

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

TWIN RINKS AT EISENHOWER, LLC,

Chapter 11

Case No. 15-72466-REG

Debtor.

-----X

**ORDER CONFIRMING THE SECOND AMENDED CHAPTER 11
PLAN OF LIQUIDATION UNDER CHAPTER 11
OF THE UNITED STATES BANKRUPTCY CODE**

Twin Rinks at Eisenhower, LLC, the debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”), having proposed and filed the Second Amended Chapter 11 Plan of Liquidation (the “Plan”) (a copy of which is attached as Exhibit A), under Chapter 11 of title 11 of the United States Code, 11 U.S.C §§ 101 et seq. (the “Bankruptcy Code”), and the Plan and the Disclosure Statement (the “Disclosure Statement”) having been disseminated pursuant to the “Order Approving Disclosure Statement” (the “Order”); and copies of (a) the Plan, together with all schedules and exhibits thereto, (b) the Disclosure Statement, together with all schedules and exhibits thereto, (c) the Order and (d) ballot(s) having been transmitted to (i) every holder of a claim against the Debtor entitled to vote on the Plan, and (ii) the Office of the United States Trustee; and the Order having fixed, inter alia, (a) November 16, 2015 (the “Voting Deadline”) as the last date and time by which (i) all ballots were to have been received by the Debtor in order to be counted as acceptances or rejections of the Plan, and (b) November 23, 2015 at 1:30 p.m. (changed by the Court to 11:00 a.m.) (the “Confirmation Date”), as the time and date for the hearing pursuant to sections 1128 and 1129 of the Bankruptcy Code (the “Confirmation Hearing”) to consider confirmation of the Plan and any duly and timely filed objections thereto (“Objections”); and due and sufficient notice of the Confirmation Hearing, and the date by which Objections must be filed, having been

given in accordance with the terms of the Order; and the Confirmation Hearing having been held before the Court on November 23, 2015 and the appearance of all interested parties having been noted on the record of the Confirmation Hearing; and the Court having considered any and all Objections; and any and all Objections having been withdrawn, overruled or otherwise resolved; and upon the record of the Confirmation Hearing and all of the pleadings and proceedings heretofore had herein; and after due deliberation and sufficient cause appearing therefore, the Court hereby makes the following findings of fact and conclusions of law:

Findings of Fact and Conclusions of Law¹

a. The Court has jurisdiction over the Debtor and the Chapter 11 case pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtor is qualified to be a debtor under section 109 of the Bankruptcy Code. Venue in the Eastern District of New York for the Chapter 11 Case and this proceeding was and continues to be proper pursuant to 28 U.S.C. §§ 1408 and 1409.

b. The Disclosure Statement contains “adequate information” with respect to the Plan pursuant to section 1125 of the Bankruptcy Code.

c. In accordance with sections 1126 and 1129 of the Bankruptcy Code, the Plan has been duly accepted in writing by the classes of creditors whose acceptances are required by law for confirmation of the Plan. In accordance with sections 1122(a) and 1123(a) (1) of the Bankruptcy Code, the Plan designates separate classes of claims and interests, each of which class contains only

1. This order constitutes the Court’s finding of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable to this contested matter by Bankruptcy Rules 9014 and 7052. Defined terms herein have the same meaning ascribed to them in the Plan.

claims or interests that are substantially similar to the other claims or interests within that class.

d. In accordance with sections 1123(a)(2), 1123(a)(3) and 1123(a)(4) of the Bankruptcy Code, the Plan identifies each class that is not impaired, and the Plan specifies the treatment of each class that is impaired under the Plan, and provides the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest has agreed to a less favorable treatment of such particular claim or interest.

e. In accordance with section 1123(a)(5) of the Bankruptcy Code, the Plan provides adequate means for the Plan's implementation.

f. In accordance with section 1123 (a)(7) of the Bankruptcy Code, the Plan contains only provisions that are consistent with the interests of the holders of Claims and Interests and with public policy.

g. In accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan does not include any provision which is inconsistent with the applicable provisions of the Bankruptcy Code.

h. In accordance with section 1129(a)(1) of the Bankruptcy Code and Bankruptcy Rule 3016(a), the Plan is properly dated and identifies the proponents of the Plan. In addition, the Plan complies with all applicable provisions of the Bankruptcy Code and applicable law.

i. In accordance with section 1129(a)(2) of the Bankruptcy Code, the proponents of the Plan have complied with the applicable provisions of the Bankruptcy Code.

j. In accordance with section 1129(a)(3) of the Bankruptcy Code, the Plan has been

proposed in good faith and not by any means forbidden by law.

k. In accordance with section 1129(a)(4) of the Bankruptcy Code:

(i) Any payment made or promised by the Debtor or by any person acquiring property under the Plan, for services or for costs and expenses in or in connection with the Chapter 11 case, or in connection with the Plan and incident to the Chapter 11 case, has been disclosed to the Court and approved by the Court as reasonable; and

(ii) If any such payment is to a professional, retained pursuant to an order of this Court, and such payment is to be fixed after Confirmation of the Plan, such payment is reasonable, or subject to approval of the Court as reasonable, pursuant to sections 330 and 331 of the Bankruptcy Code.

l. Subject to compliance with this Confirmation Order and the Plan, in accordance with section 1129(a)(5) of the Bankruptcy Code:

(i) The Debtor has disclosed the identify and affiliations of those individuals or entities proposed to serve, after confirmation of the Plan, as an agent or representative of the Debtor, and the appointment to, or continuance in, such office of each such individual or entity is consistent with the interests of holders i.e. claims and interests and with public policy; and

(ii) The Debtor has disclosed the identity of any insider that will be employed or retained by the Debtor, and the nature of any compensation for such insider.

m. The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission, thus satisfying section 1129(a)(6) of the Bankruptcy Code.

n. In accordance with section 1129(a)(7) of the Bankruptcy Code, with respect to each impaired class of claims, each holder of a claim in such class has accepted or is deemed to have accepted the Plan, or will receive or retain under the Plan on account of such claim, property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor was liquidated on the effective date under Chapter 7 of the Bankruptcy Code.

o. In accordance with the section 1129(a)(9) of the Bankruptcy Code, except to the extent that the holder of a particular claim has agreed or will agree to a different treatment of such claim, the Plan provides that:

(i) With respect to a claim of a kind specified in sections 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on, or as soon as practicable after, the effective date of the Plan, the holder of such claim will receive on account of such claim, cash equal to the allowed amount of such claim;

(ii) With respect to a class of claims of a kind specified in sections 507(a)(4), 507(a)(5), 507(a)(6), 507(a)(7) or 507(a)(8) of the Bankruptcy Code, each holder of a claim of such class will receive on account of such claim, cash equal to the allowed amount of such claim;

p. In accordance with section 1129(a)(10) of the Bankruptcy Code, at least one class of claims that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by an insider holding a claim in such class.

q. In accordance with section 1129(a)(11) of the Bankruptcy Code, confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtor or any

successor to the Debtor under the Plan.

r. In accordance with section 1129(a)(12) of the Bankruptcy Code, all fees payable under 28 U.S.C. § 1930, have been paid or the Plan provides for the payment of all such fees on or following the Effective Date of the Plan.

s. The provisions of section 1129(a)(13) through (16) are not applicable to the Plan or this Debtor.

t. In accordance with section 1129(d) of the Bankruptcy Code, the principal purpose of the Plan is not the avoidance of taxes and there has been no objection by any governmental unit asserting such avoidance.

u. Pursuant to section 1126 and 1129(a)(6) of the Bankruptcy Code, (a) as provided for in the Plan, Classes 2, 3 and 3A are impaired and (b) as indicated in the certification, Classes 2, 3 and 3A accepted the Plan pursuant to section 1126(c) of the Bankruptcy Code. The holders of Claims in Class 1 are not impaired. The Holders of Class 4 Interests are deemed to have rejected the Plan.

v. The procedures by which the ballots for acceptance or rejection of the Plan were solicited and tabulated are fair, were properly conducted, and are in accordance with the Bankruptcy Code, the Bankruptcy Rules, and applicable non-bankruptcy law.

w. Due, proper, timely and sufficient notice of the Confirmation Hearing and of the

opportunity to object to confirmation of the Plan have been given to holders of claims and interests, and other parties in interest in accordance with the Order and the applicable Bankruptcy Code sections and Bankruptcy Rules, and in satisfaction of all due process considerations, and the form, manner and content of such notice is hereby approved.

x. Any conflict between the descriptions of claims and interests in the Disclosure Statement and the Plan shall be resolved in favor of the Plan. Any conflict between the Plan and this order shall be resolved in favor of this order.

CONFIRMATION ORDER

Based upon the foregoing Findings of Facts and Conclusions of Law, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. The Plan and each of its provisions shall be, and hereby are, confirmed in all respects pursuant to section 1129 of the Bankruptcy Code.

2. To the extent any Objections have not been withdrawn prior to entry of this order or are not cured by the relief granted herein, all remaining Objections shall be and hereby are, overruled, and all withdrawn Objections shall be, and hereby are, deemed withdrawn.

3. In accordance with the Plan and section 1141(a) of the Bankruptcy Code, and except as otherwise specifically provided in this order, the Plan and its provisions shall be, and hereby are, binding

7.

upon the Debtor (whether prior to or following the effective date), any person or entity acquiring or receiving any property under the Plan, any lessor or lessee of property to or from the Debtor, and

any holder of a claim against or interest in the Debtor, whether or not the holder of such claim or interest is impaired under the Plan and whether or not such holder has filed, or is deemed to have filed, a proof of claim or interest or has accepted or rejected the Plan.

4. Pursuant to section 1142 (b) of the Bankruptcy Code, the Debtor is authorized and directed to execute and deliver all documents and agreements necessary to consummate and implement the Plan, and to take any and all lawful actions required to consummate and implement the Plan.

5. The Debtor is authorized and directed to execute any and all releases, agreements, and other similar documents, or take other actions (including the payment of money), set forth in or as are otherwise necessary or appropriate to consummate the Plan.

6. Nothing in the Plan or this order shall discharge or release the Debtor or the estate from obligations or liabilities to be paid or performed under the Plan.

7. Except as otherwise provided in the Plan or in this order, all persons or entities who have held, hold or may hold claims against the Debtor or the property of its estate, be and they hereby are, permanently enjoined and restrained from instituting or continuing any judicial or administrative proceeding or employing any process to interfere with or alter consummation or implementation of the Plan, the releases and exculpations, payments or transfers provided for in the Plan, and the debtor-in-possession account(s) on and after the Effective Date including: (i) commencing or continuing in any manner, directly or indirectly, any action or other proceeding of any kind with respect to any such claim

against the debtor-in-possession account(s), with respect to any such claim, (ii) from the

enforcement, attachment, collection or recovery by any manner or means, directly or indirectly, of any judgment, award, decree, or order against the debtor-in-possession account(s) with respect to any such claim, (iii) from creating, perfecting or enforcing, directly or indirectly, any encumbrance of any kind against the debtor-in-possession account(s) with respect to any such claim, (iv) from asserting, directly or indirectly, any setoff, right of subrogation, or recoupment of any kind against the debtor-in-possession account(s), and (v) from any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

8. As provided in the Plan, the Debtor will establish reasonable reserves to cover payment of Disputed Claims and other expenses including, without limitation, fees payable pursuant to 28 U.S.C. § 1930 (a)(6), costs incurred in connection with the filing of the monthly financial reports for each month that this case remains open, and reasonable professional fees.

9. As provided in the Plan, all unexpired leases and executory contract(s) to which the Debtor was a party on the Petition Date not otherwise assumed or rejected pursuant to a separate order of the Bankruptcy Court will be deemed rejected by the Debtor pursuant to sections 365 and 1123(b)(2) of the Bankruptcy Code as of the Effective Date.

10. This Court hereby retains jurisdiction of this Chapter 11 Case pursuant to and for the purposes of (i) Titles 11 and 28 of the United States Code and (ii) such other purposes as may be

necessary or useful to aid the Confirmation, consummation and implementation of the Plan to the extent that the Court may legally retain jurisdiction of such matters. Except as may have been expressly provided in prior orders of the Court, notwithstanding anything in the Plan to the contrary, the Court shall retain sole and exclusive jurisdiction to determine any dispute or cause of action arising under any agreement or arrangement approved by the Court and to determine the scope, extent and applicability of all compromises and releases under the Plan or this Order.

11. Prior to the Effective Date, the Plan may be amended or modified subject to further order of the Bankruptcy Court, only in accordance with the Plan and section 1127 of the Bankruptcy Code.

12. The failure to reference or to discuss any particular provision of the Plan in this Confirmation Order shall have no effect on the validity, binding effect or enforceability of such provision, and such provision shall have the same validity, binding effect and enforceability as every other provision of the Plan.

13. The Debtor and its agents, and professionals are hereby authorized to execute such documents and take such action as may be necessary or appropriate to implement this order.

**Dated: Central Islip, New York
December 1, 2015**



A handwritten signature in black ink, appearing to read "Robert E. Grossman". The signature is written in a cursive style and is positioned above a horizontal line.

**Robert E. Grossman
United States Bankruptcy Judge**