



Order Filed on August 27, 2019
by Clerk, U.S. Bankruptcy Court
- District of New Jersey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

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Debtors-in-Possession*

In re:

Mountain Creek Resort, Inc., *et al.*,¹

Debtors.

Chapter 11


Case No. 17-19899 (SLM)

Jointly Administered

**ORDER APPROVING SETTLEMENT OF CLAIMS ASSERTED
BY VERNON TOWNSHIP AND VERNON TOWNSHIP MUNICIPAL
UTILITIES AUTHORITY PURSUANT TO RULE 9019
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

The relief set forth on the following pages, numbered two (2) through and including five (5), is hereby **ORDERED**.

DATED: August 27, 2019


Honorable Stacey L. Meisel
United States Bankruptcy Judge

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Mountain Creek Resort, Inc. (4557), Mountain Creek Services Inc. (3228), Mountain Creek Management, LLC (1394), Mountain Creek Mountainslide, LLC (1545), Mountain Leasing LLC (6057), and Appalachian Liquors Corporation (9542).

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Debtors: Mountain Creek Resort, Inc., *et al.*

Case No.: 17-19899 (SLM)

Caption: Order Approving Settlement of Claims Asserted by Vernon Township and Vernon Township Municipal Utilities Authority Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure

Upon consideration of the motion (the “Motion”)² of the above-captioned Debtors for entry of an order approving the settlement of claims asserted by Vernon Township and the Vernon Township Municipal Utilities Authority pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and upon consideration of the Certification (together with the Motion, the “Vernon Settlement Pleadings”); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, as amended on September 18, 2012 (Simandle, C.J.); and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and M&T Bank and the State of New Jersey having participated in the mediation and having provided substantive comments to the Revised Settlement Agreement; and notice of the Vernon Settlement Pleadings having been given to (i) the Office of the United States Trustee for the District of New Jersey, One Newark Center, Suite 2100, Newark, NJ 07102; (ii) Drinker Biddle & Reath, LLP, 600 Campus Drive, Florham Park, New Jersey 07932-1047, Attention: Michael P. Pompeo, Esq., attorneys for the Committee; (iii) Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, New York 10018, Attention: Scott Markowitz, Esq. and Arthur Goldstein, Esq., attorneys for the DIP Lender; (iv) the Internal Revenue Service, 2970 Market Street, Mail Stop 5-Q30.133, Philadelphia, PA 19104-5016; (v) the New Jersey Division of Taxation Compliance and Enforcement - Bankruptcy Unit, 50 Barrack Street, 9th Floor, Trenton, NJ 08695; (vi) the Office of the Attorney General of the State of New Jersey, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, Trenton, NJ 08625; (vii) the Office of the United States Attorney,

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion and in the Certification submitted simultaneously herewith.

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Debtors: Mountain Creek Resort, Inc., *et al.*

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Peter Rodino Federal Building, 970 Broad Street, Suite 700, Newark, NJ 07102; (viii) M&T Bank, PO Box 1302, Buffalo, NY 14240-1302; (ix) Greenberg Traurig, LLP, 2700 Two Commerce Square, 2001 Market Street, Philadelphia, PA 19103, Attention: Diane E. Vuocolo, Esq., attorneys for M&T Bank; (x) Head USA, Inc., 3125 Sterling Circle, Suite 101, Boulder, CO 80301; (xi) Alpina Sports Corp., 93 Etna Road, Lebanon, NH 03766; (xii) HSK Adventure, Inc., 300 Plaza Drive, Vestal, NY 13850; (xiii) Kuzari Investor 27335 LLC, 220 East 42nd Street, 29th Floor, New York, NY 10017; (xiv) Cole Schotz P.C., 25 Main Street, Hackensack, NJ 07601, Attention: Warren A. Usatine, counsel for Kuzari Investor 27335 LLC; (xv) Bank of America, N.A. Bank of America Corporate Center, 100 North Tryon St, Charlotte, NC 28255; (xvi) Vernon Township, 21 Church Street, Vernon, NJ 07462; (xvii) Highlands State Bank, PO Box 160, Vernon, NJ 07462; (xviii) Visions Federal Credit Union, 24 McKinley Ave, Endicott, NY 13760-5491; (xix) Axess North America, 6433 N Business Loop Rd, Park City, UT 84098; (xx) Proficio Bank, 6985 Union Park Center, Suite 150, Cottonwood Heights, UT 84047; (xxi) Dell Financial Services LLC, 12234 North Interstate 35, Suite 35B, Austin, TX 78753; (xxii) Marlin Business Bank, 300 Fellowship Rd, Mt Laurel, NJ 08054; (xxiii) Ally Financial Inc., Ally Detroit Center, 500 Woodward Ave, Detroit, MI 48226; (xxiv) Kubota Credit Corporation USA, 4400 Amon Carter Boulevard, Suite 100, Fort Worth, TX 76155; (xxv) GE Capital Information Technology Solutions, LLC, 300 E. John Carpenter Freeway, Irving, TX 75062-2712; (xxvi) Bank of the West, Dept. LA 23091, Pasadena, CA 91185-3091; (xxvii) McElroy, Deutsch, Mulvaney & Carpenter, 1300 Mt. Kemble Avenue, Morristown, NJ 07962, Attn: Louis A. Modugno, Esq.; (xxviii) Norris, McLaughlin & Marcus, P.A., 400 Crossing Boulevard, 8th Floor, P.O. Box 5933, Bridgewater, NJ 08807-5933, Attn: Morris S. Bauer, Esq. and Melissa A. Pena, Esq.; (xxix) New Jersey Department of State, PO Box 300, Trenton, NJ 08625; (xxx) the Sussex County Municipal Utilities Authority,

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34 NJ-94, Lafayette Township, NJ 07848; (xxxix) Sussex County Board of Freeholders, 1 Spring Street, Newton, NJ 07860; (xxxii) Chiesa Shaninian & Giantomasi PC, One Boland Drive, West Orange, New Jersey 07052, Attention: Robert Nies, Esq.; (xxxiii) R. J. Hughes Justice Complex, Division of Community Affairs, 2nd Floor West Wing, 25 Market Street, Trenton, New Jersey 08625, Attention: Craig S. Keiser, Esq. Deputy Attorney General; (xxxiv) Sills Cummis & Gross, P.C., The Legal Center, One Riverfront Plaza, Newark, NJ 07102, Attention: Thomas H. Prol, Esq.; (xxxv) those parties who have filed a notice of appearance and request for service of pleadings in these Chapter 11 Cases pursuant to Fed. R. Bankr. P. 2002; and (xxxvi) the Debtors' twenty largest unsecured creditors on a consolidated basis (collectively, the parties listed in (i) – (xxxvi), the "Notice Parties"), being sufficient under the circumstances; and it appearing that no other or further notice need be provided; and the Court having determined that based on the factual and legal issues presented by the Vernon Claims and the Vernon Adversary Proceeding, the risk of significant time, delay and expense associated with continued litigation, and the benefits to be provided to the Debtors' estates by virtue of, among other things, the elimination of the lien claims asserted by the Vernon Parties, the cancellation of certain Letter of Credit obligations, the retention of the Developer's Capacity Allocation and, the right to develop without bearing the cost of Connection Fees, the settlement is fair and in the best interests of creditors and the Debtors' estates, and falls well within the range of reasonableness; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The relief sought in the Vernon Settlement Pleadings is **GRANTED** as set forth herein.

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2. The Revised Settlement Agreement attached hereto as **Exhibit 1** is hereby approved.

3. The Objections to the relief sought in the Vernon Settlement Pleadings filed by the State of New Jersey [ECF No. 965] and by the Sussex County Municipal Utilities Authority [ECF No. 969] are resolved in accordance herewith.

4. The form and manner of notice of the Vernon Settlement Pleadings and the Revised Settlement Agreement was good and sufficient.

5. The Debtors are authorized to take all actions as may be required or necessary in order to implement the terms of the Revised Settlement Agreement and related documents thereto and the relief granted pursuant to this Order.

6. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or is otherwise waived.

7. To the extent applicable, any stay provided for under Bankruptcy Rule 6004(h) shall not apply to this Order.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.