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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

DECLARATION OF ERIC MATEJEVICH IN SUPPORT OF CONFIRMATION OF THE DEBTORS' JOINT PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

Hearing Date and Time:
April 14, 2014, at 10:00 a.m.

I, ERIC MATEJEVICH, declare pursuant to 28 U.S.C. § 1746:[2]

[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] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan (defined herein), which is incorporated herein by reference.

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1. I am the Co-Chief Operating Officer of RIH Acquisitions NJ, LLC ("**RIH Acquisitions**") d/b/a The Atlantic Club Casino Hotel, a New Jersey limited liability company and one of the Debtors. I have served as RIH Acquisitions' Co-Chief Operating Officer since December 28, 2011.

2. I submit this declaration (the "**Declaration**") in support of confirmation of the *Joint Plan of Liquidation of RIH Acquisitions NJ, LLC and RIH Propco NJ, LLC Under Chapter 11 of the Bankruptcy Code* dated February 28, 2014 [Docket No. 355] (as same may be amended, supplemented or modified, including as so modified by this Order, collectively, the "**Plan**") pursuant to Section 1129 of Title 11 of the United States Code (the "**Bankruptcy Code**"). All matters set forth in this Declaration are based on (a) my personal knowledge, (b) my review of relevant documents, including the Plan, (c) my opinion, based on my personal experience and knowledge of the Debtor's business and financial condition, or (d) as to matters involving the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, my reliance on the advice of the Debtor's bankruptcy counsel. The references to sections of the Bankruptcy Code in this Declaration have been supplied by counsel to the Debtors in order to provide the context for the statements made herein.

3. If I were called to testify, I could and would testify competently to the facts set forth herein.

I. BACKGROUND

4. On November 6, 2013 (the "**Filing Date**"), each of the Debtors filed a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code.

5. A comprehensive statement of the facts pertinent to the Debtors' business, the prepetition capital structure and the circumstances leading to the Chapter 11 filing is set forth in my Affidavit submitted in support of the Debtors' various "First Day Motions" [Docket No. 17]

(the "**First Day Affidavit**"). A complete description of the events leading to the filing of the Plan is set forth in the *Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Chapter 11 Plan* [Docket No. 373] (the "**Disclosure Statement**"). The facts from the First Day Affidavit and the Disclosure Statement are incorporated herein by reference.

A. The Sale of the Debtors' Assets

6. Prior to the Filing Date, RIH Acquisitions NJ, LLC 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**"). RIH Propco NJ, LLC was a wholly owned subsidiary of RIH Acquisitions NJ, LLC. RIH Propco NJ, LLC had no assets or liabilities, other than as a party to a unitary lease with RIH Acquisitions NJ, LLC. Pursuant to that lease, all the real estate associated with the Atlantic Club Casino, as well as its non-gaming furniture, fixtures and equipment, was leased by RIH Acquisitions NJ, LLC to RIH Propco NJ, LLC, and leased back by RIH Propco NJ, LLC to RIH Acquisitions NJ, LLC. The Debtors sold substantially all of their assets less than three (3) months after the commencement of this Chapter 11 case. The Debtors no longer maintains active business operations and pending confirmation of the Plan operated the business for the purpose of winding down their affairs for the benefit of the Debtors' creditors.

B. The Solicitation of the Plan

7. On March 10, 2014, the Court entered an Order: *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 on March 10, 2014 [Docket No. 372] (the "**Disclosure Statement and Voting Procedures Order**"). Pursuant to the Disclosure Statement and Voting Procedures Order, the Bankruptcy Court conditionally approved the Disclosure Statement as containing "adequate information" of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtors' creditors and equity interest holders to make an informed judgment whether to accept or reject the Plan. The Disclosure Statement and Voting Procedures Order also approved, among other things: (a) all materials to be transmitted to creditors entitled to vote on the Plan (the "**Solicitation Packages**"), (b) the form of ballots, and (c) the procedures for voting and for tabulation of votes to accept or reject the Plan.

8. On March 14, 2014, the Debtors commenced their solicitation of votes with respect to the Plan.

C. Voting Results

9. The Court established April 7, 2014 (the "**Voting Deadline**") as the deadline for receipt of votes accepting or rejecting the Plan. On April 9, 2014, the Debtors filed the Declaration of Michael J. Hill Regarding Tabulation of Ballots with Respect to Votes on the Debtors' Plan [Docket No. 424] (the "**Voting Declaration**") confirming that Kurtzman Carson Consultants, LLC ("**KCC**") solicited and tabulated votes in accordance with the Disclosure Statement and Voting Procedures Order. The Voting Declaration sets forth the results of voting on the Plan.

10. As set forth in the Voting Declaration, as of the Voting Deadline, the creditors entitled to vote on the Plan have accepted or are deemed to have accepted the Plan.

II. THE PLAN SATISFIES ALL REQUIREMENTS FOR CONFIRMATION

11. Based on my review of the Plan and all related materials and my discussions with Debtors' legal counsel, it is my understanding that the Plan complies with all applicable provisions of the Bankruptcy Code.

A. The Plan Satisfies Section 1122 of the Bankruptcy Code

12. Article III of the Plan provides for the separate classification of Claims against and Equity Interests in the Debtors based on differences in the legal nature and/or priority of the Claims and Equity Interests. Specifically, the Plan designates three (3) Classes of Claims and one (1) Class of Equity Interests. Each of the Claims or Equity Interests in each particular Class is substantially similar to the other Claims or Equity Interests in such Class.

13. As required by Section 1122(a) of the Bankruptcy Code, each Class of Claims or Equity Interests contains only Claims or Equity Interests that are substantially similar to the other Claims or Equity Interests within that Class. Further, valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests under the Plan. Additionally, similar Claims have not been placed into different Classes to affect the voting on the Plan. Accordingly, I believe that the classification of Claims and Equity Interests complies with Section 1122(a) of the Bankruptcy Code.

B. The Plan Satisfies Section 1123(a) of the Bankruptcy Code

14. The Plan complies fully with each requirement of Section 1123(a) of the Bankruptcy Code.

(a) Section 1123(a)(1) of the Bankruptcy Code: In accordance with Section 1123(a)(1) of the Bankruptcy Code, Article III of the Plan designates each Class of Claims and Equity Interests, other than Claims of a kind specified in Section 507(a)(2), 507(a)(3) or 507(a)(8) of the Bankruptcy Code.

(b) Section 1123(a)(2) of the Bankruptcy Code: Article III of the Plan identifies each Class of Claims and Equity Interests that is not impaired under the Plan.

(c) Section 1123(a)(3) of the Bankruptcy Code: Article III of the Plan sets forth the treatment of impaired Claims and Equity Interests.

(d) Section 1123(a)(4) of the Bankruptcy Code: As required by Section 1123(a)(4) of the Bankruptcy Code, the Plan provides for the same treatment of each Claim or Equity Interest within a particular Class.

(e) Section 1123(a)(5) of the Bankruptcy Code: Article V of the Plan enumerates the means for implementation of the Plan as required by Section 1123(a)(5). As set forth in Article V of the Plan, any Cash remaining in the Reserves or in any Priority Tax Claim reserve after the allowance and payment in full of all Allowed Administrative Expense Claims, Allowed Professional Compensation and Reimbursement Claims, Allowed Priority Non-Tax Claims, Allowed Priority Tax Claims and Allowed Miscellaneous Secured Claims, as applicable, shall be distributed to the Liquidation Trust. As further set forth in Article V of the Plan, on or prior to the Effective Date, the Debtors will establish the Liquidation Trust and transfer to the Liquidation Trust all of their right, title and interests in all of the Liquidation Trust Assets. As required by Section 1123(a)(5) of the Bankruptcy Code, these means for implementation of the Plan are adequate.

(f) Section 1123(a)(6) of the Bankruptcy Code: The Plan does not provide for the issuance of non-voting equity securities. Accordingly, Section 1123(a)(6) of the Bankruptcy Code is not applicable.

(g) Section 1123(a)(7) of the Bankruptcy Code: Article VIII of Plan contains provisions with respect to the manner of selection of the Liquidation Trust and the Liquidation

Trustee. As required by Section 1123(a)(7) of the Bankruptcy Code, the Liquidation Trustee has been selected in a manner consistent with the Holders of Claims and Equity Interests and with public policy.

(h) Section 1123(a)(8) of the Bankruptcy Code: Section 1123(a)(8) of the Bankruptcy Code is not applicable to the Debtors because the Debtors are not individuals.

C. The Plan Satisfies Section 1123(b) of the Bankruptcy Code

15. The Plan contains certain of the permissive provisions authorized by Section 1123(b) of the Bankruptcy Code including, among others, the impairment and unimpairment of Allowed Claims and Equity Interests (Section 1123(b)(1)) and the assumption or rejection of executory and unexpired leases (Section 1123(b)(2)).

16. The Plan seeks to implement an exculpation provision. The exculpation provision in Article IX of the Plan is permissible pursuant to Section 1123(b)(6) of the Bankruptcy Code. Such a provision is particularly appropriate in this Chapter 11 case because it provides protection to those parties who were essential to, who have made substantial contributions in connection with, the Chapter 11 Cases, the Sale Transaction or the formulating, negotiating, preparing, disseminating, implementing, administering, soliciting, confirming or consummating the Plan, the Disclosure Statement, the Confirmation Order, the Sale Transaction or any other contract or instrument, release or other agreement or document created or entered into solely in connection with the Plan or the Sale Transaction.

17. The exculpation provision of the Plan is fair and necessary under the circumstances of this Chapter 11 case and is supported by the creditor constituencies in this Chapter 11 case, as evidenced by the support from the Committee and further evidenced by the fact that creditors voted overwhelmingly in favor of the Plan.

D. The Plan Satisfies Section 1123(d) of the Bankruptcy Code

18. In accordance with Section 1123(d) of the Bankruptcy Code, all unexpired leases and executory contracts of the Debtors not previously expressly assumed and assigned as part of the Sale Transaction, rejected or terminated by order of the Bankruptcy Court or by the terms of any such unexpired lease or executory contract, shall be deemed rejected on the Effective Date; provided, however, notwithstanding anything to the contrary herein, any director or officer or errors or omissions policies running to the benefit of the Debtors, to the extent such contracts are executory contracts under Section 365 of the Bankruptcy Code, shall be assumed as of the Effective Date.

E. The Plan Satisfies Section 1129(a) of the Bankruptcy Code

19. The Plan complies fully with each requirement of Section 1129(a) of the Bankruptcy Code.

(a) Sections 1129(a)(1) and (a)(2) of the Bankruptcy Code: The Plan and the Debtors, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code, as required by Sections 1129(a)(1) and 1129(a)(2), respectively. The Debtors and their directors, officers, employees, equity holders, members, agents, accountants, financial advisors, consultants and attorneys have acted in "good faith" within the meaning of Section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and orders of this Court in connection with all their respective activities relating to the solicitation of acceptances of the Plan.

(b) Section 1129(a)(3) of the Bankruptcy Code: The Plan was proposed in good faith with the legitimate and honest purposes of maximizing the value of the Debtors and the corresponding recovery to their creditors.

(c) Section 1129(a)(4) of the Bankruptcy Code: The Plan provides that the Bankruptcy Court shall retain jurisdiction to hear and determine all Fee Applications. Under the terms of the Plan, the Bankruptcy Court has jurisdiction to review any dispute with respect to the reasonableness of such fees.

(d) Section 1129(a)(5) of the Bankruptcy Code: The Debtors have complied with Section 1129(a)(5) of the Bankruptcy Code. Each of the current members of the board of directors of the Debtors will resign as of the Effective Date and no successors shall be appointed. The Liquidation Trustee was identified in the Liquidation Trustee Agreement, which was attached to the Plan Supplement. Therefore, Section 1129(a)(5) of the Bankruptcy Code will be satisfied.

(e) Section 1129(a)(6) of the Bankruptcy Code: The Plan does not provide for any rate change that requires regulatory approval. Therefore, Section 1129(a)(6) of the Bankruptcy Code is not applicable.

(f) Section 1129(a)(7) of the Bankruptcy Code: The Plan satisfies Section 1129(a)(7) of the Bankruptcy Code because it provides value which is not less than that which would be recovered by creditors in a Chapter 7 bankruptcy proceeding. In a Chapter 7 liquidation, creditors would receive distributions based on the liquidation of the non-exempt assets of the Debtors. Such assets would include the same assets being collected and liquidated under the Plan – the interest of the Debtors in the remaining assets. However, the net proceeds from the collection and liquidation of the remaining assets would be reduced in a Chapter 7 proceeding by any commission payable to Chapter 7 trustee of each of the Debtor's estates as well as the fees for the trustee's attorneys and other professionals. Moreover, a Chapter 7 liquidation would result in delay in the payment to creditors and trigger a new bar date for filing

proofs of claim against the Debtors. Hence, Chapter 7 would not only delay distribution but raise the prospect of additional claims that were not asserted in the Debtors' Chapter 11 cases. When the cost of liquidation is considered, as well as the time delay in receiving distributions, the Debtors assert that creditors will receive smaller, if not substantially smaller, distributions pursuant to Chapter 7 liquidation than under the Plan.

(g) Section 1129(a)(8) of the Bankruptcy Code: As indicated in Article III of the Plan, Classes 1 and 2 are unimpaired and are thus conclusively presumed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Furthermore, based on my review of the Voting Declaration, all impaired classes of the Debtors that are entitled to vote have either accepted the Plan or are deemed to accept the Plan. Therefore, the Plan satisfies Section 1129(a)(8) of the Bankruptcy Code.

(h) Section 1129(a)(9) of the Bankruptcy Code: Based on my review of Articles II and III of the Plan, the Plan provides for the treatment of Administrative Expense Claims, Professional Compensation and Reimbursement Claims, Priority Tax Claims and DIP Credit Agreement Claims and other Claims entitled to priority under Sections 507(a)(1)-(8) of the Bankruptcy Code, as applicable, in the manner required by Section 1129(a)(9) of the Bankruptcy Code.

(i) Section 1129(a)(10) of the Bankruptcy Code: Based on my review of the Voting Declaration and my knowledge of the solicitation process, I understand that one impaired Class of Claims for the Debtors has accepted the Plan, excluding the votes cast by insiders. Accordingly, the Plan satisfies the requirements of Section 1129(a)(10) of the Bankruptcy Code.

(j) Section 1129(a)(11) of the Bankruptcy Code: Based on my review of the Plan, confirmation of the Plan is not likely to be followed by a further liquidation or the need for

further financial reorganization of the Debtors. The Plan contemplates that all proceeds of the Liquidation Trust Assets (primarily resulting from the Sale Transaction, *i.e.*, sale of substantially all of the Debtors' assets) will be distributed to the creditors of the Debtors pursuant to the terms of the Plan. Since no further reorganization of the Debtors will be possible and sufficient funds exist to make all payments required by the Plan, the Plan is feasible within the meaning of Section 1129(a)(11) of the Bankruptcy Code.

(k) Section 1129(a)(12) of the Bankruptcy Code: The Plan provides for payment of fees payable pursuant to Section 1930(a)(6) of Title 28 of the United States Code with respect to the Debtors on or before the Effective Date. Accordingly, the Plan satisfies the requirements of Section 1129(a)(12) of the Bankruptcy Code.

(l) Section 1129(a)(13) of the Bankruptcy Code: The Debtors have no obligation to pay "retiree benefits" within the meaning of Section 1114 of the Bankruptcy Code on or before the Filing Date. Accordingly, Section 1129(a)(13) of the Bankruptcy Code is not applicable.

(m) Section 1129(a)(14) of the Bankruptcy Code: The Debtors are not required to pay any domestic support obligations. Accordingly, Section 1129(a)(14) of the Bankruptcy Code is not applicable.

(n) Section 1129(a)(15) of the Bankruptcy Code: The Debtors are not individuals. Accordingly, Section 1129(a)(15) of the Bankruptcy Code is not applicable.

(o) Section 1129(a)(16) of the Bankruptcy Code: All transfers of property under the Plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business or

commercial corporation or trust. Accordingly, Section 1129(a)(16) of the Bankruptcy Code is not applicable.

F. The Plan Satisfies Section 1129(d) of the Bankruptcy Code

20. Although implementation of the Plan may avoid adverse tax consequences that may otherwise arise from the transactions contemplated by the Plan, based on my review of the Plan and my knowledge of the Debtors, the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of Section 5 of the Securities Act and, to date, no governmental unit has objected to confirmation of the Plan on any such grounds. The Plan, therefore, satisfies the requirements of Section 1129(d) of the Bankruptcy Code.

G. The Plan Satisfies the "Cram Down" Requirements under Section 1129(b) of the Bankruptcy Code

21. Notwithstanding the fact that the Class of Equity Interests of the Debtors is deemed to reject the Plan, the Plan may still be confirmed because it does not discriminate unfairly and is fair and equitable as to the Class of Equity Interests that is deemed to have rejected the Plan. All holders of Equity Interests of the Debtors are treated similarly. The Debtors' creditors will not be paid in full and, therefore, the Plan properly provides that holders of Equity Interests in the Debtors will receive nothing. Moreover, the Plan is fair and equitable to the holders of Equity Interests in the Debtors because no holder of a junior interest will receive or retain any property on account of any distribution under the Plan.

III. CONCLUSION

22. The Plan will enable the Holders of Claims and Equity Interests to realize the highest possible recoveries under the circumstances. Therefore, the Plan is in the best interests of all Holders of Claims and Equity Interests and should be confirmed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: April 9, 2014

/s/ Eric Matejevich

ERIC MATEJEVICH