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Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
HONORABLE GLORIA M. BURNS
CASE NO. 13-34483 (GMB)

In re:

RIH ACQUISITIONS NJ, LLC, *et al.*,¹

Debtors-in-Possession.

Chapter 11

HEARING DATE AND TIME:

_____, 2014, at ____:____.m.

**ORAL ARGUMENT WAIVED UNLESS
OBJECTIONS TIMELY FILED**

NOTICE OF DEBTORS' MOTION PURSUANT TO 11 U.S.C. § 105(d)(2)(B)(v) AND (vi) FOR AN ORDER: (A) CONDITIONALLY APPROVING THE DISCLOSURE STATEMENT FOR SOLICITATION PURPOSES ONLY; (B) SCHEDULING A JOINT HEARING TO CONSIDER ADEQUACY OF THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE JOINT PLAN OF LIQUIDATION; (C) APPROVING NOTICE AND OBJECTION PROCEDURES WITH RESPECT TO ADEQUACY OF THE DISCLOSURE STATEMENT AND PLAN CONFIRMATION; (D) FIXING A RECORD DATE FOR VOTING AND PROCEDURES FOR TEMPORARY ALLOWANCE OF CLAIMS;(E) APPROVING SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF; AND (F) APPROVING THE FORM OF BALLOTS AND ESTABLISHMENT OF PROCEDURES FOR VOTING ON THE PLAN

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal identification number are: RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel (1695) and RIH Propco NJ, LLC (5454).



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TO: ALL PARTIES-IN-INTEREST

PLEASE TAKE NOTICE that on the date and time set forth in the Order Shortening Time served herewith, the undersigned, attorneys for RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel and RIH Propco NJ, LLC, the within debtors and debtors-in-possession (collectively, the “**Debtors**”), shall move before the Honorable Gloria M. Burns, Chief United States Bankruptcy Judge, at the United States Bankruptcy Court, Mitchell H. Cohen U.S. Courthouse, 400 Cooper Street, 4th Floor, Camden, New Jersey 08101, for entry of an Order, pursuant to 11 U.S.C. § 105(d)(2)(B)(v) and (vi), (a) conditionally approving the Disclosure Statement for solicitation purposes only; (b) scheduling a joint hearing to consider adequacy of the Disclosure Statement and confirmation of the Joint Plan of Liquidation; (c) approving notice and objection procedures with respect to the adequacy of the Disclosure Statement and Plan confirmation; (d) fixing a record date for voting and procedures for temporary allowance of claims; (e) approving solicitation packages and procedures for distribution thereof; and (f) approving the form of ballots and establishment of procedures for voting on the Plan (the “**Motion**”).

PLEASE TAKE FURTHER NOTICE that in support of the Motion, the undersigned shall rely on the accompanying Application which sets forth the relevant factual and legal bases upon which the requested relief should be granted. A proposed Order granting the requested relief also is submitted herewith.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion shall: (i) be in writing, (ii) state with particularity the basis of the objection; and (iii) be filed with the Clerk of the United States Bankruptcy Court electronically by attorneys who regularly practice before the Bankruptcy Court in accordance with the General Order Regarding Electronic Means for Filing, Signing, and Verification of Documents dated March 27, 2002 (the

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Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
HONORABLE GLORIA M. BURNS
CASE NO. 13-33483 (GMB)

In re:

RIH ACQUISITIONS NJ, LLC, *et al.*,¹

Debtors-in-Possession.

Chapter 11

HEARING DATE AND TIME:

_____, 2014, at ____:____.m.

**ORAL ARGUMENT WAIVED UNLESS
OBJECTIONS TIMELY FILED**

**APPLICATION IN SUPPORT OF THE DEBTORS' MOTION PURSUANT TO 11 U.S.C. §
105(d)(2)(B)(v) AND (vi) FOR AN ORDER: (A) CONDITIONALLY APPROVING THE
DISCLOSURE STATEMENT FOR SOLICITATION PURPOSES ONLY; (B) SCHEDULING A
JOINT HEARING TO CONSIDER ADEQUACY OF THE DISCLOSURE STATEMENT AND
CONFIRMATION OF THE JOINT PLAN OF LIQUIDATION; (C) APPROVING NOTICE AND
OBJECTION PROCEDURES WITH RESPECT TO ADEQUACY OF THE DISCLOSURE
STATEMENT AND PLAN CONFIRMATION; (D) FIXING A RECORD DATE FOR VOTING
AND PROCEDURES FOR TEMPORARY ALLOWANCE OF CLAIMS;(E) APPROVING
SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF; AND (F)
APPROVING THE FORM OF BALLOTS AND ESTABLISHMENT OF PROCEDURES FOR
VOTING ON THE PLAN**

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal identification number are: RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel (1695) and RIH Propco NJ, LLC (5454).

TO: HONORABLE GLORIA M. BURNS
Chief United States Bankruptcy Judge

RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel and RIH Propco NJ, LLC, the within debtors and debtors-in-possession (collectively, the “**Debtors**”), by and through their counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A. respectfully represents:

I. INTRODUCTION

1. This Application is submitted in support of the Debtors’ motion (the “**Motion**”) for entry of an Order pursuant to 11 U.S.C. § 105(d)(2)(B)(v) and (vi): (a) conditionally approving the Disclosure Statement (the “**Disclosure Statement**” defined further herein) for solicitation purposes only; (b) scheduling a joint hearing (the “**Joint Hearing**”) to consider adequacy of the Disclosure Statement and confirmation of the Debtors’ Joint Plan of Liquidation (as may be amended and as further defined herein, the “**Plan**”); (c) approving notice and objection procedures with respect to adequacy of the Disclosure Statement and Plan confirmation; (d) fixing a record date (the “**Record Date**” defined further herein) for voting on the Plan and procedures for temporary allowance of claims; (e) approving solicitation packages and procedures for distribution thereof; and (f) approving the form of ballots (the “**Ballots**,” as defined further herein) and establishment of procedures for voting on the Plan.

2. As detailed further herein, the Debtors respectfully assert that cause exists to allow the Court to schedule the Joint Hearing to consider both the adequacy of the Disclosure Statement pursuant to 11 U.S.C. § 1125(b) and confirmation of the Plan. The Debtors’ creditors eligible to vote on the Plan are largely well-informed, sophisticated creditors, of which some have participated in the Plan negotiations as members of the Official Committee of Unsecured Creditors (the “**Committee**”). Conducting the Joint Hearing will enable the Debtors to obtain

confirmation of the Plan at least one month earlier than a traditional timeline would allow, which will limit administrative expenses, while most importantly, still providing at least twenty-eight (28) days' notice to the creditors to consider the Disclosure Statement and the Plan.

II. JURISDICTION

3. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a "core proceeding" pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (L) and (O).

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

III. BACKGROUND

5. On November 6, 2013 (the "**Filing Date**"), the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"). Since the Filing Date, the Debtors have remained in possession of their assets – and RIH Acquisitions continues management of its business – as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

6. On November 14, 2013, the United States Trustee for the District of New Jersey (the "**UST**") appointed the Committee to represent the interests of all the Debtors' unsecured creditors.

A. The Debtors' Business

7. A detailed description of RIH Acquisitions' business and the facts precipitating the filing of these Chapter 11 proceedings are set forth in the Affidavit of Eric Matejevich in support of the Debtors' various "First Day Motions" (the "**Matejevich Affidavit**"). Those facts are incorporated herein by reference.

8. As set forth in the Matejevich Affidavit, as of the Filing Date, RIH Acquisitions was in the hotel and gaming business and owned and operated The Atlantic Club Casino Hotel (formerly The Atlantic City Hilton and ACH) located at Boston Ave. & The Boardwalk in

Atlantic City, New Jersey (the “**Atlantic Club Casino**”).² As of the Filing Date, the Atlantic Club Casino had 801 hotel rooms, over 75,000 square feet of casino gaming space including state of the art low denomination slots and table games, as well as seven restaurants. The Atlantic Club Casino also offered over 37,000 square feet of versatile event space and could accommodate gatherings of up to 1,600 people.

B. The Sale of Substantially All of the Debtors’ Assets

9. On November 12, 2013, the Debtors filed a Motion for entry of: (I) an Order Pursuant to 11 U.S.C. § 363 and Fed. R. Bankr. P. 2002, 6004 and 6006: (1) Approving Bidding Procedures in Connection With the Sale of the Debtors’ Assets; (2) Authorizing Entry into Stalking Horse Agreements and Approving Stalking Horse Protections; (3) Approving Procedures Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (4) Scheduling an Auction and Sale Approval Hearing; (5) Approving the Form and Manner of the Sale Notice; and (6) Granting Certain Related Relief; and (II) an Order: (1) Approving the Sale of Substantially All of the Debtors’ Assets; (2) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (3) Granting Certain Related Relief [Docket No. 62] (the “**Sale Motion**”).

10. On November 19, 2013, the Court entered an Order pursuant to 11 U.S.C. § 363 and Fed. R. Bankr. P. 2002, 6004 and 6006 approving that portion of the Sale Motion related to the bidding procedures [Docket No. 87] (the “**Bidding Procedures Order**”). The Bidding Procedures Order fixed December 16, 2013, at 4:00 p.m. as the deadline for the submission of

² RIH Propco is a wholly owned subsidiary of RIH Acquisitions. RIH Propco has no assets or liabilities, other than as a party to a unitary lease with RIH Acquisitions. Pursuant to that lease, all the real estate associated with the Atlantic Club Casino, as well as its non-gaming furniture, fixtures and equipment, were leased by RIH Acquisitions to RIH Propco, and leased back by RIH Propco to RIH Acquisitions.

Qualified Bids (as defined in the Bidding Procedures Order) and December 17, 2013 at 11:00 a.m. for an auction to determine the highest and/or otherwise best bid for the Debtors' assets.

11. On December 17, 2013 and December 18, 2013, the Debtors conducted an open auction process for the sale of all or substantially all their assets. On December 19, 2013, the Debtors, in consultation with their advisors, the Committee and Northlight Trust I, a Delaware statutory trust, as DIP lender, selected Caesars Entertainment Operating Company, Inc. (“**Caesars**”) and Tropicana Atlantic City Corp. (“**Tropicana**,” collectively with Caesars, the “**Successful Bidders**”) as the highest and best bidders for the Debtors' assets (the “**Sale**”).

12. The Sale was presented to and approved by the Court on December 23, 2013. On December 26, 2013, the Court entered two (2) orders [Docket Nos. 221 and 222] approving the Sale Motion (the “**Sale Orders**”).

13. As a result of the respective sales of assets to the Successful Bidders, the Debtors ceased operations on January 13, 2014. On January 15, 2014, the Debtors closed on the Asset Purchase Agreement with Tropicana. The Debtors closed on the Asset Purchase Agreement with Caesars on February 3, 2014.

C. The Debtors' Disclosure Statement and Plan

14. Following the approval of the Sale, the Debtors examined all available options to emerge from Chapter 11. Toward that end, the Debtors formulated the Plan which, in short order, provides for the creation of a liquidating trust that will administer the Debtors' estates and distribute the sale proceeds to the Debtors' creditors. Accordingly, on February 28, 2014, the Debtors filed the Plan and accompanying Disclosure Statement.

D. Request for a Joint Hearing

15. As described herein, the Debtors' creditors are all sophisticated business institutions who, upon information and belief, are likely to support the Plan. As set forth above,

the Debtors sold substantially all of their assets. The Sale essentially provided the framework for the Plan, which was supported by the Committee and to which no creditors objected with the exception of one (1) disgruntled bidder. All parties-in-interest will benefit from a prompt and successful conclusion of the Debtors' Chapter 11 cases and the Debtors now seek the Court's approval of a Joint Hearing to consider the adequacy of the Disclosure Statement and confirmation of the Plan.

16. By this Motion, the Debtors respectfully request that the Court schedule a Joint Hearing to consider ***both*** the adequacy of the Disclosure Statement and immediately thereafter, confirmation of the Plan. In connection therewith, by this Motion, the Debtors also seek the Court's conditional approval of the Disclosure Statement for solicitation purposes only so as to allow the Debtors to immediately begin the solicitation process.

IV. REQUESTED RELIEF AND BASIS THEREFOR

A. The Court Should Conditionally Approve the Debtors' Disclosure Statement for Solicitation Purposes Only and the Court Should Schedule A Joint Hearing To Consider the Adequacy of the Disclosure Statement and Confirmation of the Plan

(i) Conditional Approval of the Disclosure Statement

17. The Debtors request that the Court schedule the Joint Hearing to consider both the adequacy of the Disclosure Statement and confirmation of the Plan. In order to do so, the Debtors also seek the Court's conditional approval of the Disclosure Statement as containing "adequate information" sufficient to satisfy the requirements of Section 1125 of the Bankruptcy Code and allow immediate solicitation of those creditors of the Debtors' estates who are allowed to vote on the Plan.

18. The Bankruptcy Code provides that a plan proponent cannot solicit acceptances or rejections of a plan unless the Court approves a written disclosure statement as containing

“adequate information.” 11 U.S.C. § 1125(b). See also General Electric Credit Corp. v. Nardulli & Sons, Inc., 836 F.2d 184, 188 (1988). The Bankruptcy Code defines “adequate information”

as:

information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan ... and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.

11 U.S.C. § 1125(a)(1).

19. A plan proponent must furnish such information so that creditors and interest holders can make an informed decision about the feasibility of the plan. See e.g. In re Microwave Prods. of Am., Inc., 100 B.R. 376, 377 (Bankr. W.D. Tenn. 1989). The adequacy of a disclosure statement is to be determined on a case-by-case basis “under a flexible standard that can promote the policy of Chapter 11 towards fair settlement through a negotiation process between informed and interested parties.” In re Copy Crafters Quickprint, Inc., 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988); see also Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 417 (3d Cir. 1988), cert. denied, 488 U.S. 967 (1988). Essentially, a disclosure statement must “clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.” In re Feretti, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

20. Accordingly, a bankruptcy court has broad discretion to examine the adequacy of information contained in a disclosure statement. See In re Texas Extrusion Corp., 844 F.2d 1142, 1157 (5th Cir. 1988); In re Ionosphere Clubs, Inc., 179 B.R. 24, 29 (S.D.N.Y. 1995);

Feretti, 128 B.R. at 18. In addition to the criteria now specified in Section 1125(a)(1), courts examining the adequacy of disclosure statements prior to the enactment of BAPCPA generally examined whether the disclosure statement contained the following types of information:

- (a) the circumstances that gave rise to the filing of the bankruptcy petition;
- (b) an explanation of the available assets;
- (c) the anticipated future of the debtor;
- (d) the source of the information provided in the disclosure statement;
- (e) a disclaimer, which typically indicates that no statement or information concerning the debtor or its assets is authorized, other than those set forth in the disclosure statement;
- (f) the condition and performance of the debtor while in Chapter 11;
- (g) information regarding claims against the estate;
- (h) a liquidation analysis;
- (i) the accounting methods used to produce the financial information in the disclosure statement;
- (j) a summary of the plan;
- (k) an estimate of all administrative expenses, including professional fees;
- (l) any financial information, valuations or pro forma projections that would be relevant to creditors' determinations of whether to accept or reject the plan;
- (m) information relevant to the risks being taken by the creditors and interest holders;
- (n) the actual or projected value that can be obtained from avoidable transfers;
- (o) the existence, likelihood and possible success of nonbankruptcy litigation;
- (p) the tax consequences of the plan; and
- (q) the relationship of the debtor with its affiliates.

In re Cardinal Congregate I, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990); In re Oxford Homes, Inc., 204 B.R. 264, 269 (Bankr. D. Me. 1997). This list is by no means comprehensive, and a plan proponent is not required to provide all of the information on the list. See In re Phoenix Petroleum Co., 278 B.R. 383, 393 (Bankr. E.D. Pa. 2001) (cautioning that "no one list of categories will apply in every case"); Feretti, 128 B.R. at 18-19.

21. The Debtors submit that the Disclosure Statement contains all of the information on the above list that is relevant to the Plan and which is sufficient to enable the Court to conditionally approve the Disclosure Statement for solicitation purposes. The Disclosure

Statement describes, inter alia, (a) the Plan, including the composition and proposed treatment of each class of claims asserted against the Debtors' estates, (b) the circumstances giving rise to the Debtors' Chapter 11 filings, (c) significant events that occurred during the Debtors' Chapter 11 cases, (d) the condition and performance of the Debtors while in Chapter 11, (e) financial information that would be relevant to creditors' determinations of whether to accept or reject the Plan, (f) the method and timing of distributions under the Plan, and (g) appropriate disclaimers regarding the Court's approval of information only as contained in the Disclosure Statement.

While the Debtors submit that the Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code and should ultimately be approved, the Debtors assert that the information provided therein is sufficient to allow the Court to conditionally approve the Disclosure Statement now to allow immediate solicitation and, as described further herein, to conduct the Joint Hearing to both ultimately consider the adequacy of the Disclosure Statement and confirmation of the Plan.

(ii) Propriety of the Joint Hearing

22. There is ample authority to enable the Court to shorten the typical notice periods with respect to solicitations for chapter 11 plans and to conduct the Joint Hearing and conditionally approve the Disclosure Statement in furtherance of same. Section 105(d)(2)(B)(v) and (vi) of the Bankruptcy Code expressly provide that the Court is authorized to:

issue an order ... prescribing ... limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that – ...

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

11 U.S.C. § 105(d)(2)(B)(v) and (vi).

23. “Section 105(d)(2) ... provides rather substantial flexibility and latitude for the Court to designate, or adjust, the Chapter 11 plan, disclosure statement, and confirmation time lines and procedure.” In re Aspen Limousine Service, Inc., 187 B.R. 989, 995 (Bankr. D. Col. 1995)

24. Section 105(d)(2)(B)(v) and (vi) by its terms allow

... this Court [to] “mix and match” the opportunities and timing for a debtor, creditors, and parties-in-interest, to file plans and disclosure statements, and solicit acceptances of such plans. It is an omnibus provision with which the Court can customize Chapter 11 preconfirmation procedures, as long as those procedures are not inconsistent with other provisions of the Code. Thus, the Court is authorized to use Section 105(d)(2) options as long as they don't conflict with Sections 1121 and 1125.

Id. Thus the Court is expressly empowered to examine the economics, exigencies and issues with respect to each Chapter 11 case and determine what noticing procedures may be appropriate with respect to disclosure statements and plans.

25. The standard period for notice of a hearing to approve a disclosure statement and under the Bankruptcy Code is typically 28 days pursuant to Rule 2002(b) and (d) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). Fed. R. Bankr. P. 2002(b) and (d), 3017. The Court, however, is expressly authorized to exercise its discretion to reduce such notice period for cause, with or without motion or notice. Fed. R. Bankr. P. 9006; see also 9 Collier on Bankruptcy, ¶ 3017.01[2] at 3017-5 (16th ed. 2011).

26. Generally, such cause can be proven by showing a need for haste and that the shortened notice does not hurt the creditors. See 9 Collier on Bankruptcy, ¶ 3017.01[2] at 3017-5. Moreover, “if there are few impaired creditors or if the impaired creditors are sophisticated and well informed concerning the case, reduction of the notice period would be acceptable.” Id.

27. The Court is empowered to select the time and date to conduct the hearing on confirmation before the Disclosure Statement is approved and indeed, absent an objection and under certain circumstances, the Court may not ultimately have to conduct a hearing on the adequacy of the Disclosure Statement. *Id.* at ¶ 3017.01[4] at 3017-6 and 3017-7.

28. Courts in this district and beyond have previously allowed combined hearings to consider adequacy of a disclosure statement and confirmation of a Plan in the context of chapter 11 case. *See, e.g., In re Electronics Expo, LLC*, Case No. 13-16921 (NLW) (Bankr. D.N.J. June 19, 2013), *Order: (A) Conditionally Approving the Disclosure Statement for Solicitation Purposes only; (B) Scheduling a Joint Hearing to Determine the Adequacy of the Debtors' First Amended Disclosure Statement Pursuant to 11 U.S.C. § 1125(b) and Confirmation of the Joint Plan of Liquidation; (C) Approving Notice and Objection Procedures in Respect of Adequacy of the Disclosure Statement and Plan Confirmation, (D) Fixing a Record Date for Voting and Temporary Allowance of Claims; (E) Approving Solicitation Packages and Procedures for Distribution Thereof; and (F) Approving the Form of Solicitation Package and Ballots and Establishment of Procedures for Voting on the Plan* [Docket No. 106]; *In re North Country BBQ Ventures, Inc., et al.*, Case No. 09-44194(MS) (Bankr. D.N.J. Apr. 5, 2010), *Order Conditionally Approving the Disclosure Statement for Solicitation Purposes Only, Scheduling a Joint Hearing to Determine the Adequacy of Debtor's Disclosure Statement and if Appropriate to Confirm Debtor's Original Joint Plan of Liquidation; Establishing Procedures for the Solicitation and Tabulation of Votes to Accept or Reject the Debtor's Original Joint Plan of Liquidation; and Fixing Time for Filing Acceptances or Rejections of Plan and Any Objections, Combined With Notice Thereof* [Docket No. 165]; *In Universal Automotive Indus., Inc., et al.*, Case No. 05-27778(MS) (Bankr. D.N.J. July 28, 2005), *Order Scheduling A Joint Hearing To Determine*

the Adequacy of Debtor's[sic] Disclosure Statement and If Appropriate to Confirm Debtor's[sic] Plan of Reorganization and Fixing Time for Filing Acceptances or Rejections of Plan Combined With Notice Thereof [Docket No. 189]; In re Immedica, Inc., Case No. 03-11390 (MS) (Bankr. D.N.J. Sept. 26, 2003), *Order (i) Scheduling a Hearing to Approve of Debtor's Disclosure Statement and Plan of Reorganization and (ii) Approving Voting Procedures* [Docket No. 354]; In re Harmony Holdings, LLC, et al., Case No. 08-00599(DD) (Bankr. D.S.C. Aug. 4, 2008), *Order Setting Date After Which Debtor May Solicit Acceptance of Plan and Combining the Hearings on Approval of the Disclosure Statement and Confirmation of the Plan of Reorganization* [Docket No. 162]; In re Ponderosa Pine Energy Partners, Ltd., et al., Case No. 05-21444(NLW) (Bankr. D.N.J. Nov. 18, 2005), *Order Granting (i) Authority for Debtor to Execute Joint Settlement Term Sheet Nunc Pro Tunc and (ii) Expedited Procedure for Disclosure Statement Approval and Plan Confirmation* [Docket No. 570]; In re The Young Women's Christian Assoc. of Germantown, Case No. 04-31669 (Bankr E.D. Pa. Dec. 21, 2005), *Order (I) Scheduling Combined Hearing to Consider Approval and Confirmation Plan of Reorganization and (ii) Establishing Deadline for Administrative Claims* [Docket No. 289]; In re EliteAgents Mortgage Servs., Inc., Case No. 03-41805 (Bankr D.N.J. July 9, 2004), *Order Scheduling Disclosure / Confirmation Hearing and Fixing Time for Filing Acceptances or Rejections of Plan Combined With Notice Thereof* [Docket No. 144]; and In re Hazel Pointe, LP, Case No. 03-04426(JW) (Bankr. D.S.C. June 9, 2003) [Docket No. 21].

29. Based upon the circumstances presented by the Debtors' Chapter 11 cases and the composition of the creditor-body in question, there is ample cause to allow the Court to conduct the Joint Hearing to consider both the Disclosure Statement's adequacy and confirmation of the Plan. As already detailed herein, the Sale, which was fully supported by the Committee and the

Debtors' creditors, save one (1) disgruntled bidder, established the framework for the Plan.

Moreover, the Debtors' creditors are, for the most part, well-informed and sophisticated parties whose interests will not be prejudiced by expediting the scheduling of the hearing on the Disclosure Statement and Plan.

30. Ultimately, the Joint Hearing will also allow the Debtors to limit the administrative expenses by streamlining the approval process for the Disclosure Statement and confirmation of the Plan. Absent further Order of the Court, the Debtors would not likely obtain approval of the Disclosure Statement until at least March 31, 2014, and only thereafter could the Debtors begin the solicitation process, seeking confirmation of the Plan by the earliest, April 28, 2014. That time frame will likely increase costs of administration and delay distributions to the Debtors' creditors. The sooner the Court approves the Plan, the sooner that the sale proceeds can begin to be distributed to the creditors.

31. The Debtors assert that the foregoing demonstrates the appropriateness of conducting the Joint Hearing, both with respect to the interests of the Debtors' creditors and the aims of the Bankruptcy Code to expeditiously and economically proceed towards confirmation. Accordingly, the Debtors request that the Court schedule the Joint Hearing for the date previously scheduled to consider the Disclosure Statement.

B. Objection Procedures With Respect to Adequacy of the Disclosure Statement and Confirmation of the Plan

32. Bankruptcy Rule 3017(c) provides for objections to be filed with respect to a disclosure statement at any time prior to a court's approval of same and that "[o]n or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation."

Fed. R. Bankr. P. 3017(c).

33. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the court.” Fed. R. Bankr. P. 3020(b)(1).

34. The Debtors request that in connection with scheduling the Joint Hearing to consider the adequacy of the Disclosure Statement and confirmation of the Plan, that the Court establish objection procedures therewith which would require all creditors to serve the Debtors’ respective counsel, the UST and counsel for the Committee with any objection with respect to the adequacy of the Disclosure Statement or to confirmation of the Plan within **7 days of the Joint Hearing**. The Debtors request that the Court require any such objections to: (i) be in writing, (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party, (iii) state with particularity the basis and nature of any objection to the Plan, and (iv) be filed, together with proof of service, with the Court and served so that they are received by (i) the Clerk of the Court, (ii) counsel for the Debtors, (iii) the UST, and (iv) counsel for the Committee, at the addresses set forth in Order approving this Motion.

35. As detailed further above, the Debtors urge that establishing such objection procedures is warranted based on the Debtors’ Chapter 11 cases and the composition of the Debtors’ creditor-body eligible to vote to accept the Plan. Moreover, the proposed timing for service of objections, if any, will afford the Debtors, the Committee and other significant parties in interest sufficient time to consider the objections and proposed modifications and file any replies while leaving the Court sufficient time to consider any such objections and replies before the Joint Hearing.

C. Record Date

36. Bankruptcy Rule 3017(d) provides that, for the purpose of soliciting votes in connection with confirmation of a plan, “creditors and equity security holders shall include holders of stock, bonds, debentures, notes and other securities of record on the date the order

approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes.

37. The Debtors respectfully request that the Court exercise its power under Section 105(a) of the Bankruptcy Code³ to fix the day the Court enters an Order granting the relief requested in this Motion as the record date (the “**Record Date**”) for purposes of determining creditors entitled to vote on the Plan.

D. The Solicitation Package and Procedures for Distribution Thereof

38. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims and equity interests for the purpose of soliciting their votes and providing adequate notice of the hearing on confirmation of a plan. Specifically, Rule 3017(d) provides, in pertinent part:

Upon approval of a disclosure statement,—except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders—the debtor in possession, trustee, proponent of the plan, or clerk as the court orders, shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of such plan may be filed; and
- (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

³ Pursuant to Section 105(a) of the Bankruptcy Code, “[t]he [C]ourt may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan ...

Fed. R. Bankr. P. 3017(d).

39. After the Court has conditionally approved the Disclosure Statement as containing adequate information required by Section 1125 of the Bankruptcy Code, the Debtors propose to mail solicitation packages in hard copy (the “**Solicitation Packages**”), which shall contain copies of (a) the Order approving this Motion, (b) the Joint Hearing Notice (substantially in the form as the notice attached hereto as **Exhibit A**), (c) (i) a Ballot, together with a return envelope and (d) the Disclosure Statement (together with the Plan annexed thereto as Exhibit “A”) or (ii) a Notice of Non-Voting Status (as defined below), as applicable.

40. The Debtors propose to serve the Solicitation Packages on (a) all persons or entities identified in the Debtors’ schedules of liabilities filed pursuant to Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments and modifications thereto through and including the Record Date (the “**Schedules**”) as holding liquidated, noncontingent, and undisputed claims, in an amount greater than zero, (b) all parties having filed proofs of claims in an amount greater than zero or notices of transfers of claims in the Debtors’ Chapter 11 case, (c) any other known holders of claims against the Debtors in an amount greater than zero or equity interests in the Debtors as of the Record Date, (d) all parties listed on the Debtor’s Schedules for noticing purposes only,; (e) the UST, and (f) counsel for the Committee

41. A “Notice of Non-Voting Status,” substantially in the same form as that annexed hereto as **Exhibit B**, shall be distributed to: (i) all known holders of claims on the Record Date in the Non-Voting Classes, (ii) all parties listed on the Debtors’ Schedules for noticing purposes

only, and (iii) holders of Disputed Claims, who are not entitled to vote to accept or reject the Plan either because they do not hold a Claim against the Debtors or because they are unimpaired.

42. The Debtors anticipate that some of the notices of hearing to consider approval of and deadline for objecting to the Disclosure Statement (the “**Disclosure Statement Notices**”) may be returned to the Debtors as undeliverable. The Debtors believe it would be costly and wasteful to distribute Solicitation Packages to the same addresses to which undeliverable Disclosure Statement Notices were distributed. Therefore, the Debtors seek the Court’s approval for a departure from the strict notice rule, excusing them from distributing Solicitation Packages to those entities listed at such addresses, unless the Debtors are provided accurate addresses for such entities before the Solicitation Date.

43. The Debtors respectfully submit they have shown good cause for implementing the proposed notice and service procedures.

E. Form of Ballot and Procedures for Voting on the Plan

(i) Form of Ballot and Method for Distribution Thereof

44. Bankruptcy Rule 3017(d) requires the Debtors to mail a form of ballot, which substantially conforms to Official Form No. 14, only to “creditors and equity security holders entitled to vote on the Plan.” Fed. R. Bankr. P. 3017(d).

45. The Debtors propose to distribute to holders of Class 3 (General Unsecured Claims) a ballot substantially in the form annexed hereto as **Exhibit C** (each a “**Ballot**” and together the “**Ballots**”).

46. The form of the Ballots is based upon Official Form No. 14, with slight modification to meet the particular requirements of the Debtors’ Chapter 11 Cases and the Plan. The Ballot will not be mailed to any classes other than Class 3, as all other classes either are

unimpaired and conclusively presumed to have accepted the Plan, or will receive no distribution under the Plan and, therefore, are deemed to have rejected the Plan.

(ii) The Deadline for Receipt of Ballots

47. Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, the court shall fix a time within which the holders of claims or equity interests may accept or reject a plan. Assuming the Court approves the Motion and allows for a Joint Hearing to consider the adequacy of the Disclosure Statement and confirmation of the Plan, the Debtors propose that to be counted as a vote to accept or reject the Plan, each Ballot must be properly executed, completed and delivered to the Debtors' court-approved balloting agent, RIH Acquisitions NJ, LLC Ballot Processing Center, c/o KCC ("**KCC**"), 2335 Alaska Avenue, El Segundo, California 90245 (a) by first-class mail, in the return envelope provided with each Ballot, (b) by overnight courier, or (c) by personal delivery, so that they are received by KCC no later than **seven (7) days before the Joint Hearing** (the "**Voting Deadline**"). The Debtors submit that such solicitation period is a sufficient period within which the Debtors' creditors, which are each sophisticated, well-informed financial or business institutions, can make an informed decision to accept or reject the Plan.

(iii) Procedure for Tabulating Ballots

48. Section 1126(c) of the Bankruptcy Code provides:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that the “court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018(a).

49. Solely for purposes of voting to accept or reject the Plan and not for the purpose of the allowance of, or distribution on account of, a claim, and without prejudice to the rights of the Debtors in any other context, or a liquidating trustee as may be the case, the Debtors propose that each claim within a class of claims entitled to vote to accept or reject the Plan will be temporarily allowed in an amount equal to the amount of such Claim as set forth in the Schedules, with certain exceptions set forth herein, provided that:

(a) if a claim has been estimated or otherwise allowed for voting purposes by order of the Court, such claim is temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;

(b) if a claim is listed in the Schedules and a proof of claim subsequently was filed in an amount that is liquidated, non-contingent and undisputed, such claim is temporarily allowed in the amount set forth on the proof of claim, unless such claim is disputed as set forth in subparagraph (d) below;

(c) if a claim is listed in the Schedules as contingent or unliquidated and a proof of claim was not (i) filed by the applicable bar date for the filing of proofs of claim established by the Court or (ii) deemed timely filed by an Order of the Court prior to the Voting Deadline, unless the Debtors have consented in writing, such claim is disallowed for voting purposes; and

(d) (i) if a claim is listed in the Schedules as disputed, (ii) if a claim for which a proof of claim has been timely filed is, by its terms, disputed, or (iii) if the Debtors have served

an objection, complaint or request for estimation as to a claim, such claim shall be disallowed for voting purposes only and not for purposes of allowance or distribution, except to the extent and in the manner as may be set forth in such objection, complaint or request for estimation.

(e) each entity that holds or has filed more than one (1) unsecured claim against the Debtors shall not be entitled to aggregate such unsecured claims for purposes of voting, classification and treatment under the Plan; and

(f) notwithstanding anything herein to the contrary, the Debtors, in consultation with the Committee, may agree subject to a contrary Order of the Bankruptcy Court, to waive any defects or irregularities of a particular Ballot, either before the Voting Deadline or after, and any such waivers shall be documented with the Court before the Joint Hearing.

50. In addition to the foregoing, the Debtors further request that the following procedures be put into place with respect to the solicitation of votes for the Plan:

(a) if any claimant seeks to challenge the allowance of its claim for voting purposes in accordance with the above procedures, such claimant is directed to serve on the Debtors and to file with the Court (with a copy to chambers) a motion for an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing such claim in a different amount for purposes of voting to accept or reject the Plan so that the motion can be heard on or prior to the Joint Hearing and provided further that the Debtors are afforded at least three (3) business days to file a response to the motion;

(b) as to any creditor filing a motion pursuant to Bankruptcy Rule 3018(a), such creditor's Ballot shall not be counted unless temporarily allowed for voting purposes after notice and a hearing by an order entered by the Court on or prior to the Joint Hearing;

(c) if a creditor casts more than one Ballot voting the same claim before the Voting Deadline, the last Ballot received before the Voting Deadline is deemed to reflect the voter's intent and thus to supersede any prior Ballots;

(d) each creditor that votes to accept or reject the Plan is deemed to have voted the full amount of its claim;

(e) creditors must vote all of their claims within a particular class under the Plan either to accept or reject the Plan and may not split their vote(s), and a Ballot that partially rejects and partially accepts the Plan shall be counted as an acceptance of the Plan; and

(f) any Ballot that is properly completed, executed, and timely returned to Debtors' counsel, but does not indicate an acceptance or rejection of the Plan, or that indicates both an acceptance and rejection of the Plan, shall be deemed to accept the Plan.

51. Generally, and except as otherwise consensually agreed upon by the Debtors and the Committee in certain limited circumstances, the following types of Ballots will not be counted in determining whether the Plan has been accepted or rejected: (a) any Ballot received after the Voting Deadline unless agreed upon by the Debtors and the Committee; (b) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (c) any Ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote to accept or reject the Plan; (d) any Ballot cast for a claim identified as unliquidated, contingent, or disputed for which no proof of claim was timely filed; and (e) any unsigned Ballot; (f) any Ballot transmitted by Facsimile or other electronic means, unless the Debtors in consultation with the Committee, waive this requirement and accepts alternate means of transmission or delivery of any Ballot.

52. Lastly, at or before the Joint Hearing, the Debtors' counsel or KCC shall prepare and file, in accordance with Local Bankruptcy Rule 3018-2, a certification of balloting (the "**Certification of Balloting**") that summarizes, under penalty of perjury, both the numbers and amounts of acceptances and rejections in each voting class, and certifying to their timely filing. The Debtors' counsel shall serve the Certification of Balloting on the UST, the Committee, all parties that have filed a notice of appearance in the Debtors' Chapter 11 cases, and such other persons as the Court may direct.

53. The Debtors believe that the foregoing proposed procedures provide for a fair and equitable voting process.

V. NOTICE

54. The Debtors propose to provide notice of this Motion on the following parties (and as also set forth in the Application to Shorten Notice of the Motion filed herewith): (a) the UST; (b) counsel to the Committee; (c) the State of New Jersey, including the Office of the Attorney General; (d) the Internal Revenue Service and applicable state and local taxing authorities; (e) the Debtors' secured creditors, or their known counsel, and (f) all other parties-in-interest that have filed notices of appearance in the Debtors' cases.

55. The Debtors submit that such notice constitutes good and sufficient notice of the relief requested herein.

EXHIBIT A

**COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.**

A Professional Corporation
Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, New Jersey 07602-0800
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Ryan T. Jareck, Esq.
Nicholas B. Vislocky, Esq.
(201) 489-3000
(201) 489-1536 Facsimile
Attorneys for RIH Acquisitions NJ, LLC, *et al.*,
Debtors-in-Possession

In re:

RIH ACQUISITIONS NJ, LLC, *et al.*,¹

Debtors-in-Possession.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
HONORABLE GLORIA M. BURNS
CASE NO. 13- 34483 (GMB)

Chapter 11
(Jointly Administered)

**NOTICE OF (i) CONDITIONAL APPROVAL OF THE DISCLOSURE STATEMENT;
(ii) ESTABLISHMENT OF RECORD DATE; (iii) JOINT HEARING DATE TO
CONSIDER ADEQUACY OF THE DISCLOSURE STATEMENT AND CONFIRMATION
OF THE JOINT PLAN OF LIQUIDATION; (iv) PROCEDURES FOR OBJECTING TO
ADEQUACY OF THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE PLAN;
AND (v) DEADLINE FOR VOTING ON THE PLAN**

PLEASE TAKE NOTICE that:

1. **Conditional Approval of Disclosure Statement for Debtors' Joint Plan of Liquidation.** By order dated _____, 2014 (the "**Order**"), the United States Bankruptcy Court for the District of New Jersey (the "**Court**") conditionally approved the Disclosure Statement (as it may be further amended, the "**Disclosure Statement**") Pursuant to Section 1125 of the Bankruptcy Code for the Joint Plan of Liquidation filed by RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel and RIH Propco NJ, LLC, (the "**Debtors**") and permitted the Debtors to solicit votes with regard to the approval or rejection of the Joint Plan of Liquidation (as it may be further amended, the "**Plan**"), annexed as Exhibit A to the Disclosure Statement. Any capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal identification number are: RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel (1695) and RIH Propco NJ, LLC (5454).

2. **Joint Hearing.** A joint hearing (the “**Joint Hearing**”) to consider (i) the adequacy of the Disclosure Statement pursuant to 11 U.S.C. § 1125(b) and (ii) confirmation of the Plan, will be held at 10:00 a.m. (prevailing Eastern Time) on _____, **2014**, before the Honorable Gloria M. Burns, Chief United States Bankruptcy Judge, at the United States Bankruptcy Court, Mitchell H. Cohen U.S. Courthouse, 400 Cooper Street, 4th Floor, Camden, New Jersey 08101. The Joint Hearing may be continued from time to time without further notice other than an announcement of the adjourned date(s) at the Joint Hearing, and the Plan may be modified, if necessary, prior to, during or as a result of the Joint Hearing, without further notice to interested parties.

3. **Record Date for Voting Purposes.** Only creditors who hold claims on _____, 2014 are entitled to vote on the Plan.

4. **Voting Deadline.** All votes to accept or reject the Plan must be actually received by the Debtors’ court-approved balloting agent, RIH Acquisitions NJ, LLC Ballot Processing Center, c/o KCC, 2335 Alaska Avenue, El Segundo, California 90245, by regular mail, overnight mail or hand delivery, so that it is **actually received no later than 4:00 p.m. (prevailing Pacific Time) on _____, 2014** (the “**Voting Deadline**”). Any failure to follow the voting instructions included with your Ballot may disqualify your Ballot and your vote.

5. **Parties in Interest Not Entitled to Vote.** The following creditors and shareholders are not entitled to vote on the Plan: (i) holders of unimpaired claims; (ii) holders of claims or interests who will receive no distribution at all under the Plan; (iii) holders of claims that are the subject of filed objections or requests for estimation, except to the extent and in the manner as may be set forth in such objection, complaint or request for estimation; and (iv) parties listed on the Debtors’ Schedules solely for notice purposes. If you have timely filed a proof of claim and disagree with the Debtors’ classification of, objection to, or request for estimation of, your claim and believe that you should be entitled to vote on the Plan, then you must serve on the Debtors at the address set forth below and file with the Court (with a copy to chambers) a motion (a “**Rule 3018(a) Motion**”) for an order pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) temporarily allowing such claim in a different amount or in a different class for purposes of voting to accept or reject the Plan. All Rule 3018(a) Motions must be filed on or before the tenth (10th) day after the later of (i) service of this Joint Hearing Notice and (ii) service of notice of an objection or request for estimation, if any, as to such claim. In accordance with Bankruptcy Rule 3018, as to any creditor filing a Rule 3018(a) Motion, such creditor’s Ballot will not be counted unless temporarily allowed by the Court by an order entered by the Court at least five (5) days prior to the Voting Deadline.

6. **Objections to the Disclosure Statement, Confirmation or to Rejection or Assumption and/or Assignment of Executory Contracts.** Responses and objections, if any, to the adequacy of the Disclosure Statement or confirmation of the Plan as set forth more fully in the Plan, must:

- (a) be in writing;
- (b) state the name and address of the objecting party and the nature of the claim or interest of such party;
- (c) state with particularity the basis and nature of any objection,
- (d) be filed with the Court either (i) electronically or (ii) conventionally, as noted below:
 - (i) **Electronic Filing:** if the filer is an attorney who regularly practices before the Bankruptcy Court and who is in possession of passwords and logins to both PACER and the Bankruptcy Court’s Electronic Case Filing System, electronic filing must be in accordance with the Bankruptcy Court’s General Order Regarding Electronic Means for Filing, Signing and Verification of Documents dated March 27, 2002 and the Commentary Supplementing Administrative Procedures dated as of March 2004 (each of which can be found at www.njb.uscourts.gov); or

(ii) Conventional Filing: the filer must send the objection by mail, courier or messenger to the Clerk's Office at the following address: United States Bankruptcy Court, Mitchell H. Cohen U.S. Courthouse, 400 Cooper Street, 4th Floor, Camden, New Jersey 08101; the hard copy of the objection should be accompanied by a diskette containing the objection in Portable Document Format (PDF) format; and

(e) be served upon (i) the United States Trustee for the District of New Jersey, One Newark Center, Suite 2100, Newark, New Jersey 07102, Attention: Jeffrey Sponder, Esq.; (ii) counsel to Debtors, Cole, Schotz, Meisel, Forman & Leonard, P.A., Court Plaza North, 25 Main Street, P.O. Box 800, Hackensack, New Jersey 07602 (Telephone No. 201-489-3000), Attention: Michael D. Sirota.; and (iii) counsel to the Committee, Klehr, Harrison, Harvey and Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, Pennsylvania 19103 (Telephone No. 215-569-3007), Attention: Morton R. Branzburg, **so as to be actually received by each of the aforementioned parties (and filed with the Court in accordance with paragraph 6(d) above) by no later than the Voting Deadline.**

IF ANY OBJECTION TO THE DISCLOSURE STATEMENT OR TO CONFIRMATION OF THE PLAN IS NOT FILED AND SERVED STRICTLY AS PRESCRIBED HEREIN, THE OBJECTING PARTY MAY NOT BE HEARD AT THE JOINT HEARING AND MAY BE BARRED FROM ASSERTING ITS OBJECTION, AS THE CASE MAY BE, TO THE DISCLOSURE STATEMENT AND/OR CONFIRMATION OF THE PLAN,

7. **Parties Who Will Not Be Treated as Creditors.** Any holder of a claim that (i) is scheduled in the Debtors' schedules of assets and liabilities, statements of financial affairs and schedules of executory contracts and unexpired leases at zero, or in an unknown amount, or as disputed, contingent, or unliquidated, and is not the subject of a timely filed proof of claim or a proof of claim deemed timely filed with the Court pursuant to either the Bankruptcy Code or any order of the Court, or otherwise deemed timely filed under applicable law, or (ii) is not scheduled and is not the subject of a timely filed proof of claim or a proof of claim deemed timely filed with the Court pursuant to either the Bankruptcy Code or any order of the Court, or otherwise deemed timely filed under applicable law, shall not be treated as a creditor with respect to such claim for purposes of (a) receiving notices regarding, or distributions under, the Plan, or (b) voting on the Plan.

8. **Additional Information.** Any party in interest wishing to obtain information about the solicitation procedures or copies of the Disclosure Statement or the Plan should contact Debtors' counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., at the telephone number and/or address listed in paragraph 6(e) of this Notice.

Dated: Hackensack, New Jersey
February 28, 2014

Michael D. Sirota, Esq.
Warren A. Usatine
Ryan T. Jareck
Nicholas B. Vislocky
COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
A Professional Corporation
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07602-0800
(201) 489-3000
(201) 489-1536 Facsimile
*Attorneys for RIH Acquisitions NJ, LLC, et al.,
Debtors-in-Possession*

EXHIBIT B

**COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.**

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Michael D. Sirota, Esq.
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Nicholas B. Vislocky, Esq.
(201) 489-3000
(201) 489-1536 Facsimile
Attorneys for RIH Acquisitions NJ, LLC, et al.
Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
HONORABLE GLORIA M. BURNS
CASE NO. 13-34483 (GMB)

In re:

RIH ACQUISITIONS NJ, LLC, *et al.*¹

Debtors-in-Possession.

Chapter 11

NOTICE OF NON-VOTING STATUS

PLEASE TAKE NOTICE THAT by an Order, entered _____, 2014 (the “**Order**”), the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”) conditionally approved the Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Joint Plan of Liquidation of RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel and RIH Propco NJ, LLC (the “**Debtors**”), and permitted the Debtors to solicit votes to accept or reject the Joint Plan of Liquidation, dated February 28, 2014 (as may be amended, the “**Plan**”), annexed as **Exhibit “A”** thereto.

ALTHOUGH YOU MAY BE LISTED IN THE DEBTORS’ SCHEDULES OF ASSETS AND LIABILITIES AS EITHER A PARTY TO AN EXECUTORY CONTRACT OR AN UNEXPIRED LEASE WITH THE DEBTORS, AS HAVING A CONTINGENT, UNLIQUIDATED, OR DISPUTED CLAIM, OR AS A NOTICE PARTY ONLY, YOU ARE RECEIVING THIS NOTICE BECAUSE YOU EITHER (I) DID NOT FILE A PROOF OF CLAIM; (II) YOUR CLAIM IS A DISPUTED CLAIM; (III) YOU ARE NOT A CREDITOR OF THE DEBTORS’ ESTATES AND DO NOT HAVE A CLAIM AGAINST THE DEBTORS; OR (IV) YOU ARE CLASSIFIED IN A CLASS OF CLAIMS THAT IS PRESUMED TO CONCLUSIVELY HAVE ACCEPTED THE PLAN; AND ACCORDINGLY, YOU ARE NOT ENTITLED TO VOTE ON THE PLAN.

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal identification number are: RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel (1695) and RIH Propco NJ, LLC (5454).

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE OR THE ENCLOSED DOCUMENTS, PLEASE CALL RYAN T. JARECK, ESQ. OF COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A., DEBTOR'S COUNSEL, AT (201) 489-3000.

Dated: Hackensack, New Jersey
February 28, 2014

Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Ryan T. Jareck, Esq.
Nicholas B. Vislocky, Esq.
COLE, SCHOTZ, MEISEL,
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Attorneys for RIH Acquisitions NJ, LLC, et al.
Debtors-in-Possession

EXHIBIT C

**COLE, SCHOTZ, MEISEL,
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Nicholas B. Vislocky, Esq.
(201) 489-3000
(201) 489-1536 Facsimile
Attorneys for RIH Acquisitions NJ, LLC, *et al.*
Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
HONORABLE GLORIA M. BURNS
CASE NO. 13-4483 (GMB)

In re:

RIH ACQUISITIONS NJ, LLC, *et al.*¹

Debtors-in-Possession.

Chapter 11

**BALLOT FOR HOLDERS
OF CLASS 3 CLAIMS

GENERAL UNSECURED CLAIMS**

On _____, 2014, the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”) (i) conditionally approved the Disclosure Statement of RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel and RIH Propco NJ, LLC, the within debtors and debtors-in-Possession (the “**Debtors**”), pursuant to Section 1125 of the Bankruptcy Code, and (ii) authorized the Debtors to solicit votes with regard to the approval or rejection of their Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (the “**Plan**”). Capitalized terms used but not defined in these instructions have the meaning ascribed to them in the Plan.

**THE DEBTORS ARE SOLICITING VOTES WITH RESPECT TO THE PLAN
FROM THE HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS AGAINST**

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal identification number are: RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel (1695) and RIH Propco NJ, LLC (5454).

THE DEBTORS IN CLASS 3 OF THE PLAN. If you have any questions on how to properly complete this Ballot, please call Ms. Frances Pisano, Paralegal of Cole, Schotz, Meisel, Forman & Leonard, P.A., Debtor's counsel, at (201) 489-3000, Ext. 6253.

VOTING INSTRUCTIONS FOR COMPLETING THE BALLOT

This Ballot does not constitute and shall not be deemed to constitute (i) a Proof of Claim or an assertion of a Claim, (ii) an admission by the Debtors of the nature, validity or amount of any Claim. This Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan. Do not enclose notes or securities with your completed Ballot.

1. This Ballot is submitted to you to solicit your vote to accept or reject the Plan. Please indicate your vote by marking an "x" in the appropriate box on the face of the Ballot.

2. Please indicate the amount of your Claim in the appropriate space on the face of the Ballot. The amount of your Claim as set forth by you on this Ballot does not necessarily constitute an Allowed Claim under the Plan. The amount of your Claim may be subject to further reconciliation and an objection may be interposed to your Claim in the Bankruptcy Court, which may effect your vote.

3. After providing all remaining information requested on the Ballot, please sign, date and return this Ballot by mail, overnight courier or hand delivery to be received by no later than _____, **2014, at 4:00 p.m.**, to the following address:

RIH Acquisitions NJ, LLC Ballot Processing Center
c/o KCC
2335 Alaska Avenue
El Segundo, California 90245

4. The Plan can be confirmed by the Bankruptcy Court and thereby made binding if it is accepted by the holders of at least 2/3 in amount and more than 1/2 in number of Impaired Claims in a Class. The votes of the Claims actually voted in your Class will bind those who do not vote. If the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if at least one Impaired Class of Claims has accepted the Plan and the Bankruptcy Court finds that the Plan accords fair and equitable treatment to, and does not discriminate unfairly against, the Classes rejecting it.

5. You must vote all of your Claims within a single Class to either accept or reject the Plan. A Ballot that partially rejects and partially accepts the Plan will not be counted. A Ballot that fails to indicate acceptance or rejection of the Plan will be counted as an acceptance.

6. Your signature is required in order for your vote to be counted. You are also required to provide your social security number or Tax I.D. number before receiving any distribution. If the Claims voted with this Ballot are held by a partnership, the Ballot should be executed in the name of the partnership by a general partner. If the Claim is held by a corporation, the Ballot must be executed by an officer. If you are signing in a representative capacity, also indicate your title after your signature.

PLEASE COMPLETE THE FOLLOWING:

ITEM 1. Vote on the Plan. The undersigned holder of a Class 3 General Unsecured Claim, hereby votes to:

Check one box:

Accept the Plan

Reject the Plan

Amount of Claim: \$_____

ITEM 2. Acknowledgments and Certification. By signing this Ballot, the undersigned acknowledges that the undersigned has been provided with a copy of the Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code, dated February 28, 2014. The undersigned certifies that (i) it is the holder of a Class 3 General Unsecured Claim Against the Debtors, and (ii) it has full power and authority to vote to accept or reject the Joint Plan of Liquidation(the “Plan”). The undersigned understands that if the Ballot is validly executed but does not indicate either acceptance or rejection of the Plan, then this Ballot will be counted as an acceptance of the Plan.

Signed: _____

Name of Claimant (Print): _____

Title: _____

(Please sign exactly as name or names appear hereon. Full title of one signing in representative capacity should be clearly designated after signature. Names of all joint holders should be written even if signed by one.)

Name of Institution: _____

Street Address: _____

City, State and Zip Code: _____

Telephone Number: _____

Dated: _____

Tax I.D. or Social Security Number: _____

BALLOTS CAST BY FACSIMILE, TELECOPIER, E-MAIL OR OTHER ELECTRONIC COMMUNICATION WILL NOT BE COUNTED UNLESS AN ORIGINAL IS SUBSEQUENTLY RECEIVED BY THE VOTING DEADLINE. ONLY ORIGINAL BALLOTS WITH AN ORIGINAL SIGNATURE WILL BE COUNTED. ANY BALLOT WHICH IS PROPERLY EXECUTED BUT DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN SHALL BE COUNTED AS AN ACCEPTANCE.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)
COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
A Professional Corporation
Court Plaza North
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Debtor-in-Possession

In re:

RIH ACQUISITIONS NJ, LLC, *et al.*,¹

Debtors-in-Possession

Case No. 13- 34483 (GMB)

Chapter 11
(Jointly Administered)

Chief Judge: Gloria M. Burns

ORDER: (A) CONDITIONALLY APPROVING THE DISCLOSURE STATEMENT FOR SOLICITATION PURPOSES ONLY; (B) SCHEDULING A JOINT HEARING TO DETERMINE THE ADEQUACY OF THE DISCLOSURE STATEMENT PURSUANT TO 11 U.S.C. § 1125(B) AND CONFIRMATION OF THE JOINT PLAN OF LIQUIDATION; (C) APPROVING NOTICE AND OBJECTION PROCEDURES WITH RESPECT TO ADEQUACY OF THE DISCLOSURE STATEMENT AND PLAN CONFIRMATION; (D) FIXING A RECORD DATE FOR VOTING AND TEMPORARY ALLOWANCE OF CLAIMS; (E) APPROVING SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF; AND (F) APPROVING THE FORM OF BALLOTS AND ESTABLISHMENT OF PROCEDURES FOR VOTING ON THE PLAN

The relief set forth on the following pages, numbered two (2) through fifteen (15), is hereby **ORDERED**.

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal identification number are: RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel (1695) and RIH Propco NJ, LLC (5454).

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THIS MATTER having been opened to the Court by RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel and RIH Propco NJ, LLC, the within debtors and debtors-in-possession (the “**Debtors**”), by and through their counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., upon motion (the “**Motion**”) for an Order: (a) conditionally approving the Disclosure Statement (the “**Disclosure Statement**”) pursuant to Section 1125 of the Bankruptcy Code for the Joint Plan of Liquidation (as may be amended, the “**Plan**”) for solicitation purposes, (b) scheduling a joint hearing to determine the adequacy of the Disclosure Statement and confirmation of the Plan; (c) approving notice and objection procedures in respect of adequacy of the Disclosure Statement and Plan confirmation; (d) fixing a record date for voting and procedures for temporary allowance of claims, (e) approving solicitation packages and distribution procedures for same, and (f) approving form of ballots and procedures for voting on the Plan; and the Debtors having filed the Disclosure Statement and Plan on February 24, 2014; and notice of the Motion having been provided in accordance with the Order Shortening Time entered by the Court; and the Court having considered the Motion, the arguments of counsel, if

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any, and objections, if any, to the Motion; and the Court having determined that cause exists for entry of this Order;²

IT IS FOUND THAT:

1. **Ballots Approved.** The form of ballot attached hereto as **Exhibit A** (singularly a “**Ballot**” and collectively, the “**Ballots**”) for Class 3 is sufficiently consistent with Official Form No. 14 and adequately addresses the particular needs of these Chapter 11 cases and is appropriate for the class of claims entitled under the Plan to vote to accept or reject the Plan.
2. **Reasonable Period for Solicitation.** The period set forth below during which the Debtors may solicit acceptances to the Plan is a reasonable period of time for creditors to make an informed decision whether to accept or reject the Plan.
3. **Voting Procedures Fair & Equitable.** The procedures for the solicitation and tabulation of votes to accept or reject the Plan (as more fully set forth in the Disclosure Statement) provide for a fair and equitable voting process and are consistent with Section 1126 of the Bankruptcy Code.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Application submitted in support of the Motion.

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4. **Notice Procedures Sufficient.** The procedures set forth below regarding notice (the “**Joint Hearing Notice**” defined further herein) to all creditors of the time, date and place of the hearing to consider the adequacy of the Disclosure Statement and confirmation of the Plan and the contents of the Solicitation Packages (as defined below) comply with Bankruptcy Rules 2002 and 3017 and constitute sufficient notice to all interested parties.

NOW, THEREFORE, IT IS ORDERED THAT:

1. **Conditional Approval of Disclosure Statement for Solicitation.** The Debtors’ Disclosure Statement is conditionally approved for solicitation purposes only.

2. **Joint Hearing Scheduled.** Pursuant to Fed. R. Bankr. P. 3017(a) and (d) and 11 U.S.C. § 105(d)(2)(B)(v) and (vi), a joint hearing (the “**Joint Hearing**”) to consider the adequacy of the Disclosure Statement and confirmation of the Plan, shall be held before the Honorable Gloria M. Burns, Chief United States Bankruptcy Judge on _____, **2014**, **at ___:___ .m.**, prevailing Eastern Time, at the United States Bankruptcy Court for the District of New Jersey, Mitchell H. Cohen U.S. Courthouse, 400 Cooper Street, 4th Floor, Camden, New Jersey 08101.

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3. **Service of the Disclosure Statement and the Plan.** Within five (5) day(s) after entry of this Order, copies of this Order, together with the Disclosure Statement, the Plan and appropriate ballot or notice, as described further herein, shall be mailed by the Debtors to the United States Trustee (the “**UST**”), counsel for the Official Committee of Unsecured Creditors (the “**Committee**”), all creditors, equity holders and other parties in interest as provided for by Fed. R. Bankr. P. 3017(d), and to any party in interest upon written request.

4. **Objections to Adequacy of Disclosure Statement or Confirmation of Plan.**
Objections to the adequacy of the Disclosure Statement or to confirmation of the Plan must:

- (a) be in writing;
- (b) state the name and address of the objecting party and the nature of the claim or interest of such party;

- (c) state with particularity the basis and nature of any objection;
- (d) be filed with the Court either (i) electronically or (ii) conventionally, as noted below:

- (i) Electronic Filing: if the filer is an attorney who regularly practices before the Bankruptcy Court and who is in possession of passwords and logins to both PACER

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and the Bankruptcy Court's Electronic Case Filing System, electronic filing must be in accordance with the Bankruptcy Court's General Order Regarding Electronic Means for Filing, Signing and Verification of Documents dated March 27, 2002 and the Commentary Supplementing Administrative Procedures dated as of March 2004 (each of which can be found at www.njb.uscourts.gov); or

(ii) Conventional Filing: the filer must send the objection by mail, courier or messenger to the Clerk's Office at the following address: United States Bankruptcy Court, Mitchell H. Cohen U.S. Courthouse, 400 Cooper Street, 4th Floor, Camden, New Jersey 08101; the hard copy of the objection should be accompanied by a diskette containing the objection in Portable Document Format (PDF) format;

(e) be filed together with proof of service upon (i) the United States Trustee for the District of New Jersey, One Newark Center, Suite 2100, Newark, New Jersey 07102, Attention: Jeffrey Sponder, Esq.; (ii) counsel to the Debtors, Cole, Schotz, Meisel, Forman & Leonard, P.A., Court Plaza North, 25 Main Street, P.O. Box 800, Hackensack, New Jersey 07602-0800 (Telephone No. 201-489-3000), Attention: Michael D. Sirota and (iii) counsel to the Committee, Klehr, Harrison, Harvey and Branzburg LLP, 1835 Market Street, Suite 1400,

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Philadelphia, Pennsylvania 19103 (Telephone No. 215-569-3007), Attention: Morton R.

Branzburg (collectively, the “**Notice Parties**”); and

(f) be filed with the Court and received by each of the Notice Parties **no later than _____ () days before the Joint Hearing scheduled herein, or on _____, _____, by __:__ .m.**, prevailing Eastern Time. Objections to adequacy of the Disclosure Statement or to confirmation of the Plan that are not timely filed, served and actually received in the manner set forth above shall not be considered and shall be deemed overruled.

5. **Record Date.** The record date (the “**Record Date**”) for purposes of determining creditors entitled to vote on the Plan, or in the case of non-voting classes, to receive the Notice of Non-Voting Status (as defined below) shall be the date hereof.

6. **Ballots.** The Ballots are approved.

7. **Solicitation Packages.** Within seven (7) business days after the date hereof, the Debtors shall mail solicitation packages in hard copy (the “**Solicitation Packages**”) containing a copy of (A) this Order, (B) the Joint Hearing Notice, attached hereto as **Exhibit B**, and (C) (i) a Ballot, together with a return envelope and the Disclosure Statement (together with the Plan annexed thereto as Exhibit “A”) to holders, as off the Record Date, of claims in Class 3 (General

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Unsecured Claims), which class is entitled to vote to accept or reject the Plan, excluding holders of disputed claims; or (ii) a Notice of Non-Voting Status (as defined below), as applicable, to (a) all persons or entities identified in the Debtors' schedules of liabilities filed pursuant to Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments and modifications thereto through and including the Record Date (the "**Schedules**") as holding liquidated, noncontingent, and undisputed claims, in an amount greater than zero, (b) all parties having filed proofs of claims in an amount greater than zero or notices of transfers of claims in the Debtors' chapter 11 cases (c) any other known holders of claims against the Debtor in an amount greater than zero or equity interests in the Debtors as of the Record Date, (d) all parties listed on the Debtors' Schedules for noticing purposes only, (e) holders of Disputed Claims, who are not entitled to vote, (f) unimpaired classes, (g) the UST, and (h) counsel for the Committee.

8. Undeliverable Notices.

(a) With respect to addresses from which Disclosure Statement Notices were returned as undeliverable, the Debtors are excused from mailing Solicitation Packages to those entities listed at such addresses unless the Debtors are provided with accurate addresses for such entities before the Solicitation Date.

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(b) The failure to mail Solicitation Packages to such entities that are described above will not constitute inadequate notice of the Joint Hearing or the Voting Deadline nor constitute a violation of Bankruptcy Rule 3017(d).

9. **Additional Notices.** The following notices shall also accompany the Solicitation Packages, where appropriate:

(a) **Joint Hearing Notice – All Creditors and Parties-in-Interest.** A Joint Hearing Notice, substantially in the same form as that annexed hereto as **Exhibit B** is approved and may be distributed to all creditors. Such Joint Hearing Notice provides notice of the time, place and date of the Joint Hearing, notice of all objection procedures and notice that while the Court shall consider the adequacy of the Disclosure Statement and confirmation of the Plan at the Joint Hearing, the Joint Hearing may be continued from time to time by the Court or the Debtors without further notice or through adjournments announced in open court.

(b) **Non-Voting Status Notice.** A “Notice of Non-Voting Status,” substantially in the same form as that annexed hereto as **Exhibit C**, is approved and shall be distributed to: (i) all known holders of claims on the Record Date in the Non-Voting Classes and (ii) all parties listed on the Debtors’ Schedules for noticing purposes only.

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10. **Voting Deadline.** All Ballots must be properly executed, completed, and returned to Debtors' court-approved balloting agent, Acquisitions NJ, LLC Ballot Processing Center, c/o KCC, 2335 Alaska Avenue, El Segundo, California 90245 (a) by first-class mail, in the return envelope provided with each Ballot, (b) by overnight courier, or (c) by personal delivery, so that such Ballots are received by Debtors' counsel **no later than _____, 2014, at __:__ .m.**, prevailing Eastern Time (the "**Voting Deadline**").

11. **Voting and Tabulation Procedures.** Solely for purposes of voting to accept or reject the Plan and not for the purpose of the allowance of, or distribution on account of, a claim, and without prejudice to the rights of the Debtors in any other context, or a liquidating trustee as may be the case, each claim within a class of claims entitled to vote to accept or reject the Plan is temporarily allowed in an amount equal to the amount of such Claim as set forth in the Schedules, provided that:

(a) if a claim has been estimated or otherwise allowed for voting purposes by order of the Court, such claim is temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;

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(b) if a claim is listed in the Schedules and a proof of claim subsequently was filed in an amount that is liquidated, non-contingent and undisputed, such claim is temporarily allowed in the amount set forth on the proof of claim, unless such claim is disputed as set forth in subparagraph (d) below;

(c) if a claim is listed in the Schedules as contingent or unliquidated and a proof of claim was not (i) filed by the applicable bar date for the filing of proofs of claim established by the Court or (ii) deemed timely filed by an Order of the Court prior to the Voting Deadline, unless the Debtors have consented in writing, such claim is disallowed for voting purposes;

(d) (i) if a claim is listed in the Schedules as disputed, (ii) if a claim for which a proof of claim has been timely filed is, by its terms, disputed, or (iii) if the Debtors have served an objection, complaint or request for estimation as to a claim, such claim shall be disallowed for voting purposes only and not for purposes of allowance or distribution, except to the extent and in the manner as may be set forth in such objection, complaint or request for estimation;

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(e) each entity that holds or has filed more than one (1) unsecured claim against the Debtors shall not be entitled to aggregate such unsecured claims for purposes of voting, classification and treatment under the Plan; and

(f) notwithstanding anything herein to the contrary, the Debtors, in consultation with the Committee, may agree subject to a contrary Order of the Bankruptcy Court, to waive any defects or irregularities of a particular Ballot, either before the Voting Deadline or after, and any such waivers shall be documented in the Voting Report, which is to be filed with the Court no later than two business days before the Joint Hearing.

12. **Claimant Challenges to Claim Amount for Voting Purposes.**

(a) If any claimant seeks to challenge the allowance of its claim for voting purposes in accordance with the above procedures, such claimant is directed to serve on the Debtors and to file with the Court (with a copy to chambers) a motion for an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing such claim in a different amount for purposes of voting to accept or reject the Plan so that the motion can be heard on or prior to the Joint Hearing and provided further that the Debtors are afforded at least three (3) business days to file a response to the motion.

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(b) As to any creditor filing a motion pursuant to Bankruptcy Rule 3018(a), such creditor's Ballot shall not be counted unless temporarily allowed for voting purposes after notice and a hearing by an order entered by the Court on or prior to the Joint Hearing.

13. **Additional Voting Procedures.**

(a) If a creditor casts more than one Ballot voting the same claim before the Voting Deadline, the last Ballot received before the Voting Deadline is deemed to reflect the voter's intent and thus to supersede any prior Ballots.

(b) Each creditor that votes to accept or reject the Plan is deemed to have voted the full amount of its claim.

(c) Creditors must vote all of their claims within a particular class under the Plan either to accept or reject the Plan and may not split their vote(s), and a Ballot that partially rejects and partially accepts the Plan shall be counted as an acceptance of the Plan.

(d) Any Ballot that is properly completed, executed, and timely returned to Debtors' counsel, but does not indicate an acceptance or rejection of the Plan, or that indicates both an acceptance and rejection of the Plan, shall be deemed to accept the Plan.

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(e) Subject to paragraph 11 of this Order, the following types of Ballots will not be counted in determining whether the Plan has been accepted or rejected: (i) any Ballot received after the Voting Deadline unless agreed upon by the Debtors and the Committee; (ii) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (iii) any Ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote to accept or reject the Plan; (iv) any Ballot cast for a claim identified as unliquidated, contingent, or disputed for which no proof of claim was timely filed; and (v) any unsigned Ballot; and (vi) any Ballot transmitted by Telecopier or other electronic means, unless the Debtors in consultation with the Committee, waive this requirement and accepts alternate means of transmission or delivery of any Ballot.

14. Certification of Balloting.

(a) The Debtors' counsel or KCC shall, at or before the Joint Hearing (defined below), prepare and file a certification of balloting (the "**Certification of Balloting**") that summarizes, under penalty of perjury, both the numbers and amounts of acceptances and rejections in each voting class, and certifying to their timely filing.

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(b) The Debtors' counsel shall, at or before Confirmation Hearing, serve the Certification of Balloting on (a) the UST, (b) counsel for the Committee, (c) the Debtors' secured creditors or their known counsel and (d) all parties that have filed a notice of appearance in the Debtors' chapter 11 cases.

15. Debtors' Authorization.

(a) The Debtors are authorized, in their sole discretion, to take or refrain from taking any action necessary or appropriate to implement the terms of and the relief granted in this Order without seeking further order of the Court.

(b) The Debtors are authorized to make nonsubstantive changes to the Disclosure Statement, the Plan and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors and to make conforming changes among the Disclosure Statement, the Plan and any other materials in the Solicitation Package prior to their mailing.

16. **Sufficient Notice.** The notice to be provided pursuant to the procedures set forth herein is good and sufficient notice to all parties in interest and no other or further notice need be provided.