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GAMING ENFORCEMENT



Attorneys for RIH Acquisitions NJ, LLC

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In The Matter Of The Petition Of RIH	:	State of New Jersey
Acquisitions NJ, LLC For Various	:	Casino Control Commission
Declaratory Rulings In Connection With A	:	
Settlement Agreement And Release	:	
Agreement	:	PRN 307 1103
	:	
	:	<b>PETITION</b>

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RIH Acquisitions NJ, LLC (“RANJ”) hereby submits this Petition to the Casino Control Commission (the “Commission”) and states as follows:

**FACTS**

1. RANJ, the casino licensee that owns and operates ACH Casino Resort (formerly the Atlantic City Hilton Casino Resort)(“ACH”), is the holder of a casino license issued by the Commission pursuant to Commission Resolution No. 07-04-18-13.

2. RANJ is also a party to that certain Settlement Agreement and Release Agreement, both executed as of November 2, 2011 (the “Settlement Agreement” and “Release Agreement” respectively), a true and correct copy of each are attached to the accompanying Certification of Gilbert L. Brooks (“Brooks Cert.”) as Exhibits A and B.

3. Among the parties to the Settlement Agreement and Release Agreement are Colony Investors VI, L.P. (“Colony Investors VI”), Colony Investors VII, L.P. (“Colony Investors VII”), RIH Co-Investment Partners I, L.P. (“RIH Co-Investment Partners”), Resorts International Holdings, LLC (“RIH”), RIH Propco NJ, LLC (“Propco”), RANJ, RIH Propco MS

I, LLC, RIH Acquisitions MS I, LLC, RIH Propco MS II, LLC, RIH Acquisitions MS II, LLC and U.S. Bank, National Association, as Trustee for the Benefit of the Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2007-FL1, and for the Holders of the Non-Trust Partition Interests (the “Lender”). Berkadia Commercial Mortgage, LLC (“Berkadia”) is also a party to the Settlement Agreement for the limited purpose set forth in the Settlement Agreement.

4. RIH Propco MS I, LLC and RIH Acquisitions MS I, LLC are the owner/lessor/lessee of the Resorts Tunica casino resort in Tunica, Mississippi (“Resorts Tunica”).

5. RIH Propco MS II, LLC and RIH Acquisitions MS II, LLC (RIH Proco MS I, LLC, RIH Acquisitions MS I, LLC, RIH Propco MS II, LLC and RIH Acquisitions MS II, LLC collectively referred to hereafter as the “Mississippi Borrowers”) are the owner/ lessor/lessee of the Bally’s Tunica casino resort in Tunica, Mississippi (collectively hereafter with Resorts Tunica, the “Mississippi Properties”).

6. RANJ, Propco and the Mississippi Borrowers are borrowers in connection with an October 24, 2006 loan agreement with JPMorgan Chase Bank, N.A. (the “Loan Agreement”).

7. The Loan Agreement is secured by, among other things, ACH and the Mississippi Properties. The Loan Agreement is also secured by a Guaranty of Recourse Obligations of Borrower executed by Colony Investors VI, Colony Investors VII and RIH Co-Investment Partners (the “Guaranty”). Colony Investors VI, Colony Investors VII and RIH Co-Investment Partners (collectively hereafter the “Guarantors”) are entity qualifiers and financial source qualifiers of ACH. (See, Brooks Cert., Exh.C).

8. RANJ is wholly owned by RIH. RIH is wholly owned by RIH Casino Resorts, LLC (“RIH Casino Resorts”). RIH Casino Resorts is wholly owned by RIH Resorts, LLC (“RIH Resorts”). RIH Co-Investment Partners owns a non-voting interest in RIH Resorts. Colony RIH Holdings, LLC (“Colony RIH Holdings”) owns the balance of the non-voting ownership interest in RIH Resorts. Colony Investors VII and Colony Investors VI own Colony RIH Holdings.

9. The Lender is the current holder of the Loan Agreement, the Guaranty and all relevant security interests, including mortgages, related to ACH and the Mississippi Properties.

10. RANJ and the other borrowers thereunder are in default in connection with the Loan Agreement.

11. As a consequence of the default, the Lender has commenced foreclosure litigation seeking to foreclose upon ACH (the “ACH Foreclosure Litigation”) and the Mississippi Properties (collectively hereafter with the ACH Foreclosure Litigation, the “Foreclosure Litigation”).

12. In an effort to reach a consensual and orderly resolution of the Foreclosure Litigation, the parties have negotiated and wish to close upon the Settlement Agreement and the Release Agreement. The parties have agreed to use their commercially reasonable efforts to close and consummate the transactions contemplated by the Settlement Agreement and Release Agreement on or before November 30, 2011.

13. Per the terms of the Settlement Agreement, and subject to the receipt of all required governmental approvals in Mississippi, including but not limited to an approval from the Mississippi Gaming Commission, RIH and the Mississippi Borrowers agreed not to take any action that will delay the Lender from foreclosing upon the membership interests held by RIH in

the Mississippi Borrowers, such that the Lender will obtain ownership of all equity interests in the Mississippi Borrowers and, thus, control and own the Mississippi Properties.

14. Further, the Guarantors, through an escrow arrangement, and subject to a closing and consummation of the transactions contemplated by the Settlement Agreement and the Release Agreement, have agreed to make an equity contribution in an amount equal to \$15 million in immediately available funds to RANJ (the "Equity Contribution"). Subject to the terms of the Settlement Agreement, the Equity Contribution will be available to RANJ to fund operations at ACH.

15. In addition, subject to a closing and consummation of the transactions contemplated by the Settlement Agreement and the Release Agreement, the Lender shall release to RANJ \$9.3 million of business interruption insurance proceeds presently held by the Lender, said business interruption insurance proceeds related to the August 2009 flooding at ACH and said business interruption insurance proceeds currently the subject of petitions filed by RANJ and presently pending before both the Commission and the New Jersey Division of Gaming Enforcement (the "Division") (PRN 2871101). Upon the contemplated closing and the release of the \$9.3 million of business interruption insurance proceeds by the Lender to RANJ, RANJ shall withdraw the pending petitions before the Commission and the Division. The \$9.3 million of business interruption insurance proceeds released to RANJ shall be available to RANJ to fund operations at ACH.

16. At the time of the closing and consummation of the transactions contemplated by the Settlement Agreement and Release Agreement, the Lender will fully release the mortgage lien and security interest it has with respect to the Loan Agreement in connection with ACH (the "ACH Mortgage").

17. Also as part of the Settlement Agreement, upon the closing and consummation of the transactions contemplated by the Settlement Agreement and the Release Agreement, the Lender has agreed to dismiss the ACH Foreclosure Litigation.

18. Further, as part of the Settlement Agreement, the parties will enter into a Transition Services Agreement that will require RIH to provide certain services to the Mississippi Properties for a limited duration until a complete transition of ownership of the Mississippi Properties can take place, in particular certain information technology related services. (See, Brooks Cert., Exh. D). Except as may be provided in the Transition Services Agreement, the Mississippi Borrowers will withdraw from participation in any company benefit plan sponsored by RIH.

19. Further, as part of the Settlement Agreement, the Lender and the Mississippi Borrowers will have limited rights to utilize the "Resorts" and "Resorts International" names for a limited duration.

20. Further, upon the closing and consummation of the transactions contemplated by the Settlement Agreement and the Release Agreement, all intercompany agreements, including but not limited to the Unitary Lease between RANJ, Propco and the Mississippi Borrowers, will be terminated, modified or amended so that the Mississippi Borrowers will no longer be parties thereto. The Unitary Lease will also be amended to remove all references to the Loan Agreement and the Lender and the Lender will no longer have any rights or obligations thereunder, including but not limited to, the right to enforce any rights in connection with the Unitary Lease.

21. As a consequence of the Loan Agreement, RIH established an independent advisory board. Following the closing and consummation of the transactions contemplated by

the Settlement Agreement and the Release Agreement, RIH will eliminate the independent advisory board. There will, however, be no changes to RANJ's current independent audit committee or any of the present RIH and RANJ Officers and Directors.

22. The Release Agreement will effectuate a mutual and comprehensive release of any and all claims between the parties with a limited exception in terms of the release granted by RANJ to the Lender.

23. Pursuant to a Securities Purchase Agreement with the Casino Reinvestment Development Authority ("CRDA"), and in accordance with N.J.S.A. 5:12-144.1, over the years, RANJ has made required investment alternative tax payments. In terms of the investment alternative tax payments previously made by RANJ, a portion of the investment alternative tax payments have been allocated to the RANJ payment fund and further allocated to the Atlantic City Housing, Atlantic City Economic Development, South Jersey, North Jersey, NJDA and Atlantic City Funds, but not yet committed or pledged to any project or the purchase of CRDA bonds (the "Available CRDA Funds"). In accordance with N.J.S.A. 5:12-177, N.J.A.C. 19:65-2.9 and the CRDA Donation Credit Policy set forth in CRDA Resolutions 95-50 and 98-67, RANJ has requested that it be permitted to donate the Available CRDA Funds (the "CRDA Donation Request"). If the CRDA Donation Request is approved by CRDA, it is anticipated that RANJ will receive a cash return of a portion of the Available CRDA Funds consistent with a donation ratio of 1 to 1.51.

24. In order to allow the closing of the Transaction, RANJ respectfully seeks various declaratory rulings under the New Jersey Casino Control Act, N.J.S.A. 5:12-1 et seq. (the "Act"), and the regulations of the Commission and Division enacted thereunder.

## FIRST COUNT

25. The averments in Paragraphs 1-24 above are incorporated by reference as if set forth at length herein.

26. RANJ seeks a declaratory ruling based on N.J.S.A. 5:12-84(a) that, following the closing and consummation of the transactions contemplated by the Settlement Agreement and the Release Agreement and the CRDA Donation Request, it will have established by clear and convincing evidence its financial stability, integrity, and responsibility for a time period of November 1, 2011 through October 31, 2012. RANJ respectfully submits that it meets the standard of financial stability, integrity, and responsibility as those standards are defined in N.J.S.A. 5:12-84(a).

27. Following the closing and consummation of the transactions contemplated by the Settlement Agreement and the Release Agreement and the CRDA Donation Request and, in accordance with N.J.S.A. 5:12-84(a)(1), RANJ will have the ability to assure the financial integrity of casino operations by the maintenance of a casino bankroll or equivalent provisions adequate to pay winning wagers to casino patrons when due. Based upon projections provided by RANJ to the Division, RANJ projects that it will maintain, on a daily basis, a casino bankroll, or a casino bankroll and equivalent provisions, in an amount which is at least equal to the average daily minimum casino bankroll or equivalent provisions, calculated on a monthly basis, for the corresponding month in the previous year.

28. Following the closing and consummation of the transactions contemplated by the Settlement Agreement and the Release Agreement and the CRDA Donation Request, and in accordance with N.J.S.A. 5:12-84(a)(2), RANJ has provided the Division with projections

demonstrating that it will have the ability to meet ongoing operating expenses consistent with its business plan for future operations at ACH.

29. Following the closing and consummation of the transactions contemplated by the Settlement Agreement and the Release Agreement and the CRDA Donation Request, and in accordance with N.J.S.A. 5:12-84(a)(3), RANJ has provided the Division with projections demonstrating that it will have the ability to pay, as and when due, all local, state, and federal taxes, including the tax on gross revenues imposed by N.J.S.A. 5:12-144(a), the investment alternative tax obligations imposed by N.J.S.A. 5:12-144(b) and N.J.S.A. 5:12-144.1, and any fees imposed pursuant to the Act or regulations promulgated thereunder.

30. Following the closing and consummation of the transactions contemplated by the Settlement Agreement and the Release Agreement and the CRDA Donation Request, and in accordance with N.J.S.A. 5:12-84(a)(4), RANJ has provided the Division with projections demonstrating that it will have the ability to make necessary capital and maintenance expenditures in a timely manner which are adequate to ensure maintenance of ACH as a superior, first-class facility of exceptional quality in accordance with N.J.S.A. 5:12-83(i).

31. Following the closing and consummation of the transactions contemplated by the Settlement Agreement and the Release Agreement and the CRDA Donation Request, and in accordance with N.J.S.A. 5:12-84(a)(5), RANJ has provided the Division with projections demonstrating that it will have the ability to pay, exchange, refinance, or extend debts, including long-term and short-term principal and interest and capital lease obligations, or otherwise manage such debts, which will mature or otherwise come due and payable from November 1, 2011 through October 31, 2012.

32. In general, following the closing and consummation of the transactions contemplated by the Settlement Agreement and the Release Agreement, RANJ will have resolved the default under the Loan Agreement and caused liens on ACH exceeding \$500 million to be released such that ACH will be owned by RANJ free and clear of all existing mortgage debt. Further, RANJ will embark upon a business plan which gives it a better opportunity to compete in the reality of an evolving Atlantic City gaming market.

### **SECOND COUNT**

33. The allegations set forth in paragraphs 1-32 above are incorporated by reference as if set forth at length herein.

34. In Commission Resolution No. 07-04-08-13 (specifically Condition 6), the Commission required that RANJ provide to the Commission and Division copies of any amendments or proposed amendments to the Loan Agreement, the Unitary Lease, or any document related thereto, and that RANJ not proceed with any such amendments without the approvals required by N.J.S.A. 5:12-82(c) and N.J.A.C. 19:43-4, as applicable.

35. Consequently, RANJ requests Commission and Division approval to close and consummate the transactions contemplated by the Settlement Agreement and the Release Agreement, including but not limited to entry into the Transition Services Agreement.

36. In addition to the contemplated elimination of the independent advisory board, all present warrants, including management warrants, to acquire any interest in RIH, RIH Casino Resorts, RIH Resorts and Colony RIH Holdings, will be cancelled and voided. As a consequence, and with reference to the current ownership organizational structure of RANJ, RIH Co-Investment Partners II, L.P. will no longer have any interest in RIH Resorts.

37. In connection with the closing and consummation of the transactions contemplated by the Settlement Agreement and the Release Agreement, the operating agreement for RANJ will also be amended and restated. In conjunction with the amendment and restatement of the RANJ operating agreement, RIH's membership units in RANJ will be reconstituted into common and preferred membership units. The preferred membership units will be non-voting. It is anticipated that initially the preferred membership units will be issued to RIH and, subsequently, RIH may sell all or a portion of the preferred membership units to Eric J. Matejevich, the Chief Financial Officer of RIH, and/or Michael Frawley, the Chief Operating Officer of RANJ. Both Mr. Matejevich and Mr. Frawley are currently individual qualifiers of RANJ.

WHEREFORE, RANJ respectfully requests that the Commission:

- (a) Permit RANJ to close and consummate the transactions contemplated by the Settlement Agreement and the Release Agreement;
- (b) Find and declare that RANJ satisfies the financial stability requirements of N.J.S.A. 5:12-84(a) and has proved by clear and convincing evidence its financial stability, integrity, and responsibility for the period of November 1, 2011 through October 31, 2012;
- (c) Approve the changes to RANJ's ownership organizational structure and documents referenced in the Petition including but not limited to the Unitary Lease;
- (d) Pursuant to N.J.S.A. 5:12-82(d)(7) and in accordance with N.J.A.C. 13:69C-2.8, permit RANJ to sell preferred membership units to RIH, Eric J. Matejevich and/or Michael Frawley; and
- (e) Grant such other relief as the Commission deems equitable and just.

Dated: November 2, 2011

Respectfully submitted,



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