Cir. 2010) (citing *In re Prejean* , 994 F.2d 706, 708 (9th Cir. 1993); *In re Fairchild Aircraft Corp.* , 6 F.3d 1119, 1125-26, n.5 (5th Cir. 1993)).	Courts typically consider the fair market value or "what would be the fairly equivalent value of the property, taking into consideration all of the specific circumstances of each case affecting the value of the asset." *In re JTS Corp.* , 617 F.3d 1102, 1109 (9th Cir. 2010). If the property is ultimately sold at a foreclosure sale, that price is "reasonably equivalent value" "so long as all the requirements of the applicable state foreclosure law have been complied with." *BFP v. Resolution Trust Corp.* , 511 U.S. 531, 545 (1994).	"'[U]nreasonably small capital' would refer to the inability to generate sufficient profits to sustain operations. Because an inability to generate enough cash flow to sustain operations must precede an inability to pay obligations as they become due, unreasonably small capital would seem to encompass financial difficulties short of equitable solvency." *Moody v. Security Pacific Business Credit, Inc.* , 971 F.2d 1056, 1070 (3d. Cir. 1992).	Trustee bears burden of proof. *In re Hannover Corp.* , 310 F.3d 796, 802 (5th Cir. 2002).	

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CRITICAL VALUATION ISSUES FOR CASINOS

Topic	Valuation Issue	Typical Standard of Value	Other Factors	Burden of Proof	Valuation Issues From Casino Cases
550: Liability of Transferee for Avoided Transfers	Value is ordinarily determined at time of transfer. *USAA Fed. Savings Bank v. Thacker (In re Taylor)* , 599 F.3d 880, 890 (9th Cir. 2010). However, timing of valuation should "depend [] upon the circumstances of each individual case." *In re Integra Realty Resources, Inc.* , 354 F.3d 1246, 1267 (10th Cir. 2004) (citation and quotation marks omitted).	Value for determining amount that may be recovered under Bankruptcy Code § 550 should be based upon fair market price. *See, e.g., Active Wear, Inc. v. Parkdale Mills, Inc.* , 331 B.R. 669, 673 (W.D. Va. 2005) ("Case law and statutory law demand that the value which must be assigned to the yarn in this case is the fair market value that could be obtained for the yarn in a liquidation sale held by Active Wear."); *Hirsch v. Steinberg (In re Colonial Realty Co.)* , 226 B.R. 513, 525 (Bankr. D. Conn. 1998) ("Courts generally agree that the market value of the property at the time of transfer, less the consideration received, is the proper measure of recovery under § 550.") (citations omitted); *Slutsky v. Michel Tire Co. (In re Vann)* , 26 B.R. 148, 149 (Bankr. S.D. Ohio 1983) ("The term 'value' connotes market value . . .").		N/A	

Source: Based in part on Fundamentals of Valuation Analysis Part II, VALCON 2013.

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Casino Bankruptcy Law and the Current Economic Crisis

By Bruce Beesley, Esq., Sean McGuinness, Esq. and Tricia Darby, Esq.

The current economic crisis facing the United States (and the world for that matter) is also impacting the casino gaming industry. The reason for this is that many institutional investors on Wall Street, as well as private equity firms and large national/international banks, either own equity in, or have lent money to, public and private gaming companies.

Further impacting the situation is that many of these commercial loans were made in the last couple of years with high debt leverage ratios, anticipating that casino revenues would stay at historical levels. The recent drop in casino revenues is likely to result in many gaming companies not being able to meet their income covenants and other potential defaults. This essentially results in a scenario where a gaming company might not be able to generate enough revenue to pay its debt obligations.

To relate this to a consumer situation, it is as if a homeowner purchased a $500,000 house two years ago and, at that time, had the income to pay the mortgage. Today, that same homeowner has experienced a drop in income whereby he or she only has income to pay for a house worth $300,000.

Why Gaming Companies May Need to File Bankruptcy

As with most commercial loans, a lender to a gaming company expects that the borrower will repay according to terms of the credit facility. These loans typically are secured against the possibility of default by taking security interests in the borrower's assets. Loan documents also typically have financial covenants. Some types of security require prior gaming regulatory approval to be effective (i.e. pledges of stock of privately owned companies). These approvals typically are obtained before a transaction closes and the lender-borrower relationship begins.

Loans to licensed gaming companies often create a unique situation that impacts a lender's ability to foreclose on the collateral. For instance, lenders cannot assume control of a Nevada gaming business without prior gaming regulatory approval. Moreover, certain gaming assets can't be transferred without prior gaming regulatory approvals.

Sophisticated borrowers may attempt to use the gaming regulatory structure to their advantage against unsophisticated lenders. A borrower can use a lender's inability to take over gaming operations without the appropriate licenses as leverage to renegotiate the terms of a loan transaction after a borrower default. Lenders also don't want to force their hand in such an instance, because the only quick way to gain control of a gaming borrower's business would be to cease gaming operations, which would adversely impact the value of the collateral.

Negotiations between gaming lenders and borrowers often result in a bankruptcy restructure that allows the business to remain open, employees to remain employed, and the borrower and its creditors to explore ways by which to maximize the value of the bankrupt company to maximize the return to creditors. In some instances, a lender and a senior borrower may agree to reorganize the company outside of bankruptcy, but must file a bankruptcy petition to achieve the agreement because of other creditors.

Other common ways for a gaming bankruptcy exist. In some cases, the borrower may voluntarily file without having reached an agreement with any of its lenders. In others, a group of creditors may cause an involuntary filing. Either way, the bankruptcy becomes a venue for determining how the debtor will be restructured and what happens to its assets.

Within the confines of a bankruptcy action, rights of foreclosure may ultimately come into play and be exercised under the umbrella of the bankruptcy court. The gaming regulatory agencies and the bankruptcy courts work in tandem to administrate gaming bankruptcies that is in the best interests of the bankruptcy estate in a manner consistent with gaming laws and regulations.

Types of Gaming Bankruptcies

There are three types of bankruptcies that are typically filed by casino debtors:

1- Chapter 11 reorganization with a debtor that generates enough cash flow to continue operations and/or has significant debtor-in-possession financing to justify the bankruptcy court allowing the debtor to continue to operate during the bankruptcy and allowing the debtor to offer a plan of reorganization to its creditors and to the bankruptcy court. Examples of this type of bankruptcy are: Stratosphere Casino and Hotel, Fitzgeralds Gaming Corporation and the Aladdin Casino and Hotel. In each of these instances, the casinos were able to stay open and continue operations while a reorganization plan was circulated to the creditors and the court.

2- Chapter 11 reorganization with a debtor that either does not generate enough cash flow to continue operations or does not have adequate debtor-in-possession financing to finance the bankruptcy long enough to go through a plan of reorganization process. In this instance, the bankruptcy court may order a Section 363 sale of the debtor's assets, which results in the property being marketed for sale. In such an instance, a stalking horse bidder will be solicited and an auction will take place. In this scenario, the equity owners of the debtor are able to participate in the auction and bid for the assets. Examples of this type of bankruptcy are: The Resort at Summerlin and

Stateline Casino. In both of these instances, the casinos were able to stay open with the agreement that a sale process would be initiated right away.

3- Chapter 7 liquidation with a debtor that doesn't generate positive cash flow and who doesn't have the ability to obtain debtor-in-possession financing to continue operations. In this type of situation, the bankruptcy court and the gaming regulators work together to appoint a trustee to take over operations and make efforts to liquidate/sell the assets. Examples of this type of bankruptcy are: The Maxim Hotel and Casino and Fitzgeralds Reno (when it was the sole remaining asset of Fitzgeralds Gaming Corporation that couldn't be sold when the buyer declined to purchase that property along with the other three).

Regardless of the type of casino bankruptcy, once a bankruptcy is filed, the fiduciary duty the operators of the casino shifts from the equity owners of the company to the bankruptcy estate itself (and more specifically to all of the creditors). The point here is that the casino's operations should be allowed to continue so as to maximize revenues in order to make it more likely that all creditor constituency groups are able to recover as much as possible. Generally, the prior owner's equity is wiped out and is worth nothing as the equity is last in priority to be paid out (i.e. all creditors would need to be paid in full to allow any payment to the equity).

While the Bankruptcy Code technically requires that upon the filing of bankruptcy protection, a casino is to cease issuing and honoring pre-petition chips and recognize only new "post-petition chips" this is not how the issue is handled. Practically, a debtor casino could not compete in the highly competitive industry if they were required to strictly follow certain requirements of the Bankruptcy Code. For this reason, upon the filing of a chapter 11 petition, a casino debtor will file "first day motions" with the court.

First day motions request the bankruptcy court's approval of various transactions that will allow it to continue uninterrupted operations during the bankruptcy proceeding, including recognition of the aforementioned pre-petition chips. They are designed to ensure that the debtor can maintain normal business operations with customers, employees, suppliers, customers and other stakeholders. The ultimate goal is to allow the debtor to continue generating funds to support ongoing operations which will permit the debtor to satisfy creditors and successfully complete its plan. Common first day motions seek authorization for payment of pre-petition payroll and related employee expenses, payment of the pre-petition claims of "critical vendors", emergency use of cash collateral, debtor-in-possession (DIP) financing, pre-petition chips and tokens (as well as ticket in-ticket out vouchers) and the appointment of the debtor's bankruptcy counsel, financial advisors, and accountants.

In a casino bankruptcy, first day orders facilitate the continued operation of the casino. Casino customers must be able to exchange their cash for gaming chips and the race and sports book and keno operators must be allowed to accept bets on future events and pay winners on demand. To maintain operations, the casino must honor each of those pre-petition obligations of the debt post-petition pursuant to a first day order. First-day orders that are typically obtained to authorize payment of gaming chips and tokens in the ordinary course of business, address claims to casino cash, honor sports book wagers and deposits, authorize the debtor to retain pre-petition charge card accounts, and honor tour and travel commitments and other pre-petition room deposits.

Restructuring Alternatives

During a Chapter 11 bankruptcy case, the debtor will propose a plan of reorganization based on its negotiations with creditors. There are several restructuring alternatives available to casino debtors seeking protection under Chapter 11 of the Bankruptcy Code. Among the alternatives is refinancing outstanding debt, selling assets pursuant to Section 363 of the Bankruptcy Code or a plan of reorganization, or converting debt to equity. Most plans of reorganization will include a combination of these restructuring alternatives.

In many cases the easiest restructuring alternative available to a casino debtor is to refinance its existing debt. Lenders need to be aware that, as with the initial debt transaction itself, when a casino debtor proposes to refinance existing debt, the lenders are subject to being called forward by gaming regulators for full suitability investigations. Gaming regulators generally have the discretion to call lenders forward for licensing, but this is rarely exercised so long as the lenders are bona fide banking institutions. In addition, the refinancing of debt may have to obtain the gaming authorities prior approval of transaction. The debtor's ability to approve the plan of reorganization will likely be dependent on the lender and/or transaction being approved by the gaming authorities.

An equity swap is another restructuring option available to a casino debtor. In order to effectuate the equity swap, a significant amount of the debtor's creditors must accept the debtor's plan of reorganization (at least two-thirds in amount and a majority in number of those creditors voting in the class whose claims will be subject to conversion into equity of the reorganized). An equity swap will likely create gaming licensing issues for the lenders, the result of which will vary depending upon the nature of the entity in bankruptcy (public or private) and the jurisdictions in which that company does business.

A third restructuring option available to a casino debtor is to sell its assets to a third party. Any sale of assets by the casino debtor is subject to bankruptcy court's approval, as well as gaming regulatory approval. An asset sale may be very beneficial to a creditor who is unwilling or unable to undergo the licensing or suitability scrutiny that is required in an equity swap. In the sale process, only the buyer and its insiders, and affiliates will undergo such scrutiny. However, there are potential downsides for creditors with the asset sale. The asset sale is not guaranteed to yield the best recovery for creditors. Additionally, there is no assurance that the buyer will be able to obtain the required licenses in a timely manner.

Lenders may be able to afford themselves of certain licensing exemptions (i.e. public company status of the bankrupt entity, institutional investor status for members of the lending group, non-voting stock), but if the lenders want to have an operational role with members of its constituency serving as officers, directors or key employees (or otherwise exercising control over casino operations), then these individuals would need to be identified and go through the full licensing process. Many large institutions and other creditors may not want their organizations or management to be subject to the intense regulatory review. Until a creditor is found to be suitable by the gaming authorities, it cannot receive as distribution an equity interest in the reorganized debtor under the plan of reorganization.

In regards to the Chapter 11 bankruptcy scenarios, any plan of reorganization or sale would need to go to the applicable gaming regulatory agencies for a licensing investigation, after the bankruptcy court rules. This essentially means that the debtor retains control of the operation pending the license investigation.

The gaming license investigations that may be necessary can range from a full-blown new gaming investigation of a company that has never been licensed before in a jurisdiction (which would take the most time) to an updated investigation of a company that is already licensed in a jurisdiction. Of course, the more jurisdictions in which a gaming company does business, the more gaming regulatory agencies that come into play.

In this current economic climate, it is likely that some gaming companies will file bankruptcy. Gaming regulators are no doubt monitoring this situation closely and will be an integral part of the process as these companies restructure their debt and potentially some creditors convert their debt into equity during the reorganization process.

Please see http://www.lrlaw.com/gaming for a more comprehensive review of gaming licensing requirements and for what lenders to gaming companies should know about bankruptcy/restructuring.

When Gaming Goes Heads Up with the Bankruptcy Code: Unique Restructuring Issues for Gaming Businesses in Difficult Economic Times[1]

Dawn M. Cica*
Laury M. Macauley**

The intersection of gaming and bankruptcy law has long presented legal conflicts that have never been easily reconciled. This problem has been exacerbated in recent years by the current global and national economic turbulence that has greatly impacted the casino gaming industry and has led to a sizeable increase in the number of businesses using bankruptcy to restructure and/or liquidate assets.[2]

Many institutional investors on Wall Street, as well as private equity firms and large national and international banks, either own equity in, or have lent money to, public and private gaming companies. With creditors anticipating that casino revenues would remain at historically high levels or would continue

[1] This article is an expansion of a previously published article. *See* Dawn M. Cica, Laury Macauley & Sean M. McGuinness, *In and Out of Bankruptcy: Weathering the Financial Storm in Gaming*, Nev. Gaming Law., Sept. 2011, at 17, *available at* http://www.lrlaw.com/files/Uploads/Documents/Nevada_Gaming_Lawyer.pdf.

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[2] The five-year period between 2006 and 2010 saw business filings nationwide rise almost threefold—in 2006, there were 19,695 filings as compared to 56,282 during fiscal year 2010. Statistical Tables for the Federal Judiciary, Administrative Office of the United States Courts, *available at* http://www.uscourts.gov/Statistics/StatisticalTablesForTheFederalJudiciary.aspx.

to climb, many of these loans were made at the top of the market with high debt leverage ratios. However, because gaming is essentially an entertainment industry, the economic tumult precipitously reduced consumer discretionary spending, leading to deflated casino revenue.[3]

Moreover, businesses in the gaming industry have faced an onslaught of additional competition nationwide. States like California have allowed a substantial expansion of Indian gaming.[4] Moreover, a myriad of states across the nation have expanded authority for gaming enterprises to include, among other things, the addition of traditional casino gaming at racetrack facilities.[5]

As a result of these economic forces and the resulting decrease in discretionary income, casino profitability has suffered and major capital projects have been delayed or shelved. Additionally, many gaming companies have been unable to meet their income or other covenants in their debt obligations. In fact, Nevada's 256 largest casinos netted a loss of nearly $4 billion in the 2011 fiscal year.[6] Faced with such challenges, and the particular conflicts inherent in the gaming and bankruptcy legal constructs, both lenders and debtors in the gaming industry have been forced to develop creative solutions unique to casino businesses, whether in or out of the bankruptcy context.

I. Restructuring Alternatives

In the wake of financial defaults, gaming debtors and lenders often turn first to restructuring options in order to avoid the filing of a bankruptcy. Nevertheless, the novel aspects of the casino business still present numerous difficulties for lenders.

Casinos are typically financed with a combination of secured and unsecured debt much in the same way as any other business. They own property, certain of which they can pledge to secure their debt. Unlike general commercial loans, however, the lender's tripartite relationship to its collateral and the borrower is regulated by state gaming laws. For example, in Nevada, the pledge of privately owned stock in gaming companies requires the prior approval of gaming authorities before they can become effective. A gaming license itself is not subject to encumbrance, since it is considered a revocable privilege to conduct gaming activities.[7] Nevertheless, lenders routinely take the

[3] American Gaming Ass'n, State of the States: The AGA Survey of Casino Entertainment 5 (2011) (According to the American Gaming Association, total U.S. consumer spending on commercial casino gaming declined in 2008 and 2009, only to rebound slightly with an increase of 0.9% in 2010. In Nevada, the increase was a modest 0.1%.).

[4] *Id.* at 23.

[5] *Id.* at 4 (As of December 31, 2010, there were 456 Tribal casinos nationwide, covering twenty-eight different states; there were forty-five racetrack casinos, covering twelve states.).

[6] Nevada State Gaming Control Board, Nevada Gaming Abstract 2011 (Jan. 6, 2012) (reporting that Nevada's 256 largest casinos generated a net loss of $3,996,656,422.00 in the 2011 fiscal year).

[7] Nev. Rev. Stat. § 463.220(2) (2009) states in part, "No state gaming license may be assigned either in whole or in part;" *see also*, Nev. Gaming Reg. 8A.010(4) (regulations of the Nevada Gaming Commission, which defines "personal property gaming collateral" and "operating license" separately).

position that the "enterprise value" of the casino constitutes intangible personal property, allowing them to assert a security interest in that goodwill.[8]

In addition to those regulatory issues, the necessary set-up of a casino business itself presents unique challenges to the lender. One of the most important characteristics of the gaming business is the typically large amount of cash on hand in the casino. This cash is located in the casino cage, throughout the casino in gaming machines, at the gaming tables, and is represented by chips. Pursuant to the Uniform Commercial Code (UCC), Section 9-313(a), a lender's security interest in that cash can only be perfected by possession.[9] However, because cash is the lynchpin of the gaming enterprise (and casinos need to maintain a minimum bankroll on hand per gaming regulations),[10] a lender's actual possession of such cash (and perfection of its security interest thereby) would prohibit the continual and profitable operation of the casino.

Even if the lender was granted a security interest in gaming tables and slot machines, the lender does not automatically have a security interest in the cash generated by the use of that gaming equipment.[11] Although there are no cases that directly address whether the revenue generated by such gaming equipment constitutes "proceeds" under the UCC, it is questionable whether such a position would prevail, because cash neither diminishes the value of the lender's collateral when generated, nor is generated from the sale or transmutation of the collateral.[12] If the revenue does not constitute "proceeds," this is injurious to the secured creditor's interest after a bankruptcy filing, because a security interest does not attach to post-petition revenue unless it constitutes "proceeds, products, offspring, or profits . . . ." of the pre-petition collateral.[13] Furthermore, if an "interest"[14] in this revenue cannot be established, a lender may be helpless to stop a casino from freely using cash on hand, despite the fact that such cash may have been earned through the use of encumbered gaming equipment.

Due to the uncertainty of these various legal issues, lenders are increasingly requiring that borrowers structurally separate the ownership of the real estate from the operation, and that borrowers operate pursuant to such leases.[15] As part of this structure, the lender generally requires the borrower to deposit cash into accounts controlled by the lender, which then "waterfalls" out to pay approved operating expenses and debt obligations.

[8] *See* Nev. Rev. Stat. § 463.510(1) (2009).
[9] U.C.C. § 9-313(a) (2001).
[10] *See* Nev. Gaming Comm'n Reg. 6.150 (Mar. 2006) (regulations of the Nevada Gaming Commission).
[11] "Gaming equipment" includes, gaming devices, cashless wagering systems, and associated equipment as defined in Nev. Rev. Stat. §§ 463.0155, 463.014, 463.0136 (2009).
[12] *See*, *e.g.*, *In re* S & J Holding Corp., 42 B.R. 249, 250 (Bankr. S.D. Fla. 1984) (cash revenues generated by video game machines and vending machines do not constitute "proceeds").
[13] *See* 11 U.S.C. §552(b)(1) (2006).
[14] *Id.* § 363(a).
[15] As of the July 28, 2009 filing date of the chapter 11 bankruptcy cases of Station Casinos, Inc, all of debtors' real estate was owned by separate entities from that of its operating entities, making for a jointly-administered case of seventeen separate debtors. *See In re* Station Casinos, Inc., No. BK-09-52477, 2010 Bankr. Lexis 5673 (Bankr. D.Nev. 2010).

In addition to the issues that arise in connection with the grant and perfection of a lender's interest in collateral, loans to licensed gaming companies often create unique situations that impact a lender's ability to foreclose on the collateral. In Nevada, lenders cannot assume control of a Nevada gaming business without prior gaming regulatory approvals, generally requiring application and a finding as to the lender's suitability.[16] The issue of how much decision making power a lender can have over a casino or gaming company without being deemed to be in control is often complex and difficult to predict. Certain foreclosures of stock or equity also require prior approval of the lender by the gaming regulatory authorities.[17] Although gaming devices may be foreclosed upon without prior approval from regulators, approvals are required in order to sell or further transfer those gaming devices. When the devices are ultimately transferred, the transfer must be to someone who already holds a manufacturer's or distributor's license.[18] On the other hand, real property may be foreclosed upon without any gaming authority consent, which is why sophisticated lenders are requiring the bifurcation of the real estate from the operation.

For these reasons, sophisticated borrowers may attempt to use the gaming regulatory structure to their advantage against unsophisticated lenders. A borrower can use a lender's inability to take over and conduct gaming operations without the appropriate licenses as leverage to renegotiate the terms of a loan transaction after a borrower default. Accordingly, lenders do not want the borrowers to force their hand in such an instance, because the only quick way to gain control of a gaming borrower's business would be to cease gaming operations, which would decimate the value of the collateral.

Increasingly, with the new borrowing structures, lenders are finding ways to restructure without the cost and delay of a bankruptcy filing. Oftentimes, lenders use leverage against personal guarantors to gain negotiating power. For example, the parties to the senior secured loan on the M Resort agreed that, rather than a foreclosure or entering bankruptcy, the parties would market and auction the property.[19] Similarly, the Planet Hollywood lenders and owners agreed to sell the property to Caesars Entertainment, f.k.a. Harrah's Entertainment, rather than filing a chapter 11, which would have constituted yet another

[16] *See*, e.g., Nev. Rev. Stat. §§ 463.160-170 (2009). For example, on December 23, 2011, the Nevada Gaming Commission found Ronald Paul Johnson "suitable" to serve as receiver for the Las Vegas Hilton, including its gaming business, in advance of his appointment by the Court (see more detailed discussion, *infra*). An applicant cannot be found "suitable" unless the Commission is satisfied that the applicant is:

> (a) A person of good character, honesty and integrity;
> (b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this State or to the effective regulation and control of gaming or charitable lotteries, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or charitable lotteries or in the carrying on of the business and financial arrangements incidental thereto; and
> (c) In all other respects qualified to be licensed or found suitable consistently with the declared policy of the State.

Id. § 463.170.
[17] *See* Nev. Gaming Comm'n Reg. 8.010 (2011).
[18] *See*, *e.g.*, Nev. Rev. Stat. § 463.162.
[19] *See* Howard Stutz, *M Resort Facing Sale,* Las Vegas Rev.-J., Aug. 16, 2010, http://www.lvrj.com/business/lloyds-banking-group-soliciting-bids-for-m-resort-100804429.html.

bankruptcy for the former Aladdin property.[20] More recently, the Palms announced that the owners had sold 98% of the equity in a transaction that erased $400 million in debt.[21]

In the case of the Hard Rock, the senior secured lender and one of the mezzanine lenders made a deal to avoid property closure or bankruptcy.[22] Essentially, the mezzanine lender (which was secured by an upstream grant of the ownership of the borrower) contracted with a licensable casino tenant to take over casino operations once the mezzanine lender foreclosed on the borrower's equity interest.[23] The mezzanine lender filed applications with the Nevada State Gaming Control Board and obtained a temporary waiver of licensing so the foreclosure could take place and control of the casino operations could be passed along to a newly licensed casino tenant thereafter.[24] The licensure of the casino tenant by the Nevada Gaming Commission occurred at the same hearing in which the lender's temporary waiver was obtained.[25]

In the recent case of the Las Vegas Hilton ("LV Hilton"), the lenders applied to the district court for a receiver under the Nevada statutes.[26] After an evidentiary hearing at which the judge questioned the interplay between gaming and a secured lender's remedies, the district court judge appointed a receiver for the non-gaming properties.[27] The lenders obtained appointment of a receiver who had previously agreed to buy the LV Hilton, and the receiver concurrently filed for a gaming license under N.R.S. § 463.[28] The final order turned the LV Hilton's assets and operations over to the receiver, contingent upon the Nevada Gaming Commission's finding of suitability, which was determined subsequently.[29]

Nevertheless, if the borrower and the lenders cannot agree on a consensual restructuring,[30] borrowers will often file a chapter 11 bankruptcy petition in order to gain negotiating leverage over the lenders. The casino industry is naturally favored in this respect, simply because of the amount of cash it generates

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[20] *Harrah's Moves Ahead with Possible Planet Hollywood Acquisition,* LAS VEGAS SUN, Nov. 30, 2009, http://www.lasvegassun.com/news/2009/nov/30/harrahs-moves-ahead-possible-planet-hollywood-acqu/; *Harrah's Officially Takes Over Planet Hollywood*, LAS VEGAS SUN, Feb. 19, 2010, http://www.lasvegassun.com/news/2010/feb/19/harrahs-officially-takes-over-planet-hollywood/.

[21] Chris Sieroty, *Regulators Recommend Sale of Palms Majority Stake*, LAS VEGAS REV.-J., Nov. 2, 2011, http://www.lvrj.com/business/regulators-recommend-sale-of-palms-majority-stake-133108318.html.

[22] Chris Sieroty, *State Gaming Officials To Discuss Hard Rock Fate*, LAS VEGAS REV.-J., Feb. 4, 2011, http://www.lvrj.com/business/state-gaming-officials-to-discuss-hard-rock-fate-115298134.html.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] Stipulation and Order for the Appointment of a Receiver, Goldman Sachs Mortgage Co. v. Colony Resorts LVH Acquisitions, LLC, No. A-11-648281-B (Nev. Dist. Ct. Jan. 6, 2012) [hereinafter Goldman Sachs Stipulation and Order].

[27] *Id.*

[28] *See, e.g.*, NEV. REV. STAT. § 463.160 (2009).

[29] Goldman Sachs Stipulation and Order, *supra* note 26.

[30] This might also be true if the granting of receivers over gaming properties becomes more accessible to lenders.

and the difficulties lenders face with respect to perfection of their security interests. As they say in the industry, "he who has the cash wins."

Bankruptcy law generally eliminates a lender's ability to obtain new liens post-petition in "after-acquired" property.[31] Instead, a lender may only claim a security interest in property that constitutes "proceeds" of property encumbered pre-petition.[32] To qualify as a "proceed," the property must "necessarily derive[ ] from the sale, exchange or other dispensation of other encumbered property."[33] Stated another way, only property that is directly attributable to pre-petition collateral, without the addition of estate resources, can qualify as proceeds.[34] Courts addressing the general issue of what constitutes proceeds have consistently held that revenue derived from the use of collateral, as opposed to the disposition or diminution of collateral, are not "proceeds."[35]

As a result, once in bankruptcy, casinos generally argue that lenders have no interest in cash generated from the use of encumbered gaming equipment. There are no published opinions directly addressing the issue. Based on decisions that have been issued dealing with types of revenue generated by other kinds of machines, including the Las Vegas Monorail, it appears that it may be more difficult than ever for a lender to rebut such a contention successfully.[36] This point becomes clear by simply examining the day-to-day operations of a casino. Patrons enter casinos with the intention of using the equipment (slot machines, tables, video games, etc.) for the thrill of possibly realizing a big return on their wager. However, no matter how large the wager, no lease or ownership in the inventory or equipment of the casino is intended or expected to be granted to a gambler in exchange for his or her wager.

However, even if a lender could demonstrate that cash generated from gaming equipment qualified as proceeds, the hurdle of commingling would remain. In order to prohibit the use of cash collateral, a lender must demonstrate a legally cognizable interest in the collateral.[37] When an interest is claimed in proceeds, the proceeds must be reasonably identifiable.[38] In other words, "once a debtor deposits cash proceeds into an account and commingles it with other money, the [ability to identify] a secured creditor's proceeds is destroyed unless the secured creditor can prove the money currently in the debtor's account corresponds to its collateral."[39]

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[31] *See* 11 U.S.C. § 552(a) (2006); *In re* Stallings, 290 B.R. 777, 783 (Bankr. D. Idaho 2003).

[32] *See* 11 U.S.C. § 552(b) (2006).

[33] Philip Morris Capital Corp. v. Bering Trader, Inc. (*In re* Bering Trader), 944 F.2d 500, 502 (9th Cir. 1991); *see also,* U.C.C. § 9-102(a)(64) (2001) (defining proceeds as "whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral . . . .").

[34] *See* 5 COLLIER ON BANKRUPTCY ¶ 552.02[2][a] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2011); *In re* Delco Oil, Inc., 365 B.R. 246, 249 (Bankr. M.D. Fla. 2007).

[35] *See In re* S & J Holding Corp., 42 B.R. 249, 250 (Bankr. S.D. Fla. 1984); CLC Equip. Co. v. Brewer (*In re* Value-Added Commc'n, Inc.), 139 F.3d 543, 546 (5th Cir. 1998); *In re* Las Vegas Monorail, 429 B.R. 317, 333-34 (Bankr. D. Nev. 2010).

[36] *See In re* Las Vegas Monorail, 429 B.R. at 342-45.

[37] 11 U.S.C. § 363(a).

[38] *See* NEV. REV. STAT. § 104.9315(b) (2009).

[39] Arkinson v. Frontier Asset Mgmt., LLC (*In re* Skagit Pac. Corp.), 316 B.R. 330, 338 (B.A.P. 9th Cir. 2004).

Unlike many other businesses, casinos operate with money cages. Cash, coins, and chips obtained from patrons on the casino floor end up in these cages. Although gambling may account for the majority, this revenue is generated from a variety of sources. As such, difficulty arises with respect to identification of the specific proceeds generated from the use of gaming equipment.

Either way, a casino lender enters the bankruptcy process at a disadvantage. Without an encumbrance on cash collateral, a gaming business can use these funds for the administration of the bankruptcy.[40] This pool of cash, coupled with the fact that most casinos have positive EBITDA,[41] in many cases gives the borrower the leverage it needs over its lenders.

Despite this advantage, most parties recognize that a restructuring, whether done through the bankruptcy process or not, should allow the casino business to remain open, employees to remain employed, and provide a mechanism for the borrower and its creditors to explore ways by which to maximize the value of the bankrupt company to, in turn, maximize the return to creditors.

II. Impact of Gaming Issues in Bankruptcies

Increasingly, borrowers and senior lenders may have agreed to restructure the gaming company. However, pursuant to a structure that requires the borrower to file a bankruptcy petition to achieve the terms of the agreement, if there are non-consenting junior creditor groups who have claims that need to be addressed in order to allow the restructured company to have a fresh start and to get through their bankruptcy case quickly. Sometimes this is referred to as a "prepackaged plan" or "prepack," because the borrower and senior lenders agree on the terms of the plan before the case is filed. Such pre-packaged plans were seen in the Station Casinos and Riviera cases, among others.

Whether or not there is an attempt at a "prepackaged plan" under the umbrella of a restructuring deal, casino debtors are turning to bankruptcy filings in significant numbers to assist them in addressing financial difficulties. The bankruptcies of casino debtors typically follow three different paths:

1) *Chapter 11 reorganization with a debtor that generates enough cash flow, and/or has significant debtor-in-possession financing*. These two factors will in turn operate to justify the bankruptcy court in allowing the debtor-in-possession to continue operation during the bankruptcy, and to offer a plan of reorganization to its creditors and to the bankruptcy court. Examples of this type of bankruptcy were: Herbst Gaming,[42] Station Casinos,[43] the Riviera,[44] Stratosphere Casino and Hotel,[45] Fitzgeralds Gaming Corporation,[46] and the

[40] *See* 11 U.S.C. §552(a) (property acquired after commencement of case not covered by pre-petition security agreement).

[41] "EBITDA" stands for "earnings before interest, taxes, depreciation and amortization" and is often used as an indicator of a company's financial performance.

[42] Herbst Gaming, Inc. v. Insurcorp (*In re* Zante, Inc.), No. 3:10-cv-00231, 2010 WL 5477768 (Bankr. D. Nev. Dec. 29, 2010).

[43] *In re* Station Casinos Inc., No. 09-52477, 2011 WL 6813603 (Bankr. D. Nev. Dec. 21, 2011).

[44] *In re* Riviera Holdings Corp., No. 10-22910 (Bankr. D. Nev. 2010).

[45] Mcdonald's Corp. v. Stratosphere Corp. (*In re* Stratosphere Gaming Corp.), 23 F. App'x 749 (9th Cir. 2001).

Aladdin Casino and Hotel.[47] In each of these instances, the casinos were able to stay open and continue operations, while a reorganization plan was circulated to the creditors and the court.

2) *Chapter 11 reorganization with a debtor that either (a) does not generate enough cash flow to continue operations, or (b) does not have adequate debtor-in-possession financing to finance the bankruptcy long enough to complete the required plan of reorganization process*. In this instance, the bankruptcy court may order a sale of the debtor's assets, pursuant to Bankruptcy Code section 363, which results in the property being marketed for sale.[48] In such an instance, a stalking horse bidder may be contracted with to make a minimum, opening bid of the assets at auction.[49] In any event, an auction will usually take place under the bankruptcy court's supervision. In this scenario, the debtor-in-possession's equity owners are able to participate in the auction and bid for the assets alongside non-owners. Examples of this type of bankruptcy were: The Resort at Summerlin,[50] Stateline Casino,[51] and the Siena Hotel Spa & Casino.[52] In the first two instances, the casinos stayed open with the agreement that a sale process would be immediately initiated. In the case of the Siena, the gaming business ran out of sufficient funds to operate under state regulations and voluntarily shut down before the sale was conducted.[53]

3) *Chapter 7 liquidation with a debtor that does not generate positive cash flow, and does not have the ability to obtain debtor-in-possession financing to continue operations*. In this type of situation, the bankruptcy court and the gaming regulators work together to appoint a trustee to take over operations and make efforts to liquidate the assets. Examples of this type of bankruptcy were: The Maxim Hotel and Casino[54] and Fitzgeralds Reno.[55]

Regardless of the type of casino bankruptcy, once a bankruptcy petition is filed, the casino operators' fiduciary duties shift from that of equity owners of the company to the bankruptcy estate itself (and more specifically to all of the creditors). Then, the debtor's duties (even if a trustee has not been appointed) become similar to those of a bankruptcy trustee to maximize the eventual distribution to the bankruptcy estate's creditors.[56] The focus then is on allowing the casino's operations to continue so as to maximize revenues in order to make it

[46] *In re* Fitzgeralds Gaming Corp., No. 00-33467 (Bankr. D. Nev. 2011).

[47] *In re* Aladdin Gaming, LLC., No. 01-20141 (Bankr. D. Nev. 2011).

[48] 11 U.S.C. § 363 (2006).

[49] *See In re* Aladdin Gaming, LLC, No. 01-20141.

[50] *In re* The Resort at Summerlin Inc., No. 00-18878 (Bankr. D. Nev. 2011).

[51] Jorgenson v. State Line Hotel, Inc. (*In re* State Line Hotel, Inc.), 323 B.R. 703 (B.A.P. 9th Cir. 2005), *vacated* 242 F. App'x 460 (9th Cir. 2007).

[52] *In re* High-Five Enter., LLC , No. 10-54013 (Bankr. D. Nev. 2010) (jointly administered with *In re* One South Lake Street, LLC., No. 10-54065 (Bankr. D. Nev. 2010)).

[53] *Id.*

[54] *In re* Max Gaming, LLC., No. 99-19904 (Bankr. D. Nev. 2000).

[55] *In re* Fitzgeralds Reno, No. 00-33469 (Bankr. D. Nev. 2011) (The Reno casino was the sole remaining asset of Fitzgeralds Gaming Corporation that couldn't be sold when the buyer declined to purchase that property along with the other three.).

[56] 11 U.S.C. § 1107(a) (2006) ("a debtor in possession shall have all the rights, . . . powers, and shall perform all the functions and duties . . . of a trustee . . . ."); *In re* Reliant Energy Channel View LP, 594 F.3d 200, 210 (3d Cir. 2010) ("debtors-in-possession have a fiduciary duty to maximize the value of the estate").

more likely that all creditor constituency groups are able to recover as much as possible. Generally, the prior owner's equity is wiped out and becomes worthless, as the equity is last in priority to be paid out under the Bankruptcy Code.[57]

Once the gaming borrower has filed for bankruptcy, the extensive state and local gaming regulatory schemes not only complicate, but are often at odds with the bankruptcy process. Federal bankruptcy law and state and local gaming regulations may present competing goals and requirements. Two goals underlying the federal bankruptcy process are: providing creditors with payment and allowing an ongoing business to emerge rehabilitated. On the other hand, gaming regulations are driven by numerous public policies not at issue in the bankruptcy process. These public policies include: 1) the protection of consumers; 2) the integrity of the gaming industry as a whole; 3) the control of the financial practices of gaming businesses; 4) the prevention of unsuitable persons from involvement in gaming; 5) establishing and maintaining appropriate accounting procedures for gaming enterprises; and 6) maintaining a stable source of revenue for state and municipalities through tax and licensing revenues.[58]

The impact of state regulators upon a gaming bankruptcy is made by its two-pronged regulatory scheme of controlling the businesses through both reporting and licensing requirements. The reporting requirements include the submission of periodic and detailed financing and operating reports, the maintenance of stock ledgers that disclose all beneficial owners, and the reporting and approval of most loans, leases, sales of securities and any other financing transactions of the gaming business.[59] On the other hand, extensive licensing requirements require, among other things, all officers, directors, and certain key employees to apply to be licensed or found "suitable" after comprehensive disclosure and investigation of detailed personal information at the great expense of the applicant.[60] These requirements are not waived or otherwise limited in any way by the filing of the bankruptcy case, because the automatic stay normally given to actions against a debtor in bankruptcy does not apply to the exercise of "police or regulatory power" by a "governmental unit" to enforce a non-monetary judgment.[61]

However, recent Nevada legislation may act to ease the overly burdensome licensing requirements by allowing entities to file applications for a "preliminary finding of suitability" before first being in a position in which licensing is mandatory under the Nevada Gaming Control Act.[62] As a result, a party without an existing involvement in Nevada's gaming industry or an agreement that gives it a right to such involvement, now has the opportunity to apply for a preliminary finding of suitability, thereby providing the party with a

57 *Id.* § 1129(b)(2)(B)(ii) (the so-called "Absolute Priority Rule," which requires that all unsecured creditors would need to be paid in full to allow any payment to the equity).

58 *See* Nev. Rev. Stat. § 463.0129 (2009).

59 *See* Nev. Gaming Comm'n Reg. 8.130 (2)-(3). Additionally, other reporting requirements for licensees are contained in numerous regulation sections.

60 *See* Nev. Rev. Stat. § 463.170.

61 11 U.S.C. § 362(b)(4).

62 *See* Nev. Rev. Stat. § 463.1625(1).

means to address and resolve licensing risks prior to entering into a major transaction or assuming an employment position requiring licensing.

III. Procedural Issues in Gaming Bankruptcies

In addition to the all-encompassing policy issues, there are also complicated procedural issues. When a debtor files a chapter 11 petition, the "automatic stay" goes into effect, which both prohibits creditors from pursuing actions against the debtor and prevents the debtor from paying any claims that arose prior to the filing.[63] This "stay" creates a myriad of problems for a gaming business due to the necessary, constant flow of cash and cash equivalents (vouchers, chips, and tokens) and in light of wagers on future events (as for keno and sporting events in the sports book). This is because one cannot count on them being paid out prior to the filing of the bankruptcy petition due to the nature of a casino's round-the-clock operations.

Therefore, a company beginning the chapter 11 process must immediately ask the court for certain orders that will allow it to continue uninterrupted operations during the bankruptcy proceeding—the so-called "first day orders." Although these motions are highly irregular in the bankruptcy process insofar as they request payment of pre-petition, unsecured obligations prior to distribution to other unsecured creditors (normally inviolate in a bankruptcy case), the motions are nonetheless essential to the continuation of the gaming enterprise. They are designed to ensure that the debtor can maintain normal business operations with customers, employees, suppliers, and other stakeholders and continue the necessary generation of revenue and compliance with state gaming laws. The ultimate goal is to allow the debtor to continue generating funds to support ongoing operations, which will, in turn, permit the debtor to satisfy creditors and successfully complete its plan of reorganization.

Typically, these "first day orders" allow the debtor to do the following: pay employees, pay certain important trade creditors or "critical vendors," pay taxing authorities, honor room reservations, convention contracts and deposits, use the existing cash management system already in place, retain attorneys and other advisors, use estate assets (including cash) to conduct business operations, and obtain financing to fund the administration of the bankruptcy.[64]

Because these orders are so crucial, gaming debtors normally arrange in advance with the bankruptcy court for a hearing date to occur shortly after the filing of their bankruptcy petition. Moreover, despite the short notice normally given to the creditors of the estate and other parties in interest, the bankruptcy courts routinely grant these motions on an interim basis, and then grant a series of final orders after additional notice time has been given and a continued hearing has occurred.

Gaming authorities may be able to exercise their "police power" to force the casino to honor obligations to its customers made prior to the bankruptcy

63 11 U.S.C. § 362.

64 *See* Lynn P. Harrison & James V. Drew, *First Day Orders: A Survey of Critical Vendor Motions and Recent Developments*, *in* PLI's Course Handbook, 31st annual Current Development in Bankruptcy & Reorganization (2009), *available at* www.pli.edu/emktg/toolbox/SurVendor_Motions36.doc.

filing and to honor the state and local taxes inherent in the business.[65] The Bankruptcy Code technically requires that, upon filing for bankruptcy protection, a casino is to cease issuing and honoring pre-petition chips and recognize only new "post-petition chips."[66] However, the bankruptcy court's "first day orders" will normally fix this problem and include a grant of authority to authorize payment of gaming chips and tokens (as well as ticket-in, ticket-out vouchers) in the ordinary course of business, address claims to casino cash, honor sports book wagers and deposits, authorize the debtor to retain pre-petition charge card accounts, honor tour and travel commitments and other pre-petition room deposits, honor customer incentive programs and other agreements like "Megabucks," and pay gaming taxes.

Practically, a debtor casino could not compete in the highly competitive gaming industry if it was required to follow certain requirements of the Bankruptcy Code strictly. Casino customers must be able to exchange their cash for gaming chips, and the race and sports book and keno operators must be allowed to accept bets on future events and pay winners on demand. To maintain operations and to comply with state gaming regulations the casino must honor each of those pre-petition obligations of the debt post-petition, and do so with no interruption upon the bankruptcy filing. Due to the role of the gaming authorities, in many cases, the debtor will normally inform the regulators about the bankruptcy and may even give them an opportunity to comment on certain relevant "first day orders."

Obviously, financing of the administration of the bankruptcy is usually of paramount importance in a gaming case. In the bankruptcy context, post-petition financing requires the approval of the bankruptcy court, pursuant to Bankruptcy Code section 364[67] and, once a petition is filed, lenders cannot be compelled to provide further loan advances based on pre-petition financing agreements.[68]

However, because this funding triggers the same kind of regulatory scrutiny as non-bankruptcy funding and is subject to the same constraints,[69] loans to gaming debtors are complex.[70] If a debtor needs financing, the senior

[65] *See infra* Part III.
[66] Under Nev. Gaming Comm'n Reg. 12.060 of the Nevada Gaming Commission and State Gaming Control Board, chips and tokens constitute debt. In bankruptcy, chip holders are considered general unsecured creditors. Generally, casinos pay chip or token debt with cash reserves inside the gaming establishment. Often, lenders have a security interest in a casino's cash reserves or cash collateral. After the filing of a bankruptcy petition, pursuant to 11 U.S.C. § 363(c)(2)(B), a debtor may not use cash collateral without the creditor's consent or court order. Furthermore, as discussed *supra*, the absolute priority rule (11 U.S.C. §1129(b)(2)(B)(ii)) requires that higher priority creditors be paid in full before lower priority claimants receive any payment. Additionally, the automatic stay established by 11 U.S.C. § 362 prevents creditors from taking any act to collect a pre-petition debt. Taking all these factors together, a debtor casino is technically not supposed to honor pre-petition chips or gambling debts. Nevertheless, casinos usually avoid this restriction by filing first day motions seeking leave of the court to use cash collateral to maintain business operations.
[67] *See* 11 U.S.C. § 364(b)-(d) (2006).
[68] *See id.* § 365(c).
[69] Cash perfection issues, non-assignability of the gaming licenses, and regulatory approvals.
[70] Such financing is often called "DIP" financing or "debtor-in-possession" financing.

secured lenders often provide it in return for the debtor making all encompassing agreements as to the use of cash, budgets, and the exit strategy of the debtor and the lenders. They may even require an agreement from the debtor as to the validity and extent of their liens against the debtor's property and require that the debtor give up claims against the lenders.

Unfortunately, this cooperation between the debtor and the senior secured lender may not be enough to ensure liens remain unchallenged or that claims will not eventually be pursued. A debtor in possession ("DIP") has all the rights and powers of a trustee, including the ability to avoid certain liens encumbering estate property.[71] However, if a debtor in possession neglects to take such action, courts can confer derivative standing upon a third party—assuming certain criteria can be demonstrated[72]—to bring actions to recover property for the benefit of the estate.[73]

A recent Delaware decision illustrates how derivative standing may arise in a case involving a debtor that is a gaming entity.[74] In *In re Centaur, LLC*, the Official Committee of Unsecured Creditors sought derivative standing to challenge the validity of various liens held by the senior secured lenders and the second lien holders.[75] The debtor was a holding company for a variety of entities operating gaming facilities in several states.[76] Among other things, the Committee challenged the senior secured lenders' perfection in "cage cash" at off-track betting locations operated by the debtor's affiliates.[77] Additionally, the Committee sought to avoid as fraudulent transfers certain liens associated with "upstream guaranties" from the affiliated gaming entities regarding the senior secured credit facility.[78] Overall, the Committee sought to avoid liens on estate property worth an estimated $192 million.[79]

As the primary basis for bringing its motion, the Committee contended that the debtor unjustifiably refused to bring these actions on behalf of the estate.[80] In support of this contention, the Committee offered expert testimony that identified a potential recovery for the unsecured creditors of over $85 million, if certain liens were avoided.[81] To rebut this, the debtor offered testimony that only $6.55 million would be recovered—just $1.55 million above the high end estimated litigation costs to pursue the claims.[82] Despite these disparities in

[71] *See supra* Part III.
[72] *In re* YES! Entm't Corp., 316 B.R. 141, 145 (Bankr. D. Del. 2004) (stating that derivative standing requires: "(1) a colorable claim, (2) that the trustee unjustifiably refused to pursue the claim, and (3) the permission of the bankruptcy court to initiate the action.").
[73] *See* Fogel v. Zell, 221 F.3d 955 (7th Cir. 2000); Commodore Int'l Ltd. v. Gould (*In re* Commodore Int'l Ltd.), 262 F.3d 96 (2d Cir. 2001); Official Comm. Of Unsecured Creditors of Cybergenics Corp. v. Chinery, 330 F.3d 548 (3d Cir. 2003); *In re YES! Entm't Corp.*, 316 B.R. at 141; *In re* Centaur, LLC., No. 10-10799, 2010 WL 4624910 (Bankr. D. Del. Nov. 5, 2010).
[74] *In re Centaur,* 2010 WL 4624910, at *1.
[75] *Id.*
[76] *Id.* at *1-2.
[77] *Id.* at *4.
[78] *Id.*
[79] *Id.* at *1.
[80] *Id.* at *5-7.
[81] *Id.* at *5.
[82] *Id.* at *5-6.

value, the *Centaur* court granted derivative standing to the Committee.[83] In reaching this determination, the court concluded:

> Under these circumstances, and understanding there may indeed be some benefit to the estate [itself] if some or all of the claims are prosecuted successfully, and to achieve the appropriate balance between allowing pursuit of colorable Claims and ensuring benefit to the estate, [the court] will grant the Committee's request for standing to prosecute the Claims . . . .[84]

Thus, as *Centaur* demonstrates, even if a debtor agrees to the validity of certain liens or the forfeiture of certain claims to obtain DIP financing, such agreements can still be challenged by other parties in interest in the case. Although these agreements benefit a debtor by allowing it to continue its operations, a strong argument exists that the forfeiture of such claims potentially harms other creditors by minimizing the bankruptcy estate. As expected, the greater the magnitude of the claim a debtor waives, the more likely a third party may be granted derivative standing to pursue the potential benefit for the estate.

Although derivative standing presents a potential difficulty in a casino reorganization, other obstacles are more certain. Like all casino financing, DIP financing requires the licensees to provide the appropriate notices to the gaming authorities.[85] If such notification is not done, state gaming regulators could attempt to rescind the financing arrangement or take other disciplinary action against the casino debtor, notwithstanding prior approval by the bankruptcy court.[86] However, in many bankruptcies, additional DIP financing is not needed because the debtor's operations still generate sufficient revenues to support its operations. Nevertheless, in such a case, there may still be negotiations over the definition and use of the lender's cash collateral, as both are instrumental to the success of the debtor's reorganization.

Additionally, and of key importance to a debtor, once the case is ongoing, the debtor has the ability to accept, assume, and assign, or reject executory contracts. Although the Bankruptcy Code does not define an "executory contract," the legislative history of section 365 adopts the Countryman[87] definition of such contracts as those "on which performance remains due to some extent on both sides."[88] In the context of a gaming business, executory contracts would include leases of gaming devices such as slot and video poker machines.

However, it must be noted that this key ability to accept or reject contracts in bankruptcy is limited by gaming regulations, which may impact the timing of any proposed assignment, as well as limiting the group of persons or entities to which those contracts are assigned.

[83] *Id.* at *7.
[84] *Id.*
[85] *See* Nev. Gaming Comm'n Reg. 8.130 (2011).
[86] *See generally* Nev. Rev. Stat. § 463 (2009).
[87] Vern Countryman, *Executory Contracts in Bankruptcy: Part I*, 57 Minn. L. Rev. 439, 447 (1973); 3 Collier on Bankruptcy, *supra* note 34, at ¶ 365.02[1].
[88] 3 Collier on Bankruptcy, *supra* note 34, at ¶ 365.02[1].

IV. Exit Strategies

The goal of every bankruptcy debtor is to exit from bankruptcy. During a chapter 11 case the debtor will propose a plan of reorganization based on its negotiations with creditors in order to accomplish that exit. There are several restructuring alternatives available to casino debtors seeking protection under chapter 11 of the Bankruptcy Code. Among these alternatives is the refinancing of outstanding debt, selling assets pursuant to section 363 of the Bankruptcy Code or a plan of reorganization, a "friendly foreclosure" or converting debt to equity. Most plans of reorganization will include a combination of some or all of these restructuring alternatives.

In many cases, the easiest restructuring alternative available to a casino debtor is to refinance its existing debt. Lenders need to be aware that, as with the initial debt transaction itself, when a casino debtor proposes to refinance existing debt, the lenders are subject to being called forward by gaming regulators for full suitability investigations.[89] Gaming regulators generally have the discretion to call lenders forward for licensing, but this is rarely exercised so long as the lenders are bona fide banking institutions. In addition, the refinancing of debt may require the prior approval of the gaming authorities.[90] Thus, the debtor's ability to obtain the bankruptcy court's approval of its plan of reorganization will likely be dependent on the lender and/or the proposed transaction also being approved by the gaming authorities.

An equity swap is another restructuring option available to a casino debtor. In order to effectuate the equity swap, a significant amount of the debtor's creditors must accept the debtor's plan of reorganization (at least two-thirds in amount and a majority in number of those creditors voting in the class whose claims will be subject to conversion into equity of the reorganized entity).[91] An equity swap will likely create gaming licensing issues for the lenders, the result of which will vary depending upon the nature of the entity in bankruptcy (public or private) and the jurisdictions in which that company does business.[92]

A third restructuring option available to a casino debtor is to sell its assets to a third party. Any sale of assets by the casino debtor is subject to the bankruptcy court's approval, as well as gaming regulatory approval.[93] An asset sale may be very beneficial to a creditor who is either unwilling or unable to undergo the licensing or suitability scrutiny required in an equity swap. In the sale process, only the buyer and its insiders and affiliates will undergo such scrutiny. However, there are potential downsides for creditors with an asset sale. Most importantly, the asset sale is not guaranteed to yield the best recovery for creditors. Additionally, there is no assurance that the buyer will be able to obtain the required licenses in a timely manner and complete the sale.

[89] Nev. Rev. Stat. §§ 463.165, 463.167 (2009).
[90] *See id.* § 463.165.
[91] *See* 11 U.S.C. § 1126(c) (2006).
[92] Nev. Gaming Comm'n Reg. 8.030 requires any new owner to obtain licensing from the Commission.
[93] 11 U.S.C. § 363; Nev. Gaming Comm'n Reg. 8.030 (1975).

Lenders may be able to avail themselves of certain licensing exemptions (i.e., public company status of the bankrupt entity, institutional investor status for members of the lending group, non-voting stock), but if the lenders want to have an operational role with members of its constituency serving as officers, directors or key employees (or otherwise exercising control over casino operations), then these individuals would need to be identified and go through the full licensing process. Many large institutions and other creditors may not want their organizations or management to be subject to the intense regulatory review. Until a creditor is found to be suitable by the gaming authorities, it cannot receive as a distribution an equity interest in the reorganized debtor under the plan of reorganization.[94]

In regard to the various chapter 11 bankruptcy scenarios described above, any plan of reorganization or sale would need to be submitted to all applicable gaming regulatory agencies for a licensing investigation and approval, even after the bankruptcy court approval is obtained. This essentially means that the debtor retains control of the operation pending the license investigation and approval, thus stalling the progress of the reorganization.

The gaming license investigations that may be necessary in such instances can range from a full-blown, new gaming investigation of a company that has never been licensed before in a jurisdiction (which would take the most time), to an updated investigation of a company that is already licensed in a jurisdiction. Of course, the more jurisdictions in which a gaming company does business, the more gaming regulatory agencies that come into play.

V. Going Forward

Despite some slow growth in casino revenues over the last several years, the effects of the current economic climate are significant, from credit tightening to unemployment, and to limitations on discretionary income and spending. Yet, despite having to weather these storms, the casino industry is continuing to evolve as courts, regulators, lenders, casino companies, and equity owners still face the challenges posed by the ongoing financial crises and the difficulties that the necessary intersection between gaming regulations and bankruptcy statutes presents. As these conditions continually evolve, sophisticated restructuring professionals and advisors continue to innovate, providing the necessary strategic planning and support for finding new and creative ways to restructure gaming businesses in accordance with state and federal laws, and to keep them operating.

94 *See* Nev. Rev. Stat. § 463.160(1)(d).

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ARTICLE: GAMBLING WITH BANKRUPTCY: NAVIGATING A CASINO THROUGH CHAPTER 11 BANKRUPTCY PROCEEDINGS

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LEXISNEXIS SUMMARY:
... The fact that a trustee may operate the business of a casino in bankruptcy presents a potential conflict with the authority of state gaming regulators to license and approve key persons operating commercial casinos. ... The Interaction of State Gaming Regulation and Chapter 11 Bankruptcy Proceedings: Lessons Learned in Balancing Competing Interests of State Regulators and Bankruptcy Courts An inherent tension exists between the original jurisdiction of a bankruptcy court over a Chapter 11 bankruptcy debtor - including jurisdiction over the property of the debtor - and state regulatory oversight of casinos. ... At the same time, state gaming regulations ordinarily require notice of financing arrangements and approval of the financing. ... These questions include how to perfect a security interest in casino cash and what rights, if any, state gaming regulators have to use casino cash to pay expenses such as wagering taxes. ... Acting under the purview of the automatic stay and antidiscrimination provisions of the Federal Bankruptcy Code, the bankruptcy court in Elsinore enjoined an attempt by the New Jersey Casino Control Commission to require payment of prebankruptcy-petition taxes and fees as a condition of renewing a casino license. ... Consequently, the lesson learned from Jaffe and other casino bankruptcy proceedings is that the active cooperation of state regulators is essential to ensure an orderly and successful Chapter 11 reorganization.

TEXT:
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I. Introduction

The proliferation of casinos across the United States has become a modern-day version of the proverbial golden egg for many communities. n1 Communities often view casinos as new sources of vital revenue and tools for economic development. n2 When casinos fail, public reaction is often one of shock because communities find it hard to believe that a casino could become financially distressed.

In reality, commercial casinos face many of the same pressures and financial challenges as other private businesses. Casinos, like other businesses, are susceptible to mismanagement or other economic circumstances that can cause them to become financially distressed. As with other sectors of the economy, financially distressed businesses in the [*363] gaming industry have sought - and will likely continue to seek - federal bankruptcy protection in order to restructure debt and financial operations. n3

Two high-profile casino bankruptcy proceedings have recently gained the attention of Wall Street, the general public, and the gaming community - the bankruptcy petitions filed by the owners of Detroit-based Greektown Casino n4 and Atlantic City-based Tropicana Casino and Resort. n5 A commercial casino seeking bankruptcy protection is not itself a new legal development. n6 In fact, the first instances of casino bankruptcies date back to 1985, when both the Atlantis Casino and Dunes Casino sought bankruptcy protection. n7

Casinos are heavily regulated businesses. n8 Bankruptcy proceedings invoke the jurisdiction of a unique, specialized department of the federal judiciary. In the typical bankruptcy reorganization proceeding, the bankruptcy court ultimately gains some level of control over the operation of the debtor's business activities. Consequently, bankruptcy proceedings involving casinos present complicated scenarios not ordinarily present in a typical bankruptcy reorganization proceeding. n9 The interaction of state gaming regulation and federal bankruptcy law can at times present competing interests and goals. On one hand, state gaming regulators have the overall goal of protecting the public integrity of commercial casinos. On the other hand, bankruptcy law is designed to ensure creditors are paid [*364] and an ongoing business can successfully emerge from bankruptcy proceedings. As a result, casino bankruptcies are ripe for jurisdictional fights between state regulators and the bankruptcy courts.

This Article addresses the interaction of state gaming regulation and bankruptcy law. The Article first presents an overview of federal bankruptcy law. The discussion of federal bankruptcy law will particularly focus on provisions of the Federal Bankruptcy Code that may present obstacles to or create tension with state gaming regulators. n10 Next, the Article will provide a summary of the various requirements imposed by state gaming laws and regulations that are potentially at tension with the protections provided by the Federal Bankruptcy Code. The Article will then present an analysis of aspects of Chapter 11 bankruptcy proceedings that create conflicts with state regulatory oversight of commercial casinos. The Article concludes by presenting a practical approach premised on cooperation between state gaming regulators and bankruptcy courts when dealing with casino bankruptcy proceedings.

II. Background on the Sources and Scope of Federal Bankruptcy Law

Federal bankruptcy law derives directly from the United States Constitution. The Constitution provides that "Congress shall have Power ... To establish ... uniform Laws on the subject of Bankruptcies throughout the United States." n11 Acting under the authority granted by the Constitution, Congress has vested federal district courts with jurisdiction over bankruptcy proceedings and enacted a comprehensive Federal Bankruptcy Code. n12

A. Federal Court Jurisdiction over Bankruptcy Proceedings

Congress has statutorily created "original and exclusive jurisdiction of all cases under title 11 [Federal Bankruptcy Code]" to the federal district courts. n13 Although federal district courts have original jurisdiction over cases arising under the Federal Bankruptcy Code, Congress has established [*365] specialized bankruptcy courts to hear bankruptcy cases. n14 Bankruptcy courts are designated as units of federal district courts. n15 Thus, bankruptcy courts administer proceedings initiated under the Federal Bankruptcy Code while operating as units of federal district courts. Consequently, federal district courts review decisions of bankruptcy courts.

The federal district courts' jurisdiction over bankruptcy matters includes plenary powers over the debtor's property. That is, federal courts "in which a case under title 11 [the Federal Bankruptcy Code] is commenced or is pending shall have exclusive jurisdiction - (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate ... ." n16 Thus, in the context of a casino bankruptcy, one of the key considerations is whether the actual gaming license is "property" of the casino's bankruptcy estate. n17 As discussed below, the broad scope of the bankruptcy court's jurisdiction over the property of the estate of a debtor is a source of tension vis-a-vis the ability of state gaming authorities to exercise regulatory authority over casinos. n18

[*366] Although the federal district courts have original jurisdiction over bankruptcy proceedings, federal courts may nonetheless abstain from entertaining certain matters raised in the context of a bankruptcy proceeding. n19 There are two types of abstention: permissive abstention and mandatory abstention.

Permissive abstention is statutorily enshrined with the announcement that:

nothing in [the grant of original jurisdiction] prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. n20

Permissive abstention is appropriate when there are "unique, unsettled, or difficult" issues of state law presented. n21 Thus far, however, there are no known cases of a bankruptcy court abstaining from overseeing a casino bankruptcy in total deference to state gaming regulators.

The basis for mandatory abstention is similarly set forth in the statute granting federal district courts original jurisdiction of bankruptcy matters:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. n22

Accordingly, mandatory abstention is limited in scope to those circumstances in which a debtor attempts to have a federal court adjudicate a state law claim by virtue of the federal court's bankruptcy jurisdiction.

B. The Federal Bankruptcy Code

A bankruptcy proceeding may take various forms under the Federal Bankruptcy Code. Applicable to most casino bankruptcies - and the focus [*367] of this Article - a petition may be filed to reorganize the debts of the debtor pursuant to Chapter 11 of the Federal Bankruptcy Code. A Chapter 11 petition may be filed voluntarily by a debtor or involuntarily by creditors or other interested parties. n23 After a bankruptcy petition is filed, several important rights arise under the Federal Bankruptcy Code and control the actions that creditors and state gaming regulators may take with respect to a commercial casino.

1. The Automatic Stay Provision of 11 U.S.C. § 362 and Other Limits on the Authority of Governmental Units

An important consequence of filing a bankruptcy petition is the application of the automatic stay provisions. Particularly relevant to a casino bankruptcy proceeding, the automatic stay provisions of the Federal Bankruptcy Code provide that a bankruptcy petition:

operates as a stay, applicable to all entities, of -

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

... .

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate[.] n24

The intent of the automatic stay is "to give the debtor a "breathing spell' from creditor actions that would gravely impair the debtor's ability to reorganize and to ensure that similarly situated creditors be treated the same, rather than permitting the spoils (i.e., the debtor's assets) to go to the fleetest or nimblest creditor." n25 Accordingly, the automatic stay performs an important function by ensuring the orderly administration of bankruptcy reorganizations.

Congress has imposed limits on the reach of the automatic stay. One limitation is an exception for the enforcement of the police and regulatory [*368] powers of governmental units. n26 "In the automatic stay context, we generally have construed the phrase "police or regulatory power' to "refer to the enforcement of state laws affecting health, welfare, morals, and safety, but not regulatory laws that directly conflict with the control of the res or property by the bankruptcy court.'" n27 The police or regulatory power exception to the automatic stay is broadly construed. n28

The automatic stay provision works in conjunction with the Federal Bankruptcy Code's prohibition of discrimination against a debtor in possession, which provides that "a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant ... [to discriminate against] a person that is or has been a debtor under this title ... solely because such bankrupt or debtor is or has been a debtor under this title ... ." n29 The antidiscrimination provision of the Federal Bankruptcy Code could limit state gaming regulators' ability to take regulatory action against a casino in bankruptcy proceedings. n30

2. The Role of a Chapter 11 Trustee or Debtor in Possession Under the Federal Bankruptcy Code

A Chapter 11 proceeding may either involve the appointment of a trustee to continue the operation of the business activities of the debtor or allow for a debtor in possession to continue its business activities. In a Chapter 11 proceeding, "the trustee may operate the debtor's business." n31 A debtor in possession similarly has the right under a Chapter 11 [*369] proceeding to continue to operate its business. n32 The legislative history of 11 U.S.C. § 1108 recognizes that a trustee is not presumed to be the party approved to operate the debtor's business; rather, the trustee's power is merely one of the powers a debtor in possession acquires under 11 U.S.C. § 1107. n33 The fact that a trustee may operate the business of a casino in bankruptcy presents a potential conflict with the authority of state gaming regulators to license and approve key persons operating commercial casinos. Typically, however, in the case of casinos, the debtor in possession continues to operate the business during the Chapter 11 proceedings.

III. State Gaming Regulations

The underlying public policy behind state gaming regulation is to protect the public integrity of the legalized gambling industry. The policies underlying state gaming regulations include the following public policy goals:

(1) the prevention of unsavory or unsuitable persons from having a direct or indirect involvement with gaming at any time or in any capacity; (2) the establishment and maintenance of responsible accounting practices and procedures; (3) the maintenance of effective controls over the financial practices of a licensee, including the establishment of minimum procedures for internal fiscal affairs and the safeguarding of assets and revenues, providing reliable record keeping and requiring the filing of periodic reports with Gaming Authorities; (4) the prevention of cheating and fraudulent practices; and (5) the creation of a source of state and local revenues through taxation and licensing fees. These statements of public policy are embodied in statutes, regulations and supervisory procedures implemented at the state and local level by a variety of overlapping regulatory bodies (the "Gaming Authorities"). n34

Gaming regulations are directed at three different levels of the gaming industry. First, the regulations address licensing and operation of the gaming establishment. n35 Second, gaming regulations cover which casino employees and personnel must be licensed in connection with the [*370] operation of the casino. n36 Third, the regulations identify circumstances when owners of the casinos must be licensed. n37

A. State Regulation of Casinos

The state regulation of casinos generally encompasses three distinct subject matters: "(1) licensing and registration, (2) financial reporting, and (3) gaming license fees and taxes." n38 The following discussion provides an overview of typical regulatory provisions addressing these three subject matters.

Initially, state gaming laws universally require a person to hold a casino license in order to operate a commercial casino. n39 State gaming laws and regulations typically set forth comprehensive criteria that must be met for a person to be eligible to hold a commercial casino license. For example, the Michigan Gaming Control and Revenue Act n40 requires the Michigan Gaming Control Board to consider, when determining whether to grant a casino license, such factors as (1) the integrity, moral character, and reputation of the applicant, (2) personal and business probity, (3) financial ability and experience, and (4) the past and present compliance of the applicant and its affiliates with the gaming laws of other jurisdictions. n41 Nevada law, which serves as the model gaming law for most United States jurisdictions, provides that:

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A [casino] license ... must not be granted unless the applicant has satisfied the Commission that:

(a) The applicant has adequate business probity, competence and experience, in gaming or generally; and

(b) The proposed financing of the entire operation is:

(1) Adequate for the nature of the proposed operation; and

(2) From a suitable source. n42

Applicants bear the burden of establishing that they meet the statutory criteria to hold a casino license. n43

State gaming laws and regulations provide for detailed reporting requirements. For example, casinos are typically required to submit annual reports to state gaming regulators. n44 Casino licensees also have continuing duties to disclose any information requested by state gaming regulators or as a result of proscribed changes in the operation of the casino business. n45 Licensed casinos must also ordinarily report - and, in some cases, receive approval from state gaming regulators for - any loans or financing arrangements. n46 The state regulatory authority over financing arrangements would be affected in the event that a casino enters the supervision of a bankruptcy court.

State regulation of casinos also addresses the payment of licensing fees and the taxation of gaming revenue. Under the Michigan Gaming Control and Revenue Act, the state wagering tax is transmitted daily to the [*372] state. n47 The ability to continue daily transmittal of wagering taxes is a further source of tension between the jurisdiction of a bankruptcy court and state regulation of casinos. For example, the failure to transmit wagering taxes could result in suspension or even revocation of a casino license. Moreover, a casino's continuing ability to legally transmit daily taxes will likely require approval of a bankruptcy court. n48

B. Licensing and Regulation of Key Personnel and Employees of Casinos

In connection with obtaining a casino license, key personnel and so-called "qualifiers" of the casino license applicant are also required to meet suitability standards. n49 Key personnel and qualifiers are often defined to include the following: (a) officers and directors of the casino license applicant; (b) a person who holds, directly or indirectly, more than a five percent equity interest in either a casino license applicant or a person holding a controlling interest in a casino license applicant; and (c) certain managerial employees. n50 Accordingly, state gaming control boards actively investigate and regulate individuals who are either involved with the operation of a licensed casino or benefit from the casino operation.

In addition to requiring key personnel to satisfy suitability standards, state gaming regulations ordinarily require most casino employees to hold an occupational license. For instance, under the Michigan Gaming Control and Revenue Act, occupational licenses are issued to "a person to perform an occupation in a casino or casino enterprise which the [Michigan Gaming Control Board] has identified as requiring a license to engage in casino gaming in Michigan." n51 "Casino" is defined by the Michigan Act to mean "a building in which gaming is conducted." n52 A "casino enterprise" is defined to mean buildings and facilities functionally or physically connected with a casino. n53 Thus, occupational licenses extend to those individuals who are employed by licensed casinos and perform services within the casino, including on-site management personnel.

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C. Licensing and Regulation of Casino Owners

The ownership of casinos is subject to further licensing and regulation by state gaming regulators. n54 Regulations promulgated under the Michigan Gaming Control and Revenue Act require a finding of suitability by the Michigan Gaming Control Board for equity owners who hold direct or indirect interests in the licensee that are at or above prescribed levels. n55 Furthermore, transfers of an equity interest in a licensed casino are often subject to the approval of gaming regulators. n56 Accordingly, gaming regulators must not only approve most transfers of ownership interests in licensed casinos, but key personnel of a person acquiring an ownership interest in a licensed casino may also be subject to suitability determinations. n57

IV. The Interaction of State Gaming Regulation and Chapter 11 Bankruptcy Proceedings: Lessons Learned in Balancing Competing Interests of State Regulators and Bankruptcy Courts

An inherent tension exists between the original jurisdiction of a bankruptcy court over a Chapter 11 bankruptcy debtor - including jurisdiction over the property of the debtor - and state regulatory oversight of casinos. This tension can serve as a means of deflecting attention away from a troubled casino and onto a jurisdictional battle of control over the [*374] oversight of a casino. Ultimately, these competing claims to jurisdictional supremacy may result in an insolvent casino, effectively undermining regulatory oversight. Moreover, the recent decision of the Seventh Circuit Court of Appeals in Village of Rosemont v. Jaffe reveals that efforts to undermine state regulatory oversight can lead to a lose-lose situation for the casino and its efforts to carry out a successful bankruptcy reorganization plan. n58

A. Using the Automatic Stay to Halt State Regulatory Action

The automatic stay of 11 U.S.C. § 362 limits the use of judicial or administrative tribunals once a bankruptcy petition has been filed. The automatic stay further prohibits any entity from taking any act to gain possession of property of the debtor's estate. n59 There is an important exception to the automatic stay for the exercise of police powers by a governmental unit. n60 Broadly construed, the automatic stay could effectively deny state gaming regulators from taking disciplinary action against a casino that is under the supervision of a bankruptcy court. n61 In contrast, if the automatic stay does not apply - either because the casino license is not "property" of the bankruptcy estate or the police power exception to the automatic stay applies - the bankruptcy court would effectively be denied jurisdiction to oversee the operation and reorganization of a bankrupt casino. n62

The threshold question turns on whether a casino license can be construed to be "property" of the estate. State gaming laws usually [*375] expressly provide that a casino license amounts to a mere privilege and does not rise to the status of a property right. For example, the Michigan Gaming Control and Revenue Act has a typical formulation of this concept by expressly providing that a casino license is simply "a revocable privilege granted by the state and is not a property right." n63

At least one legal commentator has argued, "despite its attributes under state law, a gaming license properly is considered property of the bankruptcy estate. As such, the state authorities cannot exercise control of the license itself without violating the automatic stay." n64 As appealing as the argument may be - even with due consideration of the underlying legal theory of the argument - the Seventh Circuit in Jaffe appears to question the proposition that a casino license is property of the bankruptcy estate. In Jaffe, the Seventh Circuit refused to "accept the argument that we should treat [the casino's] license as a res with respect to which the bankruptcy court had the authority to displace the state's police power." n65 Thus, although a court could construe Jaffe to merely hold that the police power exception to the automatic stay was applicable, the decision nevertheless suggests that a casino license is not "property" of a bankruptcy estate. n66

Even if it is assumed that a casino license is property of the estate of a bankrupt casino, in most instances a state's regulatory authority over casinos falls within the police power exception to the automatic stay. Jaffe unconditionally acknowledged as much. n67 "But whatever property right the [casino] license conferred has always been subject to, or conditioned on, the regulatory powers of the state." n68 Moreover, "nothing in the bankruptcy laws permits the court to enjoin the [gaming control board], a state regulatory agency, from exercising police powers of the state to regulate the gambling industry." n69

In re Elsinore Shore Associates held that the police power exception to the automatic stay was not applicable to allow state regulators to condition renewal of a casino license upon payment of pre-petition taxes. n70 [*376] Conceivably, therefore, Elsinore could be construed to limit the authority of state gaming regulators to take disciplinary action against a casino licensee. However, the decision in Elsinore can also be construed narrowly to stand for the proposition that threats of state regulatory action cannot be used to alter the priority order of payment of claims against a Chapter 11 debtor. n71 Thus, Elsinore can be considered to have limited precedent and application beyond its unique facts.

B. Approval of Loans and Financing Arrangements

A key step in a Chapter 11 bankruptcy proceeding - particularly to ensure a successful reorganization - is for a debtor to obtain post-petition financing. n72 The Federal Bankruptcy Code expressly authorizes a trustee or debtor in possession to obtain unsecured credit and incur unsecured debt. n73 At the same time, state gaming regulations ordinarily require notice of financing arrangements and approval of the financing. n74 As a result, the approval of post-petition financing can cause significant tension between the jurisdiction of the bankruptcy court and state gaming regulators.

In the event that state regulatory approval of post-petition financing is not sought, state gaming regulators could attempt to rescind the financing arrangement or take other disciplinary action against the casino licensee. n75 Although no reported decisions have expressly addressed this question, a casino or Chapter 11 trustee would likely have to argue that any state regulatory action is subject to the automatic stay or antidiscrimination provisions of the Federal Bankruptcy Code. Such an argument is tenuous at best. Furthermore, the Seventh Circuit's decision in Jaffe provides ample ammunition to attack an assertion that the automatic stay or antidiscrimination provisions of the Federal Bankruptcy Code prohibit state gaming regulators from exercising jurisdiction over the approval of post-petition financing arrangements. n76 Thus, from a practical standpoint, fighting over state regulators' lack of authority to approve post-petition financing appears to be a lost cause for the casino?debtor.

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C. Licensing of Trustees and Personnel to Operate a Casino in Bankruptcy

As discussed above, a paramount feature of state gaming regulation involves the licensing of not only casinos, but also their employees, key personnel, and certain equity owners. n77 As such, a trustee will most likely be subject to state gaming regulation because the trustee's ability to operate the casino will be conditioned upon obtaining a license from state regulators. n78 In contrast, bankruptcy courts will likely have limited ability to compel the appointment of a trustee. n79 Nevada has adopted procedures to permit a trustee to use an existing casino license, with the caveat that the trustee must file an application and have it approved prior to operating the casino. n80 Therefore, the orderly administration of Chapter 11 casino bankruptcy proceedings, through the use of a trustee, can be imperiled without the cooperation of state gaming regulators.

D. Competing Claims to the Daily Cash Flow of Casinos

Casinos are businesses that deal with large amounts of cash. "Naturally, one of the hallmarks of a casino operation is the importance and amount of cash on the premises at all times." n81 The rights to the cash of a casino present several ancillary questions in connection with administrating a Chapter 11 proceeding. These questions include how to perfect a security interest in casino cash and what rights, if any, state gaming regulators have to use casino cash to pay expenses such as wagering taxes.

"No cases have yet addressed the manner in which a creditor may perfect a lien in casino cash." n82 Ordinarily, a security interest in cash is perfected by possession. n83 "If it is the intention to control the cash of the Casino with operations continuing, the appointment of a receiver is required." n84 The appointment of a receiver will require approval by state gaming regulators. n85

The Michigan Gaming Control and Revenue Act specifically [*378] contemplates the appointment of a conservator when a casino license is suspended for more than 120 days. n86 Thus, although it is possible to have a third-party receiver or conservator control the casino cash, under the Michigan Act the casino license must first be in a state of either suspension or revocation. n87 Therefore, the practicability of using a conservator - at least under Michigan gaming laws - may be limited. Furthermore, even assuming that a bankruptcy court authorizes the appointment of a receiver or custodian, it is possible that a gaming control board - like the Michigan Gaming Control Board - may balk out of concerns of whether it has the authority to appoint a conservator or receiver absent a suspension of the casino license for more than 120 days.

A related issue with respect to the use of the post-petition cash proceeds of a casino involves whether states may make a priority claim to the cash proceeds or take disciplinary action relating to the payment of wagering taxes. As discussed above, the Elsinore court considered whether state gaming regulators may take disciplinary action arising out of the failure to pay pre-petition gaming taxes. n88 Acting under the purview of the automatic stay and antidiscrimination provisions of the Federal Bankruptcy Code, the bankruptcy court in Elsinore enjoined an attempt by the New Jersey Casino Control Commission to require payment of prebankruptcy-petition taxes and fees as a condition of renewing a casino license. n89 Elsinore can be narrowly construed to, in substance, involve an attempt to avoid the priority preferences of the Federal Bankruptcy Code with respect to the payment of pre-petition tax liabilities. n90

Following the Seventh Circuit's decision in Jaffe, other bankruptcy courts may be reluctant to undermine the regulatory authority of state gaming regulators. Nonetheless, the dispute with respect to how cash proceeds of post-petition operations are disposed of presents significant issues with respect to the regulation of casinos and bankruptcy court jurisdiction. Such uncertainty and the possibility of protracted disputes further encourage cooperation among the casino?debtor, state gaming [*379] regulators, and the bankruptcy court.

E. Approval of the Bankruptcy Plan of Reorganization

Federal Bankruptcy Judge Greg Zive has noted that "gaming regulations have a significant impact on plan confirmation issues." n91 Jaffe is the quintessential example of the consequences that result when gaming regulators and a casino fail to fully agree upon a plan of reorganization and rely on nonbinding side agreements. n92 In Jaffe, the casino?debtor's efforts to use the bankruptcy court to force Illinois state gaming regulators' approval of the terms of a reorganization plan was rejected. n93 Jaffe instructs debtors to avoid Emerald Casino's approach for successfully adopting a plan of reorganization. Specifically, efforts should be undertaken to seek approval of state gaming regulators prior to confirmation of the plan of reorganization and include such terms directly in the plan.

V. In the Spirit of Cooperation: A Proposal for Navigating Casino Bankruptcy Proceedings

There are many unsettled questions in connection with who has jurisdiction over what matters in a casino bankruptcy. The competing beliefs of jurisdictional supremacy between state gaming regulators and bankruptcy courts could effectively undermine the ability of a casino to successfully emerge from Chapter 11 bankruptcy proceedings. As a result, we advocate the use of a cooperative approach between state gaming regulators and bankruptcy courts in Chapter 11 proceedings. Otherwise, as Elsinore and Jaffe reveal, the result can lead to protracted litigation and even the rejection of the reorganization plan.

At the outset, bankruptcy courts need to be cognizant of the concerns of state gaming regulators. The gaming industry is a highly regulated industry. Regulators are in constant contact with casino licensees and have a thorough understanding of casino operations. Gaming regulators' concerns center on protecting the public integrity of casino gambling through comprehensive oversight. Moreover, as Jaffe reveals, a fight to apply the automatic stay provisions to prevent regulatory action may largely turn out to be futile. Thus, the best interests of all involved lie with developing a cooperative approach.

[*380] Developing a cooperative approach requires close coordination between the bankruptcy court and state gaming regulators. Thus, we make the following observations with respect to the various stages of casino bankruptcy proceedings, taking into account lessons learned from prior proceedings.

A. Filing the Petition and First-Day Orders

The filing of a Chapter 11 petition sets off a flurry of activity in rapid sequence. As other commentators have recognized, first-day orders are often comprehensive and set forth the terms of the initial interim operation of the casino. n94 The practical problem involves what role, if any, state gaming regulators should play in approving first-day orders. n95

The goal of a first-day order is to ultimately "facilitate continued operation of the casino." n96 To avoid disputes out of the box, a practical approach is to ensure that first-day orders honor pre-petition obligations of the casino, including the recognition of pre-petition casino chips and vouchers as obligations of the casino. n97 Moreover, although it may not be practical to immediately involve state gaming regulators, gaming regulators should promptly be informed of the proceedings by the petitioning party and presented with the opportunity to comment on the first-day orders. Bankruptcy courts, for their part, need to involve gaming regulators at a very early stage of the proceedings to, at the very least, develop a level of understanding for whether the terms for payment of obligations and post-petition financing will be subjected to intense regulatory scrutiny.

B. Operating the Casino During Chapter 11 Proceedings

Jaffe reveals that the automatic stay provisions of the Federal Bankruptcy Code will have very limited application during the administration of a casino bankruptcy. Thus, continuing the operation of a casino during Chapter 11 bankruptcy proceedings requires the active participation of state gaming regulators. There is no dispute that gaming regulators retain the authority to approve any personnel that may assume oversight of casino operations, including trustees. n98 Additionally, any post-petition financing arrangement will need to be approved by state gaming [*381] regulators. n99 Finally, should ownership of the casino change as a result of the Chapter 11 proceedings, that will also require the approval of state gaming regulators. n100 Consequently, the lesson learned from Jaffe and other casino bankruptcy proceedings is that the active cooperation of state regulators is essential to ensure an orderly and successful Chapter 11 reorganization.

C. Confirming the Bankruptcy Plan of Reorganization

Jaffe is an example of what can occur when there is a dispute among gaming regulators in approving a sale of a casino. Jaffe ultimately teaches that the approval of gaming regulators should be directly incorporated within the confirmation of the plan of reorganization. Otherwise, casino licensees still run the risk of state gaming regulators taking disciplinary actions that, as in Jaffe, can lead to the revocation of the casino's license.

VI. Conclusion

The interaction of the Federal Bankruptcy Code and state gaming regulation in the context of a casino bankruptcy raises several questions concerning who has jurisdiction and over what matters. Recent bankruptcy filings by the owners of Greektown Casino and the Tropicana Casino and Resort could renew the jurisdictional fights as casinos attempt to maneuver around the oversight of state gaming regulators. The lessons learned from prior proceedings reveal that state gaming regulators will have an active say in the operation of the casino during the bankruptcy proceedings and any reorganization plan to exit bankruptcy. As a result, it is imperative that the bankruptcy court and the state gaming authorities quickly establish a collaborative working relationship to ensure orderly and efficient Chapter 11 proceedings. Such action will assist the bankruptcy court in fulfilling the intent of the Federal Bankruptcy Code while giving due deference to the highly important regulatory role performed by state gaming authorities.

Legal Topics:

For related research and practice materials, see the following legal topics:
GovernmentsState & Territorial GovernmentsGaming & LotteriesGovernmentsState & Territorial GovernmentsLicensesTax LawState & Local TaxesGambling TaxGeneral Overview

FOOTNOTES:

n1. As of 2008, there were twelve states in the United States that had authorized commercial casino gambling. See American Gaming Association, 2008 State of the States: The AGA Survey of Casino Entertainment 4 (2008). The twelve states with legalized commercial gambling are Colorado, Illinois, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, Nevada, New Jersey, Pennsylvania, and South Dakota. Id. There are a total of 467 commercial casinos in the twelve states with legalized commercial gaming. Id. Commercial casinos in the twelve states had gross revenue during 2007 of $ 34.1 billion. See id. at 2. Commercial casinos paid the staggering sum of $ 5.8 billion in wagering taxes to the twelve states with legalized casino gambling. See id. Moreover, commercial casinos employed 360,818 people during 2007, while contributing $ 13.8 billion in the form of sala-

ries, benefits, and tips to the United States economy. See id. Nearly every other state has some form of legalized gambling, ranging from racinos to tribal casinos. See id. at 4.

n2. See, e.g., Peter J. Kulick, Comment, Rolling the Dice: Determining Public Use in Order to Effectuate a "Public-Private Taking" - A Proposal to Redefine "Public Use", 2000 L. Rev. M.S.U.-D.C.L. 639, 640-41 (2000) (discussing the use of casinos for economic development in Detriot).

n3. See, e.g., Nathan Hurst, Greektown Casino Files for Bankruptcy, Detroit News, May 31, 2008, available at http://www.detnews.com/apps/pbcs.dll/article?AID=/20080531/BIZ/805310373; Tropicana Files for Chapter 11 Protection Amid Jersey Joust, USA Today, May 7, 2008, available at http://www.usatoday.com/money/companies/20 08-05-06-tropicana-bankruptcy N.htm.

n4. Hurst, supra note 3.

n5. Tropicana Files for Chapter 11 Protection Amid Jersey Joust, supra note 3.

n6. See Gregg W. Zive, The House Doesn't Always Win, 8 Gam. L. Rev. 278, 278-79 (2004).

n7. Id. Both casinos were located in New Jersey. Id. at 279.

n8. See Eric B. Becker, Slots in the City: A Critical Look at the Balance of Decision-Making Power in Gaming Legislation, 18 Fordham Urb. L.J. 1033, 1039-40 (1998). Commercial casinos are primarily regulated under state gaming laws that legalize commercial gambling. Id. Nevada was the exclusive legalized gaming jurisdiction in the United States for nearly fifty years. Id. Currently, twelve states have legalized commercial casinos, while nearly every other state has some form of legalized gambling, such as racinos and tribal casinos. See American Gaming Association, supra note 1, at 4. Thus, the implications raised in this Article are not limited solely to those twelve states that have legalized commercial casinos.

n9. See Zive, supra note 6, at 279.

n10. See 11 U.S.C. §§101-1532 (2006).

n11. U.S. Const. art. I, § 8, cl. 4.

n12. See 11 U.S.C. §§101-1532 (2006) (Federal Bankruptcy Code); 28 U.S.C. § 1334 (2000 & Supp. V 2005) (granting jurisdiction to federal district courts over bankruptcy proceedings).

n13. See 28 U.S.C. § 1334(a) (2000).

n14. See id. § 151.

n15. See id.

n16. Id. § 1334(e) (Supp. V 2005) (emphasis added).

n17. See discussion infra Part III. See also John M. Czarnetzky, When the Dealer Goes Bust: Issues in Casino Bankruptcies, 18 Miss. C. L. Rev. 459, 464-65 (1998) (discussing whether a state gaming license constitutes property of the bankruptcy estate). Although recognizing that most state laws clearly provide that such licenses are not "property" of the casino, Professor Czarnetzky argues that a casino license should properly be construed to be "property" of the bankruptcy estate. See id. at 465. However, such an expansive interpretation of the concept of "property" for bankruptcy law purposes appears to undermine longstanding state regulation of legalized gambling. Pushing the argument to its extreme, bankruptcy could effectively be used to completely abrogate the authority of state gaming regulators. In any event, a recent decision by the Seventh Circuit appears, at least, to reach a middle ground by recognizing that, although a "[gaming] license is for some purposes "property of the estate,' ... the [Federal Bankruptcy] Code forbids the bankruptcy court from interfering with the government's police and regulatory powers." Village of Rosemont v. Jaffe, 482 F.3d 926, 938 (7th Cir. 2007) (citation omitted). Thus, courts have recognized that there are limitations on the jurisdiction of the bankruptcy court with respect to a casino license.

n18. State gaming regulators ultimately have the underlying purpose of protecting the public integrity of casino gambling and ensuring compliance with gaming laws, including securing payment of wagering taxes and fees. Decisions with respect to who may own a casino, who may manage a casino, and how the casino operates ordinarily fall within the purview of state gaming regulators. However, as discussed in this Article, such decisions are also ordinarily within the scope of the jurisdiction of bankruptcy courts in a typical Chapter 11 proceeding.

n19. See 28 U.S.C. § 1334(c)(1) (Supp. V 2005).

n20. Id.

n21. See, e.g., In re Dow Corning Corp., 113 F.3d 565, 571 (6th Cir. 1997).

n22. 28 U.S.C. § 1334(c)(2) (2000).

n23. 11 U.S.C. §§301, 303 (2006).

n24. Id. § 362(a) (emphasis added).

n25. Czarnetzky, supra note 17, at 461-62.

n26. See 11 U.S.C. § 362(b)(4) (2006). The police power exception provides that the automatic stay does not apply to:

... the commencement or continuation of an action or proceeding by a governmental unit ... to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the government unit to enforce such governmental unit's or organization's police or regulatory power.

Id.

n27. City & County of San Francisco v. PG & E Corp., 433 F.3d 1115, 1123 (9th Cir. 2006) (quoting Hillis Motors, Inc. v. Haw. Auto. Dealers' Ass'n, 997 F.2d 581, 591 (9th Cir. 1993)).

n28. See In re Baillie, 368 B.R. 458, 466 (Bankr. W.D. Pa. 2007).

n29. 11 U.S.C. § 525(a) (emphasis added).

n30. See Gerald M. Gordon et al., Bankruptcy Trends in the Gaming Field, 10 J. Bankr. L. & Prac. 293, 304 (2001).

n31. 11 U.S.C. § 1108.

n32. See id. § 1107.

n33. See generally H.R. Rep. No. 95-595 (1977), as reprinted in 1978 U.S.C.C.A.N. 5963; see also 11 U.S.C. § 1108 (summarizing the House Report).

n34. Gordon et al., supra note 30, at 295.

n35. See id. at 296.

n36. See id. at 297-98.

n37. See id. at 298-99.

n38. See id. at 296.

n39. See, e.g., Mich. Comp. Laws Ann. § 432.206(1) (West 2001); Nev. Rev. Stat. § 463.160(1) (2007); N.J. Stat. Ann. § 5:12-82(a) (West 1996). For purposes of state gaming laws, a "person" encompasses most forms of business entities, such as corporations, limited liability companies, and partnerships. See, e.g., Mich. Comp. Laws Ann. § 432.202(ff).

n40. Mich. Comp. Laws Ann. § 432.201-.226.

n41. See id. § 432.206(5). Michigan's casino licensing provisions are unique in many respects. The Michigan Gaming Control and Revenue Act was enacted as part of an initial law that amended the Michigan constitution to legalize commercial casino gambling in limited circumstances. Under the Act, only three casino licenses may be awarded per city. Id. § 432.206(3). Because the Act defines a "city" as having "a population of at least 800,000 at the time a license is issued," casino operations are limited to the city of Detroit, the only city in Michigan with a population anywhere near 800,000. Id. § 432.202(l)(i). As a result, the casino licensing qualifications set forth many unique characteristics that limit applicants to construct casinos only within the Detroit city limits, provide for detailed development obligations and assessments of financial ability, as well as commitments to the city of Detroit.

n42. Nev. Rev. Stat. § 463.170(3).

n43. See, e.g., Mich. Comp. Laws Ann. § 432.206(1) (applicant bears the burden by "clear and convincing evidence" to establish it meets the casino licensing standards); Nev. Rev. Stat. § 463.170(1).

n44. See Mich. Comp. Laws Ann. § 432.206(8).

n45. See id. § 432.206(10).

n46. See Mich. Admin. Code r. 432.1509 (2007). The Michigan Gaming Control Board administrative regulations require a casino licensee to obtain the approval of the Gaming Control Board prior to entering into any debt transaction affecting the capitalization or financial viability of its Michigan properties. See id. A debt transaction is defined to mean circumstances under which a casino licensee "acquires debt, including, but not limited to, bank financing, private debt offerings, or any other transaction that results in a change of encumbrance of more than 1% in capitalization or debt-to-equity ratio of the licensee, applicant, holding company, or affiliate of the applicant or holder of the casino license." Id. r. 432.1102(b) (2008).

n47. See Mich. Comp. Laws Ann. § 432.212(2).

n48. See 11 U.S.C. § 505(a)(1) (2006).

n49. See, e.g., Mich. Admin. Code r. 432.1304(2) (2008).

n50. See, e.g., id. r. 432.1104(c).

n51. See Mich. Comp. Laws Ann. § 432.202(ee).

n52. Id. § 432.202(g).

n53. See id. § 432.202(h).

n54. See Gordon et al., supra note 30, at 295-98. State gaming acts and regulations make distinctions between privately owned casinos and casinos owned or operated by companies whose shares are traded on a stock exchange. See, e.g., Mich. Admin. Code r. 432.1304(2). As a general rule, shareholders of a publicly traded company may freely purchase and sell shares in the public market without being vetted and without obtaining approval until such time as the person's stock ownership exceeds a certain percentage of the outstanding shares of the publicly traded company - typically a 5% interest. See id.; Mich. Comp. Laws Ann. § 432.226.

n55. See Mich. Admin. Code r. 432.1304(2); see also supra note 54 and accompanying text.

n56. For example, under the Nevada Gaming Control Act,

It is unlawful for any person to sell, purchase, lease, hypothecate, borrow or loan money, or create a voting trust agreement or any other agreement of any sort to or with any licensee in connection with any gaming operation licensed under this chapter or with respect to any portion of such gaming operation, except in accordance with the regulations of the [Nevada Gaming] Commission.

Nev. Rev. Stat. § 463.300 (2007).

n57. See id.; Mich. Admin. Code r. 432.1304(2).

n58. See Village of Rosemont v. Jaffe, 482 F.3d 926 (7th Cir. 2007).

n59. 11 U.S.C. § 362(a)(3)-(4) (2006).

n60. See id. § 362(b)(4).

n61. In re Elsinore Shore Associates, 66 B.R. 723, 730 (Bankr. D.N.J. 1986) is one example of a bankruptcy court invoking the automatic stay to enjoin the New Jersey Casino Control Commission from taking action to revoke a casino license for failure to pay pre-petition gaming taxes. Although the bankruptcy court in Elsinore implicated the automatic stay, the Seventh Circuit's holding in Jaffe calls into question the continuing vitality of Elsinore or, at a minimum, greatly curtails the potential reach of the decision. See Jaffe, 482 F.3d at 937-38.

n62. See Zive, supra note 6, at 284. Judge Zive argues that permitting gaming regulators to exercise "the police power exception to the automatic stay to take away or deprive a casino of its license to operate during the reorganization process ... would in essence negate the ability of the casino to operate or reorganize." Id. With all due respect to Judge Zive, his construction of the police power exception to the automatic stay places too much emphasis on the jurisdictional reach of bankruptcy courts and does not give enough consideration to states' legitimate public policy and police power concerns vis-a-vis regulating the gambling industry.

n63. Mich. Comp. Law Ann. § 432.208c(1) (West 2001).

n64. Czarnetzky, supra note 17, at 469.

n65. Jaffe, 482 F.3d at 936.

n66. Id. at 937.

n67. Id.

n68. Id.

n69. Id.

n70. In re Elsinore Shore Assocs., 66 B.R. 723, 743 (Bankr. D.N.J. 1986).

n71. See Czarnetzky, supra note 17, at 468-69. Moreover, in light of the holding of Jaffe - permitting Illinois gaming regulators to take disciplinary action for pre-petition conduct - the continuing applicability of Elsinore is questionable.

n72. See Zive, supra note 6, at 286.

n73. See 11 U.S.C. § 364(a) (2006).

n74. See, e.g., Mich. Admin. Code r. 432.1509 (2007).

n75. See id. r. 432.1511 (2008).

n76. See Village of Rosemont v. Jaffe, 482 F.3d 926, 938 (7th Cir. 2007).

n77. See discussion supra Part III.

n78. See Zive, supra note 6, at 283-84.

n79. See id.

n80. See id.

n81. Czarnetzky, supra note 17, at 475.

n82. Zive, supra note 6, at 285.

n83. Id.

n84. Gordon et al., supra note 30, at 301.

n85. See id. at 301-02.

n86. See Mich. Comp. Laws Ann. § 432.224(1) (West 2001).

n87. See id. ("When the board revokes a casino license, or suspends a casino license ... , or refuses to renew a casino license ... the board ... shall appoint a conservator ... .").

n88. See In re Elsinore Shore Assocs., 66 B.R. 723 (Bankr. D.N.J. 1986).

n89. Id. at 730.

n90. See Czarnetzky, supra note 17, at 471 (discussing how the Gaming Commission was requiring pre-petition license fees, but the court held that this practice violated section 525 of the Bankruptcy Code).

n91. See Zive, supra note 6, at 290.

n92. See generally Village of Rosemont v. Jaffe, 482 F.3d 926 (7th Cir. 2007).

n93. See id. at 930, 939.

n94. See Zive, supra note 6, at 282.

n95. See id.

n96. See id.

n97. See id.; see also Gordon et al., supra note 30, at 294-95.

n98. See Zive, supra note 6, at 283.

n99. See, e.g., Mich. Admin. Code r. 432.1509 (2007).

n100. See, e.g., Nev. Rev. Stat. § 463.300 (2007).

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 (___)**
Debtors.	:	**(Joint Administration Requested)**

DECLARATION OF ROBERT GRIFFIN IN SUPPORT OF DEBTORS' CHAPTER 11 PETITIONS AND FIRST-DAY MOTIONS AND APPLICATIONS

I, Robert Griffin, pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is true and correct to the best of my knowledge:

1. I am the Chief Executive Officer of Trump Entertainment Resorts, Inc. ("TER"), and have served in that position since October 2010. In my role as Chief Executive Officer, I am familiar with the day-to-day operations, business, and financial affairs of the Debtors.

2. My extensive gaming experience spans more than twenty years. Prior to my appointment as Chief Executive Officer of TER in October of 2010, I held senior management positions at the Debtors' former property, the Trump Marina Hotel Casino (the "Marina"), from 1992 through 1998. From 1999 through 2003, I served as Vice President and General Manager for several properties owned and operated by Isle of Capri Casinos, Inc. ("ICCI"). Between 2004 and 2008, I served as Senior Vice President of Operations of ICCI, where I was responsible for the operations of sixteen casinos and racing facilities throughout the United States, Grand

[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.

Bahamas and the United Kingdom. From 2008 to September of 2010, I served as President and CEO of MTR Gaming Group, Inc. ("MTR"), which owns and operates casino and racetrack facilities in West Virginia, Pennsylvania and Ohio. In March of 2010, I became a member of MTR's Board of Directors.

3. On September 9, 2014 (the "Petition Date"), TER and its affiliated debtors and debtors in possession (collectively, the "Debtors," or the "Company") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"), thereby commencing the above-captioned chapter 11 cases (the "Chapter 11 Cases").

4. The Debtors own and operate two casino hotels located in Atlantic City, New Jersey: the Trump Taj Mahal Casino Resort (the "Taj Mahal") and the Trump Plaza Hotel and Casino (the "Plaza"). Since emerging from their prior bankruptcy cases in 2010, the Debtors continued to face significant challenges due to the prolonged economic downturn, increased competition from within the Atlantic City market and from neighboring states, and the lingering effects of Superstorm Sandy, all of which contributed to declining revenues. These factors, coupled with the seasonal and capital-intensive nature of the Debtors' businesses, high debt load, significant labor costs and double-digit real estate tax increases, hindered the Debtors' ability to operate successfully and negatively impacted the Debtors' liquidity position. Consequently, as described in more detail below, the Debtors determined to commence these Chapter 11 Cases. The Debtors believe that the commencement of these Chapter 11 Cases is in the best interests of the Debtors' creditors and stakeholders.

5. In order to enable the Debtors to mitigate the potential adverse impact of the chapter 11 filing, the Debtors have filed motions and pleadings seeking approval of various types

of "first-day" relief that are intended to allow the Debtors to perform and meet all of the obligations necessary to fulfill their duties as debtors-in-possession. The relief sought therein is necessary to operate the Debtors' businesses in chapter 11 with minimum disruption or loss of value.

6. I submit this declaration (the "Declaration") to assist the Court and other parties-in-interest in understanding the circumstances that preceded the commencement of these Chapter 11 Cases, and in support of the Chapter 11 Cases and the relief requested through the various first-day motions and applications (collectively, the "First-Day Motions") filed by the Debtors. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, information provided to me by certain of the Debtors' employees and the Debtors' professionals, my review of relevant documents or my opinion based upon my experience, knowledge and information concerning the operations and financial affairs of the Debtors and their businesses and the gaming industry. If I were called upon to testify, I would testify competently to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtors.

7. This Declaration is divided into two sections. Section I provides general background information, including a description of the Debtors' current organizational structure, operations, capital structure and events giving rise to these Chapter 11 Cases. Section II sets forth those facts that are most germane to this Court's consideration of the Debtors' First-Day Motions, and is intended to supplement any other declarations submitted in direct support of any given motion or application.

I. GENERAL BACKGROUND

A. Organizational Structure

8. TER, the ultimate parent company of the Debtors, is a Delaware corporation that holds a 99% interest in, and is a general partner of, Trump Entertainment Resorts Holdings, L.P. ("TER Holdings"), a Delaware limited partnership.[2] The remaining one percent of TER Holdings is held by TERH LP Inc., a Delaware corporation, as a limited partner. As the sole general partner of TER Holdings, TER has the exclusive rights, responsibilities and discretion as to the management and control of TER Holdings and its subsidiaries. TER Holdings, in turn, holds 100% of the equity interests in each of the various subsidiaries of the Debtors, including (a) Trump Plaza Associates LLC ("Plaza Associates"), a New Jersey limited liability company, which owns the Plaza, and (b) Trump Taj Mahal Associates LLC ("Taj Associates"), also a New Jersey limited liability company, which owns the Taj Mahal.[3] The Debtors derive revenue primarily from casino operations, room rental, food and beverage sales and/or entertainment revenue.

B. Operations

i. Taj Mahal

9. The Taj Mahal is located on the northern end of Atlantic City's boardwalk and is situated on 35.9 acres of beachfront property. The Taj Mahal features over 2,000 hotel rooms, including the 782-room Chairman Tower (which includes 66 suites and 8 penthouse suites) and

[2] A chart depicting the organizational structure of the Debtors is attached hereto as Exhibit A.

[3] Until May 24, 2011, the Debtors owned and operated the Marina, which was located on approximately 14 acres in Atlantic City's marina district and featured a 27-story hotel with approximately 728 guest rooms, approximately 79,000 square feet of gaming space (including approximately 1,980 slot machines and 70 table games), approximately 30,500 square feet of convention, ballroom and meeting space and other amenities. On May 24, 2011, the Marina was sold to Golden Nugget Atlantic City, LLC, an affiliate of Landry's Restaurants, Inc., for gross cash proceeds of approximately $37.3 million. Although the Marina was sold in 2011, as of the Petition Date, Trump Marina Associates, LLC, the legal entity that owned the Marina, is inactive and has not been dissolved.

the original 1,228-room hotel tower (which includes 243 suites and 7 penthouse suites), sixteen dining locations (including Il Mulino New York), and five cocktail lounges. The Taj Mahal also features approximately 162,000 square feet of gaming space that includes approximately 2,500 slot machines and 180 table games (including poker tables), a high-end gaming salon, an approximately 12,500 square-foot Poker and Keno room and an Asian-themed table game area offering popular Asian table games. The Taj Mahal also features the following: an approximately 20,000 square foot multi-purpose entertainment complex known as the "Xanadu Theater," with seating capacity for up to approximately 1,200 people, which can be used as a theater, concert hall, boxing arena or exhibition hall; a 35,000 square-foot Scores gentlemen's club; the Casbah nightclub; the Mark G. Etess Arena, featuring approximately 63,000 square feet of exhibition and entertainment space which can accommodate over 5,000 people; and a health club, spa and fitness center with an indoor pool. The Taj Mahal also has a parking garage for approximately 6,750 cars, a six-bay bus terminal and a roof-top helipad.

10. The Taj Mahal's net revenues for the 2013 fiscal year were approximately $257.9 million, and the unaudited net revenues for the six months ended June 30, 2014 were approximately $108.5 million.

ii. Plaza

11. The Plaza is located at the center of the boardwalk at the end of the Atlantic City Expressway (the main highway into the city), and is situated on 10.9 acres with direct access to Boardwalk Hall (an entertainment and sporting venue owned and operated by the New Jersey Sports and Exposition Authority that can accommodate up to approximately 13,000 people). The Plaza features approximately 906 hotel rooms (including 140 suites) and approximately 87,000 square feet of casino space with approximately 1,600 slot machines and 63 table games.

The Plaza also features approximately 18,000 square feet of conference space, a 750-seat cabaret theater, two cocktail lounges, seven restaurants, a players club, a seasonal beach bar and restaurant, health spa, an indoor pool, and retail outlets. Additionally, the Plaza has a parking garage that can accommodate thirteen buses and approximately 2,700 cars.

12. The Plaza's net revenues for the 2013 fiscal year was approximately $76.3 million, and the unaudited net revenues for the six months ended June 30, 2014 were approximately $28.1 million.

iii. Gaming Regulations

13. The ownership and operation of each of the Debtors' casinos is subject to extensive regulation under the statutes and regulations of the State of New Jersey, including the New Jersey Casino Control Act, as enforced and implemented by the New Jersey Casino Control Commission (the "CCC") and the New Jersey Division of Gaming Enforcement ("DGE"). As of the Petition Date, the Debtors are in compliance with the rules and regulations of the CCC and the DGE.

iv. Online Gaming

14. In 2013, the New Jersey Legislature passed, and Governor Christie signed, a bill legalizing online gambling in the State of New Jersey and restricting the operation of the on-line gaming websites to Atlantic City's casinos. In October 2013, the DGE issued an internet gaming permit to each of Taj Associates and Plaza Associates to conduct internet gaming in the State of New Jersey.

15. On June 24, 2013, Taj Associates entered into a ten-year online gaming operation agreement (the "UG Online Gaming Agreement") with Fertitta Acquisitionsco LLC, doing business as Ultimate Gaming ("UG"). On June 27, 2013, Plaza Associates also entered into a

ten-year online gaming operation agreement (the "Betfair Online Gaming Agreement," and together with the UG Online Gaming Agreement, the "Online Gaming Agreements") with Betfair Interactive US LLC ("Betfair").

16. Pursuant to the Online Gaming Agreements, each of UG and Betfair agreed to host, manage, operate, and support internet gambling games in New Jersey under the internet gaming permits granted to the Company. In exchange, each of UG and Betfair agreed to share certain percentages of the online gaming revenues (after the deduction of certain player-related costs, gaming taxes and obligations owed to the Casino Reinvestment Development Authority) with the Company. In addition, UG and Betfair each contributed $8 million and $7.5 million, respectively, to the Company.

v. Employees

17. As of July 31, 2014, the Debtors employed approximately 2,800 full-time equivalent employees and approximately 1,300 part-time, on call or seasonal employees.

18. Certain of the Debtors' casino hotel employees are subject to collective bargaining agreements ("CBAs") with various unions operating in Atlantic City, New Jersey. The largest of these unions is UNITE HERE, Local 54 ("Local 54"), whose CBA covers 446 employees at the Plaza and 1,140 employees at the Taj Mahal. Pursuant to their CBAs, the Debtors have an obligation to contribute to multiemployer pension plans. For the year ending December 31, 2013, the Debtors contributed, in the aggregate, approximately $5.4 million on account of these pension plans. In addition, the CBAs require the Debtors to provide various health, welfare and other benefits to all employees covered by the CBAs. For the year ending December 31, 2013, the Debtors' total cost associated with health, welfare and other benefits was approximately $14.9 million.

C. Prior Bankruptcy Filings

19. On November 21, 2004, TER's predecessor entity, Trump Hotels & Casino Resorts, Inc., together with 28 affiliates and subsidiaries (collectively, the "2004 Debtors"), filed voluntary chapter 11 petitions in the United States Bankruptcy Court for the District of New Jersey (Case No. 04-46898 (JHW)) (the "2004 Chapter 11 Cases"). On April 5, 2005, the Bankruptcy Court entered an order confirming a chapter 11 plan of reorganization with respect to the 2004 Debtors, and on May 20, 2005 the plan became effective. On March 17, 2009, the Bankruptcy Court issued its final decree and order closing the 2004 Chapter 11 Cases.

20. The 2004 Debtors emerged from the 2004 Chapter 11 Cases with an unsustainable balance sheet, including a $500 million secured credit facility and $1.25 billion in principal amount of second lien notes issued by TER's predecessor-in-interest ("Second Lien Notes"). Moreover, following their emergence from bankruptcy, the 2004 Debtors' operating results were negatively affected by the global recession, intense competition within the Atlantic City market and adjoining states, and certain other factors.

21. Consequently, on February 17, 2009, TER and its direct and indirect subsidiaries (collectively, the "2009 Debtors") filed voluntary chapter 11 petitions in the United States Bankruptcy Court for the District of New Jersey (Case No. 09-13654 (JHW)) (the "2009 Cases"). On May 7, 2010, the Bankruptcy Court entered an order (the "2010 Confirmation Order") confirming a chapter 11 plan of reorganization with respect to the 2009 Debtors (the "2010 Plan"), and on July 16, 2010 the 2010 Plan became effective. On January 10, 2012, the Bankruptcy Court issued its final decree and order closing the 2009 Cases.

22. Pursuant to the 2010 Plan, TER received $225 million in new capital in connection with an equity rights offering backstopped by former holders of the Second Lien

Notes. Additionally, five percent of the newly issued and outstanding stock of TER was distributed to holders of the Second Lien Notes on a pro-rata basis, and, five percent of the newly issued and outstanding stock of TER, together with warrants to acquire an additional five percent of TER's stock, were issued to Donald J. Trump. The holders of approximately $486.3 million in first lien debt previously issued by TER's predecessor-in-interest received a cash payment of $125 million as well new debt (as described below).

D. Capital Structure of the Debtors

23. The Debtors' current capital structure arises from the 2010 Plan, and is generally described below:

i. First Lien Credit Agreement

24. Pursuant to the 2010 Plan, on July 16, 2010, each of TER, TER Holdings and certain subsidiaries of TER (the "Subsidiary Guarantors") entered into that certain Amended and Restated Credit Agreement with Beal Bank, SSB, as the initial collateral agent and administrative agent (the "First Lien Agent"), and Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Partners Master Fund II LP and Icahn Partners Master Fund III LP (collectively, the "First Lien Lenders"), as initial lenders, pursuant to which TER issued $356.4 million principal amount of first lien debt (the "First Lien Debt") to the First Lien Lenders. In connection with a settlement of certain disputes between the Company and the First Lien Lenders, on September 21, 2010, the Amended and Restated Credit Agreement was subsequently amended (as amended, supplemented or modified from time to time prior to the date hereof, the "First Lien Credit Agreement"), retroactive to July 16, 2010, to reduce the total principal amount outstanding as of such date from approximately $356.4 million to approximately $346.5 million, and to provide

that interest would be payable on all principal amounts outstanding. In April 2012, Beal Bank was replaced as collateral agent and administrative agent by Icahn Agency Services, LLC.

25. The First Lien Credit Agreement requires quarterly principal amortization payments in the amount of $866,000, and requires the Debtors to pay interest on the unpaid principal amount outstanding at an annual rate of 12%, payable quarterly in arrears. Under the First Lien Credit Agreement, the Company is subject to certain affirmative and negative covenants, and is required to make mandatory prepayments of the First Lien Debt under certain circumstances. Amounts outstanding under the First Lien Credit Agreement are guaranteed by the Subsidiary Guarantors, and are secured by first priority liens on and security interests in all of the Debtors' assets. The 2010 Confirmation Order provides, in part, as follows:

> Notwithstanding anything to the contrary in the Plan, the Plan Documents, or this Order, on the Effective Date, the First Lien Agent(s) and/or Lenders shall continue to have valid, perfected and first priority liens on, and pledges and security interests in, all of the Debtors' and Reorganized Debtors' assets (of every kind and nature whatsoever), including, for the avoidance of doubt, cage cash, and all proceeds of any and all of the foregoing and this Order shall be sufficient and conclusive evidence of the first priority, perfection and validity of such liens, pledges and security interests without the need for any further action including, without limitation, the filing or recording any financing statements or other documents that may otherwise be required under federal or state law in any jurisdiction.

2010 Confirmation Order at § 19(b). All indebtedness outstanding under the First Lien Credit Agreement matures on December 31, 2015. As of the Petition Date, the aggregate principal amount total outstanding under the First Lien Credit Agreement was approximately $285.6 million plus accrued but unpaid interest of approximately $6.6 million.

ii. ***Trade Debt***

26. As of the Petition Date, the Debtors' books and records reflected accounts payable due and owing in the amount of approximately $13.5 million.

iii. ***Equity***

27. As of August 20, 2014, there were approximately 200 holders of record of TER's common stock, many of whom may include former holders of the Second Lien Notes who received common stock under the 2010 Plan (as described above). Upon information and belief, Donald J. Trump holds approximately 5% of the TER common stock as well as warrants to purchase approximately 5% of TER common stock.

E. **Management's Efforts to Increase Revenue and Decrease Costs**

28. Upon the Company's emergence from bankruptcy in 2010, a new Board of Directors was appointed pursuant to the 2010 Plan. In September 2010, the Board of Directors selected Robert F. Griffin as the new chief executive officer and, subsequently, hired a new chief financial officer and various other members of senior management.

29. Despite the significant reduction in debt under the 2010 Plan, the Company still faced approximately $346.5 million in First Lien Debt. In addition, it soon became clear that the Company needed to reduce its footprint in order to stem the losses associated with underperforming assets such as the Marina, rationalize its cost structure and invest in its properties in order to remain competitive. Accordingly, since 2010, the Company's management team has undertaken a number of initiatives in an attempt to restore the Company's financial footing.

i. ***Sale of Non-Core and Under-Performing Assets***

30. As noted above, the Marina had experienced sustained operational losses and was in need of substantial cap-ex funding. Consequently, on May 24, 2011, the Company completed the sale of the Marina to Golden Nugget Atlantic City, LLC (an affiliate of Landry's, Inc.) for approximately $38 million in cash and the assumption of certain liabilities. The Company also agreed to remove a deed provision restricting the development of gaming activities on real property previously sold by the Company to Boardwalk Florida Enterprises, LLC in exchange for a payment of approximately $5.5 million in cash. Since 2011, the Company has sold other non-core assets, including (a) the Steel Pier, an approximately 425,000 square feet pier located across the boardwalk from the Taj Mahal, for approximately $4.3 million in cash; (b) the "skybridge," which extends over the boardwalk and connects the Taj Mahal to the Steel Pier, for approximately $250,000 in net cash proceeds; (c) the off-site warehouse located in Egg Harbor Township, New Jersey, for approximately $1.9 million in net cash proceeds; (d) the Company's former corporate offices for approximately $3.1 million in cash; and (e) the sale of an unused parcel of land located near the Plaza for approximately $1.3 million in cash.

31. The Company also attempted to sell the Plaza due to its sustained under-performance and substantial capital expenditure needs. Beginning in July 2011 the Company retained CBRE Richard Ellis to conduct a marketing process in an effort to sell the Plaza. Approximately 150 prospective purchasers or investors were contacted; approximately fifteen parties were provided access to a datasite; four parties submitted bids (including one bid for the purchase of the Plaza as a non-casino); and only one party submitted a formal bid, though the bidder did not enter into a formal purchase agreement until February 2013. However, the

Company was unable to consummate a sale transaction with respect to the Plaza because of its inability to obtain a release of the security interests in the Plaza.

ii. Realization of Cost-Savings and Cost Containment

32. The Company also took steps to reduce operational expenses, including staffing reductions, improving labor and other operational efficiencies, varying the availability of certain amenities to match current demand, and certain other cost-cutting measures, in order to realign operations to appropriately function within reduced business volumes in light of the then-current economic and competitive conditions. In addition, in 2011, the Debtors successfully negotiated with several unions to achieve significant concessions in the form of approximately $4 million of annual wage reductions (though such wage concessions have proven insufficient given the Debtors' extremely challenging market and industry). Also, in June 2012, the Company settled with the City of Atlantic City with respect to the Company's challenges to the real estate tax assessments for its casino properties for the tax years 2008 through 2012, which provided the Company with an estimated $41.7 million in net present value savings as it related to the Debtors' continuing operations.

iii. Property Improvements

33. Remaining competitive with other casino hotels located in Atlantic City and neighboring states requires substantial capital expenditures in the properties and amenities offered by the Company. Thus, the Company embarked upon a number of capital projects and obtained significant tenant and state-funded investments in the Company's properties. In order to compete with the other casino hotels located in Atlantic City and neighboring states on the basis of customer service, quality and extent of amenities and promotional offers, during 2011 the Company added several new amenities to their properties, including the addition of the

famous White House Sub Shop and a Panda Express on the Taj Mahal's Spice Road. In addition, the Taj Mahal entered into lease agreements for the tenant-funded development of a 35,000 square-foot Scores gentlemen's club, the first of its kind in an Atlantic City casino, as well as a Robert's Steak House, a high-end restaurant.

34. The Company also undertook several other construction projects, including: (i) a $7 million, state-funded project to restore the Taj Mahal's facade; and (ii) a $500,000 upgrade to the Taj Mahal's computer room, including enhancements to its HVAC system, electrical capacity and sprinkler systems. In an effort to increase boardwalk traffic, the Company contracted with a new operator for its seasonal Beach Bar at the Plaza that permitted the establishment to remain open every day in 2014 summer season (rather than only on select days during the summer season).

iv. Online Gaming Agreements

35. As noted above, in order to boost revenue, the Company sought to capitalize on recently enacted New Jersey legislation authorizing online gaming in New Jersey, and entered into two Online Gaming Agreements, with each of UG and Betfair. Pursuant to the Online Gaming Agreements, UG and Betfair contributed $8 million and $7.5 million, respectively, to the Company, and agreed to share certain percentages of online gaming revenues with the Company.

F. Circumstances Leading To The Debtors' Chapter 11 Filings

36. The Debtors had hoped that the aforementioned measures would restore the Debtors to profitability and long-term stability. Unfortunately, the Debtors' operating results and financial condition continued to decline due to a variety of factors, including those described below.

i. ***High Debt Burden***

37. Although the Debtors were able to significantly reduce the principal balance of the First Lien Debt through asset sale pay downs and amortization payments, the Debtors remain highly leveraged, with a current principal balance of $285.6 million and annual debt service expense of approximately $38 million (as compared with negative LTM EBITDA).

ii. ***Declining Atlantic City Market***

38. Since 2010, the Atlantic City gaming market has experienced significant contractions. Total 2013 gross gaming revenues in the Atlantic City market (as reported to the DGE) was down over 6.2% from 2012 levels. These declines are a result of a variety of factors, including (a) increased competition within the Atlantic City market (*i.e.*, the opening of the Revel casino in April 2012, which resulted in decreased market share for the Debtors' properties, the significant property improvements made by the Golden Nugget in 2011, and the recent expansion and rebranding of Resorts Casino Hotel as Jimmy Buffet's Margaritaville), (b) competition from adjoining states (*i.e.*, the opening of casinos in Pennsylvania, Maryland, Delaware and New York), (c) the general economic decline in Southern New Jersey and surrounding areas, and (d) the change in spending patterns in the region due to decreased disposable income. This decline is likely to be further exacerbated by, among other things, the legislative effort currently underway to legalize gambling in New Jersey outside of Atlantic City.

39. Indeed, this market decline has resulted in significant over-supply in the Atlantic City casino market, as evidenced by the recently-announced closures or bankruptcies of several other casinos, including the Showboat Casino Hotel (the "Showboat"), the Atlantic Club, and, most notably, the Revel Casino Hotel (the "Revel") after less than two years in operation.

40. Additionally, initial operational results following the Showboat and Revel closures suggest that the closures will result in decreased foot traffic to the north end of the boardwalk, where the Taj Mahal is located, and that any "bounce" for the Taj Mahal may be muted, non-existent or even negative as a result of the closures.

iii. ***Lingering Effects of Superstorm Sandy and Other Storms***

41. During late October 2012, an unusual mix of a hurricane and winter storm ("Superstorm Sandy") caused widespread property damage and flooding to numerous regions along the Eastern United States. On October 27, 2012, in anticipation of Superstorm Sandy, the Governor of New Jersey ordered the closure of all businesses and the evacuation of Atlantic City, New Jersey. On October 28, 2012, the DGE ordered the temporary suspension of all twelve Atlantic City gaming licenses. The DGE vacated its order on November 2, 2012. The Taj Mahal and the Plaza closed to the public on October 28, 2012. Superstorm Sandy caused some physical damage to the Debtors' casinos, which were able to reopen on November 2, 2012.

42. Furthermore, in June 2012, a fast moving, severe thunderstorm (derecho) tracked into the mid-Atlantic states. Sections of Virginia, Maryland, Pennsylvania, Washington, DC, Delaware and southern New Jersey suffered overturned trees, roof damage and power outages. Over 200,000 people in southern New Jersey lost power.

43. Finally, in August 2011, Hurricane Irene made landfall in New Jersey and continued up the east coast. Mandatory evacuation of certain of the Debtors' feeder markets began on August 24, 2011. A state of emergency was declared for New Jersey on August 25, 2011 and a mandatory evacuation was ordered for Atlantic County shore communities. Atlantic City casinos closed on August 26, 2011 and reopened with limited services on August 29, 2011. The Taj Mahal and the Plaza sustained minimal physical damage.

44. The Debtors' results of operations were negatively impacted due to the closure and the extensive damage sustained within its primary feeder markets in the Mid-Atlantic Region in the wake of these storms. Additionally, as a result of the effects of Superstorm Sandy, the Debtors submitted a $14 million business interruption claim to its insurance company, but the insurance company has disputed this claim, and the Debtors cannot predict when (if at all) the payment will be recovered.

iv. <u>Disappointing Internet Gaming Results</u>

45. As noted above, the Debtors became licensed to conduct online gaming in 2013. Initially thought to be a major boon to Atlantic City casino operators, actual results have thus far fallen short of expectations.

v. <u>Declining Performance</u>

46. As a result of the foregoing, the Debtors have experienced significant EBITDA declines since their emergence from the prior bankruptcy cases. EBITDA, including discontinued operations, for the 2013 fiscal year was negative $5.1 million. The Debtors' gaming revenues declined from approximately $394.8 million in 2012 to approximately $330 million in 2013 (representing a 16.4% decline); hotel room revenues declined from approximately $73.3 million in 2012 to approximately $67.2 million in 2013 (representing an 8.3% decline); and food and beverage sales declined from approximately $57.1 million in 2012 to approximately $44.3 million in 2013 (representing a 22.5% decline).

47. The Debtors' declining performance continued into 2014. EBITDA, including discontinued operations, for the first six months of the 2014 fiscal year was negative $25.7

million.[4] The Debtors' gaming revenues declined from approximately $164.6 million in the first half of 2013 to approximately $134.6 million in the first half of 2014 (representing an 18.2% decline); hotel room revenues declined from approximately $30.8 million in the first half of 2013 to approximately $30.2 million in the first half of 2014 (representing a 1.9% decline); and food and beverage sales declined from approximately $21 million in the first half of 2013 to approximately $16 million in the first half of 2014 (representing a 23.8% decline).

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

49. Entering fiscal year 2014, the Debtors were optimistic that their strong brand name and the pent up gaming demand due to Superstorm Sandy would result in a meaningful earnings recovery. Unfortunately, the first eight months of 2014 have resulted in EBITDA below management's projections, due to a variety of factors, including the abnormally cold 2014 winter weather, frequent snowstorms in the Mid-Atlantic United States, increased utility costs related to the cold, intense competition in the Atlantic City market and surrounding regional gaming markets, and current economic conditions in southern New Jersey and elsewhere.

[4] This amount includes a $7.8 million expense related to Casino Reinvestment Development Authority asset donation.

vi. Inflexible Cost Structure

50. The Debtors' flexibility in its cost structure is limited by high taxes and labor costs. In July 2014, Atlantic City announced a *29% increase* in property tax rates. Moreover, the CBAs covering the Debtors' businesses require pension plan contributions of approximately $5 million each year, coupled with $15 million in health, welfare and other benefit payments each year, thus imposing an unsustainable cost structure upon the Debtors given their current size and financial condition.

vii. Default Notices and Third Party Litigation

51. In the weeks prior to the commencement of the Chapter 11 Cases, the Debtors were confronted with third-party litigation and notices of default with respect to certain of its material contracts.

a. Online Gaming Agreements

52. On July 16, 2014 and July 30, 2014, Betfair purported to deliver written notices of default under the Betfair Online Gaming Agreement (though Betfair stopped short of terminating such agreement). Thereafter, Betfair unilaterally took steps to sweep into a new bank account controlled by Betfair certain online gaming revenue collected by the Company pursuant to the Betfair Online Gaming Agreement, and, on September 4, 2014, Betfair purported to terminate the Betfair Online Gaming Agreement.

53. Separately, on August 22, 2014, UG delivered a written notice of default under the UG Online Gaming Agreement. Thereafter, through a letter dated September 3, 2014, UG purported to terminate the UG Online Gaming Agreement.

b. Trademark Litigation

54. In connection with the Company's emergence from the 2009 Cases (as described below), on July 16, 2010, each of TER, TER Holdings and certain of its subsidiaries (collectively, the "Licensee Entities") entered into the Second Amended and Restated Trademark License Agreement (the "Trademark License Agreement") with Donald J. Trump and Ivanka Trump (the "Trump Parties"), which amended and restated the previous trademark license agreement that the Company had entered into with Mr. Trump in 2005. Pursuant to the Trademark License Agreement, the Trump Parties granted the Licensee Entities a perpetual royalty-free license to use certain trademarks, service marks, names, domain names and related intellectual property associated with the name "Trump" and the Trump Parties in connection with TER Holdings' casino and gaming activities related to the Company's three then-existing casino properties in Atlantic City, New Jersey, subject to certain terms and conditions. On July 1, 2011, the Licensee Entities entered into the First Amendment to the Trademark License Agreement, pursuant to which, among other things, that Trump Parties were replaced as "Licensors" with Trump AC Casino Marks LLC, a Delaware limited liability company. Upon information and belief, Trump AC Casino Marks LLC is controlled by one or more of the Trump Parties.

55. On August 5, 2014, Trump AC Casino Marks LLC commenced a lawsuit in state Superior Court in Atlantic County, New Jersey (Case No. C00005014), against the Company and the First Lien Agent (the "DJT Action") alleging various breaches of the Trademark License Agreement. Plaintiff also seeks the imposition of a mandatory injunction to compel the Licensee Entities to cure the alleged breaches under the Trademark License Agreement or, in the

alternative, a declaratory judgment that the Trademark License Agreement has already terminated by reason of the alleged breaches.

56. The Debtors dispute the assertions made in the DJT Action. The termination of the Trademark License Agreement, or the entry of an injunction or similar order against any of the Licensee Entities, would constitute an event of default under the First Lien Credit Agreement and might otherwise have an adverse impact on the Debtors' businesses.

c. Levine Staller Litigation

57. On August 5, 2014, the law firm that previously assisted the Company with respect to the Company's settlement of the real property tax assessments for the TER Casinos for the tax years 2008 through 2012, filed a motion with the Tax Court of New Jersey seeking to enforce an attorney's charging lien with respect to a $1.25 million contingency fee allegedly owed to the firm, and to issue a judgment and writ of execution in its favor against the assets of the Debtors. On August 26, 2014, the Tax Court of New Jersey granted the motion, but limited its enforcement to just the proceeds of the tax settlement. The Debtors may appeal that judgment, but in any event, believe that such "proceeds" no longer exist as they were fully expended in the Company's business. The judgment constituted an event of default under the First Lien Credit Agreement, and the attachment of the Debtors' funds would further exacerbate the Debtors' liquidity position.

G. *Exploration of Strategic Alternatives*

58. Collectively, the above factors have had a severe, negative impact on the Company's liquidity. Due to the seasonality of the Debtors' businesses, the Debtors were unable to generate excess cash flows during the 2014 summer season sufficient to subsidize non-peak seasons, and the Debtors are now entering a period of several months where significant operating

losses are expected. The Debtors missed their third quarter property tax payment, initially due on August 28, 2014, in the amount of $10.8 million (although that amount is disputed), and do not expect to have sufficient liquidity to make the $9.5 million interest payment due to the First Lien Lenders on September 30, 2014.

59. On April 24, 2014, the Debtors' board of directors (the "Board") determined to explore strategic and restructuring alternatives that may be available to the Debtors. The Board determined to proceed on a parallel track, whereby the Debtors and their professionals would undertake efforts to solicit third party investments in the Debtors while simultaneously engaging in discussions with its secured lenders concerning the possibility of a comprehensive balance sheet restructuring (either in or out of bankruptcy). The Board also appointed a special sub-committee (the "Special Committee") to spearhead that effort.

60. In May 2014, the Debtors retained Houlihan Lokey Capital Inc. ("Houlihan Lokey"), as financial advisor, to assist the Special Committee and the Board in identifying alternatives that may be available to the Debtors. Houlihan Lokey contacted the Debtors' key stakeholders, including the Debtors' secured lenders, online gaming partners, significant equity holders and other parties-in-interest, in an attempt to gauge interest in an investment in, or a strategic transaction with, the Debtors. However, none of the parties contacted expressed an interest in making an investment in or advancing credit to the Debtors or purchasing either of the Debtors' casinos.

H. *Plaza Closure*

61. Over the past several years, the Plaza has experienced negative EBITDA, with performance worsening each year. The Plaza experienced EBITDA losses of approximately $7.6 million and $11.8 million in 2012 and 2013, respectively, prior to deductions for unallocated

corporate costs. Performance has continued to deteriorate in 2014 due to worsening market conditions. Year-to-date through July 2014, the Plaza experienced EBITDA losses of approximately $9.6 million, which reflects an increase in losses of approximately $6.8 million over the same period from the prior year. Moreover, the Plaza's cash burn rate is expected to dramatically increase once the summer season ends. When combined with capital expenditures to maintain the property, these cash flow losses made the Plaza's ongoing operations unsustainable.

62. Consequently, on August 8, 2014, the Board determined that a closure of the Plaza was necessary and in the best interests of the Debtors' enterprise as a whole. In anticipation of that decision, on July 14, 2014, the Debtors issued notices pursuant to the Worker Adjustment and Retraining Notification Act, notifying Plaza employees of the expected closure of the Plaza.

63. In order to complete the closure of the Plaza, on August 25, 2014, Plaza Associates filed a petition with the DGE, seeking declaratory rulings related to the termination of casino operations, including the surrender of its casino license and the amendment and surrender of its operation certificate and its internet gaming permit. Thereafter, on August 29, 2014, the Debtors received the necessary conditional approvals from the DGE to close the Plaza. The Debtors intend to cease operations at the Plaza on September 16, 2014.

I. *Discussions with the First Lien Lenders*

64. Additionally, beginning in the Spring of 2014, the Debtors initiated discussions with their secured lenders, the First Lien Lenders, concerning the terms of a potential restructuring of the Debtors' capital structure. To facilitate those discussions, the Debtors furnished extensive non-public financial and operational information to the First Lien Lenders

and their professionals. In connection with those negotiations, the Debtors entered into a forbearance agreement with the First Lien Lenders, dated June 28, 2014 (the "Forbearance Agreement"), as subsequently amended on August 15, 2014 and August 20, 2014, pursuant to which the First Lien Lenders agreed to refrain from exercising certain rights and remedies related to certain defaults arising under the First Lien Credit Agreement.

J. *Discussions with Local 54 and Potential Closure of the Taj Mahal*

65. In addition, the Debtors and their representatives initiated good faith negotiations with their largest union, Local 54. However, to date, these negotiations have not yielded any consensual modifications to Local 54's CBA. Specifically, representatives of the Debtors met with representatives of Local 54 and provided a proposal that would facilitate a feasible business plan premised upon certain modifications to be made to the CBA with Local 54. The Company was subsequently informed by representatives of Local 54 that they were unwilling to make the proposed concessions.

66. Additionally, as described above, initial results following the closure of the Showboat and the Revel indicate that the Taj Mahal may have significant difficulty in attracting activity to its section of the boardwalk, and any increase in revenue as a result of those closures may be offset by the decrease in foot-traffic at the northern end of the boardwalk. In light of these results, the Debtors' limited liquidity and the stalled negotiations with Local 54, on September 5, 2014, the Board authorized the Company to issue notices pursuant to the Worker Adjustment and Retraining Notification Act, notifying its Taj Mahal employees of a potential closure of the Taj Mahal. The Debtors expect to continue negotiations with Local 54. Absent expense reductions, particularly concessions from their unions, the Debtors expect that the Taj

Mahal will close on or shortly after November 13, 2014 and that all operating units will be terminated between November 13, 2014 and November 27, 2014.

67. Based on the foregoing, the Debtors determined to commence these Chapter 11 Cases. The Debtors intend to utilize the Chapter 11 Cases in order to, among other things, (a) protect the Debtors' estates from the potential adverse impact to the Debtors' businesses resulting from certain third party litigation, (b) restructure outstanding indebtedness and claims, (c) seek to preserve the value of certain executory contracts that the Debtors may elect to assume, (d) attempt to address their cost structure by, among other things, reducing their labor costs, and (e) maximize value for the benefit of the Debtors' estates.

II. SUMMARY OF FIRST-DAY MOTIONS[5]

68. As Chief Executive Officer of TER, I have formed opinions as to: (a) the urgency and necessity for obtaining the relief sought by the Debtors in their First-Day Motions (including the exhibits attached thereto) listed on Exhibit B attached hereto and filed on the Petition Date; (b) the need for the Debtors to continue to effectively operate and, as seamlessly as possible, embark upon these Chapter 11 Cases; (c) the deleterious effects upon the Debtors and their estates if the Debtors do not obtain the relief requested in the First-Day Motions; and (d) the immediate and irreparable harm that the Debtors and their estates will be exposed to in the event that the Court does not approve such relief. My opinions are based upon my first-hand experience as Chief Executive Officer of TER, my experience in the gaming industry, and as the result of my review of various materials and information and discussions with other personnel of

[5] Capitalized terms used in this section but not otherwise defined herein shall have the meanings ascribed to such terms in the First-Day Motions, as applicable.

the Debtors and their professional advisors. This Declaration is submitted in support of the Court's entry of orders approving the relief requested in the First-Day Motions.

69. The relief sought in the First-Day Motions will minimize the adverse impact of these Chapter 11 Cases on, and preserve and maximize the value of, the Debtors' estates. I believe that the relief sought is necessary and essential to enable the Debtors to operate effectively as debtors-in-possession. The Debtors, in consultation with their professional advisors, carefully designed the relief requested so that the Debtors will not suffer any immediate and irreparable harm as a result of the commencement of these Chapter 11 Cases.

70. Accordingly, for the reasons stated herein and in the First-Day Motions, I respectfully request that each of the First-Day Motions be granted in its entirety. Set forth below are facts in support of the First-Day Motions, summarized for the convenience of the Court.

A. Administrative First-Day Motions

i. Debtors' Motion for an Order, Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1, Authorizing the Joint Administration of the Debtors' Chapter 11 Cases (the "Joint Administration Motion")

71. The Debtors request entry of an order directing joint administration of these Chapter 11 Cases for procedural purposes only. Given the integrated nature of the Debtors' operations, joint administration will provide significant administrative convenience without harming the substantive rights of any party in interest. Many of the motions, hearings and orders that will be filed in these Chapter 11 Cases will almost certainly affect each of the Debtors. Among other things, the entry of an order directing joint administration of these Chapter 11 Cases will reduce fees and costs by avoiding duplicative filings and objections, and will allow the United States Trustee and all parties in interest to monitor these Chapter 11 Cases with greater ease and efficiency.

72. Accordingly, on behalf of the Debtors, I respectfully request that the Joint Administration Motion be approved.

ii. ***<u>Debtors' Application for an Order, Pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002(f), and Local Rule 2002-1(f), Appointing Prime Clerk LLC as Clams and Noticing Agent, Nunc Pro Tunc to the Petition Date (the "Prime Clerk Retention Application".</u>***

73. The Debtors request entry of an order, pursuant to section 156(c) of title 28 of the United States Code, and Local Rule 2002-1(f), authorizing the retention and appointment of Prime Clerk LLC as claims and noticing agent in these Chapter 11 Cases. I believe that the relief requested in the Prime Clerk Retention Application will ease the administrative burden on the Clerk of the Court in connection with these Chapter 11 Cases. In addition, I have been advised by counsel that Prime Clerk's retention is required by the Local Rules in light of the anticipated number of creditors.

74. Therefore, on behalf of the Debtors, I respectfully request that the Prime Clerk Retention Application be approved.

B. **<u>Operational First-Day Motions</u>**

i. ***<u>Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a) and 366 of the Bankruptcy Code, (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured of Future Payment, (III) Establishing Procedures for Determining Additional Adequate Assurance of Payment, and (IV) Setting a Final Hearing Related Thereto (the "Utilities Motion")</u>***

75. The Debtors request through the Utilities Motion the entry of interim and final orders, among other things: (a) prohibiting the Debtors' Utility Companies from altering, refusing, or discontinuing Utility Services on account of pre-petition invoices; (b) deeming the Utility Companies adequately assured of future payment; (c) establishing procedures for

determining additional adequate assurance of future payment and authorizing the Debtors to provide additional adequate assurance of future payment to the Utility Companies; and (d) setting a final hearing related to the relief requested in the Utilities Motion.

76. The Utility Companies provide the Debtors with natural gas, heat, electricity, cable, telephone, internet connectivity, water, waste disposal and/or other similar services that the Debtors' facilities are dependent on. Any interruption of the Utility Services would severely disrupt the Debtors' day-to-day operations and be extremely harmful to their business, as the Debtors' facilities need to be fully operational 24 hours a day in order to meet the needs of their casino and hotel customers. Also, although the Debtors intend to cease normal business operations at the Plaza, the Debtors' continued receipt of certain of the Utility Services will nevertheless be essential to the maintenance of the Plaza and to ensure that the facility remains safe and secure. Maintaining Utility Services will also be necessary to satisfy certain of the conditions imposed by the DGE, namely that the Debtors maintain security personnel at the Plaza for a period of time.

77. In general, the Debtors have established a good payment history with many of their Utility Companies, making payments on a regular and timely basis. The Debtors pay on average approximately $2.9 million per month on account of the Utility Services. Approximately $950,000 of that amount is attributable to the Plaza and the remainder is attributable to the Taj Mahal. To provide adequate assurance to the Utility Companies, as required under section 366 of the Bankruptcy Code, the Debtors propose to deposit a sum of $1,470,000, which represents 50% of the Debtors' estimated monthly cost of the Utility Services subsequent to the Petition Date, into a segregated account to be maintained during the pendency

of these Chapter 11 Cases in the manner provided for in the Proposed Interim Order and the Proposed Final Order.

78. I believe and am advised that the Assurance Procedures are necessary, because if such procedures were not approved, the Debtors could be forced to address numerous additional adequate assurance requests by the Utility Companies in a disorganized manner during the critical first weeks of these Chapter 11 Cases. Moreover, a Utility Company could unilaterally determine, on or after the 30th day following the Petition Date, that it is not adequately assured of future payment and discontinuing service or making an exorbitant demand for payment to continue service.

79. Accordingly, on behalf of the Debtors, I respectfully request that the Utilities Motion be approved.

ii. ***<u>Debtors' Motion for an Order, Pursuant to Sections 105(a), 363(b), 507(a)(8), 541, 1107(a) and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees and Related Obligations and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto (the "Taxes and Fees Motion")</u>***

80. The Debtors request authority to pay certain prepetition taxes and fees that, in the ordinary course of business, accrued or arose before the Petition Date. In the ordinary course of business, the Debtors incur or collect certain Taxes and Fees and remit such Taxes and Fees to various Authorities. Any failure to pay the Taxes and Fees could impair the Debtors' ability to continue their business operations. Any unexpected or inopportune interruption of the Debtors' operations during the course of these Chapter 11 Cases could greatly diminish estate value and frustrate the Debtors' chapter 11 efforts. In addition, certain of the Authorities may take precipitous action against the Debtors' directors and officers for certain unpaid Taxes and Fees

that undoubtedly would distract those individuals from their duties related to the Debtors' prosecution of these cases. Finally, based on my knowledge and conversations with the Debtors' professional advisors, it is my understanding that certain of the Taxes and Fees are entitled to priority status under the Bankruptcy Code and, as a result, must be paid in full before any general unsecured obligations may be satisfied.

81. Therefore, on behalf of the Debtors, I respectfully request that the Taxes and Fees Motion be approved.

iii. ***<u>Debtors' Motion for an Order, Pursuant To Sections 105(a), 363 and 364 of the Bankruptcy Code, (I) Authorizing (A) Payment of Prepetition Obligations Incurred In the Ordinary Course of Business In Connection With Liability, Property, and Other Insurance Programs, Including Payment of Policy Premiums, and (B) Continuation of Insurance Premium Financing Programs; and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto (the "Insurance Motion")</u>***

82. The Debtors request the entry of an order authorizing, but not directing, the Debtors to (a) continue and, to the extent necessary, renew liability, property and other insurance programs and pay policy premiums arising thereunder or in connection therewith, including prepetition obligations arising in the ordinary course of business, and (b) continue the Debtors' insurance premium financing programs and renew or enter into new premium financing programs, as necessary, under substantially similar terms.

83. In the ordinary course of business, the Debtors have maintained, and continue to maintain, a number of insurance programs for directors and officers, general liability, property, umbrella and crime. Continuation of the Insurance Programs is essential for preserving the value of the Debtors' assets and, in most cases, such coverage is required by the various contracts and laws that govern the Debtors. Furthermore, it is my understanding that, pursuant to the chapter

11 operating guidelines issued by the United States Trustee for Region 3 pursuant to 28 U.S.C. § 586, the Debtors are obligated to maintain certain insurance coverage, which coverage is provided by the policies included in the Insurance Programs.

84. Because it is not economically advantageous for the Debtors to pay the premiums on each of their Insurance Programs on an annualized basis, from time to time, in the ordinary course of business, the Debtors finance the premiums on certain of the Insurance Programs. If the Debtors are unable to continue making payments under the PFAs, First Insurance may be permitted to terminate the Financed Programs. The Debtors would then be required to obtain replacement insurance on an expedited basis and likely at a significantly increased cost.

85. Accordingly, on behalf of the Debtors, I respectfully request that the Insurance Motion be approved.

iv. Debtors' Motion for Entry of Interim and Final Orders, Pursuant To Sections 105(a), 363(b), 503(b), 1107(a) and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Claims (A) Arising Under the Perishable Agricultural Commodities Act, (B) of Lien Vendors, (C) Arising Under Section 503(b)(9) of the Bankruptcy Code and (D) of Critical Vendors and Service Providers, (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto and (III) Granting Certain Related Relief (the "Vendor Motion")

86. Through the Vendor Motion, the Debtors request authority, in their discretion, to pay, in the ordinary course of business, (a) prepetition claims (i) arising under PACA or PASA, (ii) upon which a lien may arise as a result of a mechanic's lien, artisan's lien, materialman's lien or any other similar lien, and (iii) of certain critical vendors and service providers, and (b) claims entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code.

87. The Debtors rely on several vendors which supply the Debtors with, among other things, fruits and vegetables protected by PACA, and these vendors may be eligible to assert

PACA claims, in priority ahead of all other creditors in these Chapter 11 Cases. The Debtors also regularly use service providers to repair, maintain, and improve their properties. These vendors could potentially assert liens against the Debtors' property for amounts that the Debtors owe to them. In addition, the Debtors have received certain goods within the twenty-day period prior to the Petition Date that may be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code. Finally, to maintain consistency, the Debtors rely heavily on a number of key vendors that supply the Debtors with goods and services that are critical to the Debtors' business. It is essential that the Debtors are able to maintain their business relationships with, and honor outstanding payment obligations to, these key vendors given the role that they play in the Debtors' business.

88. The goods and services provided by the Vendors are necessary to ensure that there are not any unexpected or inopportune interruptions to the Debtors' operations, because the Vendors are the most cost-efficient and, in many cases, the only source from which the Debtors can procure critical goods and services within a timeframe that would permit the Debtors to avoid unanticipated interruptions, delays or shutdowns in operations. Any failure to pay the Vendor Claims would, in the Debtors' business judgment, result in the Vendors refusing to provide necessary goods and services to the Debtors. Any unexpected or inopportune interruption, delay or shutdown in the Debtors' operations resulting from a refusal by the Vendors to do business with the Debtors on a post-petition basis would have disastrous effects on the Debtors' business and undermine the Debtors' ability to preserve and maximize the value of their estates.

89. Moreover, the PACA/PASA Vendors will be eligible to assert PACA/PASA Claims, likely granting them priority ahead of all other secured, priority and unsecured creditors

in these Chapter 11 Cases, and the Lien Vendors may assert and perfect construction, materialman's, mechanic's or other similar statutory liens on the Debtors' assets, thereby jeopardizing the Debtors' ability to prosecute these Chapter 11 Cases in a timely and efficient manner. Also, the Debtors' payment of the 503(b)(9) Claims merely affects the timing of such payments, and not the amount to be received by the 503(b)(9) Vendors on account of their claims which, based on my knowledge and conversations with the Debtors' professional advisors, are afforded administrative expense priority under section 503(b)(9) of the Bankruptcy Code. With respect to the Critical Vendor Claims, the Debtors have reviewed their accounts payable and undertaken a process to identify those vendors which are essential to avoid any unexpected or inopportune interruptions to their operations. I believe that the authority to pay the Critical Vendor Claims is vital to their efforts to preserve and maximize the value of their estates.

90. Therefore, on behalf of the Debtors, I respectfully request that the Vendor Motion be approved.

v. Debtors' Motion for an Order, Pursuant To Sections 105(a), 363(c), 503(b)(1), 1107(a), and 1108 of the Bankruptcy Code, Authorizing (I) the Debtors to Honor Prepetition Obligations Related to Customer Programs and Otherwise Continue Customer Programs In the Ordinary Course of Business and (II) Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto (the "Customer Programs Motion")

91. The Debtors request the authority, in their discretion, to continue, maintain, implement new, and/or terminate, and to pay, honor, and otherwise satisfy prepetition obligations related to, their prepetition customer practices and programs, in the ordinary course of business and in a manner consistent with past practice through the Customer Programs Motion. In an effort to attract new customers and to earn and maintain the goodwill and loyalty of their existing customers, the Debtors over the course of time have developed the Customer Programs.

Honoring and supporting the Customer Programs will enable the Debtors to retain, maintain, and create valuable customer relationships, which will strengthen the Debtors' business and their prospects for successfully prosecuting these Chapter 11 Cases. The necessity of the Customer Programs in the Debtors' highly competitive industry cannot be overstated and many of the programs are standard practice. If the Debtors' obligations under the Customer Programs cannot be honored in the ordinary course of business, it is likely that the Debtors' customers would choose to go elsewhere, thereby adversely impacting the Debtors' business and thus their ability to maximize the value of their assets.

92. The Debtors cannot risk even the perception that their business during these Chapter 11 Cases will offer anything but high quality casino entertainment and hospitality experiences to their customers. To that end, absent the ability to satisfy the Trump One and Room Account Vendor Claims, the Debtors run the significant risk that the Trump One Vendors and Room Account Vendors will refuse, among other things, to honor Comp Dollars and allow Room Charges. Such a result would adversely impact the Debtors' customers' overall experience by significantly limiting (or potentially eliminating) the options available to redeem Comp Dollars and have convenient access to restaurants, retail stores and beauty salons. Simply put, the Debtors are not the only choice in Atlantic City for gaming or entertainment and thus, any impairment of the customers' overall experience will adversely affect the Debtors' efforts to maximize the value of their assets for the benefit of all stakeholders.

93. Accordingly, on behalf of the Debtors, I respectfully request that the Customer Programs Motion be approved

vi. ***Debtors' Motion for an Order, Pursuant to Sections 105(a), 345, 363, 1107(a) and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015, and Local Rule 2015-2, (I) Authorizing and Approving Continued Use of Cash Management System, (II) Authorizing Use of Prepetition Bank Accounts and Business Forms, (III) Authorizing Payments of Prepetition Costs and Fees Associated With Customer Credit and Debit Card Transactions, (IV) Waiving the Requirements of Section 345(b) on an Interim Basis, (V) Granting Administrative Expense Status to Post-Petition Intercompany Claims, and (VI) Granting Certain Related Relief (the "Cash Management Motion")***

94. Through the Cash Management Motion, the Debtors request the authority to, among other things: (a) continue to use their Bank Accounts; (b) treat such accounts for all purposes as accounts of the Debtors as debtors in possession; (c) open new debtor-in-possession accounts, if needed; and (d) use, in their present form, all correspondence and business forms existing immediately before the Petition Date, without reference to the Debtors' status as debtors-in-possession. In addition, the Debtors request that the Court authorize the Cash Management Banks to: (a) to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors-in-possession; (b) receive, process, honor, and pay any and all checks, drafts, wires, or other electronic transfer requests issued, payable through, or drawn on, the Bank Accounts after the Petition Date by the holders or makers thereof or other parties entitled to issue instructions with respect thereto, as the case may be; and (c) debit from the Bank Accounts ordinary course of business bank fees and charges. The Debtors also seek authority to pay or otherwise satisfy prepetition obligations on account of the Card Processing Fees, and to allow pre-petition chargebacks to be taken by the Processors against post-petition deposits to the Card Depository Accounts.

95. In the ordinary course of business, the Debtors utilize a centralized cash management system with respect to the Hotel Properties and with respect to TER Holdings. The

Debtors seek authority to continue utilizing the Cash Management System because it is critical that they be able to consolidate management of cash and centrally coordinate transfers of such funds in order to efficiently and effectively operate their business. Maintenance of the existing system will prevent undue disruption to the Debtors' operations while protecting their cash for the benefit of their estates. Requiring the Debtors to change the Cash Management System at this critical time would cause unnecessary disruption to the Debtors and their business affairs.

96. The Cash Management System provides significant benefits to the Debtors, including the ability to: (i) closely track, and thus control, all corporate funds; (ii) ensure cash availability; and (iii) reduce administrative expenses. The Debtors will ensure that appropriate procedures are in place so that checks issued prior to the Petition Date, but presented after the Petition Date, will not be honored absent approval from the Court. The Debtors will also maintain records of post-petition transfers within the Cash Management System, so that transfers and transactions will be documented in their books and records to the same extent such information was maintained to the Petition Date. Only if the Bank Accounts are continued in their current form can the Debtors proceed through chapter 11 efficiently and cost-effectively.

97. Furthermore, if enforced, the U.S. Trustee Guidelines would cause significant disruption to the Debtors' business and impair their chapter 11 efforts. I believe that maintaining the Bank Accounts is necessary to avoid delays in paying debts incurred post-petition, and to ensure as smooth a transition to chapter 11 as possible. If the Debtors are required to transfer their existing bank accounts, it will be disruptive, time consuming, and expensive. Also, if the Debtors were required to change their correspondence and business forms, it would be costly and disruptive.

98. Finally, the success of the Debtors' chapter 11 efforts is dependent upon, among other things, the ability to process customer credit and debit card transactions. The ability to pay the Card Processing Fees, including any related pre-petition amounts, is critical to the successful prosecution of these Chapter 11 Cases, as any inability to continue to satisfy pre-petition obligations with respect to such fees I believe threatens the Debtors' ability to maximize value.

99. Therefore, on behalf of the Debtors, I respectfully request that the Cash Management Motion be approved.

vii. ***Debtors' 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; (II) Reimbursement of Prepetition Employee Business Expenses; (III) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (IV) Payment of Workers' Compensation Obligations; (V) Payments for Which Prepetition Payroll Deductions Were Made; (VI) Payment of All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (VII) Payment to Third Parties of All Amounts Incident to the Foregoing Payments and Contributions and (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto (the "Employee Wages Motion")***

100. The Debtors request the authority, in their discretion, to pay prepetition claims, honor obligations, and to continue programs, in the ordinary course of business, on account of the Employee Wages and Benefits.

101. As of August 30, 2014, the Debtors employed: 2,963 employees at the Taj Mahal, of which approximately 2,000 were full-time, and the remainder of which were part-time, seasonal, on call or on a leave of absence; 1,105 employees at the Plaza, of which 766 were full-time, and the remainder of which were part-time, seasonal, on call or on a leave of absence; 138 employees that serve in an administrative capacity supporting the Debtors' operations at the Taj Mahal and the Plaza, of which 128 were full-time, and the remainder of which were part-time,

seasonal, on call or on a leave of absence; and eight employees that serve at the executive and management level for the Debtors and which are employed by TER Holdings. The Debtors also supplement their workforce with certain independent contractors.

102. However, as previously discussed, the Debtors issued notices pursuant to the Worker Adjustment and Retraining Notification Act to the Trump Plaza Employees on July 14, 2014, and subsequent to the Petition Date, the Debtors intend to cease normal business operations at the Plaza. Although the Debtors' continued employment of certain of the Trump Plaza Employees will be essential to the maintenance and the orderly wind-down of the Plaza, to ensure that the facility remains safe and secure subsequent to its closing, and to satisfy certain of the conditions imposed by the DGE, the number of Trump Plaza Employees will decrease significantly once normal operations have ceased at the Plaza.

103. The vast majority of the Employees rely exclusively on their full compensation or reimbursement of their wages or expenses to continue to pay their daily living expenses, and these Employees will be exposed to significant financial difficulties if the Debtors are not permitted to pay the Unpaid Wages and Reimbursable Expenses. Additionally, if the Debtors are unable to pay or otherwise honor the Employee Wages and Benefits, the morale and loyalty of the Employees will be jeopardized at a time when such support is critical to, among other things, the Debtors' chapter 11 efforts and ability to effectively prosecute these Chapter 11 Cases. The Employees have an intimate knowledge of the Debtors' infrastructure and operations, and any deterioration in the Employees' morale and welfare at this critical time undoubtedly would adversely impact the Debtors and the success of these Chapter 11 Cases. Finally, maintaining the Workers' Compensation Program is justified because applicable state law mandates this coverage, and the risk that eligible claimants will not receive timely payments with respect to

employment-related injuries could have a devastating effect on the financial well-being and morale of the Employees and their willingness to remain in the Debtors' employ.

104. Accordingly, on behalf of the Debtors, I respectfully request that the Employee Wages Motion be approved.

viii. <u>Debtors' Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 362 and 541 of the Bankruptcy Code, Establishing Notification Procedures for Transfers of or Claims of Worthless Stock Deductions with Respect to Common Stock (the "NOL Motion")</u>

105. Through the NOL Motion, the Debtors request entry of an order establishing notification procedures that must be satisfied before certain transfers of, or claims of worthless stock deductions with respect to, equity securities in TER or of any Beneficial Ownership thereof are deemed effective.

106. The Debtors have incurred significant NOLs, which may have substantial future value to the Debtors' successors (and, indirectly, to the estates). Specifically, the Debtors estimate that as of December 31, 2013 they will have total federal NOL carryovers of approximately $450 million and New Jersey NOL carryovers of approximately $840 million, which would expire on a rolling basis beginning in 2029. Based upon current federal and New Jersey income tax rates, such estimated NOL carryovers, subject to certain restrictions and limitations, could provide significant future federal and state cash tax savings.

107. The problem facing the Debtors, which the NOL Motion seeks to resolve, is that unrestricted trading of TER's Common Stock and claims of worthlessness with respect to TER's Common Stock could severely limit or even eliminate the Debtors' ability to use such NOLs. I have been informed that under section 382 of the Internal Revenue Code of 1986, as amended,

the Debtors' ability to use their NOLs as well as certain other tax credits will be severely limited if and when TER undergoes an "ownership change" for purposes of section 382 of the IRC.

108. Accordingly, in order to protect the Debtor's ongoing ability to make use of the NOLs, on behalf of the Debtors, I request that the NOL Motion be approved.

ix. <u>Debtors' Motion for Interim and Final Orders (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 (the "Cash Collateral Motion")</u>

109. Through the Cash Collateral Motion, the Debtors request entry of an order: (a) authorizing the Debtors to use Cash Collateral; (b) providing adequate protection with respect to the diminution in value, if any, of the interests of the Secured Parties as may result from the use of Cash Collateral; (c) scheduling, pursuant to Bankruptcy Rule 4001, a Final Hearing granting the relief requested in the Cash Collateral Motion on a final basis pursuant to a Final Order; and (d) granting related relief.

110. The Debtors require immediate access to Cash Collateral to ensure that they are able to continue the operation of their businesses. To date, the Debtors have been unable to obtain commitments for postpetition financing, such that the Cash Collateral is the Debtors' sole source of funding for their operations and the costs of administering the chapter 11 process. Absent authority to immediately use Cash Collateral, the Debtors would suffer irreparable harm because the Debtors would immediately cease operations, which, in turn, would cause an immediate and pronounced deterioration in the value of the Debtors' business. Thus, the Debtors' access to Cash Collateral is absolutely necessary to preserve and maximize value for the benefit of all of the Debtors' stakeholders. The Debtors believe that they will be able to

satisfy the operational expenses of the Debtors and the administrative costs associated with these Chapter 11 Cases during the Budget period.

111. Access to existing Cash Collateral on an interim basis will provide the Debtors with the liquidity necessary to ensure that the Debtors have sufficient working capital and liquidity to operate their business and thus preserve and maintain the going concern value of the Debtors' estates. Without such access to liquidity, the Debtors' ability to navigate through the chapter 11 process will be jeopardized, to the detriment of the Secured Parties and all of the Debtors' other stakeholders. As a result, the Debtors have an immediate need to use Cash Collateral to ensure sufficient liquidity throughout the pendency of these Chapter 11 Cases.

112. For the reasons noted above, the Debtors have determined, in the exercise of their sound business judgment, that they require the use of Cash Collateral for the maintenance, preservation and operation of their businesses, the expenses relating thereto, and the expenses of administering these estates. Entry of the proposed Interim Order is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

113. Accordingly, on behalf of the Debtors, I respectfully request that the Cash Collateral Motion be approved.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Dated: September 9, 2014

By: ______________________
Robert Griffin
Trump Entertainment Resorts, Inc.
Chief Executive Officer

EXHIBIT A

Organizational Structure

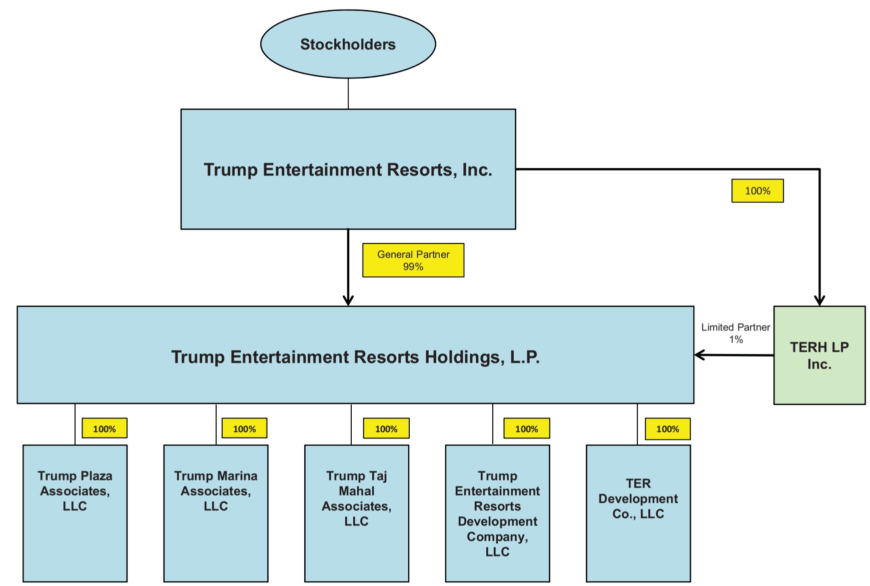

EXHIBIT B

1. Debtors' Motion for an Order, Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1, Authorizing the Joint Administration of the Debtors' Chapter 11 Cases

2. Debtors' Application for an Order, Pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002(f), and Local Rule 2002-1(f), Appointing Prime Clerk LLC as Clams and Noticing Agent, *Nunc Pro Tunc* to the Petition Date

3. Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a) and 366 of the Bankruptcy Code, (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured of Future Payment, (III) Establishing Procedures for Determining Additional Adequate Assurance of Payment, and (IV) Setting a Final Hearing Related Thereto

4. Debtors' Motion for an Order, Pursuant to Sections 105(a), 363(b), 507(a)(8), 541, 1107(a) and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees and Related Obligations and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto

5. Debtors' Motion for an Order, Pursuant to Sections 105(a), 363 and 364 of the Bankruptcy Code, (I) Authorizing (A) Payment of Prepetition Obligations Incurred In the Ordinary Course of Business In Connection With Liability, Property, and Other Insurance Programs, Including Payment of Policy Premiums, and (B) Continuation of Insurance Premium Financing Programs; and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto

6. Debtors' Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 503(b), 1107(a) and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Claims (A) Arising Under the Perishable Agricultural Commodities Act, (B) of Lien Vendors, (C) Arising Under Section 503(b)(9) of the Bankruptcy Code and (D) of Critical Vendors and Service Providers, (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto and (III) Granting Certain Related Relief

7. Debtors' Motion for an Order, Pursuant to Sections 105(a), 363(c), 503(b)(1), 1107(a), and 1108 of the Bankruptcy Code, Authorizing (I) the Debtors to Honor Prepetition Obligations Related to Customer Programs and Otherwise Continue Customer Programs In the Ordinary Course of Business and (II) Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto

8. Debtors' Motion for an Order, Pursuant to Sections 105(a), 345, 363, 1107(a) and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015, and Local Rule 2015-2, (I) Authorizing and Approving Continued Use of Cash Management System, (II) Authorizing Use of Prepetition Bank Accounts and Business Forms, (III) Authorizing Payments of Prepetition Costs and Fees Associated With Customer Credit and Debit Card Transactions, (IV) Waiving the Requirements of Section 345(b) on an Interim Basis, (V) Granting Administrative Expense Status to Post-Petition Intercompany Claims, and (VI) Granting Certain Related Relief

9. Debtors' 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; (II) Reimbursement of Prepetition Employee Business Expenses; (III) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (IV) Payment of Workers' Compensation Obligations; (V) Payments for Which Prepetition Payroll Deductions Were Made; (VI) Payment of All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (VII) Payment to Third Parties of All Amounts Incident to the Foregoing Payments and Contributions and (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto

10. Debtors' Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 362 and 541 of the Bankruptcy Code, Establishing Notification Procedures for Transfers of or Claims of Worthless Stock Deductions with Respect to Common Stock

11. Debtors' Motion for Interim and Final Orders (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

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:	Chapter 11
REVEL AC, INC., et al.,	Case No. 14-22654 (GMB)
Debtors.[1]	Jointly Administered

DISCLOSURE STATEMENT RELATING TO THE JOINT CHAPTER 11 PLAN FOR REVEL AC, INC. AND ITS AFFILIATED DEBTORS

THIS IS NOT A SOLICITATION OF VOTES ON THE PLAN. VOTES MAY NOT BE SOLICITED UNTIL THE BANKRUPTCY COURT HAS APPROVED A DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT.

Dated: June 19, 2014

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Proposed Co-Counsel to the Debtors and Debtors in Possession

[1] The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Revel AC, Inc. (3856), Revel AC, LLC (4456), Revel Atlantic City, LLC (9513), Revel Entertainment Group, LLC (2321), NB Acquisition, LLC (9387) and SI LLC (3856). The location of the Debtors' corporate headquarters is 500 Boardwalk, Atlantic City, New Jersey 08401.

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I.

INTRODUCTION

All capitalized terms used in this Disclosure Statement and not otherwise defined herein shall have the meanings ascribed thereto in the Plan (see Section 1.1 (Definitions) of the Plan). For ease of reference, all defined terms used in the Disclosure Statement that are not defined in the Plan are listed on Schedule 1 to this Disclosure Statement with reference to the page numbers where the terms are defined. Unless otherwise stated, all references herein to "Schedules" and "Exhibits" are references to schedules and exhibits to this Disclosure Statement, respectively.

BY ORDER DATED _______ ___, 2014 (THE "DISCLOSURE STATEMENT ORDER"), THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY (THE "BANKRUPTCY COURT") APPROVED THE DISCLOSURE STATEMENT (THE "DISCLOSURE STATEMENT") RELATING TO THE JOINT CHAPTER 11 PLAN FOR REVEL AC, INC. AND ITS AFFILAITED DEBTORS (THE "PLAN").

THIS DISCLOSURE STATEMENT INCLUDES AND DESCRIBES THE PLAN, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A", FILED BY REVEL AC, INC. AND ITS AFFILIATED DEBTORS (THE "COMPANY" OR THE "DEBTORS"). OTHER THAN CLASS 1 – PRIORITY CLAIMS, CLASS 2 – NON-LENDER SECURED CLAIMS AND CLASS 7 – OTHER EQUITY INTERESTS, EACH OF WHICH ARE UNIMPAIRED UNDER THE PLAN AND ARE THEREFORE DEEMED TO HAVE ACCEPTED THE PLAN, AND CLASS 6 – REVEL EQUITY INTERESTS, WHICH IS NOT ENTITLED TO A DISTRIBUTION UNDER THE PLAN AND IS THEREFORE DEEMED TO HAVE REJECTED THE PLAN, ALL CLASSES ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN. ACCORDINGLY, THE DEBTORS ARE SOLICITING ACCEPTANCES OF THE PLAN FROM THE HOLDERS OF ALL CLAIMS AND EQUITY INTERESTS, OTHER THAN THOSE IN CLASS 1 – PRIORITY CLAIMS, CLASS 2 – NON-LENDER SECURED CLAIMS, CLASS 6 – REVEL EQUITY INTERESTS AND CLASS 7 – OTHER EQUITY INTERESTS.

THE DEBTORS BELIEVE THAT THE PLAN IS IN THE BEST INTEREST OF AND PROVIDES THE HIGHEST AND MOST EXPEDITIOUS RECOVERIES TO HOLDERS OF CLAIMS AND EQUITY INTERESTS. ALL HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN ARE URGED TO VOTE IN FAVOR OF THE PLAN. TO BE COUNTED, YOUR BALLOT MUST BE DULY COMPLETED, EXECUTED AND RECEIVED BY **4:00 P.M., PREVAILING EASTERN TIME, ON ________ ____, 2014 (THE "VOTING DEADLINE")**. FOR THE AVOIDANCE OF DOUBT, THE DEBTORS RESERVE THE RIGHT TO OBJECT TO CLAIMS AFTER THE VOTING DEADLINE. MOREOVER, FOR THE AVOIDANCE OF DOUBT, IT IS POSSIBLE THAT HOLDERS OF CLAIMS, INCLUDING UNSECURED CLAIMS, THAT DO NOT APPEAR ON THE DEBTORS' SCHEDULES AND ARE NOT ALLOWED CLAIMS, WILL NOT RECEIVE A DISTRIBUTION ON ACCOUNT OF SUCH CLAIMS UNTIL THE EXPIRATION OF THE TIME PERIOD WITHIN WHICH CLAIM OBJECTIONS MUST BE FILED AS

REFERENCED IN "THE CHAPTER 11 PLAN – PROCEDURES FOR RESOLVING AND TREATING CONTESTED CLAIMS."

FOR YOUR ESTIMATED PERCENTAGE RECOVERY UNDER THE PLAN, PLEASE SEE THE CHART SET OUT IN "OVERVIEW OF THE PLAN – SUMMARY OF DISTRIBUTIONS UNDER THE PLAN."

II.

NOTICE TO HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN

The purpose of this Disclosure Statement is to enable you, as a creditor whose Claim is impaired under the Plan, to make an informed decision in exercising your right to accept or reject the Plan. See "Confirmation and Consummation Procedures."

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PLAN. PLEASE READ THIS DOCUMENT WITH CARE.

PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THE EXHIBITS ANNEXED TO THE PLAN AND THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF. DELIVERY OF THIS DISCLOSURE STATEMENT AFTER THE DATE HEREOF DOES NOT IMPLY THAT THERE HAS BEEN NO CHANGE IN INFORMATION SET FORTH HEREIN SINCE THAT DATE. THE DEBTORS HAVE NO DUTY TO, AND EXPRESSLY DISCLAIM ANY OBLIGATION TO, UPDATE OR ALTER ANY FORWARD-LOOKING STATEMENTS WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS OR OTHERWISE, UNLESS OTHERWISE ORDERED TO DO SO BY THE BANKRUPTCY COURT. IN THE EVENT OF ANY CONFLICT BETWEEN THE DESCRIPTIONS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE TERMS OF THE PLAN, THE TERMS OF THE PLAN SHALL GOVERN.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAW OR OTHER NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING CLAIMS OF THE DEBTORS SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

CERTAIN STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING ANY PROJECTED FINANCIAL INFORMATION, VALUATION, ILLUSTRATIVE CREDITOR RECOVERIES AND OTHER FORWARD-LOOKING STATEMENTS, ARE BASED, AT LEAST IN PART, ON ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. MOREOVER, THE DEBTORS RESERVE ALL OF THEIR RESPECTIVE RIGHTS TO ASSERT THAT THE VALUATION AND ALLOCATION OF VALUE MAY BE DIFFERENT.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THE DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THE DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, THE DEBTORS AND DEBTORS-IN-POSSESSION IN THESE CHAPTER 11 CASES.

On _______ __, 2014, after notice and a hearing, the Bankruptcy Court entered the Disclosure Statement Order pursuant to section 1125 of the Bankruptcy Code, finding that the Disclosure Statement contains information of a kind, and in sufficient detail, adequate to enable a hypothetical, reasonable investor typical of holders of the solicited classes of Claims against the Debtors to make an informed judgment with respect to the acceptance or rejection of the Plan. **APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT OF THE FAIRNESS OR MERITS OF THE PLAN OR OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.**

Each holder of a Claim entitled to vote to accept or reject the Plan should read this Disclosure Statement and the Plan in their entirety before voting. No solicitation of votes to accept or reject the Plan may be made except pursuant to this Disclosure Statement and section 1125 of the Bankruptcy Code. Except for the Debtors and certain of the Professional Persons the Debtors have retained, no person has been authorized to use or promulgate any information concerning the Debtors, their businesses, or the Plan other than the information contained in this Disclosure Statement and if given or made, such information may not be relied upon as having been authorized by the Debtors. You should not rely on any information relating to the Debtors, their businesses, or the Plan other than that contained in this Disclosure Statement and the exhibits hereto.

After carefully reviewing this Disclosure Statement, including the attached exhibits, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed ballot (the "Ballot") and return the same to the address set forth on the Ballot, in the enclosed, postage prepaid, return envelope so that it will be actually received by AlixPartners, LLP (the "Solicitation Agent" or "Claims Agent," as applicable) no later than the

Voting Deadline. All votes to accept or reject the Plan must be cast by using the appropriate ballot. Votes which are cast in any other manner will not be counted. **All ballots must be actually received by the Solicitation Agent no later than _______ __, 2014 at __:__ _.m., prevailing Eastern Time. For detailed voting instructions and the name, address and phone number of the person you may contact if you have questions regarding the voting procedures, see the Disclosure Statement Order attached hereto as Exhibit "B".**

DO NOT RETURN ANY OTHER DOCUMENTS WITH YOUR BALLOT.

You may be bound by the Plan if it is accepted by the requisite holders of Claims even if you do not vote to accept the Plan, or if you are the holder of an unimpaired Claim.

Pursuant to section 1128 of the Bankruptcy Code, the Bankruptcy Court has scheduled a hearing to consider confirmation of the Plan (the "Confirmation Hearing") for ___________ _____, 2014 at __: _.m., prevailing Eastern Time, before the Honorable ________, United States Bankruptcy Judge of the United States Bankruptcy Court for the District of New Jersey. The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be filed and served on or before ___________ _____, 2014 at __: _.m., in the manner described in the Disclosure Statement Order attached hereto as Exhibit "B".

THE DEBTORS SUPPORT CONFIRMATION OF THE PLAN AND URGE ALL HOLDERS OF IMPAIRED CLAIMS TO ACCEPT THE PLAN.

III.

EXPLANATION OF CHAPTER 11

A. Overview of Chapter 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code pursuant to which a debtor may reorganize its business for the benefit of its creditors, equity holders and other parties in interest. The Debtors commenced these chapter 11 cases, captioned In re Revel AC, Inc., Case No. 14-22654 (GMB) (the "Chapter 11 Cases"), with the filing of voluntary petitions (the "Petitions") for relief under chapter 11 of the Bankruptcy Code on June 19, 2014 (the "Petition Date").

The commencement of a chapter 11 case creates an estate comprising all the legal and equitable interests of a debtor in property as of the date the petition is filed. Sections 1101, 1107 and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and remain in possession of its property as a "debtor in possession" unless the bankruptcy court orders the appointment of a trustee. In the Chapter 11 Cases, the Debtors have remained in possession of their property and have continued to operate their business as debtors in possession. See "The Chapter 11 Case – Continued Operations."

The filing of a chapter 11 petition triggers the automatic stay provisions of the Bankruptcy Code. Section 362 of the Bankruptcy Code provides, among other things, for an automatic stay of all attempts by creditors or other third parties to collect prepetition claims from the debtor or otherwise interfere with its property or business. Exempted from the automatic stay are governmental authorities seeking to exercise regulatory or policing powers. Except as otherwise ordered by the bankruptcy court, the automatic stay remains in full force and effect until the effective date of a confirmed chapter 11 plan.

The formulation of a chapter 11 plan is the principal purpose of a chapter 11 case. The plan sets forth the means for satisfying claims against and interests in a debtor's estate. Unless a trustee is appointed, only a debtor may file a plan during the first 120 days of a chapter 11 case (the "Filing Period"), and the debtor will have 180 days to solicit acceptance of such plan (the "Solicitation Period" and, collectively with the Filing Period, the "Exclusive Periods"). However, section 1121(d) of the Bankruptcy Code permits the bankruptcy court to extend or reduce the Exclusive Periods upon a showing of "cause." The Filing Period and Solicitation Period may not be extended beyond 18 months and 20 months, respectively, from a debtor's petition date. In these Chapter 11 Cases, the Debtors filed the Plan within the applicable Filing Period and, accordingly, no other creditor or party in interest may file a plan during the Exclusive Periods.

B. Chapter 11 Plan

A chapter 11 plan may provide anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation of a debtor's assets. In either event, upon confirmation of the plan, the plan becomes binding on a debtor and all of its creditors and equity holders, and the prior obligations owed by the debtor to such parties are compromised and exchanged for the obligations specified in the plan. For a description of key components of the Plan, see "Overview of the Plan," below.

After a chapter 11 plan has been filed, the holders of impaired claims against and equity interests in a debtor are permitted to vote to accept or reject the plan. Before soliciting acceptances of the proposed plan, section 1125 of the Bankruptcy Code requires the debtor to prepare and file a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. **This Disclosure Statement is presented to holders of impaired claims against the Debtors to satisfy the requirements of section 1125 of the Bankruptcy Code in connection with the Debtors' solicitation of votes on the Plan.**

C. Confirmation of a Chapter 11 Plan

If all classes of claims and equity interests accept a chapter 11 plan, the bankruptcy court may confirm the plan if the bankruptcy court independently determines that the requirements of section 1129(a) of the Bankruptcy Code have been satisfied. See "Confirmation and Consummation Procedures – Confirmation of the Plan." **The Debtors believe that the Plan satisfies all the applicable requirements of section 1129(a) of the Bankruptcy Code.**

Chapter 11 of the Bankruptcy Code does not require that each holder of a claim or interest in a particular class vote in favor of a plan for the bankruptcy court to determine that the class has accepted the plan. See "Confirmation and Consummation Procedures."

In addition, classes of claims or equity interests that are not "impaired" under a chapter 11 plan are conclusively presumed to have accepted the plan and thus are not entitled to vote. Furthermore, classes that are to receive no distribution under the plan are conclusively deemed to have rejected the plan. See "Confirmation and Consummation Procedures." Accordingly, acceptances of a plan will generally be solicited only from those persons who hold claims or equity interests in an impaired class. Class 1 – Priority Claims, Class 2 – Non-Lender Secured Claims and Class 7 – Other Equity Interests are unimpaired under the Plan and are not entitled to vote on the Plan. Class 6 – Revel Equity Interests will not receive a distribution under the Plan and is deemed to reject the Plan. Class 3 – First Lien Lender Claims, Class 4 – Second Lien Lender Claims and Class 5 – Unsecured Claims are entitled to vote on the Plan.

In general, a bankruptcy court also may confirm a chapter 11 plan even though fewer than all the classes of impaired claims against and equity interests in a debtor accept such plan. For a chapter 11 plan to be confirmed, despite its rejection by a class of impaired claims or equity interests, the plan must be accepted by at least one class of impaired claims (determined without counting the vote of insiders) and the proponent of the plan must show, among other things, that the plan does not "discriminate unfairly" and that the plan is "fair and equitable" with respect to each impaired class of claims or equity interests that has not accepted the plan. See "Confirmation and Consummation Procedures – Cramdown." **The Plan has been structured so that it will satisfy the foregoing requirements as to any rejecting class of Claims and can therefore be confirmed, if necessary, over the objection of any (but not all) classes of Claims.**

IV.

OVERVIEW OF THE PLAN

The Plan provides for the treatment of Claims against and Equity Interests in all of the Debtors in the Chapter 11 Cases.

A. Summary of the Terms of the Plan

The Plan implements and is built around the following key elements:

- On the Effective Date and to the extent not already consummated pursuant to section 363 of the Bankruptcy Code, the transactions required to be consummated under the Asset Purchase Agreement and any documents entered into in connection therewith shall be incorporated into, and shall be deemed part of, the Plan and shall be entitled to all of the rights, benefits and protections of the Bankruptcy Code with respect thereto, including, without limitation, those set forth in Section 15.9 of the Plan, and the proceeds of the Sale of substantially all of the Debtors' Assets will be used to fund distributions under the Plan.
- On the Effective Date, the authority, power and incumbency of the Debtors shall terminate, and vest in the Plan Trustee, and all Assets of the Debtors not sold to the Buyer, including, without limitation, the Sale Consideration and the

Avoidance Actions and Causes of Action of the Debtors, shall become assets of the Plan Trust.

- The Plan Trustee shall, among other things, (i) be authorized to take all steps necessary to wind down the affairs of the Debtors, (ii) have the power and authority to hold, manage, sell and distribute the assets of the Plan Trust to the holders of Allowed Claims, (iii) hold the assets of the Plan Trust for the benefit of the holders of Allowed Claims, (iv) have the power and authority to hold, manage, sell and distribute Cash or non-Cash assets of the Plan Trust obtained through the exercise of its power and authority, (v) have the power and authority to prosecute and resolve, in the name of the Debtors and/or the name of the Plan Trustee, the Estate's Avoidance Actions and Causes of Action, (vi) administer the Non-Lender Secured Reserve and release amounts therefrom to the holders of Claims as Plan Distributions as appropriate when Contested Non-Lender Secured Claims become Allowed, Disallowed or are otherwise resoled by settlement, (vii) have the power and authority to perform such other functions as are provided in the Plan and (viii) have the power and authority to administer the closure of the Chapter 11 Cases.
- On the Effective Date, the Oversight Committee shall be formed, consisting of three members selected by the Debtors (after consultation with the First Lien Lenders, the Steering Committee and the Committee), and shall oversee the implementation and administration of the Plan Trust and the Plan.
- Allowed Priority Claims and Allowed Non-Lender Secured Claims are unimpaired under the Plan, and holders of such claims shall be paid in full.
- Allowed First Lien Lender Claims are impaired under the Plan, and, subject to and in accordance with the First Lien Intercreditor Rights, holders of such claims shall receive their Pro Rata Share of the Available Proceeds which constitute proceeds of the First Lien Collateral until the Allowed First Lien Lender Claims are paid in full and in Cash.
- Allowed Second Lien Lender Claims are impaired under the Plan, and, subject to the prior payment in full and in Cash of all Allowed First Lien Lender Claims and in accordance with the Second Lien Intercreditor Rights, holders of such claims shall receive their Pro Rata Share of the Available Proceeds which constitute proceeds of the Second Lien Collateral until the Allowed Second Lien Lender Claims are paid in full and in Cash.
- Allowed Unsecured Claims are impaired under the Plan, and, subject to the prior payment in full and in Cash of all Allowed Non-Lender Secured Claims and Allowed Lender Claims, holders of such claims shall receive their Pro Rata Share of the Available Proceeds.
- Allowed Equity Interests in Revel are impaired under the Plan, and holders of such Equity Interests shall neither receive nor retain any property under the Plan on account of such Equity Interests.

- Allowed Equity Interests in any Debtor other than Revel are unimpaired under the Plan, and all of the legal, equitable and contractual rights to which the holders of such Equity Interests are entitled in respect of such Equity Interests shall be fully reinstated and retained on and after the Effective Date.

B. Summary of Distributions Under the Plan

The following is a summary of the distributions under the Plan. It is qualified in its entirety by reference to the full text of the Plan, which is attached to this Disclosure Statement as Exhibit "A". In addition, for a more detailed description of the terms and provisions of the Plan, see "The Chapter 11 Plan" section of this Disclosure Statement.

The claim amounts set forth below are based on information contained in the Debtors' Schedules and filed proofs of claim, and reflect what the Debtors believe to be reasonable estimates of the likely resolution of outstanding disputed Claims. The amounts utilized may differ from the outstanding filed claims amounts.

The following chart summarizes the distribution to unclassified and classified Claims and Equity Interests under the Plan:

Administrative and Tax Claims

Claims[1]	Treatment
DIP Claims Estimated Allowed Claims: $___	The DIP Claims shall be Allowed Administrative Claims on the Effective Date and shall be paid in full in Cash on the Effective Date. On the Effective Date, in accordance with the terms of the DIP Documents, any outstanding letters of credit under the DIP Documents shall terminate or be collateralized. **Estimated Recovery: 100% of Allowed Claim**
Administrative Claims Estimated Allowed Claims: $___	On the Plan Distribution Date, each holder of an Allowed Administrative Claim, shall receive (i) the amount of such holder's Allowed Administrative Claim in one Cash payment, or (ii) such other treatment as may be agreed upon in writing by the Plan Trustee and such holder; provided, that such treatment shall not provide a return to such holder having a present value as of the Effective Date in excess of such holder's Allowed Administrative Claim; provided, further, that an Administrative Claim representing a liability incurred in the ordinary course of business of the Debtors may be paid at the Debtors' election in the ordinary course of business at any time prior to the occurrence of the

[1] DIP Claims, Administrative Claims and Tax Claims are treated in accordance with section 1129(a)(9) of the Bankruptcy Code. Pursuant to section 1123(a)(1) of the Bankruptcy Code, such Claims are not designated as classes of Claims for the purposes of the Plan.

	Effective Date. **Estimated Recovery: 100% of Allowed Claim**
Tax Claims Estimated Allowed Claims: $___	At the election of the Plan Trustee, each holder of an Allowed Tax Claim will receive in full satisfaction of such Allowed Tax Claim (a) payments in Cash, in regular installments over a period ending not later that five (5) years after the Petition Date, of a total value, as of the Effective Date, equal to the Allowed amount of such Claim; (b) a lesser amount in one Cash payment as may be agreed upon in writing by such holder; or (c) such other treatment as may be agreed upon in writing by such holder; provided, that such agreed upon treatment may not provide such holder with a return having a present value as of the Effective Date that is greater than the amount of such holder's Allowed Tax Claim or that is less favorable than the treatment provided to the most favored nonpriority Unsecured Claims under the Plan. **Estimated Recovery: 100% of Allowed Claim**

Claims and Equity Interests

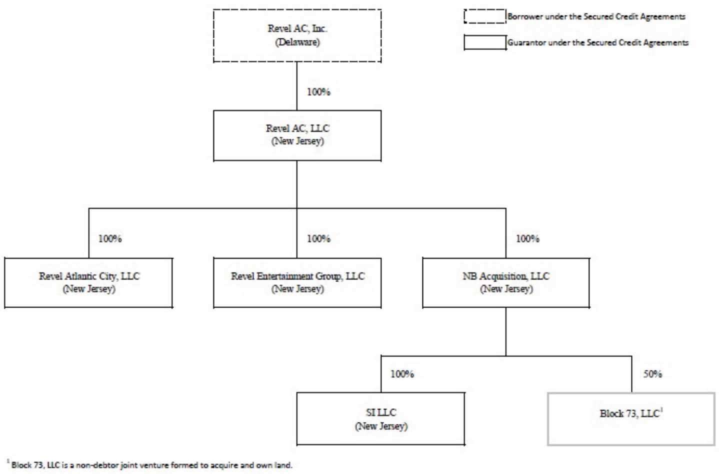
Classes	Treatment
Class 1 – Priority Claims Estimated Allowed Claims: $___ Unimpaired	Each holder of an Allowed Priority Claim against the Debtors shall be unimpaired under the Plan and, pursuant to section 1124 of the Bankruptcy Code, all legal, equitable and contractual rights of each holder of an Allowed Priority Claim in respect of such Claim shall be fully reinstated and retained, except as provided in sections 1124(2)(A)-(D) of the Bankruptcy Code, and such holder of an Allowed Priority Claim shall be paid on the Plan Distribution Date in full and in Cash. **Estimated Recovery: 100% of Allowed Claim**
Class 2 – Non-Lender Secured Claims Estimated Allowed Claims: $___ Unimpaired	Each holder of an Allowed Non-Lender Secured Claim against the Debtors shall be unimpaired under the Plan and, pursuant to section 1124 of the Bankruptcy Code, all legal, equitable and contractual rights of each holder of an Allowed Non-Lender Secured Claim in respect of such Claim shall be fully reinstated and retained, except as provided in sections 1124(2)(A)-(D) of the Bankruptcy Code, and such holder of an Allowed Non-Lender Secured Claim shall be paid on the Plan Distribution Date in full and in Cash. **Estimated Recovery: 100% of Allowed Claim**
Class 3 – First Lien Lender Claims Estimated Allowed Claims: $___	Subject to and in accordance with the First Lien Intercreditor Rights, each holder of an Allowed

Impaired	First Lien Lender Claim against the Debtors shall receive on the Plan Distribution Date, in full satisfaction of its Allowed First Lien Lender Claim, its Pro Rata Share of the Available Proceeds which constitute proceeds of the First Lien Collateral until such Allowed First Lien Lender Claim is paid in full and in Cash. **Estimated Recovery: ___% of Allowed Claim**
Class 4 – Second Lien Lender Claims Estimated Allowed Claims: $___ Impaired	Subject to the prior payment in full and in Cash of all Allowed First Lien Lender Claims and in accordance with the Second Lien Intercreditor Rights, each holder of an Allowed Second Lien Lender Claim against the Debtors shall receive on the Plan Distribution Date, in full satisfaction of its Allowed Second Lien Lender Claim, its Pro Rata Share of the Available Proceeds which constitute proceeds of the Second Lien Collateral until such Allowed Second Lien Lender Claim is paid in full and in Cash. **Estimated Recovery: ___% of Allowed Claim**
Class 5 – Unsecured Claims Estimated Allowed Claims: $___ Impaired	Subject to the prior payment in full and in Cash of all Allowed Non-Lender Secured Claims and Allowed Lender Claims, each holder of an Allowed Unsecured Claim against the Debtors shall receive on the Plan Distribution Date, in full satisfaction of its Allowed Unsecured Claim, its Pro Rata Share of the Available Proceeds. **Estimated Recovery: ___% of Allowed Claim**
Class 6 – Revel Equity Interests Estimated Allowed Equity Interests: N/A Impaired	On the Effective Date, all Equity Interests in Revel shall be cancelled, and each holder of an Equity Interest in Revel shall neither receive nor retain any property under the Plan on account such interest. **Estimated Recovery: None**
Class 7 – Other Equity Interests Estimated Allowed Equity Interests: N/A Unimpaired	On the Effective Date, each holder of an Allowed Equity Interest in any Debtor other than Revel AC, Inc. shall be unimpaired under the Plan and, pursuant to section 1124 of the Bankruptcy Code, all of the legal, equitable and contractual rights to which such Equity Interest entitles such holder in respect of such Equity Interest shall be fully reinstated and retained on and after the Effective Date. **Estimated Recovery: Not applicable.**

V.

GENERAL INFORMATION

The chart below depicts the corporate structure of Revel AC, Inc. and its subsidiaries as of the date of this Disclosure Statement. The description in "General Information" of the Debtors and their business does not give effect to any changes in the corporate structure of the Debtors in connection with or under the Plan.



A. The Development of the Revel Casino Resort

The Debtors own and operate a casino and resort facility (the "Revel Casino Resort"), which was conceived and constructed to be a unique and luxurious Atlantic City entertainment offering. The Revel Casino Resort was intended to, and does, offer a distinct array of unique, premium amenities intended to attract gaming, group business and resort customers.

With Morgan Stanley as the initial financier, construction of the Revel Casino Resort began in 2007. After several years of delays and in the wake of the financial crisis, however, Morgan Stanley abandoned the project and wrote down 98% the approximately $1.25 billion that had been invested in the property. On February 17, 2011, Morgan Stanley sold Revel Entertainment Group, LLC ("REG"), NB Acquisition, LLC ("NB Acquisition") and Revel Atlantic City, LLC ("Revel Atlantic City") to an investor group headed by Kevin DeSanctis, then chief executive officer of Revel and the project's developer, for approximately $30 million (the "Acquisition"). The lead debtor in these Chapter 11 Cases, Revel, along with Revel AC, LLC

were created to complete the Acquisition. Thereafter, the Company and its new owners raised approximately $1.15 billion in initial financing from a group of lenders led by JPMorgan Chase Bank, N.A. ("JPMorgan") to finish development of the project.

From the Acquisition through April 2, 2012, the Company focused on completing construction of the Revel Casino Resort, which is a state of the art gaming and resort facility unlike any other in Atlantic City. The facility spans 6.2 million square feet and is located on approximately 20 acres, with 820 feet of boardwalk frontage. The Revel Casino Resort features the tallest building in Atlantic City, a sleek 47-story, 710-foot high tower. Revel's 130,000 square foot casino features more than 110 table games and approximately 2,300 slot machines.

The Revel Casino Resort's amenities currently include 1,399 rooms, outdoor facilities, retail boutiques and a wide variety of entertainment amenities, including 11 dining venues (among them three signature restaurants), two nightclubs, a dayclub, five indoor/outdoor pools, a 5,500 seat theater, 160,000 square feet of customizable conference space and a spa. The resort's outdoor amenities include a 2-acre landscaped rooftop deck with outdoor pools, cabanas, fire pits and a "pine grove" (known as the Sky Garden) with over 30,000 live trees and plants.

Construction of the Revel Casino Resort provided over 2,000 construction jobs in New Jersey and, even prior to building operations, the Debtors extended job offers to approximately 800 Atlantic City residents. New Jersey's Economic Development Authority recognized the Company's important contribution to the struggling local economy when, on February 11, 2011, it awarded the Company a $261.4 million Economic Redevelopment and Growth Grant (the "ERG Grant").

The Revel Casino Resort opened for business on April 2, 2012, a week after the New Jersey Casino Control Commission granted Revel AC, Inc. a gaming license. The Debtors employ approximately 3,140 employees to operate the Revel Casino Resort. Additionally, the Debtors' retail, food and beverage partners employ hundreds of employees who also work in the Revel Casino Resort.

B. Revel's Challenges and the 2013 Restructuring

The Atlantic City casino business is highly seasonal; the May-September time frame is critical to success. Thus, the Revel Casino Resort opened in April 2012 with high hopes, expecting that the facility's differentiated service offerings would be able to surmount the sluggish macroeconomic conditions plaguing Atlantic City resort and casino market. Unfortunately, its debt burden, when combined with the challenges facing the Atlantic City casino market and certain issues unique to the Revel Casino Resort, impeded success from the beginning.

First, the general contractor hired to manage the construction of the Revel Casino Resort made a series of significant budgeting errors that were not disclosed until right before the April 2012 opening. The Revel Casino Resort, long believed to be coming along on (if not well under) budget, was in fact significantly over budget. As a result, among other things, the Company spent over $100 million in construction costs more than had been expected. Thus, the Company was forced to secure additional funding to complete the project and finance operations that would not have been necessary had the general contractor stayed on budget.[2]

Second, the Company was unable to raise the additional funds needed to construct a dedicated central utility plant (the "CUP") to provide the energy required by the Revel Casino Resort. Accordingly, REG contracted with a third party, ACR Energy Partners, LLC ("ACR"),[3] to build and operate the CUP on certain real property leased from the Company. To build the CUP, ACR contributed its own capital and raised approximately $118.6 million of 11.67% bonds to finance 75% of the construction costs. In turn, REG agreed to purchase hot and chilled water, electric and other power exclusively from ACR for at least 20 years pursuant to that certain Second Amended and Restated Energy Sales Agreement dated April 11, 2011 (the "ESA"). Under this arrangement, the Company is forced not only to pay for the actual utilities services provided by ACR, but also for (i) the operation and maintenance of the CUP, (ii) the cost of servicing ACR's bond debt, and (iii) a guaranteed return of 15% (increasing to 18% at year 6) to ACR for its equity investment. Thus, pursuant to the ESA, the Company is required to pay fixed costs of over $2 million per month over and above its variable monthly energy costs.

Third, while the resort and convention center segments performed reasonably well in the first year of the Revel Casino Resort's operations, the casino segment struggled to attract the traditional Atlantic City patron who does not stay overnight. Among other things, the property lacked a player's club and affordable food and beverage options, which are important to attract that critical segment of the customer base. Additionally, the casino segment experienced start-up issues in the marketing and technology areas.

Finally, the devastation of Hurricane Sandy exacerbated the situation. The Revel Casino Resort was forced to close for six days, from October 28 to November 3, 2012, after Governor Chris Christie declared a state of emergency in Atlantic County and ordered a mandatory evacuation. The lost revenue from the closure, along with the prolonged impact on travel to Atlantic City and the financial hardship experienced by residents in the area, significantly impacted the Company's earnings.

Collectively, these challenges had a severe negative impact on the Company's liquidity, forcing the Company to seek additional financing. Accordingly, first in August, 2012 and later in December of 2012, the Company incurred additional secured financing of approximately $250 million, hoping such amount would bridge operations over to the 2013 summer season and profitability. Unfortunately, by early 2013 the Company again lacked sufficient liquidity to continue operations or service its outstanding debt obligations.

Given the extent of the Company's then outstanding debt obligations, the ongoing struggles of the Revel Casino Resort and the fact that the liquidity provided by the 2012 loans was rapidly decreasing, in early 2013 the Company's lenders were not amenable to further advances of credit in the absence of a comprehensive balance sheet restructuring. The Company thus began restructuring discussions with their stakeholders in early February 2013, which

[2] Revel is currently engaged in litigation with the general contractor that is responsible for these problems.

[3] ACR is a wholly owned subsidiary of Energenic, LLC, which is a joint venture between South Jersey Industries and DCO Energy LLC.

discussions led to the execution of a restructuring support agreement and the successful solicitation of votes approving a prepackaged plan of reorganization (the "2013 Plan").

The Company filed cases (the "2013 Cases") under chapter 11 of the Bankruptcy Code thereby commencing chapter 11 cases (the "2013 Cases") on March 25, 2013.[4] Less than two months later, on May 15, 2013, the 2013 Plan was confirmed and became effective on May 21, 2013.[5]

Under the 2013 Plan, (i) the Company reduced its funded debt by more than 82%, from approximately $1.5 billion to approximately $270 million on the effective date of the 2013 Plan, (ii) the Company reduced annual interest expense by over 68%, from approximately $100 million to approximately $30 million, (iii) holders of approximately $923 million of then outstanding first lien debt exchanged such debt for 100% of the equity in the reorganized company, (iv) certain holders of then outstanding first lien debt provided exit facilities consisting of a $75 million revolver, pursuant to the Original First Lien Credit Agreement (as defined below), and a $260 million term loan, pursuant to the Second Lien Credit Agreement (as defined below), (v) all unsecured claims and certain secured claims were unimpaired and (vi) the Debtors rights to the ERG Grant were preserved, subject to certain contingent payment rights granted under the 2013 Plan.

C. Capital and Debt Structure Following 2013 Cases

1. First Lien Secured Financing

On May 21, 2013, the Debtors entered into that certain first lien credit agreement (the "Original First Lien Credit Agreement") by and among Revel AC, Inc., as borrower, the remaining Debtors, as guarantors, certain lenders party thereto, as lenders, and JPMorgan Chase Bank, N.A., as administrative and collateral agent (in such capacity, the "First Lien Agent"). The Original First Lien Credit Agreement provided for a $75 million revolving commitment with an interest rate of LIBOR plus 6.00% payable in cash and a maturity date of May 21, 2017. The obligations under the Original First Lien Credit Agreement were secured by a first priority security interest in substantially all of the Debtors' assets, other than certain excluded property and subject to certain permitted liens.

The Original First Lien Credit Agreement was amended on November 8, 2013, when the Debtors entered into that certain amended and restated first lien credit agreement (as amended from time to time, the "First Lien Credit Agreement") by and between Revel AC, Inc., as borrower, the remaining Debtors, as guarantors, certain lenders party thereto, as lenders (in such capacity, the "First Lien Lenders"), and the First Lien Agent. Pursuant to the First Lien Credit Agreement, the amount of the revolving commitment was increased from $75 million to $100 million, and converted into two tranches consisting of (i) tranche A-1, having a principal amount of $25 million and an interest rate of LIBOR plus 6.00% payable in cash, and (ii) tranche A-2, having a principal amount of $75 million and an interest rate of LIBOR plus 6.50% payable in cash. The First Lien Credit Agreement also included a new tranche B term loan facility having a

[4] SI LLC was not a debtor in the 2013 Cases.

[5] The 2013 Cases were closed on March 31, 2014.

principal amount of $50 million with an interest rate of LIBOR plus 9.00% payable in kind in the form of an increase of the outstanding principal amount. The obligations under the First Lien Credit Agreement mature on June 30, 2015 and are secured by a first priority security interest in substantially all of the Debtors' assets, other than certain excluded property and subject to certain permitted liens.

As of the Petition Date, the amounts outstanding under the First Lien Credit Agreement total approximately $137 million in the aggregate.

2. Second Lien Secured Financing

On May 21, 2013 the Debtors entered into that certain second lien credit agreement (as amended from time to time, the "Second Lien Credit Agreement") by and among Revel AC, Inc., as borrower, the remaining Debtors, as guarantors, certain lenders party thereto, as lenders (in such capacity, the "Second Lien Lenders" and, together with the First Lien Lenders, the "Secured Lenders"), and Wilmington Trust, N.A., as administrative and collateral agent (the "Second Lien Agent"). The Second Lien Credit Agreement provides for a senior secured second lien term loan facility in an aggregate principal amount of $275 million with an annual interest rate of either (i) 12.5%, if paid in cash, or (ii) 14.5%, if paid-in-kind. The obligations under the Second Lien Credit Agreement mature on May 21, 2018 and are secured by a second-priority security interest in substantially all of the Debtors' assets, other than certain excluded property and subject to certain permitted liens.

As of the Petition Date, the amounts outstanding under the Second Lien Credit Agreement total approximately $310 million in the aggregate.

3. Equity

Revel AC, Inc. is a privately held Delaware company with one class of common stock and approximately 8 million issued and outstanding shares. Each of the remaining Debtors is a Delaware or New Jersey limited liability company wholly owned, directly or indirectly, by Revel. NB Acquisition also owns 50% of the equity in Block 73, LLC, a New Jersey limited liability company.

D. Events Precipitating the Commencement of these Chapter 11 Cases

Despite the significant debt reduction realized after the 2013 Cases, the Debtors still projected operating losses through 2013. Accordingly, the Debtors immediately began a series of aggressive changes designed to stem their continued losses and progress towards profitability. The Debtors believed that profitability depended upon reduced operational costs and a shifting of their primary focus from sophisticated, high-end, leisure related services towards the Debtors' gaming operations.

First, in addition to transitioning to a new management team and board of directors following the 2013 Cases, the Debtors made significant changes to their employee composition. They reduced employee headcount by approximately 18% and transitioned towards a workforce with more flexible scheduling opportunities. Such changes provided the Debtors significant cost

savings, and helped position the Debtors' new management team to tackle the operational challenges facing the Debtors.

Second, to address certain perceived weaknesses in their marketing efforts, the Debtors brought in a marketing consultant to evaluate such efforts. Although the Debtors previously lacked an online marketing presence and had no sales through wholesalers, such as online hotel reservation websites, they have since made substantial improvements in those areas over the past year. As a result the Debtors have almost doubled occupancy rates over the past year.

Third, the Debtors recognized that their nightlife and entertainment booking segment needed improvements, as evidenced by such segment's approximately $14 million in losses during calendar year 2012. In response, the Debtors terminated their engagement with their previous talent buyer and established an in-house talent buying program to handle the Debtors' entertainment operations. This change reduced costs and dramatically improved the Debtors' performance in their nightlife and entertainment segment.

Fourth, the Debtors brought in The Fine Point Group ("Fine Point"), a casino and gaming consultant, to analyze the Debtors' casino operations and suggest ways to accelerate growth. With Fine Point's assistance, the Debtors aggressively marketed the Revel Casino Resort during the summer of 2013, including marketing strategies such as the "You Can't Lose" promotion during July 2013 and the "Gamblers Wanted" taglines. These efforts aided the Debtors in generating increased revenue and market share and substantially improved the Debtors' customer database, an important competitive driver in the casino industry.

Finally, and perhaps most importantly, the Debtors implemented significant modifications to the Revel Casino Resort designed to improve their casino operations. These changes included, among other things, (i) installing filtration systems on the casino floor to service designated smoking areas, (ii) investing in signage for the casino, (iii) adding a new beach front day club unique to the Atlantic City market, (iv) removing an underperforming poker room from the casino, (v) adding an upscale player's lounge to the casino, (vi) increasing the availability and variety of affordable food options and (vii) improving the casino's rewards program. Collectively, these changes have led to steady growth in the Debtors' casino revenue and increase in market share.

The Debtors hoped that these substantial and comprehensive improvements would lead to a successful summer season that would leave the Debtors well on their way towards profitability and long term stability. Unfortunately, despite the reduction in operating losses realized by these changes, the Debtors continued to suffer under the weight of the burdensome ESA obligations and experienced certain severance, litigation and other non-ordinary expenses following the 2013 Cases. As a result, the Debtors were again faced with limited liquidity by late 2013 and the Debtors were forced to seek additional financing from the Secured Lenders.

Following extensive arms' length negotiations, in November 2013 the Debtors and the Secured Lenders agreed to the execution of the First Lien Credit Agreement and certain amendments to the Second Lien Credit Agreement, providing the Debtors with approximately

$75 million of additional liquidity.[6] However, the Secured Lenders imposed a number of restrictive covenants on the Debtors in connection with these amendments which restricted the Debtors' ability to fully access the additional liquidity. Importantly, the First Lien Lenders also required, as a condition to the First Lien Credit Agreement, that the Debtors execute and deliver that certain letter agreement dated as of November 8, 2013 (the "Letter Agreement") by and between Revel and the First Lien Agent, whereby the Debtors were required to immediately begin a strategic process.

Pursuant to the Letter Agreement, the Debtors were required to engage an investment banker of nationally recognized standing by no later than five days following the execution of the First Lien Credit Agreement so that such banker could assist the Debtors in pursuing a sale, merger, equity investment or other similar transaction. Accordingly, the Debtors retained Moelis & Company ("Moelis") as their investment banker, after which Moelis immediately began marketing the company.

For several months and as Moelis's marketing process continued, the Debtors' management, together with Moelis and the Debtors' other advisors, facilitated due diligence with potential buyers and engaged in negotiations with parties that submitted letters of interest. Although the Debtors made substantial progress with certain parties, including engaging in prolonged negotiations over an asset purchase agreement and postpetition financing with one such party, the Debtors were unable to reach a deal with any of these potential buyers prior to the Petition Date.

While the Debtors' prepetition marketing process did not result in a prepetition sale or stalking horse purchaser, the Debtors believe that the expressions of interest received and negotiations conducted during such process are promising indications of the value of the Debtors' assets. The Debtors further believe that renewed marketing efforts pursuant to court-approved bid procedures during these Chapter 11 Cases, followed by a public auction before this Court, will lead to a sale of substantially all of the Debtors' assets that will maximize the value of the Debtors' assets.

E. <u>Management</u>

As of the Petition Date, the Debtors' officers were:

Scott Kreeger, President and Chief Operating Officer of Revel AC, Inc. Mr. Kreeger has been with Revel since October 2013. Before joining Revel AC, Inc., Mr. Kreeger served as Senior Vice President of Corporation Operations CMO/CIO at Fertitta Entertainment, where he was responsible for all technology initiatives and operations. Mr. Kreeger has also held a number of management positions at Station Casinos, including President of Native American Gaming in which position he oversaw the company's tribal gaming initiatives as well as the luxury resort division.

[6] The Debtors' Secured Lenders executed a number of additional amendments to provide the Debtors continued access to the availability under the First Lien Credit Agreement and allow for continued funding of operating losses.

Theresa Glebocki, Senior Vice President and Chief Financial Officer of Revel AC, Inc. Ms. Glebocki joined Revel AC, Inc. in 2007 as Vice President of Finance and led the pre-opening processing, including development of internal control procedures, operations and accounting processes, financial modeling and software and product acquisition. Since July 2013, she has served as Revel AC, Inc.'s Chief Financial Officer. Prior to joining Revel AC, Inc., Ms. Glebocki served as Vice President of Finance of Trump Plaza Associates from 2000 to 2007 after having held various financial positions at Trump Entertainment since 1991.

Loretta Pickus, Senior Vice President and General Counsel of Revel AC, Inc. Ms. Pickus has held her current title since July 2013. She has over twenty-five (25) years of executive experience in the casino entertainment industry and has broad expertise in strategic corporate planning, administration of legal affairs and governmental compliance. Before joining Revel AC, Inc., Ms. Pickus served as Vice President of Trump Entertainment Resorts, where she was Chief Legal Officer of Trump Taj Mahal Casino Resorts.

VI.

<u>SELECTED FINANCIAL INFORMATION</u>

Consolidated, unaudited annual financial information for the Debtors is attached hereto as Exhibit "C".

VII.

<u>THE CHAPTER 11 CASES</u>

A. <u>Filing of the Petitions and Debtor in Possession Status</u>

On June 19, 2014, the Debtors filed the Petitions. Pursuant to sections 1101, 1107 and 1108 of the Bankruptcy Code, the Debtors have continued to operate their businesses and remain in possession of their property as "debtors in possession."

B. <u>First Day Pleadings and Orders</u>

On or about the Petition Date, the Debtors filed the following motions with the Bankruptcy Court: motion establishing procedures for utility companies to request adequate assurance of payment; motion authorizing payment of employee wages; motion authorizing continued use of cash management system, bank accounts and business forms and waiving investment and deposit requirements; motion authorizing payment of prepetition trust fund taxes; motion authorizing payment of insurance premiums in the ordinary course and maintaining insurance program; motion authorizing continued customer programs; motion authorizing payment of certain critical vendors; motion approving debtor-in-possession financing; and a motion approving interim compensation procedures. A hearing was held in the Bankruptcy Court on June 20, 2014 on the above-referenced motions and orders granting such motions were entered by the Bankruptcy Court on or about June [__], 2014.

C. Appointment of Chief Restructuring Officer.

Shaun Martin of Winter Harbor, LLC ("Winter Harbor"), was appointed as the Chief Restructuring Officer of the Debtors, and Winter Harbor was retained by order of the Bankruptcy Court to assist Mr. Martin in providing restructuring services.

D. Employment of Professionals for the Debtors

Pursuant to employment applications filed with the Bankruptcy Court and subsequent orders entered by the Bankruptcy Court, the Debtors have employed the following professionals to assist them with the administration of the Chapter 11 Cases: (i) White & Case LLP as co-counsel; (ii) Fox Rothschild LLP as co-counsel; (iii) Moelis as investment banker; and (iv) AlixPartners, LLP, as Solicitation Agent and Claims Agent. All professionals retained by the Debtors have been, or will be, paid their allowed fees and expenses incurred on behalf of the Debtors pursuant to orders entered by the Bankruptcy Court.

E. Appointment of the Committee.

On [__], the Office of the United States Trustee appointed the Committee consisting of [____]. The Committee employed the law firm of [___] to serve as its general bankruptcy counsel, [____], to serve as its bankruptcy co-counsel and [___] as its financial advisors and consultants.

F. Continued Operations.

Since the Petition Date, the Debtors have continued to operate their business as debtors in possession in the ordinary course.

G. Exclusivity

Pursuant to sections 1121(b) and (c)(3) of the Bankruptcy Code, the Debtors have a certain amount of time within which (a) to file their Plan; and (b) to solicit acceptances of their timely filed Plan before other parties in interest are permitted to file plans. The Debtors filed the Plan and this Disclosure Statement on June 19, 2014. Accordingly, no other party may file a plan unless the Solicitation Period expires or the Bankruptcy Court orders otherwise.

H. Claims Bar Date.

On June 19, 2014, the Debtors filed a motion for entry of an order (i) establishing bar dates for filing proofs of claim for prepetition claims against the Debtors, (ii) establishing ramifications for failure to comply therewith, (iii) approving electronic proof of claim system and form of proof claim and (iv) approving form and manner of bar date notice and publication notice. Specifically, the Debtors have requested that the Bankruptcy Court enter an order establishing the following bar dates: (i) **August 4, 2014 at 5:00 p.m. Eastern Time** as the deadline for each person or entity (other than governmental units, as defined in Section 101(27) of the Bankruptcy Code) to file proofs of claim for prepetition claims against the Debtors; and (ii) **December 16, 2014 at 5:00 p.m. Eastern Time** as the deadline for governmental units to file proofs of claim.

VIII.

POTENTIAL LITIGATION

A. Avoidance Actions.

The Plan provides that the Plan Trust will retain and be authorized to pursue all claims of the Debtors under sections 542, 544, 545, 547, 548, 549, 550, 551, 552 and/or 553 of the Bankruptcy Code after the Effective Date of the Plan for the benefit of the Debtors' Estates, other than those transferred to the Buyer pursuant to the terms of the Asset Purchase Agreement.

B. Other Estate Causes of Action.

The Plan provides that the Plan Trust will retain and be authorized to pursue all other claims and Causes of Action of the Debtors that were not acquired by the Buyer pursuant to the Asset Purchase Agreement.

C. Retention of Litigation Claims.

Under the Plan, the Plan Trustee will be authorized to prosecute all such claims on behalf of the Plan Trust, subsequent to the Effective Date and will determine whether to bring, settle, release, compromise or enforce such claims in accordance with the Plan and the Plan Trust Agreement.

D. Pending Litigation.

As of the Petition Date, the following material actions were pending: (i) Boyd et al. v. Revel Entertainment Group, LLC et al., Case No. No. 13-cv-05965 before the United States Bankruptcy Court for the Southern District of New York; (ii) IDEA Boardwalk, LLC v. Revel AC, Inc. (In re Revel AC, Inc.), Adv. Pro. No. 13-02013 before the United States Bankruptcy Court for the District of New Jersey; (iii) Stone Concrete, Inc. v. Revel Entertainment Group, LLC and Revel Atlantic City, LLC, Case No. ATL–L 5056-10 before the Superior Court of New Jersey; (iv) Helmark Steel, Inc. v. Revel Entertainment Group, LLC et al, Case No. ATL–L-120-13 before the Superior Court of New Jersey; (v) Imperial Woodworking Enterprise, Inc., et al. v. Revel Atlantic City, LLC, et al., Case No. ATL–L-1207-13 before the Superior Court of New Jersey; (vi) Philadelphia D&M, Inc. v. Revel Entertainment Group, LLC, et al., Case No. ATL–L-4902-13 before the Superior Court of New Jersey; (vii) Tishman Construction Company of New Jersey v. Revel Entertainment Group, LLC, Case No. ATL–L-154-14 before the Superior Court of New Jersey; and (viii) Ravel Hotel LLC v. Revel Entertainment Group LLC, Case No. 1:13-CV-02581 before the United States District Court for the District of New Jersey. A complete list of actions pending as of the Petition Date is contained in the Debtors' Schedules.

IX.

THE CHAPTER 11 PLAN

As a result of the Chapter 11 Cases and through the Plan, the Debtors submit that creditors will obtain a greater recovery under the Plan than any recovery that would be available if the Debtors' Assets were liquidated under chapter 7 of the Bankruptcy Code. The Plan is annexed hereto as Exhibit "A" and forms part of this Disclosure Statement. The summary of the Plan set forth below is qualified in its entirety by the more detailed provisions set forth in the Plan.

A. Plan Treatment of Claims and Equity Interests.

Classified Claims against and Equity Interests in the Debtors shall be treated under the Plan as follows:

1. Class 1 – Priority Claims

Each holder of an Allowed Priority Claim against the Debtors shall be unimpaired under the Plan and, pursuant to section 1124 of the Bankruptcy Code, all legal, equitable and contractual rights of each holder of an Allowed Priority Claim in respect of such Claim shall be fully reinstated and retained, except as provided in sections 1124(2)(A)-(D) of the Bankruptcy Code, and such holder of an Allowed Priority Claim shall be paid on the Plan Distribution Date in full and in Cash.

2. Class 2 – Non-Lender Secured Claims

Each holder of an Allowed Non-Lender Secured Claim against the Debtors shall be unimpaired under the Plan and, pursuant to section 1124 of the Bankruptcy Code, all legal, equitable and contractual rights of each holder of an Allowed Non-Lender Secured Claim in respect of such Claim shall be fully reinstated and retained, except as provided in sections 1124(2)(A)-(D) of the Bankruptcy Code, and such holder of an Allowed Non-Lender Secured Claim shall be paid on the Plan Distribution Date in full and in Cash.

3. Class 3 – First Lien Lender Claims

Subject to and in accordance with the First Lien Intercreditor Rights, each holder of an Allowed First Lien Lender Claim against the Debtors shall receive on the Plan Distribution Date, in full satisfaction of its Allowed First Lien Lender Claim, its Pro Rata Share of the Available Proceeds which constitute proceeds of the First Lien Collateral until such Allowed First Lien Lender Claim is paid in full and in Cash.

4. Class 4 – Second Lien Lender Claims

Subject to the prior payment in full and in Cash of all Allowed First Lien Lender Claims and in accordance with the Second Intercreditor Rights, each holder of an Allowed Second Lien Lender Claim against the Debtors shall receive on the Plan Distribution Date, in full satisfaction of its Allowed Second Lien Lender Claim, its Pro Rata Share of the Available Proceeds which

constitute proceeds of the Second Lien Collateral until such Allowed Second Lien Lender Claim is paid in full and in Cash.

5. Class 5 – Unsecured Claims

Subject to the prior payment in full and in Cash of all Allowed Non-Lender Secured Claims and Allowed Lender Claims, each holder of an Allowed Unsecured Claim against the Debtors shall receive on the Plan Distribution Date, in full satisfaction of its Allowed Unsecured Claim, its Pro Rata Share of the Available Proceeds.

6. Class 6 – Revel Equity Interests

On the Effective Date, all Equity Interests in Revel AC, Inc. shall be cancelled, and each holder of an Equity Interest in Revel AC, Inc. shall neither receive nor retain any property under the Plan on account such interest.

7. Class 7 – Other Equity Interests

On the Effective Date, each holder of an Allowed Equity Interest in any Debtor other than Revel AC, Inc. shall be unimpaired under the Plan and, pursuant to section 1124 of the Bankruptcy Code, all of the legal, equitable and contractual rights to which such Equity Interest entitles such holder in respect of such Equity Interest shall be fully reinstated and retained on and after the Effective Date.

B. Consummation of the Sale

On the Effective Date and to the extent not already consummated during the Chapter 11 Cases pursuant to section 363 of the Bankruptcy Code, the transactions required to be consummated under the Asset Purchase Agreement and any documents entered into in connection therewith shall be incorporated into, and shall be deemed part of, the Plan and shall be entitled to all of the rights, benefits and protections of the Bankruptcy Code with respect thereto, including, without limitation, those set forth in Section 15.9 of the Plan. After the Confirmation Date, the Debtors shall be authorized to enter into non-material amendments to the Asset Purchase Agreement or any other documents in furtherance of the transactions contemplated thereby without the need for further notice or Bankruptcy Court approval.

C. Sources of Cash for Plan Distributions.

All Cash necessary to make payments and Plan Distributions shall be obtained from (i) the Debtors' existing Cash balances, (iii) the liquidation of the Debtors' Assets and Causes of Actions and/or (iv) the proceeds of the Sale. The Plan Trustee shall make all Plan Distributions.

D. Plan Trust

1. Execution of the Plan Trust Agreement

The Plan Trust Agreement, in a form reasonably acceptable to the Debtors and the Committee, shall be executed on or before the Effective Date, and all other necessary steps shall be taken to establish the Plan Trust and the beneficial interests therein, which shall be for the benefit of holders of Allowed Claims. Article IX of the Plan sets forth certain of the rights, duties and obligations of the Plan Trustee. In the event of any conflict between the terms of Article IX of the Plan and the terms of the Plan Trust Agreement, the terms of the Plan Trust Agreement shall govern.

2. Purpose of Plan Trust

The Plan Trust shall be established for the sole purpose of liquidating and distributing its assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

3. Vesting of Assets in the Plan Trust; Dissolution of the Debtor.

On the Effective Date, the authority, power and incumbency of the Debtors shall terminate, and vest in the Plan Trustee, and all Assets of the Debtors not sold to the Buyer shall become assets of the Plan Trust.

4. Governance of Plan Trust.

The Plan Trust shall be governed and administered by the Plan Trustee, subject to the supervision of the Oversight Committee, as provided under the Plan and the Plan Trust Agreement. Notwithstanding anything to the contrary herein, the Oversight Committee shall act in furtherance of, and consistent with, the purpose of the Plan Trust and shall act in the best interests of the beneficiaries of the Plan Trust.

5. Role of the Plan Trustee.

In furtherance of and consistent with the purpose of the Plan Trust and the Plan, the Plan Trustee shall (i) be authorized to take all steps necessary to wind down the affairs of the Debtors, (ii) have the power and authority to hold, manage, sell and distribute the assets of the Plan Trust to the holders of Allowed Claims, (iii) hold the assets of the Plan Trust for the benefit of the holders of Allowed Claims, (iv) have the power and authority to hold, manage, sell and distribute Cash or non-Cash assets of the Plan Trust obtained through the exercise of its power and authority, (v) have the power and authority to prosecute and resolve, in the name of the Debtors and/or the name of the Plan Trustee, the Estates' Avoidance Actions and Causes of Action, (vi) administer the Non-Lender Secured Reserve and release amounts therefrom to the holders of Claims as Plan Distributions as appropriate when Contested Non-Lender Secured Claims become Allowed, Disallowed or are otherwise resolved by settlement, (vii) have the power and authority to perform such other functions as are provided in the Plan and (viii) have the power and authority to administer the closure of the Chapter 11 Cases. The Plan Trustee shall be responsible for all decisions and duties with respect to the Plan Trust and its assets. In all circumstances, the Plan Trustee shall act in the best interests of all beneficiaries of the Plan Trust and in furtherance of the purpose of the Plan Trust.

The Plan Trustee may be removed by the Oversight Committee with the approval of the Bankruptcy Court upon application for good cause shown. In the event of the resignation, removal, death or incapacity of the Plan Trustee, the Oversight Committee shall designate another person to become the Plan Trustee and thereupon the successor Plan Trustee, without

any further action, shall become fully vested with all of the rights, powers, duties and obligations of the predecessor Plan Trustee.

6. Cash

The Plan Trustee may invest Cash (including any earnings thereon or proceeds therefrom) as permitted by section 345 of the Bankruptcy Code; provided, however, that such investments are investments permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

7. Compensation of the Plan Trustee

The Plan Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy proceedings.

8. Retention of Professionals by the Plan Trustee

The Plan Trustee may retain and reasonably compensate counsel and other professionals to assist in its duties as Plan Trustee on such terms as the Plan Trustee deems appropriate without Bankruptcy Court approval. The Plan Trustee may retain any professional who represented parties in interest in the Chapter 11 Cases.

9. Noncertificated Plan Trust Interests.

The beneficial interests in the Plan Trust shall not be certificated, except as otherwise provided in the Plan Trust Agreement.

10. Dissolution of the Plan Trust.

The Plan Trustee and the Plan Trust shall be discharged or dissolved, as the case may be, at such time as (i) all assets of the Plan Trust have been liquidated and (ii) all distributions required to be made by the Plan Trustee under the Plan have been made, but in no event shall the Plan Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion within the six (6) month period prior to the fifth (5th) anniversary (and, in the case of any extension, within six (6) months prior to the end of such extension), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Plan Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the assets of the Plan Trust.

11. Securities Exempt

The issuance of any beneficial interests of the Plan Trust satisfies the requirements of section 1145 of the Bankruptcy Code and, therefore, such issuance is exempt from registration under the Securities Act of 1933, as amended, and any state or local law requiring registration.

X.

CONFIRMATION AND CONSUMMATION PROCEDURES

A. Overview

A chapter 11 plan may provide anything from a complex restructuring of a debtor's business and its related obligations to a liquidation of the debtor's assets. In either event, upon confirmation of the plan, it becomes binding on the debtor and all of its creditors and equity holders, and the obligations owed by the debtor to such parties are compromised and exchanged for the obligations specified in the plan. Before soliciting acceptances of the proposed plan, section 1125 of the Bankruptcy Code requires the debtor to prepare and file a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. **This Disclosure Statement is presented to holders of impaired Claims against the Debtors to satisfy the requirements of section 1125 of the Bankruptcy Code in connection with the Debtors' solicitation of votes on the Plan.**

If all classes of claims and equity interests accept a chapter 11 plan, the bankruptcy court may confirm the plan if the bankruptcy court independently determines that the requirements of section 1129(a) of the Bankruptcy Code have been satisfied. Section 1129(a) sets forth the requirements for confirmation of a plan and, among other things, requires that a plan meet the "best interests of creditors" test and be "feasible." The "best interests of creditors" test generally requires that the value of the consideration to be distributed to the holders of claims or equity interests under a plan may not be less than those parties would receive if the debtor were liquidated pursuant to a hypothetical liquidation occurring under chapter 7 of the Bankruptcy Code. Under the "feasibility" requirement, the bankruptcy court generally must find that there is a reasonable probability that the debtor will be able to meet its obligations under its plan without the need for further financial reorganization. **The Debtors believe that the Plan satisfies all applicable requirements of section 1129(a) of the Bankruptcy Code, including, in particular, the best interests of creditors' test and the feasibility requirement.**

The Bankruptcy Code does not require that each holder of a claim or interest in a particular class vote in favor of a chapter 11 plan for the bankruptcy court to determine that the class has accepted the plan. Rather, a class of creditors will be determined to have accepted the plan if the bankruptcy court determines that the plan has been accepted by a majority in number and two-thirds in amount of those claims actually voting in such class. Similarly, a class of equity security holders will have accepted the plan if the bankruptcy court determines that the plan has been accepted by holders of two-thirds of the number of shares actually voting in such class.

In addition, classes of claims or equity interests that are not "impaired" under a chapter 11 plan are conclusively presumed to have accepted the plan and thus are not entitled to vote. Furthermore, classes that are to receive no distribution under the plan are conclusively deemed to have rejected the plan. Accordingly, acceptances of a plan will generally be solicited only from those persons who hold claims or equity interests in an impaired class. A class is "impaired" if the legal, equitable or contractual rights associated with the claims or equity interests of that

class are modified in any way under the plan. Modification for purposes of determining impairment, however, does not include curing defaults and reinstating maturity on the effective date of the plan. **Class 1 – Priority Claims, Class 2 – Non-Lender Secured Claims and Class 7 – Other Equity Interests are unimpaired, and Class 6 – Revel Equity Interests will not receive a distribution under, and is deemed to reject, the Plan. Accordingly, Class 3 – First Lien Lender Claims, Class 4 – Second Lien Lender Claims and Class 5 – Unsecured Claims are the only classes entitled to vote on the Plan**.

The bankruptcy court also may confirm a chapter 11 plan even though fewer than all of the classes of impaired claims and equity interests accept such plan. For a chapter 11 plan to be confirmed despite its rejection by a class of impaired claims or equity interests, the plan must be accepted by at least one class of impaired claims (determined without counting the vote of insiders) and the proponent of the plan must show, among other things, that the plan does not "discriminate unfairly" and that the plan is "fair and equitable" with respect to each impaired class of claims or equity interests that has not accepted the plan.

Under section 1129(b) of the Bankruptcy Code, a plan is "fair and equitable" as to a rejecting class of claims or equity interests if, among other things, the plan provides: (a) with respect to secured claims, that each such holder will receive or retain on account of its claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; and (b) with respect to unsecured claims and equity interests, that the holder of any claim or equity interest that is junior to the claims or equity interests of such class will not receive or retain on account of such junior claim or equity interest any property from the estate, unless the senior class receives property having a value equal to the full amount of its allowed claim.

A plan does not "discriminate unfairly" against a rejecting class of claims or equity interests if (a) the relative value of the recovery of such class under the plan does not differ materially from that of any class (or classes) of similarly situated claims or equity interests, and (b) no senior class of claims or equity interests is to receive more than 100% of the amount of the claims or equity interest in such class.

The Plan has been structured so that it will satisfy the foregoing requirements as to the rejecting class of Equity Interests, and can therefore be confirmed over the objection of Class 6 – Revel Equity Interests.

B. Confirmation of the Plan

1. Elements of Section 1129 of the Bankruptcy Code

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the conditions to confirmation under section 1129 of the Bankruptcy Code are satisfied.

Such conditions include the following:

a. The Plan complies with the applicable provisions of the Bankruptcy Code.

b. The Debtors have complied with the applicable provisions of the Bankruptcy Code.

c. The Plan has been proposed in good faith and not by any means proscribed by law.

d. Any payment made or promised by the Debtors or by a person issuing securities or acquiring property under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable.

e. The Debtors have disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer or voting trustee of the Debtors or a successor to the Debtors under the Plan and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity holders and with public policy, and the Debtors have disclosed the identity of any insider that will be employed or retained by the Debtors, and the nature of any compensation for such insider.

f. With respect to each impaired class of Claims or Equity Interests, each holder of an impaired Claim or impaired Equity Interest either has accepted the Plan or will receive or retain under the Plan, on account of the Claims or Equity Interests held by such entity, property of a value, as of the Effective Date, that is not less than the amount that such entity would receive or retain if the Debtors were liquidated on such date under chapter 7 of the Bankruptcy Code.

g. In the event that the Debtors do not move to confirm the Plan non-consensually, each class of Claims or Equity Interests entitled to vote has either accepted the Plan or is not impaired under the Plan.

h. Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that Administrative Claims and Priority Claims will be paid in full, in Cash, on the Effective Date and Tax Claims will be paid in regular installments over a period ending not later that five (5) years after the Petition Date, of a total value, as of the Effective Date, equal to the allowed amount of such Tax Claims.

i. At least one impaired class of Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in such class.

j. Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors or any other successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan.

k. All fees payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan.

The Debtors believes that the Plan will satisfy all the statutory provisions of chapter 11 of the Bankruptcy Code, that it has complied or will have complied with all of the provisions of the Bankruptcy Code, and that the Plan is being proposed and submitted to the Bankruptcy Court in good faith.

2. Acceptance

A class of Claims will have accepted the Plan if the Plan is accepted, with reference to a class of Claims, by at least two-thirds in amount and more than one-half in number of the Allowed Claims of each such class of Claims. Each class of Equity Interests will have accepted the Plan if the Plan is accepted with reference to a class of Equity Interests, by at least two-thirds in amount of the Allowed Equity Interests of each class of Equity Interests.

3. Best Interests of Creditors Test

With respect to each impaired class of holders of Claims and Equity Interests, confirmation of the Plan requires that each such holder either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the applicable consummation date under the Plan, that is not less than the value such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

To determine what holders of Claims and Equity Interests of each impaired class would receive if the Debtors were liquidated, the Bankruptcy Court must determine the proceeds that would be generated from the liquidation of the properties and interests in property of the Debtors in a chapter 7 liquidation case. The proceeds that would be available for satisfaction of impaired claims against and Equity Interests in the Debtors would consist of the proceeds generated by disposition of the unencumbered equity in the properties and interests in property of the Debtors and the cash held by the Debtors at the time of the commencement of the liquidation case. Such proceeds would be reduced by the costs and expenses of the liquidation and by such additional administration and priority claims that may result from the use of chapter 7 for the purposes of liquidation.

The costs of liquidation under chapter 7 of the Bankruptcy Code would include the fees payable to a trustee in bankruptcy, and the fees that would be payable to additional attorneys and other professionals that such a trustee may engage, plus any unpaid expenses incurred by the Debtors during the Chapter 11 Cases, such as compensation for attorneys, financial advisors, accountants and costs that are allowed in the chapter 7 cases. Whereas the Plan Trustee and its counsel has the background and familiarity with the remaining assets to be liquidated to realize the most money for the costs to be incurred to complete the process, a chapter 7 trustee and the persons it employs will need time to develop the necessary industry and debtor specific knowledge necessary to assist the chapter 7 trustee examine and distribute the Debtors' assets. In addition, Claims would arise by reason of the breach or rejection of obligations incurred and executory contracts entered into or assumed by the Debtors during the pendency of the Chapter 11 Cases.

The foregoing types of Claims and such other Claims which may arise in the liquidation cases or result from the pending Chapter 11 Cases would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay impaired Claims arising on or before the Petition Date.

To determine if the Plan is in the best interests of each impaired class, the present value of the distributions from the proceeds of the liquidation of the properties and interests in property of the Debtors (net of the amounts attributable to the aforesaid claims) is then compared with the present value offered to such classes of Claims and Equity Interests under the Plan.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Chapter 11 Cases, including (i) the additional costs associated with the appointment of the chapter 7 trustee and (ii) the erosion in value of assets in chapter 7 cases in the context of the expeditious liquidation required under chapter 7, the Debtors have determined that confirmation of the Plan will provide each holder of an impaired Claim with a greater recovery than it would receive pursuant to liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

4. Feasibility

The Bankruptcy Code conditions confirmation of a chapter 11 plan on, among other things, a finding that it is not likely to be followed by the liquidation or the need for further financial reorganization of a debtor. For purposes of determining whether the Plan satisfies this condition, the Debtors have analyzed the Plan Trustee's capacity to service its obligations under the Plan. Based upon their analysis, the Debtors submit that the Plan Trustee will be able to make all payments required to be made under the Plan.

C. <u>Cramdown</u>

In the event that any impaired class does not accept the Plan, the Debtors nevertheless may move for confirmation of the Plan. To obtain such confirmation, it must be demonstrated to the Bankruptcy Court that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such classes and any other classes of Claims that vote to reject the Plan.

1. No Unfair Discrimination

A chapter 11 plan "does not discriminate unfairly" if (a) the legal rights of a nonaccepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are similar to those of the nonaccepting class, and (b) no class receives payments in excess of that which it is legally entitled to receive for its Claims or Equity Interests. The Debtors believe that under the Plan all impaired classes of Claims and Equity Interests are treated in a manner that is consistent with the treatment of other classes of Claims and Equity Interests that are similarly situated, if any, and no class of Claims or Equity Interests will receive payments or property with an aggregate value greater than the aggregate value of the Allowed Claims and Allowed Equity Interests in such class. Accordingly, the Debtors believe the Plan does not discriminate unfairly as to any impaired class of Claims or Equity Interests.

2. Fair and Equitable Test

The Bankruptcy Code establishes different "fair and equitable" tests for classes of secured claims, unsecured claims and equity interests as follows:

a. ***Secured Claims.*** Either (i) each holder of a claim in an impaired class of secured claims retains its liens securing its secured claim and it receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim, (ii) each holder of a claim in an impaired class of secured claims realizes the indubitable equivalent of its allowed secured claim or (iii) the property securing the claim is sold free and clear of liens, with such liens to attach to the proceeds and the treatment of such liens on proceeds as provided in clause (i) or (ii) of this subparagraph.

b. ***Unsecured Claims.*** Either (i) each holder of a claim in an impaired class of unsecured claims receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the chapter 11 plan, subject to the applicability of the judicial doctrine of contributing new value.

c. ***Equity Interests.*** Either (i) each holder of an equity interest in an impaired class of interests will receive or retain under the chapter 11 plan property of a value equal to the greater of (A) the fixed liquidation preference or redemption price, if any, of such stock or (B) the value of the stock or (ii) the holders of interests that are junior to the stock will not receive any property under the chapter 11 plan, subject to the applicability of the judicial doctrine of contributing new value.

BECAUSE CLASS 6 – REVEL EQUITY INTERESTS IS DEEMED TO REJECT THE PLAN, IF CLASS 3 – FIRST LIEN LENDER CLAIMS, CLASS 4 – SECOND LIEN LENDER CLAIMS OR CLASS 5 – UNSECURED CLAIMS ACCEPTS THE PLAN, THE DEBTORS WILL SEEK CONFIRMATION OF THE PLAN PURSUANT TO THE CRAMDOWN PROVISIONS OF SECTION 1129(b) OF THE BANKRUPTCY CODE.

D. <u>Effect of Confirmation</u>

Under section 1141 of the Bankruptcy Code, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor or equity security holder, whether or not the claim or interest of such creditor or equity security holder is impaired under the plan and whether or not such creditor or equity security holder voted to accept the plan. Further, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors and equity security holders, except as otherwise provided in the plan or the confirmation order.

XI.

<u>CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES</u>

The following discussion is a summary of certain U.S. federal income tax consequences expected to result from the implementation of the Plan. This discussion is based on the Internal Revenue Code, as in effect on the date of this Disclosure Statement, and on United States Treasury Regulations in effect (or in certain cases, proposed) on the date of this Disclosure Statement, as well as judicial and administrative interpretations thereof available on or before such date. All of the foregoing are subject to change, which change could apply retroactively and could affect the tax consequences described below. There can be no assurance that the IRS will not take a contrary view with respect to one or more of the issues discussed below, and no ruling from the IRS has been or will be sought with respect to any issues that may arise under the Plan.

The following summary is for general information only and does not purport to address all of the U.S. federal income tax consequences that may be applicable to any particular holder of an Allowed Claim or Equity Interest. The tax treatment of a holder of an Allowed Claim or Equity Interest, as the case may be, may vary depending upon such holder's particular situation. The following discussion does not address state, local or foreign tax considerations that may be applicable to the Debtors and holders of an Allowed Claim or Equity Interest. This summary does not address tax considerations applicable to holders that may be subject to special tax rules, such as financial institutions, insurance companies, real estate investment trusts, regulated investment companies, grantor trusts, dealers or traders in securities or currencies, tax-exempt entities, persons that hold an equity interest or a security in a Debtor as a position in a "straddle" or as part of a "hedging," "conversion" or "integrated" transaction for U.S. federal income tax purposes, persons that have a "functional currency" other than the U.S. dollar, persons who acquired an equity interest or a security in a Debtor in connection with the performance of services, or persons who are not United States persons (as defined in the Internal Revenue Code).

EACH HOLDER OF AN ALLOWED CLAIM OR EQUITY INTEREST IS URGED TO CONSULT ITS OWN TAX ADVISOR WITH RESPECT TO THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE IMPLEMENTATION OF THE PLAN.

INTERNAL REVENUE SERVICE CIRCULAR 230 DISCLOSURE

PURSUANT TO INTERNAL REVENUE SERVICE CIRCULAR 230, WE HEREBY INFORM YOU THAT THE DESCRIPTION SET FORTH HEREIN WITH RESPECT TO U.S. FEDERAL TAX ISSUES WAS NOT INTENDED OR WRITTEN TO BE USED, AND SUCH DESCRIPTION CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING ANY PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER UNDER THE U.S. INTERNAL REVENUE CODE. THIS DESCRIPTION IS LIMITED TO THE U.S. FEDERAL TAX ISSUES DESCRIBED HEREIN. IT IS POSSIBLE THAT ADDITIONAL ISSUES MAY EXIST THAT COULD AFFECT THE U.S. FEDERAL TAX TREATMENT OF THE MATTER THAT IS THE SUBJECT OF THE DESCRIPTION NOTED HEREIN, AND THIS DESCRIPTION DOES NOT CONSIDER OR PROVIDE ANY CONCLUSIONS WITH RESPECT TO ANY SUCH ADDITIONAL ISSUES. THIS DESCRIPTION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTORS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN. TAXPAYERS SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

A. <u>U.S. Federal Income Tax Consequences of Receipt of Plan Consideration to Holders of Allowed Claims.</u>

1. General Tax Considerations for Holders of Allowed Claims

a. ***Gain or Loss***

In general, a holder of an Allowed Claim will recognize gain or loss in an amount equal to the difference between (i) the amount realized by the holder in satisfaction of its Claim (other than any Claim for accrued but unpaid interest) and (ii) such holder's adjusted tax basis in such Claim (other than any Claim representing accrued but unpaid interest).

Where a gain or loss is recognized by a holder in respect of its Allowed Claim, the character of such gain or loss (as long-term or short-term capital, or ordinary) will be determined by a number of factors, including the tax status of the holder, whether the Claim in respect of which any property was received constituted a capital asset in the hands of the holder and how long it had been held, whether such Claim was originally issued at a discount or acquired at a market discount, and whether and to what extent the holder had previously claimed a bad debt deduction in respect of such Claim.

b. ***Distributions in Discharge of Accrued Interest***

In general, to the extent a holder of a debt instrument receives property in satisfaction of interest accrued during the holding period of such instrument, such amount will be taxable to the holder as interest income (if not previously included in the holder's gross income). Conversely, such holder may recognize a deductible loss to the extent that any accrued interest claimed or amortized original issue discount ("OID") was previously included in its gross income and is not paid in full.

The extent to which property received by a holder of a debt instrument will be attributable to accrued but unpaid interest is unclear. Pursuant to the Plan, all distributions in respect of any Allowed Claim will be allocated first to the principal amount of such Allowed Claim, and thereafter to accrued but unpaid interest, if any. Certain legislative history indicates that an allocation of consideration between principal and interest provided in a chapter 11 plan generally is binding for U.S. federal income tax purposes. However, there is no assurance that such allocation will be respected by the IRS for U.S. federal income tax purposes.

Each holder of an Allowed Claim is urged to consult its tax advisor regarding the inclusion in income of amounts received in satisfaction of accrued but unpaid interest, the allocation of consideration between principal and interest, and the deductibility of previously included unpaid interest and OID for tax purposes.

c. ***Bad Debt Deduction and Worthless Security Deduction***

The U.S. federal income tax consequences of the Plan to holders of Allowed Claims will depend, in part, on whether the indebtedness underlying their Claims constitutes securities for the purposes of section 165(g) of the Internal Revenue Code. For purposes of section 165(g) of the Internal Revenue Code, a Claim constitutes a "security" if it is: a share of stock in a corporation; a right to subscribe for, or to receive, a share of stock in a corporation; or a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form.

A holder of an Allowed Claim that is not a security for purposes of section 165(g) of the Internal Revenue Code who receives, pursuant to the Plan, an amount of consideration that is less than such holder's tax basis in the claim in exchange of that claim, may be entitled in the year of receipt (or in an earlier year) to a bad debt deduction under section 166(a) of the Internal Revenue Code, or may be entitled to a loss under section 165(a) of the Internal Revenue Code in the year of receipt. A holder of stock or securities, the Allowed Claim with respect to which is wholly worthless, may be entitled to a worthless securities deduction under sections 165(g) and 165(a) of the Internal Revenue Code. The rules governing the timing and amount of such deductions place considerable emphasis on the facts and circumstances of the holder, the obligor, and the instrument with respect to which a deduction is claimed. Any such loss would be limited to the holder's tax basis in the indebtedness or equity interest underlying its claim. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to claim such deductions.

d. ***Market Discount***

If a holder of an Allowed Claim purchased the underlying security or debt obligation at a price less than its issue price, the difference would constitute "market discount" for U.S. federal income tax purposes. Any gain recognized by a holder on the exchange of its Allowed Claim on the Effective Date should be treated as ordinary income to the extent of any market discount accrued on the underlying securities or debt obligation by the holder on or prior to the date of the exchange.

e. ***Information Reporting and Withholding***

All distributions to holders of Allowed Claims under the Plan are subject to any applicable withholding (including employment tax withholding). Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then applicable rate. Backup withholding generally applies if the holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is a United States person that is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

In addition, Treasury Regulations promulgated in early 2003 require disclosure by a taxpayer on its federal income tax return of certain types of transactions in which the taxpayer participated after January 1, 2003, including, among other types of transactions, the following: (a) certain transactions that result in the taxpayer claiming a loss in excess of specified thresholds; and (b) certain transactions in which the taxpayer's book-tax differences exceed a specified threshold in any tax year. These categories are very broad; however, there are numerous exceptions. Holders are urged to consult their tax advisors regarding these regulations and

whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the holders' tax returns.

2. Additional Tax Considerations for Holders of Allowed Class 3 – First Lien Lender Claims, Class 4 – Second Lien Lender Claims and Class 5 – Unsecured Claims

Pursuant to the Plan, each holder of an Allowed Class 3 – First Lien Lender Claim, Allowed Class 4 – Allowed Second Lien Lender Claim and Allowed Class 5 – Unsecured Claim will receive, on the Plan Distribution Date, its Pro Rata Share of the Available Proceeds, in each case subject to and in accordance with the Plan. See "The Chapter 11 Plan – Treatment of Classified Claims and Equity Interests." In general, a holder of an Allowed Claim in such classes will recognize gain or loss in an amount equal to the difference between (i) the "amount realized" by the holder in satisfaction of its Claim (other than any Claim for accrued but unpaid interest) and (ii) such holder's adjusted tax basis in such Claim (other than any Claim representing accrued but unpaid interest).

Holders of Allowed Class 3 – First Lien Lender Claims, Allowed Class 4 – Allowed Second Lien Lender Claims and Allowed Class 5 – Unsecured Claims will receive a beneficial interest in the Plan Trust, entitling them to share in any proceeds from its assets. However, for federal income tax purposes, because the Plan Trust has been structured to qualify as a "grantor trust," each holder of an Allowed Class 3 – First Lien Lender Claim, Allowed Class 4 – Allowed Second Lien Lender Claim and Allowed Class 5 – Unsecured Claim will be treated as directly receiving, and as a direct owner of, its allocable percentage of the assets of the Plan Trust. Accordingly, each holder should take into account in determining the "amount realized" in respect of its Claim its share of any cash and the fair market value of its undivided interest in the other underlying assets of the Plan Trust (subject to any liabilities assumed by the Plan Trust to which such assets are subject) as if received and held directly. As soon as reasonably practicable, the Plan Trustee will make a good faith valuation of the assets of the Plan Trust, and all parties must consistently use such valuation for all federal income tax purposes. The valuation will be made available as necessary for tax reporting purposes (on an asset or aggregate basis, as relevant).

Any amount a holder receives following the Effective Date as a distribution in respect of an interest in the Plan Trust should not be included for federal income tax purposes in the holder's amount realized in respect of its Allowed Claim but should be separately treated as a distribution received in respect of such holder's interest in the Plan Trust. See "Tax Treatment of the Plan Trust".

Where gain or loss is recognized by a holder in respect of its Allowed Class 3 – First Lien Lender Claims, Allowed Class 4 – Allowed Second Lien Lender Claims or Allowed Class 5 – Unsecured Claims, the character of such gain or loss (as long-term or short-term capital, or ordinary) will be determined by a number of factors, including the tax status of the holder, whether the Claim in respect of which any property was received constituted a capital asset in the hands of the holder and how long it had been held, whether such Claim was originally issued at a discount or acquired at a market discount, and whether and to what extent the holder had previously claimed a bad debt deduction in respect of such Claim.

3. Additional Tax Considerations for Holders of Allowed Class 6 – Revel Equity Interests

Pursuant to the Plan, on the Effective Date, all Class 6 – Revel Equity Interests will be canceled, whether surrendered for cancellation or otherwise, and there shall be no distribution to the holders of Class 6 – Revel Equity Interests. A holder of a Class 6 – Revel Equity Interests will generally recognize a loss in an amount equal to such holder's adjusted tax basis in such Class 6 – Revel Equity Interests. Capital losses are subject to various limitations under the Internal Revenue Code.

B. U.S. Federal Income Tax Consequences to Holders of Contested Claims

To the extent a Contested Claim is allowed, payments and distributions to the holder of such claim will be made in accordance with the provisions of the Plan governing the class of Allowed Claims to which the respective holder belongs.

C. Tax Treatment of the Plan Trust

Upon the Effective Date, the Plan Trust shall be established for the benefit of holders of Allowed Claims, whether Allowed on or after the Effective Date.

(i) ***Classification of the Plan Trust***

The Plan Trust is intended to qualify as a liquidating trust for federal income tax purposes. In general, a liquidating trust is not a separate taxable entity but rather is treated for federal income tax purposes as a "grantor" trust (i.e., a disregarded entity).

However, merely establishing a liquidating trust does not ensure that it will be treated as a grantor trust for federal income tax purposes. The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Plan Trust has been structured with the intention of complying with such general criteria. In conformity with Revenue Procedure 94-45, all parties (including the Plan Trustee and holders of Allowed Claims) are required to treat, for federal income tax purposes, the Plan Trust as a grantor trust of which the holders are the owners and grantors. The following discussion assumes that the Plan Trust will be so respected for federal income tax purposes. However, no ruling has been requested from the IRS and no opinion of counsel has been requested concerning the tax status of the Plan Trust as a grantor trust. Accordingly, there can be no assurance that the IRS would not take a contrary position. Were the IRS successfully to challenge such classification, the federal income tax consequences to the Plan Trust and the holders of Allowed Claims could vary from those discussed herein.

(ii) General Tax Reporting by the Trust and Beneficiaries

For all federal income tax purposes, all parties must treat the transfer of the Debtors' assets to the Plan Trust as a transfer of such assets directly to the holders (including the Contested Claims), followed by the transfer of such assets by the holders to the Plan Trust. Consistent therewith, all parties must treat the Plan Trust as a grantor trust of which such holders

are the owners and grantors. Thus, such holders (and any subsequent holders of interests in the Plan Trust) will be treated as the direct owners of an undivided interest in the assets of the Plan Trust for all federal income tax purposes. Pursuant to the Plan, as soon as reasonably practicable the Plan Trustee will determine the fair market value of the assets of the Plan Trust as of the Effective Date, and all parties, including the holders, must consistently use such valuation for all federal income tax purposes, such as in the determination of gain, loss and tax basis. The valuation will be made available as necessary for tax reporting purposes (on an asset or aggregate basis, as relevant).

Accordingly, each holder will be required to report on its federal income tax return its allocable share of any income, gain, loss, deduction or credit recognized or incurred by the Plan Trust. See "Allocation of Taxable Income and Loss" below. The character of items of income, deduction and credit to any holder and the ability of such holder to benefit from any deductions or losses may depend on the particular situation of such holder.

The federal income tax reporting obligations of a holder are not dependent upon the Plan Trust distributing any cash or other proceeds. Therefore, a holder may incur a federal income tax liability with respect to its allocable share of the income of the Plan Trust even if the Plan Trust has not made a concurrent distribution to the holder. In general, a distribution of cash by the Plan Trust to a holder will not be taxable to the holder as such holder is regarded for federal income tax purposes as already owning the underlying assets or realizing the income.

The Plan Trustee will file with the IRS returns for the Plan Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Plan Trustee will also send as soon as reasonably practicable to each record holder a separate statement setting forth the information necessary for such holder to determine its share of items of income, gain, loss, deduction or credit and will instruct the holder to report such items on its federal income tax return or to forward the appropriate information to the beneficial holders with instructions to report such items on their federal income tax returns. Such items generally would be reported on the holder's state and/or local tax returns in a similar manner.

(iii) Allocation of Taxable Income and Loss

The Plan provides that allocations of Plan Trust taxable income shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restrictions on distributions described herein on in the Plan) if, immediately prior to such deemed distribution, the Plan Trustee had distributed all of its other assets (valued for this purpose at their tax book value) to the holders of the Plan Trust interests, taking into account all prior and concurrent distributions from the Plan Trust. Similarly, taxable loss of the Plan Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining assets of the Plan Trust. The tax book value of the assets of the Plan Trust for this purpose will equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code, the regulations and other applicable administrative and judicial authorities and pronouncements.

THE ABOVE SUMMARY HAS BEEN PROVIDED FOR INFORMATIONAL PURPOSES ONLY. ALL HOLDERS OF ALLOWED CLAIMS AND EQUITY INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE U.S. FEDERAL, STATE, LOCAL OR FOREIGN TAX CONSEQUENCES OF THE IMPLEMENTATION OF THE PLAN.

XII.

REGULATORY ENVIRONMENT

A. General Governmental and Gaming Regulations

The following description should not be construed as a complete summary of all of the regulatory requirements that the Debtors face in connection with their current gaming operations and that the Buyer will face with its contemplated gaming operations.

The ownership and operation of the Debtors' gaming facilities are subject to pervasive regulation under the laws and regulations of New Jersey. Gaming laws generally are based upon declarations of public policy designed to protect gaming consumers and the viability and integrity of the gaming industry. Gaming laws also may be designed to protect and maximize state and local revenues derived through taxes and licensing fees imposed on gaming industry participants as well as to enhance economic development and tourism. To accomplish these public policy goals, gaming laws establish procedures to ensure that participants in the gaming industry meet certain standards of character and fitness. In addition, gaming laws generally require gaming industry participants to:

- demonstrate their financial stability;
- establish and maintain responsible accounting practices and procedures;
- maintain effective controls over their financial practices, including establishment of minimum procedures for internal fiscal affairs and the safeguarding of assets and revenues;
- maintain systems for reliable record keeping;
- file periodic reports with gaming regulators;
- ensure that contracts and financial transactions are commercially reasonable, reflect fair market value, and are arm's-length transactions entered into with suitable persons;
- establish procedures designed to prevent cheating and fraudulent practices; and
- establish programs to promote responsible gaming.

Typically, a state regulatory environment is established by statute and is administered by one or more regulatory agencies with broad discretion to regulate, among other things, the affairs of owners, managers, and persons with financial interests in gaming operations. Among other things, gaming authorities in New Jersey:

- adopt rules and regulations under the implementing statutes;
- interpret and enforce gaming laws, rules, and regulations;
- impose disciplinary sanctions for violations, including fines and penalties;

- review the character and fitness of participants in gaming operations and make determinations regarding their suitability or qualification for participation and licensure;
- grant licenses and other permissions for participation in gaming operations;
- collect and review reports and information submitted by participants in gaming operations; and
- review and approve certain transactions, such as acquisitions or change-of-control transactions, involving gaming industry participants, securities offerings, and debt transactions engaged in by such participants; and establish and collect fees and taxes.

The ownership and operation of casino gaming facilities in the State of New Jersey is governed by the New Jersey Casino Control Act and regulations promulgated thereunder (collectively, the "New Jersey Act") by the New Jersey Casino Control Commission (the "NJ CCC") and the New Jersey Division of Gaming Enforcement ("NJ DGE"). They collectively have comprehensive powers, including the authority to adopt rules and regulations governing all aspects of gaming, and the responsibility to grant or deny license applications and adjudicate all other matters arising under the New Jersey Act. The NJ DGE, under the Office of the State Attorney General, also has the duty and authority to conduct all necessary investigations and prosecute cases before the NJ CCC. The operation of a casino requires a casino license issued by the NJ CCC after an investigation of the qualifications of all Entities that must be found qualified in conjunction with the casino licensee or applicant for a casino license.

Any change in the laws or regulations of a gaming jurisdiction could have a material adverse effect on the gaming operations of the Debtors.

B. Relationship of Gaming Laws to Chapter 11 Cases and the Plan

The gaming laws require that various transactions contemplated by the Plan, including the Sale, be reviewed and, as necessary, approved by the gaming regulators in New Jersey. In addition, the Buyer and persons who may acquire or have an equity interest in the Buyer may need to be licensed, undergo suitability determinations, or obtain waivers. Accordingly, various actions contemplated by the Plan are subject to approval by the state gaming regulators, and failure to secure such approvals may materially and adversely affect the ability of the Debtors to achieve confirmation and consummation of the Plan.

C. Licensing of the Debtors and Individuals Involved Therewith

Gaming laws required the Debtors and the Buyer, as applicable, as well as their directors (with respect to corporations), managers (with respect to limited liability companies), members (with respect to limited liability companies), officers, and certain other key employees, to obtain licenses, findings of suitability or other approvals from gaming authorities. Licenses or findings of suitability typically require a determination that the applicant is suitable or otherwise qualifies to hold the license or the finding of suitability necessary to hold the equity or debt securities of the gaming licensee or its affiliated entities.

Gaming authorities generally have broad discretion in determining whether an applicant qualifies for licensing or should be deemed suitable or otherwise qualified. To determine whether to grant a license or finding of suitability to an entity to conduct gaming operations, gaming authorities generally consider the following factors:

- the financial stability, integrity, and responsibility of the applicant, including whether the operation is adequately capitalized and has the ability to pay all debts when due and the ability to make capital expenditures adequate to maintain a first class facility;
- the quality of the applicant's casino facilities;
- the amount of revenue to be derived by the applicable state from the operation of the applicant's casino;
- the applicant's practices with respect to minority hiring and training;
- the effect on competition and general impact on the community; and
- the good character, honesty and integrity of the applicant and its parent entities.

Licenses under gaming laws generally are not transferable. Licenses in New Jersey are granted without set terms, but periodic resubmissions are required from time to time. They are subject to revocation and the revocation of any of the Debtors' licenses would have a material adverse effect on their gaming operations. In evaluating individual applicants, gaming authorities generally consider the individual's business probity and casino experience, the individual's reputation for good character, honesty, and integrity, the individual's criminal history, and the character and reputation of those with whom the individual associates.

D. Findings of Qualification and Suitability Determinations

As noted above, gaming authorities may investigate any individual who has a material relationship to, or material involvement with, the Debtors to determine whether such individual is suitable or should be licensed or found suitable as a business associate of a gaming licensee. In New Jersey, the Debtors' or Buyer's, as applicable, directors (with respect to corporations), managers (with respect to limited liability companies), members (with respect to limited liability companies), officers, and certain other key employees must file applications with the gaming authorities and may be required to be licensed, qualify, or otherwise be found suitable.

Qualification and suitability determinations generally require the submission of detailed personal and financial information—and in the case of a Person other than a natural person, a list of beneficial owners—followed by a thorough investigation. The applicant must pay all the costs of the investigation. Changes with respect to the individuals who occupy licensed positions must be reported to gaming authorities and—in addition to their authority to deny an application for licensure, qualification, or a finding of suitability—gaming authorities have authority to disapprove a change in a corporate position.

If New Jersey gaming authorities were to find that a director (with respect to corporations), manager (with respect to limited liability companies), member (with respect to limited liability companies), officer, or other key employee of the Debtors or the Buyer, as applicable, does not qualify, is unsuitable for licensing, or is unsuitable to continue having a relationship with the Debtors or the Buyer, as applicable, the Debtors or the Buyer, as applicable, may be required to sever all relationships with such person. In addition, gaming authorities may require the Debtors or the Buyer, as applicable, to terminate the employment of any person who refuses to file appropriate applications. Moreover, certain holders of debt and equity securities

of the Debtors or the Buyer, as applicable, may be required to undergo a suitability investigation similar to that described above.

In New Jersey, each Person who directly or indirectly acquires any beneficial interest or ownership in securities issued by a casino licensee or any holding, intermediate, or parent company of such a company (collectively, a "New Jersey Licensee"), may have to obtain prior approval from the NJ CCC. Five (5) business days' notice must be provided to the NJ CCC of any proposed sale or transfer of any ownership interest in a New Jersey Licensee. If the NJ CCC does not object to such sale or transfer within such five (5) business days, the sale or transfer may proceed. If the purchaser or transferee of an ownership interest in a New Jersey Licensee is required to be licensed, ordinarily, the approval is obtained by utilizing the interim casino authorization provisions of the New Jersey Act (the "New Jersey Interim Casino Authorization"). Generally speaking, the New Jersey Interim Casino Authorization provisions require that any contract to transfer ownership of equity securities of an ongoing casino operation must have a closing date of 121 or more days after filing a completed application. The New Jersey Interim Casino Authorization process requires extensive filings and disclosures by the New Jersey Interim Casino Authorization applicant and all qualifiers thereof, and a subsequent investigation by and report of the NJ DGE.

Generally within four months after submission of a completed New Jersey Interim Casino Authorization application, the NJ CCC will determine whether the applicant can obtain the interest in the New Jersey Licensee on a temporary basis, pending plenary qualification and subject to the imposition of a New Jersey Interim Casino Authorization trust, whereby the applicant's interests are placed in a non-active but fully executed trust held by a qualified New Jersey Interim Casino Authorization trustee. If the NJ CCC ultimately denies the New Jersey Interim Casino Authorization application, the trust will be activated and the applicant's interest terminated with rights only in an amount not to exceed the lower of actual cost of the interest or the value of the interest on the date the trust became activated. The disqualified holder will have the right to appeal to the New Jersey Superior Court, Appellate Division. If the NJ CCC grants New Jersey Interim Casino Authorization, the applicant will be allowed to close on the acquisition and thereafter exercise all its rights, including, if applicable, management of the casino property pending plenary qualification, which generally occurs (or not) within 12 months, after the NJ DGE reports the findings of its investigation.

Certain owners or investors may have the qualification requirement waived if the Director of the NJ DGE determines that waiver is appropriate. For example, each Person directly or indirectly holding a beneficial interest or ownership of equity securities of a New Jersey Licensee that is not significantly involved in the activities of the New Jersey Licensee, and does not have the ability to control the New Jersey Licensee or elect a majority of its directors, may be eligible for waiver. There is a presumption that any Entity holding 5% or more of the equity securities of a New Jersey Licensee, or an Entity having the ability to elect one or more of the directors of such New Jersey Licensee, has the ability to control the New Jersey Licensee and, may have to submit for qualification by the NJ CCC.

An "institutional investor," as defined in the New Jersey Act (principally, pension funds, insurance companies, and registered advisors under securities laws), may be eligible for a waiver to own up to 25% of the equity securities of a New Jersey Licensee, provided the institutional investor certifies that it holds the securities for investment purposes only and has no intention to influence or control the New Jersey Licensee. If the NJ CCC finds at any time that a beneficial owner of any security in a New Jersey Licensee is not qualified under the New Jersey Act, it has the right to take any remedial action it deems appropriate, including requiring the Debtors or the Buyer, as applicable, to purchase such equity securities. In the event a disqualified beneficial owner fails to divest itself of such securities, the NJ CCC has the power to revoke or suspend the associated casino license or deny the application for same.

This summary is not intended to be complete, and is qualified in its entirety by the New Jersey Act and the rulings of the NJ CCC and NJ DGE.

Additionally, the Buyer's certificates of incorporation will contain provisions establishing the right of the NJ CCC to the prior approval of the transfer of securities and the right of the Buyer to redeem at the lesser of purchase price or the market price any transfer disapproved by the NJ CCC and the securities of unsuitable holders if (i) the holder is determined by a gaming authority, or the Buyer has been notified by the staff of a gaming authority that it will recommend that the gaming authority determine the holder to be, unsuitable, unqualified, or disqualified to own or control such securities or unsuitable to be connected with a person engaged in gaming activities in New Jersey, or (ii) the holder causes the Buyer or any affiliate of Buyer to lose or have modified, or to be threatened with the loss, suspension, condition or modification of, or who, in the sole discretion of the Buyer, is deemed likely to jeopardize the right of the Buyer or any of its affiliates to the use of or entitlement to or ability to reinstate any gaming license or liquor license.

E. Violations of Gaming Laws

The New Jersey gaming authorities may, among other things, limit, condition, suspend, or revoke a gaming license or approval to own the equity interests of the Debtors' for any cause deemed reasonable by the New Jersey licensing authority. In addition, if the Debtors violate applicable gaming laws, their gaming licenses could be limited, conditioned, suspended, or revoked by gaming authorities, and the Debtors and any other persons involved could be subject to substantial fines. Further, gaming authorities may appoint a supervisor or conservator to operate the Debtors' gaming properties or, in some jurisdictions, take title to the Debtors' gaming assets. Under certain circumstances, earnings generated during such appointment could be forfeited to the applicable state or states. Finally, New Jersey gaming jurisdictions prohibit certain types of political activity by a gaming licensee, its directors (with respect to corporations), managers (with respect to limited liability companies), members (with respect to limited liability companies), officers, and certain other key people. A violation of such a prohibition may subject the offender to criminal and disciplinary action.

F. Reporting and Record-Keeping Requirements of Gaming Authorities

The Debtors are required to submit detailed financial and operating reports on a periodic basis and furnish any other information that gaming authorities may require. Under federal law, the Debtors are required to record and submit detailed reports of currency transactions at their casinos involving more than $10,000 as well as any suspicious activity that may occur at such

facilities. Additionally, the Debtors are required to maintain a current stock ledger that may be examined by gaming authorities at any time.

G. Review and Approval by Gaming Authorities of Certain Transactions

As described herein, certain transactions contemplated by the Plan must be approved by New Jersey gaming authorities. In addition, substantially all material loans, leases, sales of securities, and similar financing transactions by the Debtors must be reported to, and in some cases approved by, gaming authorities. The Debtors may not make a public offering of securities without the prior approval of gaming authorities. Changes in control through merger, consolidation, stock or asset acquisitions, management or consulting agreements, or otherwise, are subject to prior approval of gaming authorities.

Gaming authorities may also require controlling stockholders, directors (with respect to corporations), managers (with respect to limited liability companies), members (with respect to limited liability companies), officers, and certain other key employees having a material relationship or involvement with the entity proposing to acquire control to be investigated and licensed or qualified as part of the approval process relating to the transaction. Because of regulatory restrictions, the Debtors' ability to grant a security interest in any of their gaming assets is limited and subject to receipt of approval by gaming authorities.

H. License for Sale of Alcoholic Beverages

The service and sale of alcoholic beverages at the Revel Casino Resort is subject to licensing, control, and regulation by the NJ DGE.

XIII.

RISK FACTORS

There are many risks and uncertainties in respect of the Debtors' business and/or the Plan and its implementation. The holders of Claims against and Equity Interests in the Debtors should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement, before deciding whether to vote to accept or reject the Plan. The risk factors identified below they should not be regarded as the only risks present in connection with the Debtors' businesses or the Plan and its implementation.

A. Certain Bankruptcy Considerations

1. Parties in Interest May Object to the Plan's Classification of Claims and Equity Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of Claims against and Equity Interests in the Debtors under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims and Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other

Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

2. Failure to Satisfy Vote Requirements

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek, as promptly as practicable thereafter, confirmation of the Plan. In the event that sufficient votes are not received, the Debtors may seek to confirm an alternative chapter 11 plan. There can be no assurance that the terms of any such alternative chapter 11 plan would be similar or as favorable to the holders of Allowed Claims or Allowed Equity Interests as those proposed in the Plan.

3. The Debtors May Not Be Able Secure Confirmation or Consummation of the Plan

The Plan requires the acceptance of a requisite number of holders of Claims or Equity Interests that are entitled to vote on the Plan, and the approval of the Bankruptcy Court, as described in the section of this Disclosure Statement entitled "Confirmation and Consummation Procedures – Overview." There can be no assurance that such acceptances and approvals will be obtained and therefore, that the Plan will be confirmed. In addition, confirmation of the Plan and the occurrence of the Effective Date of the Plan are subject to the satisfaction of certain conditions precedent. Although the Debtors believe that the conditions precedent to the confirmation of the Plan and to the occurrence of the Effective Date of the Plan will be met, there can be no assurance that all such conditions precedent will be satisfied. If any condition precedent is not satisfied or waived pursuant to the Plan, the Plan may not be confirmed or the Effective Date may not occur.

Furthermore, although the Debtors believe that the Plan will be confirmed and the Effective Date will occur reasonably soon after the Confirmation Date, there can be no assurance as to the timing or as to whether the Effective Date will occur. Further, and notwithstanding the foregoing or anything in the Plan to the contrary, the Debtors have reserved their rights pursuant to Section 12.5 of the Plan to delay the occurrence of the Effective Date with respect to one or more of the Debtors' Estates to a later date; provided, however, that any such election by the Debtors to delay the occurrence of the Effective Date with respect to one Estate shall not prevent the occurrence of the Effective Date with respect to any of the other Estates. If the Plan is not confirmed or the Effective Date does not occur, there can be no assurance that any alternative chapter 11 plan would be on terms as favorable to the holders of Claims and Equity Interests as the terms of the Plan. In addition, if a protracted reorganization or liquidation were to occur, there is a substantial risk that holders of Claims and Equity Interests would receive less than they would receive under the Plan. A liquidation analysis prepared by the Debtors with the assistance of their advisors is attached hereto as Schedule 2.

The Plan contemplates consummation of the Sale. Although the Bankruptcy Court has already entered the Bid Procedures Order and thereby approved the bid procedures set forth therein, consummation of the Sale may be subject to the prior approval of one or more governmental entities, including the NJ CCC and the NJ DGE. The consummation of the Sale and Plan may also require filings with respect to and consent, approvals or expiration or

termination of any waiting period, required under United States antitrust or investment laws which may include the Hart-Scott-Rodino Antitrust Improvement Act of 1976. Such approvals may be denied, conditioned or delayed and therefore may not be received when required to facilitate the Sale and the Plan.

If the Plan is not confirmed and does not go effective for any reason and the Debtors or some other party in interest decide to prosecute a different plan, recoveries to holders of Claims against or Equity Interests in the Debtors may be negatively impacted. If the Plan is confirmed but the Effective Date does not occur, it may become necessary to amend the Plan to provide for alternative treatment of Claims and Equity Interests. There can be no assurance that any such alternative treatment would be on terms as favorable to the holders of Claims and Equity Interests as the treatment provided under the Plan. If any modifications to the Plan are materially adverse to any holders of Claims or Equity Interests, it would be necessary to resolicit votes from holders of such Claims or Equity Interests, which would, at the very least, further delay confirmation and consummation of the Plan, and could jeopardize the consummation of the Plan.

4. Actual Plan Distributions May Be Less than Estimated for the Purposes of this Disclosure Statement

The Debtors project that the Claims and Equity Interests asserted against the Debtors will be resolved in and reduced to an amount that approximates the estimates set forth herein. However, there can be no assurance that these estimates will prove accurate. In the event the allowed amounts of such Claims and/or Equity Interests are materially higher than the projected estimates, actual distributions to holders of Allowed Claims could be materially less than estimated herein.

B. Risks Related to the Sale

There is no guarantee that a Person will express interest in acquiring the Debtors' Assets. Additionally, even if an asset purchase agreement is executed, there can be no assurance that a Sale will be consummated. The Buyer could breach or fail to perform under the agreement or conditions to consummation of the agreement could fail to be satisfied.

C. Certain Tax Considerations

There are a number of material income tax considerations, risks and uncertainties associated with consummation of the Plan. Holders of Claims and Equity Interests, and other interested parties, should read carefully the discussion set forth in the article of this Disclosure Statement entitled "Certain U.S. Federal Income Tax Consequences" for a discussion of certain U.S. federal income tax consequences of the transactions contemplated under the Plan.

XIV.

ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

The Debtors have concluded that the Plan will maximize recoveries to holders of Claims and Equity Interests. If no plan of reorganization can be confirmed, the Chapter 11 Cases of the Debtors may be converted to cases under chapter 7, in which event a trustee would be elected or appointed to liquidate the properties and interests in property of the Debtors for distribution to their creditors in accordance with the priorities established by the Bankruptcy Code. The Debtors believe that liquidation under chapter 7 would result in smaller distributions being made to creditors than those provided for under the Plan because (i) the chapter 7 trustee's unfamiliarity with the Debtor and its industry would lead to additional costs for the Estates and (ii) in a liquidation of the Debtors under chapter 11, the Causes of Action retained by the Estates likely will be pursued in a more orderly fashion and over a more extended period of time than in a liquidation under chapter 7, potentially resulting in greater recoveries. Accordingly, the Debtors have determined that confirmation of the Plan will likely provide each holder of a Claim or Equity Interest with a greater recovery than it would receive pursuant to liquidation of the Debtors under chapter 7.

XV.

CONCLUSION

The Debtors believe that the Plan is in the best interest of all holders of Claims and Equity Interests, and urge all holders of impaired Claims and Equity Interests in the Debtors to vote to accept the Plan and to evidence such acceptance by returning their Ballots in accordance with the instructions accompanying the Disclosure Statement.

Dated: June 19, 2014 Respectfully submitted,

REVEL AC, INC., on behalf of itself and each of the other Debtors

By: ____________________________
Name: ______________________
Title: ______________________

EXHIBIT A

THE PLAN

EXHIBIT B

DISCLOSURE STATEMENT ORDER

EXHIBIT C

SELECTED FINANCIAL INFORMATION

SCHEDULE 1

LIST OF OTHER DEFINED TERMS

Terms in this Schedule 1 are defined in the Disclosure Statement at the pages indicated below.[1]

[1] Certain terms listed on this Schedule 1 may also appear as defined terms in Section 1.1 of the Plan. To the extent there is a conflict between how such terms are defined in the Disclosure Statement and how such terms are defined in the Plan, the Plan shall control.

SCHEDULE 2

LIQUIDATION ANALYSIS

SCHEDULE 3

SCHEDULE OF REJECTED EXECUTORY CONTRACTS AND UNEXPIRED LEASES

SCHEDULE 4

SCHEDULE OF ASSUMED AND ASSIGNED EXECUTORY CONTRACTS AND UNEXPIRED LEASES

HONORABLE KEVIN J. CAREY

Judge Carey has served on the Bankruptcy Court for the District of Delaware since December 9, 2005 (and was chief judge from 2008 to 2011), having first been appointed as a bankruptcy judge for the Eastern District of Pennsylvania on January 25, 2001. He is a member of the Judicial Conference Committee on Space and Facilities, is the bankruptcy judge representative on the Third Circuit Judicial Council and on the Council's Facilities and Security Committee. Judge Carey is President of the Turnaround Management Association. He is on the Board of Directors of the American Bankruptcy Institute and is a member of the National Conference of Bankruptcy Judges. He is a contributing author to Collier on Bankruptcy and Collier Forms Manual. Judge Carey is also a part-time adjunct professor in Temple University's Beasley School of Law and in the LL.M. in Bankruptcy program at St. John's University School of Law. He began his legal career in 1979 as law clerk to Bankruptcy Judge Thomas M. Twardowski, and then served as Clerk of Court of the Bankruptcy Court, Eastern District of Pennsylvania. Judge Carey received his J.D. in 1979 from the Villanova University School of Law and his B.A. in 1976 from The Pennsylvania State University.

HONORABLE ALLAN L. GROPPER

Allan L. Gropper was appointed as a United States Bankruptcy Judge for the Southern District of New York on October 4, 2000. Prior thereto he was a member of the law firm of White & Case and represented clients in connection with many of the nation's largest Chapter 11 cases, including Manville Corporation, Texaco, LTV Corporation, Federated Department Stores/Allied Stores Corp, Maxwell Communications Corp., MGM, United States Lines, Pan American World Airways, and Waterman Steamship Corp. He was also active in international insolvencies and restructurings and was located in the White & Case Hong Kong office during the year 1999-2000.

Judge Gropper is an adjunct professor of law at Fordham Law School, a member of the National Bankruptcy Conference and a Fellow of the American College of Bankruptcy. He is a graduate of Yale College and Harvard Law School.

David Bart

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Summary of Experience

David Bart has more than 25 years experience assisting businesses and their counsel in complex matters from general consulting to commercial litigation. Assignments include special projects, strategic analysis and operational assessments; many involving bankruptcy, workouts and commercial damages. He has provided financial consulting, litigation consulting and testimony in cases involving commercial damages assessment, evaluation of business operations, solvency analysis, fraudulent transfer litigation, business valuation, forensic accounting and financial investigation projects. His engagements include matters in the U.S. Bankruptcy Court, U.S. District Court and State Court.

David's areas of expertise include strategic planning, financial and economic analysis, investigative accounting, statistical analysis, and business valuation involving both profit and non-profit entities. His consulting services have resulted in business and financial restructuring, reduced operating costs, identification of unprofitable business segments, and successful negotiation of credit support with vendors and lenders as well as successful litigation outcomes.

Professional Affiliations

David holds the following professional designations:

- Certified Insolvency and Reorganization Accountant (CIRA)
- Certified in Distressed Business Valuation (CDBV)
- Certified Fraud Examiner (CFE)
- Accredited Senior Appraiser (ASA)

David is a member of the Board of Directors of the Association of Insolvency and Restructuring Advisors, Chairman of the Technical Issues and Standards Committee, and a primary author of the Standards For Distressed Business Valuation. David is Chairman of the Litigation Trust Task Force for the American Bankruptcy Institute where he also serves on conference planning advisory committees. He is a member of the Business Valuation Association, the Association of Certified Fraud Examiners, the American Society of Appraisers, and the Illinois CPA Society.

He has published numerous articles and presentations and teaches seminars in his fields of expertise.

Education

David has earned both an M.B.A. (concentrations in finance and accounting) and a B.A. (major in anthropology and minor in statistics) from the University of Chicago.

Deloitte.

Deloitte Transactions and Business Analytics PPL

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Profile
Mr. Caputo is a principal in the Tangible Asset Valuation practice of Deloitte Transactions and Business Analytics LLP (DTBA), and leader of the Deloitte FAS Travel, Hospitality and Leisure practice, as well as the lead client service partner on several large casino, hospitality and real estate clients. Leveraging his engineering, accounting and valuation background, he provides clients assistance in appraising a company's assets, liabilities and overall business. He has managed hundreds of assignments during his 18 year tenure with Deloitte FAS and his experience includes both domestic and international projects, including advising clients on pre and post merger valuation issues, reorganization and tax planning.

Experience

Mr. Caputo performs tax, accounting and consulting analyses in connection with purchase price allocations, portfolio analyses, REIT compliance, sale-leaseback transactions, workouts, investment analyses, market studies, capital improvement projects, and federal and state tax treatment and evaluation. He performs machinery and equipment appraisals, building and land improvement valuations, asset impairments analyses, and depreciation studies for financial management planning and tax planning/reporting applications. He also performs construction project planning, project monitoring, construction auditing, operations improvements, project analysis and overall project consulting for companies as they relate to new construction projects and internal corporate construction operations.

Professional Affiliations
- American Society of Cost Segregation Professionals - Board Member

Education
- St. John's University: *MBA, Accounting*
- Villanova University: *Bachelor of Civil Engineering*

Member of
Deloitte Touche Tohmatsu

KASOWITZ
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Andrew K. Glenn is a bankruptcy, restructuring and commercial litigation partner featured in the 2012-2014 editions of *New York Metro Super Lawyers*.

Mr. Glenn represents debtors, official creditors committees, ad hoc committees of bondholders, private equity funds, insurance companies and stakeholders in major bankruptcy proceedings.

NOTABLE REPRESENTATIONS

- *Borders Group, Inc.* and its subsidiaries in their Chapter 11 cases.
- Debtors' counsel in *Forstmann & Company*.
- Debtors' counsel in the restructuring of the *Trump Atlantic City Casinos*.
- Restructuring counsel to the owner of the *Mount Airy Lodge & Casino*.
- Reorganized Debtors' counsel in *Bally Total Fitness Holdings Corporation*.
- Counsel to the Trust Preferred holders in *Mirant Corporation*, including a successful four-month $14 billion valuation trial.
- Counsel to the administrative agent of a secured credit facility to *Pappas Telecasting, Inc*.
- Counsel to the Official Committee of Unsecured Creditors *of GB Holdings, Inc*. relating to the Sands Casino in its successful termination of exclusivity, confirmation of its plan of reorganization and its settlement of litigation against entities affiliated with Carl C. Icahn.
- Counsel to the unofficial equity committee of *Northwest Airlines Inc*.
- Counsel to the acquisition of Friedman's Jewelers and Crescent Jewelers by *Harbinger Capital Partners*.

RELATED PRACTICES

Commercial Litigation
Complex Financial Products Litigation
Corporate
Creditors' Rights and Bankruptcy
Financing Litigation
Real Estate - Litigation

EDUCATION

- Benjamin N. Cardozo School of Law (J.D., *magna cum laude*, 1995)
  - Articles Editor, *Cardozo Law Review*
- Columbia University (A.B., 1990)

BAR ADMISSIONS

- 1996, New York

COURT ADMISSIONS

- 1996, U.S. District Court, Southern District of New York
- 2002, U.S. Court of Appeals, Second Circuit
- 2007, U.S. Court of Appeals, Third Circuit

- Counsel to the Official Committee of Unsecured Creditors of *Adelphia Communications*.
- Counsel to the Official Committee of Unsecured Creditors of *Sunbeam Corporation*.
- Counsel to the Official Committee of Unsecured Creditors of *Fruit of the Loom*, as special litigation counsel.
- Counsel to the Official Committee of Unsecured Creditors of *Refco, Inc.*, as special litigation counsel.
- Counsel to the Official Committee of Unsecured Creditors of *Hechinger Company*, as special litigation counsel.

Mr. Glenn also represents activist shareholders in corporate governance litigation and proxy fights and was recently trial counsel in an action brought against an auditing firm that resulted in a jury verdict in his client's favor.

In law school, Andrew's note, published in the *Cardozo Law Review*, Disclosure of Executive Illness under Federal Securities Law and the Americans with Disabilities Act: Hobsons' Choice or Business Necessity? was voted Best Law Review Note by the faculty of Cardozo.

Partner, Restructuring

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Education

Fordham University School of Law, J.D., 2002

- *cum laude*

University of Michigan, Ross School of Business Administration, B.B.A., Economics, 1999

- With Distinction

Admissions & Qualifications

2003, New York

Nicole L. Greenblatt

Nicole Greenblatt represents debtors, creditors, equity holders and investors in all aspects of complex corporate restructurings, including Chapter 11 cases, out-of-court restructurings and special situation investments or acquisitions. Nicole's practice includes advising clients with respect to business operations in Chapter 11, advising senior managers and boards of directors of financially troubled companies with respect to restructuring strategies; providing advice relating to mass tort and environmental liabilities of financially troubled companies; providing advice, negotiating and structuring financings and other commercial transactions; and advising clients seeking to purchase businesses and related assets out of Chapter 11 proceedings. Nicole has a broad range of experience across a number of industries and has represented clients in multi-jurisdictional and cross-border matters.

Chambers USA, America's Leading Lawyers for Business recognized Nicole as a leading lawyer in its 2014 edition, applauding her as "passionate, smart and [with] the right balance of aggression and consensual deal-making ability." Nicole has also been recognized in the *New York Times Magazine* as one of the New York metro area's Outstanding Young Women Lawyers (May 2014) and by *Super Lawyers* magazine as a "Rising Star" in the area of bankruptcy and creditor rights (2013-2014). Nicole recently acted for an ad hoc committee of noteholders in connection with the restructuring of Arcapita Bank, which was recognized by *The American Lawyer* as the 2014 Global Finance Deal of the Year: Restructuring and Insolvency (Middle East). The Chapter 11 cases of The Reader's Digest Association, Inc. and Tronox Incorporated, where Nicole acted as one of the lead restructuring partners, were both selected by *Turnarounds & Workouts* as two of the top ten "successful restructurings of 2010." The Reader's Digest was also recognized by the Global M&A Network as "Large Pre-Packaged Reorganization of the Year" at their Turnaround Atlas Awards in 2011. In 2011, Nicole was also selected as one of the top thirty nominees nationwide to participate in the inaugural Next Generation Program at the National Conference of Bankruptcy Judges, which program was designed to attract up-and-coming bankruptcy attorneys who will become the leaders of the next generation of practitioners.

Representative Matters

- **Caesars Entertainment Operating Company:** Representing Caesar's and certain affiliates in connection with a potential debt restructuring.
- **Sbarro Inc.:** Representing Sbarro Inc. and its affiliates in their second Chapter 11 cases in the Southern District of New York. Sbarro is the world's premier owner, operator and franchisor of Italian quick service restaurants and the largest mall-focused restaurant concept in the world, with more than 5,000 employees and 1,000 restaurants in 42 countries.

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Courts

U.S. Bankruptcy Court for the Southern District of New York

U.S. Bankruptcy Court for the Eastern District of New York

Memberships & Affiliations

Turnaround Management Association

American Bankruptcy Institute

New York City Bar Association

- Bankruptcy Committee

Publications

“Chapter 15 Denied - The Impact of ‘Bear Stearns’”, *The New York Law Journal*, October 2007 (co-author)

“Mass Tort Chapter 11 Cases” chapter in Weil, Gotshal & Manges *Reorganizing Failing Businesses*, updated in 2006 (co-author)

“District Court Addresses Parameters of Section 1146 of the Bankruptcy Code,” Weil, Gotshal & Manges Bankruptcy Bulletin, June 2006; re-published in *Pratt’s Journal of Bankruptcy Law*, December 2006

“Ninth Circuit Declines to Determine Whether Creditors’ Motivation is Relevant to Court's Consideration of Creditors’ Request for a Substantial Contribution Award,” Weil, Gotshal & Manges Bankruptcy Bulletin, October 2004

- **OGX Petroleo e Gas:** Acting as U.S. counsel to the oil and gas company controlled by Eike Batista in connection with its pending bankruptcy in Rio de Janeiro.
- **Physiotherapy:** Represented Physiotherapy, a leading provider of outpatient rehabilitation services and the largest provider of outpatient physical therapy services in the United States, in its prepackaged Chapter 11 cases. Physiotherapy’s prepackaged plan of reorganization reduced its total funded indebtedness by 62%, from $375 million to $144 million, and provided the company with long-term financing and access to incremental funding to support the company’s go-forward business needs.
- **Avis Budget Group, Inc.:** Represented Avis Budget Group in connection with the purchase of certain airport concession agreements from Simply Wheelz LLC d/b/a Advantage Rent-A-Car through a Chapter 11 sale process supervised by the United States Bankruptcy Court for the Southern District of Mississippi.
- **Revel AC, Inc.:** Represented Revel AC, Inc. and certain of its affiliates (“Revel”) in all aspects of its original prepackaged Chapter 11 reorganization proceedings before the United States Bankruptcy Court for the District of New Jersey. Kirkland assisted Revel in deleveraging its balance sheet by 82 percent, by converting approximately $1.2 billion of debt into equity, pursuant to a prepackaged plan of reorganization supported by a majority of Revel’s lenders. Kirkland also assisted Revel in obtaining $250 million in debtor-in-possession financing, and securing approximately $360 million in exit financing.
- **Metro Fuel Oil Corp.:** Represented Metro Fuel Oil Corp. and 9 of its affiliates in their Chapter 11 cases in the Eastern District of New York. Metro supplies and delivers bioheat, biodiesel, heating oil, ultra low sulfer diesel fuel, natural gas and gasoline throughout the New York Area. The company used Chapter 11 to complete a sale pursuant to Section 363 of the Bankruptcy Code.
- **Arcapita Bank Ad Hoc Committee:** Represented the interests of an ad hoc committee of debt holders under a Shariah compliant Murabaha facility in the Chapter 11 cases of Arcapita Bank. Worked constructively with the official committee of unsecured creditors to develop and implement a consensual Chapter 11 plan.
- **United Retail Group:** Represented United Retail Group, Inc. and its subsidiaries in their Chapter 11 cases. United Retail is a leading retailer of trend-right fashions for plus-size women under the Avenue brand. The company used Chapter 11 to exit unprofitable store locations and sell substantially all its assets to affiliates of Versa Capital pursuant to Section 363 of the Bankruptcy Code.
- **Vista Equity Partners:** Represented Vista Equity Partners in connection with its purchase of CDC Software in a court-supervised sale process in the United States Bankruptcy Court for the Northern District of Georgia. Vista acted as the “stalking-horse” purchaser in a sale conducted pursuant to Section 363 of the U.S. Bankruptcy Code and was approved by the Bankruptcy Court as the winning bidder in March 2012.

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Seminars

"Turnaround and Distressed," Columbia Business School 19th Annual Private Equity & Venture Capital Conference, Panelist, February 15, 2013

"Advising Distressed Businesses and Business Bankruptcy Cases," New York State Bar Association, Speaker, December 13, 2012.

"Reader's Digest Case Study: Completing a Multi-National Restructuring through the Crest and Trough of the Global Credit Crisis," The University of Chicago Booth School of Business Fifth Annual Distressed Investing and Restructuring Conference, Panelist, April 15, 2010

Prior Experience

Weil, Gotshal & Manges LLP

- **The Reader's Digest Association, Inc.:** Represented The Reader's Digest Association Inc. (RDA) and its affiliates, a global multi-brand media and direct marketing company with more than 130 million customers in 78 countries, in their 2010 pre-arranged Chapter 11 cases. In less than six months in bankruptcy, the company reduced its total debt by more than 75 percent, from more than $2.2 billion to $525 million and achieved several operational restructuring initiatives. RDA was the first company in five years to refinance its exit debt through a high yield bond offering, which was completed simultaneously with the Chapter 11 exit.
- **Tronox Incorporated:** Represented Tronox and its affiliates, a leading manufacturer and marketer of titanium dioxide pigment, electrolytics and specialty chemicals, in their complex Chapter 11 cases, where Tronox successfully restructured and resolved massive environmental liabilities through one of the largest environmental settlements in bankruptcy history.
- **Integra Telecom Inc.:** Represented Integra Telecom Inc., a facilities-based, integrated communications provider for business, in its balance sheet restructuring, which resulted in all of Integra's senior secured second lien operating company debt and unsecured parent company debt being converted into common equity and reduced Integra's total debt from almost $1.3 billion to approximately $600 million.
- **Pierre Foods, Inc.:** Represented Pierre Foods, Inc. and its affiliates, a leading manufacturer, marketer and distributor of high quality, differentiated food solutions, in their Chapter 11 cases.
- **Tecumseh Products Company:** Represented the company, a leading manufacturer of engines, compressors, and related products, in a series of out-of-court restructuring and sales transactions.
- **Armstrong World Industries, Inc.:** Represented Armstrong in its complex, six-year, mass tort Chapter 11 case. Following contested confirmation proceedings, including an appeal to the United States Court of Appeals for the Third Circuit, Armstrong successfully implemented a plan of reorganization channeling asbestos-related claims to a Section 524(g) trust. Nicole was involved in all aspects of the day-to-day administration of the Chapter 11 case, with a particular emphasis on plan related matters, environmental issues, employee benefit and retention programs, insurance matters and claims reconciliations.
- **Footstar, Inc.:** Represented Footstar and thousands of its store corporations in a complicated multi-year restructuring, involving the immediate shut down of the Just-for-Feet store chain, the sale of the Footaction chain to Foot Locker for $300 million and the reorganization around the company's Kmart shoe business. The company successfully emerged from bankruptcy following litigation with Kmart and paid all creditors in full with a significant recovery to stockholders.
- **Premium Papers:** Represented major creditor, equity holder and former owner of paper mill in connection with the Chapter 11 cases of the mill purchasers.