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Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
CASE NO. 13-

Chapter 11
(Joint Administration Pending)

In re:

RIH ACQUISITIONS NJ, LLC, *et al.*,¹
Debtors-in-Possession.

**NOTICE OF MOTION FOR AN ORDER:
(I) AUTHORIZING RIH ACQUISITIONS
NJ, LLC TO (A) SATISFY AND, TO THE
EXTENT APPLICABLE, DIRECTING
ANY PAYROLL BANKS TO HONOR,
PRE-PETITION GROSS SALARIES,
PAYROLL TAXES AND RELATED
OBLIGATIONS TO OR FOR THE
BENEFIT OF THE DEBTORS'
EMPLOYEES, AND (B) HONOR, IN ITS
DISCRETION, PRE-PETITION SICK,
VACATION, PERSONAL, AND
SIMILAR THEMED DAYS; AND (II)
GRANTING OTHER RELATED RELIEF**

HEARING DATE AND TIME:
_____, 2013, at __:__ a.m.

ORAL ARGUMENT REQUESTED

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: All Parties-in-Interest

PLEASE TAKE NOTICE that pursuant to an Order Regarding Application for Expedited Consideration of First Day Matters served herewith, on the ___ day of November, 2013, at _____ .m., or as soon thereafter as counsel may be heard, the undersigned, proposed counsel for RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel (“**RIH Acquisitions**”) and RIH Propco NJ, LLC, the within debtors and debtors-in-possession (the “**Debtors**”), shall move before the assigned 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: (i) authorizing RIH Acquisitions to (A) satisfy and, to the extent applicable, directing any payroll banks to honor pre-petition gross salaries, payroll taxes and related obligations to or for the benefit of the Debtors’ employees, and (B) honor, in its discretion, pre-petition sick, vacation, personal, and similar themed days; and (ii) granting other related relief (the “**Motion**”).

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

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion shall be presented in accordance with the Order Regarding Application for Expedited Consideration of First Day Matters.

PLEASE TAKE FURTHER NOTICE that unless objections are timely presented, the Motion shall be deemed uncontested in accordance with D.N.J. LBR 9013-1(a)(i) and the relief requested may be granted without a hearing.

PLEASE TAKE FURTHER NOTICE that the undersigned requests oral argument on the return date of the Motion.

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
Proposed attorneys for RIH Acquisitions NJ, LLC, *et al.*,
Debtors-in-Possession

By: /s/ Michael D. Sirota
Michael D. Sirota
Warren A. Usatine
Ryan T. Jareck
Nicholas B. Vislocky

DATED: November 6, 2013

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
CASE NO. 13-

Chapter 11
(Joint Administration Pending)

In re:

RIH ACQUISITIONS NJ, LLC, *et al.*,¹

Debtors-in-Possession.

**VERIFIED APPLICATION IN SUPPORT OF
MOTION FOR AN ORDER: (I)
AUTHORIZING RIH ACQUISITIONS NJ,
LLC TO (A) SATISFY AND, TO THE
EXTENT APPLICABLE, DIRECTING ANY
PAYROLL BANKS TO HONOR, PRE-
PETITION GROSS SALARIES, PAYROLL
TAXES AND RELATED OBLIGATIONS TO
OR FOR THE BENEFIT OF THE
DEBTORS' EMPLOYEES, AND (B) HONOR,
IN ITS DISCRETION, PRE-PETITION
SICK, VACATION, PERSONAL, AND
SIMILAR THEMED DAYS; AND (II)
GRANTING OTHER RELATED RELIEF**

HEARING DATE AND TIME:

_____, 2013, at __:__ a.m.

ORAL ARGUMENT REQUESTED

TO: Honorable Judge of the
United States Bankruptcy Court

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

I. INTRODUCTION AND JURISDICTION

1. This Verified Application is submitted in support of the Debtors’ motion for an Order: (i) authorizing RIH Acquisitions to (A) satisfy and, to the extent applicable, directing any payroll banks to honor pre-petition gross salaries, payroll taxes and related obligations to or for the benefit of the Debtors’ employees (the “**Pre-Petition Employee Compensation Obligations**”), and (B) honor, in its discretion, pre-petition sick, vacation, personal, and similar themed days; and (ii) granting other related relief (the “**Motion**”).

2. RIH Acquisitions uses Automatic Data Processing, Inc. (“**ADP**”) to process the payroll for its executives, whereas the rest of the payroll is processed internally. RIH Acquisitions maintains two payroll accounts and ensures that sufficient funds are available to satisfy all gross payroll and related employee obligations in a timely manner. Accordingly, neither RIH Acquisitions’ banks nor ADP will be prejudiced by an Order directing them to honor RIH Acquisitions’ checks or electronic fund transfer requests for direct deposits with respect to the Pre-Petition Employee Compensation Obligations.

3. In addition, granting the requested relief will minimize the personal hardship RIH Acquisitions’ employees and their families will suffer if the Pre-Petition Employee Compensation Obligations are not honored as a result of the Chapter 11 filings, and will maintain employee morale at this critical juncture to enhance the likelihood the Debtors’ employees will

remain with RIH Acquisitions and assist the Debtors in achieving their pronounced goals in these Chapter 11 proceedings.

4. 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) and (O).

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).

II. BACKGROUND

6. On November 6, 2013 (the “**Filing Date**”), the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of 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.

7. A detailed description of RIH Acquisitions’ business and the facts precipitating the filing of the Debtors’ 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, RIH Acquisitions is in the hotel and gaming business and owns and operates 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**”). The Atlantic Club Casino has 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 offers over 37,000 square feet of versatile event space and can accommodate gatherings of up to 1,600 people.

A. RIH Acquisitions' Workforce

9. RIH Acquisitions employs approximately 1,660 employees consisting of full-time, part-time and temporary employees (collectively, the “**Employees**”). RIH Acquisitions is party to four collective bargaining agreements, covering approximately 43% of its Employees (the “**Union Employees**”). RIH Acquisitions’ executives are paid via direct deposit (the “**Executive Payroll**”). Of the remaining Employees, approximately sixty percent (60%) are paid via direct deposit, while approximately forty percent (40%) receive paychecks.²

10. The Employees perform a variety of crucial functions for RIH Acquisitions including, but not limited to, operation of the hotel and casino, purchasing and sales, marketing, quality control and risk management, maintenance, security, and technical services. The Employees’ valuable skill sets, indispensable institutional knowledge and industry expertise and overall understanding of the Atlantic Club Casino’s operations make the Employees critical to the success of these Chapter 11 cases.

B. RIH Acquisitions' Employee Compensation Obligations

11. In the ordinary course of business, the employees on the Executive Payroll are paid on the fifteenth and the last day of each month on a current basis. Thus, the payroll made on October 31, 2013 covered the last sixteen days of October 2013 (the “**October 31st Payroll**”). All other Employees are paid weekly on Mondays, for the week ended the previous Sunday. Thus, the Non-Executive Payroll for Monday, November 4, 2013 covered the seven day period for the week ended Sunday, October 27, 2013 (the “**November 4th Payroll**”). Because approximately forty percent (40%) of RIH Acquisitions’ non-executive Employees do not use

² The Executive Payroll is handled by ADP, whereas payroll for all other Employees is processed internally (the “**Non-Executive Payroll**”).

direct deposit, it is likely many of them did not cash their November 4th Payroll checks as of the Filing Date (collectively, the “**Uncleared Payroll Checks**”).

12. In addition, as of the Filing Date, RIH Acquisitions will have incurred Pre-Petition Employee Compensation Obligations to Employees on the Non-Executive Payroll for the period from October 28, 2013 through and including November 6, 2013, for a total of ten (10) pre-petition days (the “**Current Pre-Petition Payroll**,” and together with the October 31st Payroll, to the extent not cleared as of the Filing Date, and the November 4th Payroll, collectively, the “**Pre-Petition Payroll**”).

13. RIH Acquisitions’ average gross weekly payroll for the Non-Executive Payroll, based on the past six payroll cycles, totals approximately \$827,754. RIH Acquisitions’ average gross weekly payroll for the Executive Payroll is approximately \$56,138 based on the past six payroll cycles. Based on RIH Acquisitions’ books and records and historical payroll obligations, the Debtors do not believe any Employee is owed more than the \$12,475.00 priority cap for pre-petition wages and salaries. See 11 U.S.C. § 507(a)(4).

C. Gross Payroll Deductions, Taxes and Governmental Withholdings

14. Upon the culmination of each payroll cycle, RIH Acquisitions deducts certain amounts from Employees’ paychecks to account for (i) pre- and after-tax deductions pursuant to employee benefit plans (described below under “**Employee Benefits**”), (ii) federal, state and local tax withholdings laws and (iii) other, such as garnishments, transportation, charitable contributions, child support, and union dues (collectively, the “**Employee Withheld Amounts**”). In turn, RIH Acquisitions and ADP, as applicable, transmit the Employee Withheld Amounts to appropriate third-party recipients.

15. RIH Acquisitions is required by law to withhold from an Employee's wages amounts related to federal and state taxes, social security and Medicare taxes (collectively, the "**Trust Fund Taxes**"), and to remit the Trust Fund Taxes to the appropriate taxing authorities (collectively, the "**Taxing Authorities**"). RIH Acquisitions calculates the withholding taxes and remits them to the appropriate Taxing Authorities one or two days after each payroll, while ADP remits withholding taxes to the Taxing Authorities five days following the payroll. Additionally, RIH Acquisitions is obligated to match from its own funds the social security and Medicare taxes and to remit to the Taxing Authorities, based on a percentage of gross payroll, additional amounts for state and federal unemployment insurance (collectively, the "**Employer Payroll Taxes**" and, together with the Trust Fund Taxes, the "**Payroll Taxes**"). The Payroll Taxes total approximately \$455,704 per month.

16. Given the timing of the bankruptcy filings, certain of the Employee Withheld Amounts for the October 31st Payroll and November 4th Payroll were withheld but not remitted to the appropriate third parties. In addition, after the Filing Date, RIH Acquisitions will be required to withhold from the Current Pre-Petition Payroll the Employee Withheld Amounts, which, in turn, RIH Acquisitions will have to forward to the applicable third party recipients.

D. Employee Expense Reimbursements

17. RIH Acquisitions maintains a formal employee expense reimbursement policy for travel and entertainment related business expenses (the "**T&E Policy**"), but does not maintain a formal policy for other out-of-pocket business expenses. If an Employee incurs a non-travel or entertainment related out-of-pocket business expense (the "**Business Expenses**"), the Employee must submit an expense reimbursement form with approval from the Employee's department supervisor and the Vice President of Finance. Pursuant to the T&E Policy, if an Employee

incurs an out-of-pocket expense, he or she must submit an expense reimbursement report to the Atlantic Club Casino's Chief Financial Officer no later than fourteen (14) days following the business trip's completion (the "**T&E Expenses**" and, together with the Business expenses, the "**Expense Reimbursements**"). Any T&E Expense in excess of Five Thousand Dollars (\$5,000) must be submitted to and approved by one of RIH Acquisitions' Co-Chief Operating Officers. As of the Filing Date, the Debtors believe outstanding Expense Reimbursements are negligible.

E. Employee Benefits

18. RIH Acquisitions maintains an employee benefit policy pursuant to which Employees are provided with certain specific sick/personal time, vacation, bereavement, jury duty and holiday pay (collectively, the "**Total Benefit Days**") as well as other benefits enumerated below (the "**Other Employee Benefits**"), and offers its Employees the opportunity to participate in various insurance and other company sponsored programs (the "**Company Sponsored Programs**" and, together with the Total Benefit Days and Other Employee Benefits, the "**Employee Benefits**"). The Employee Benefits are as follows:

1. Medical, Vision and Dental Insurance Plans

19. RIH Acquisitions provides medical benefits to all non-union full-time and non-union part-time Employees through plans administered by Cigna. RIH Acquisitions' contribution to medical benefits through Cigna for full-time employees is approximately \$5,364,963 per year. Part-time Employees have the option of enrolling in separate medical plans (the "**Mini Med Plans**"), which cover only certain medical services, and have coverage limitations ranging from \$1,000 to \$5,000 per year. The Mini Med Plans are fully funded by the

participating Employees.³ Additionally, RIH Acquisitions offers dental and vision insurance plans, also administered by Cigna, to full-time Employees.

20. Costs of medical, dental and vision coverage, as well as prescription drug plans, are shared between RIH Acquisitions and Employees. As of the Filing Date, RIH Acquisitions reasonably estimates its outstanding share of these costs (the “**RIH Acquisitions’ Insurance Obligations**”) to be approximately \$715,458.

2. Severance

21. Although RIH Acquisitions does not maintain a specific severance pay policy, it is RIH Acquisitions’ practice to provide all full-time Employees with two weeks’ severance pay for a layoff or staff reduction upon signing a release (the “**Severance Practice**”).

3. 401(k) Retirement Savings Plan

22. RIH Acquisitions sponsors an ERISA qualified 401(k) retirement savings plan for eligible Employees (the “**401(k) Plan**”), which is administered by New York Life Retirement Plan Services. The 401(k) Plan enables qualified Employees to defer a portion of their wages into the plan. The 401(k) Plan currently offers several investment options and allows Employees to take loans against monies invested.

23. The 401(k) Plan is funded solely by the Employees. RIH Acquisitions, however, is liable to satisfy a portion of the administrative costs related to the 401(k) Plan (the “**RIH Acquisitions 401(k) Costs**”). RIH Acquisitions is current on the RIH Acquisitions 401(k) Costs as of the Filing Date.

³ As of the Filing Date, eleven Employees are enrolled in the Mini Med Plans. The Mini Med Plans, which do not comply with the Affordable Care Act, are available through receipt of a waiver until 2014. As of 2014, the Mini Med Plans will no longer be available.

4. Vacation, Bereavement, Jury Duty and Sick Leave

24. RIH Acquisitions maintains vacation, bereavement and jury duty leave policies for all non-union Employees. Under RIH Acquisitions' vacation policy (the "**Vacation Policy**"), vacation time for non-union Employees is based on length of continuous service. Qualified Employees earn 0.0192 vacation hours for each hour paid during their first year of employment, and 0.0385 vacation hours for each hour paid if the Employee has completed two or more years of service. Earned vacation time does not vest until an Employee has worked for at least one year, but eligible Employees may use up to fifty percent (50%) of their unvested vacation time after six months of employment, not to exceed one week of vacation time. Vacation must be taken in the year following the commencement of eligibility, subject to approval in advance from the applicable department manager.

25. All full-time Employees summoned for jury duty are required to submit a copy of the summons to their supervisor upon receipt, so that adjustments to work schedules may be made. When jury duty prevents a full-time Employee from working his or her regular assignment, the Employee will be compensated by RIH Acquisitions for the difference between his/her regular rate of pay and the jury duty pay for each day during the regularly-scheduled workweek, to a maximum of four (4) weeks.

26. RIH Acquisitions observes five paid holidays and provides holiday pay to all full-time Employees who have been employed for ninety (90) days prior to the holiday. Non-union Employees receive time and a half plus holiday pay if they work on the holiday. In addition, RIH Acquisitions allows all full-time non-union Employees to use up to three (3) days of earned sick time as personal days annually, if scheduled in advance, after ninety (90) days of employment.

27. Additionally, following the completion of ninety (90) days of continuous service, full-time and grandfathered part-time Employees not covered by a collective bargaining agreement are eligible to receive sick pay. Employees who work an average of 32 hours or more per week during their anniversary year earn sick pay at the rate of two (2) hours per month, to a maximum of twenty-four (24) hours per year after the completion of ninety (90) days of continuous service. Unused sick time can be used as personal sick days, if scheduled at least one week in advance, and must be used by the following anniversary date. Unused sick time is not paid upon termination of employment.

28. RIH Acquisitions also provides up to three (3) days of bereavement leave for all Employees who have completed ninety (90) days of continuous service. Employees with fewer than ninety (90) days of service may take bereavement leave without pay.⁴

5. Personal Leave

29. Employees with at least six (6) months of employment may request a personal leave. Personal leaves of absence are granted by a manager at his/her discretion based on business needs, up to thirty (30) days during a twelve (12) month period. An Employee who is granted a personal leave is not assured the right to return to work for The Atlantic Club Casino or to the position held prior to the leave.

6. Flexible Spending Accounts

30. RIH Acquisitions offers its Employees the opportunity to participate in a Flexible Spending Account program (“FSA”) by allowing them to set aside a portion of their pre-tax earnings to pay for qualified medical expenses. Given the timing of the bankruptcy filings, it is

⁴ Bereavement leave for union Employees may vary depending on the particular union and the Employee’s relationship to the deceased family member.

possible that certain of the FSA deductions may have been withheld from the October 31st Payroll and November 4th Payroll, but RIH Acquisitions did not fund the reimbursement requests as of the Filing Date. Thus, the Debtors seek authority for RIH Acquisitions to transmit any such deductions to the FSA Plan Administrator. As of the Filing Date, RIH Acquisitions reasonably estimates its obligations to fund into the FSA plan from Employee deductions withheld, but that may not have been remitted, from the October 31st Payroll and November 4th Payroll total approximately \$1,777.

7. Life, Accidental Death and Dismemberment, and Long Term Disability Insurance

31. Life, accidental death and dismemberment, and long term disability insurance is provided for all full-time non-union Employees. RIH Acquisitions' contribution to this insurance program totals approximately \$120,000 per year. As of the Filing Date, RIH Acquisitions reasonably estimates its obligations under the life, accidental death and dismemberment and long term disability insurance program totals approximately \$10,000.

8. Union Benefits

32. In addition, Union Employees participate in the health, welfare and benefit plans offered by their respective unions, and RIH Acquisitions makes periodic contributions to each union in accordance with the terms of the applicable collective bargaining agreement. RIH Acquisitions reasonably estimates its October 2013 union-related contribution obligations total approximately \$800,000.

9. Workers' Compensation

33. In the ordinary course of business, RIH Acquisitions maintains workers' compensation insurance for the benefit of its Employees. For the current policy year, which began on May 1, 2013, RIH Acquisitions has purchased workers' compensation insurance from a

traditional insurance carrier (the “**Current Workers’ Comp Policy**”). The Current Workers’ Comp Policy covers the period May 1, 2013 through April 30, 2014 and features a self-insured retention of \$350,000 per claim. The annual premium payable for the Current Workers’ Comp Policy is approximately \$328,000. RIH Acquisitions finances its annual insurance premiums through First Insurance Funding, and is current on its premium payments.⁵ There also exist workers’ compensation claims for the years 2004 through 2013, for which RIH Acquisitions may have exposure. The typical monthly payout on those claims averages approximately \$111,344. In addition, it is possible that workers’ compensation claims may be made in the future under previous years’ policies. With respect to existing and potential future workers’ compensation claims, RIH Acquisitions seeks authority to address and satisfy any allowed claims arising in the ordinary course of business.

34. Based on RIH Acquisitions’ books and records as of September 30, 2013, RIH Acquisitions reasonably estimates that its total potential exposure for workers’ compensation claims for the years 2004 through 2013 is approximately \$2,451,394. Resorts International Holdings, LLC (the parent company of RIH Acquisitions), however, maintains approximately \$7 million in a restricted bank account at Bank of New York Mellon that collateralizes RIH Acquisitions’ workers’ compensation claims. Based on the estimate of workers’ compensation claims, there are sufficient funds held in Resorts’ restricted bank account to satisfy such claims.

10. The Sunshine Fund

35. RIH Acquisitions also maintains a fund to provide Employees who have completed at least one year of service with financial assistance for various personal hardships

⁵ Contemporaneous with the filing of this Motion, the Debtors filed a motion seeking authority to continue making finance payments to First Insurance Funding under Section 363(b)(1) of the Bankruptcy Code.

(the “**Sunshine Fund**”). Claims are paid to Employees from the Sunshine Fund on a discretionary basis. Based on RIH Acquisitions’ books and records, it believes it has no outstanding obligations to the Sunshine Fund as of the Filing Date.

III. RELIEF REQUESTED AND BASIS THEREFOR

THE COURT SHOULD AUTHORIZE THE DEBTORS TO PAY OR OTHERWISE HONOR THEIR PRE-PETITION OBLIGATIONS TO OR FOR THE BENEFIT OF THEIR EMPLOYEES

36. Given the timing of the Debtors’ Chapter 11 filings, the Pre-Petition Payroll and Payroll Taxes constitute pre-petition obligations of RIH Acquisitions. The Debtors seek an Order authorizing payment by RIH Acquisitions of, and directing RIH Acquisitions’ banks to honor payments for, the Pre-Petition Payroll and the Payroll Taxes, as well as authority to continue paying and/or otherwise honoring the other ordinary Employee Benefits enumerated above (collectively, the “**Payroll Obligations**”).⁶

37. RIH Acquisitions submits the relief sought herein is authorized pursuant to Section 363(b)(1) of the Bankruptcy Code, which provides that “[t]he trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate,” and further justified by the Court’s broad equitable powers under Section 105 of the Bankruptcy Code.

38. Section 105(a) of the Bankruptcy Code empowers the Bankruptcy Court to “[i]ssue any order, process or judgment that is necessary or appropriate to carry out the provisions of . . .” the Bankruptcy Code. As one court observed:

⁶ RIH Acquisitions’ request for authority to honor the Payroll Obligations is not intended to convert the Employees’ claims for Payroll Obligations to administrative expense obligations of RIH Acquisitions or to obligate RIH Acquisitions in any way to compensate the Employees for Payroll Obligations in cash. In addition, this request is not intended to be an assumption of (or authorization to assume) any of the employee compensation, benefits or reimbursement policies, plans or programs of RIH Acquisitions, or any written agreement any employee might have with RIH Acquisitions, pursuant to Section 365 of the Bankruptcy Code.

The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept. It was first articulated by the United States Supreme Court in Miltenberger v. Logansport, C. & S.W. R. Co., 106 U.S. 286, 1 S.Ct. 140, 27 L.Ed. 117 (1882) and is commonly referred to as either the “doctrine of necessity” or the “necessity of payment” rule. This rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.

In re Ionosphere Clubs, Inc., 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989). Accord In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (quoting In re Penn Central Transp. Co., 467 F.2d 100, 102 n.1 (3d Cir. 1972) (the “necessity of payment” doctrine permits immediate payment of claims to creditors who will not supply services or material essential to the debtor’s business until their pre-petition claims are paid)). Application of the “necessity of payment” doctrine here establishes RIH Acquisitions should be authorized to honor its Payroll and Obligations. See Friedman’s Inv. v. Roth Staffing Companies, L.P. (In re Friedman’s Inc.), No. 09-50364, 2011 WL 5975283 at *3 (Bankr. D. Del. Nov. 30, 2011) (“Put simply, [t]he doctrine of necessity stands for the proposition that a bankruptcy court may allow payment outside of a plan of reorganization on account of a pre-petition obligation where such payment is critical to the reorganization process”) (internal quotations and citation omitted).

39. First, if RIH Acquisitions is not authorized to pay its outstanding pre-petition obligations to the Employees, RIH Acquisitions’ relationship with the Employees will be adversely affected and the Employees’ morale, dedication, confidence, and cooperation might be compromised irreparably. The Employees’ support for RIH Acquisitions’ efforts during these cases is critical and cannot be jeopardized. Allowing RIH Acquisitions to satisfy the Pre-Petition Payroll and honor its Employee Benefits in the ordinary course will instill confidence in the Employees that RIH Acquisitions is in a position to satisfy, and intend to satisfy, its post-petition

payroll and related obligations and will ensure RIH Acquisitions has a sufficient support system in which to operate and that the Debtors can successfully execute their pronounced strategy in Chapter 11.

40. Equally important, absent an Order granting the relief requested in the Motion, the Employees will suffer significant financial hardship. Many of the Employees live from paycheck to paycheck and rely exclusively on receiving their full compensation from RIH Acquisitions to pay their daily living expenses. Denying them their pre-petition salaries would be detrimental and unjust, especially in today's challenging economic times.

41. The amount to be paid to any Employee for the pre-petition period will not exceed the \$12,475.00 cap contained in Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. In addition, payment of RIH Acquisitions' pre-petition payroll obligations will not prejudice other creditors of RIH Acquisitions' estate (or the estate of RIH Propco NJ, LLC) as the Employees are entitled to priority status under Section 507(a)(4) and 507(a)(5) of the Bankruptcy Code with respect to such obligations and payment in full pursuant to a Chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(B).

42. With respect to the Payroll Taxes, the payment of such taxes also will not prejudice RIH Acquisitions' other creditors as the relevant Taxing Authorities generally would hold priority claims under Section 507(a)(8) of the Bankruptcy Code with respect to such obligations and are entitled to payment in full pursuant to a Chapter 11 plan. See 11 U.S.C. § 1129(a)(C). Moreover, the portion of the Payroll Taxes withheld from the Employee's wages on behalf of the applicable Taxing Authority (as well as the other deductions) are held in trust by RIH Acquisitions. As such, that portion of the Payroll Taxes (as well as the other deductions) is

not property of RIH Acquisitions' estate (or the estate of RIH Propco NJ, LLC) under Section 541 of the Bankruptcy Code. See, e.g., Begier v. IRS, 496 U.S. 53 (1990).

43. Lastly, RIH Acquisitions is obligated by law to maintain the Workers Compensation Insurance to ensure timely and efficient payment and/or reimbursement to its Employees. Therefore, the ability to honor all workers' compensation obligations in the ordinary course of business is indispensable to the continued operation of the Atlantic Club Casino.

44. Pursuant to Rule 6003 of the Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rules**"), the Court may grant relief regarding a motion to pay all or part of a prepetition claim within 21 days after the Filing Date if the relief is necessary to avoid immediate and irreparable harm. See Fed. R. Bankr. P. 6003. The Debtors submit that the facts described herein demonstrate that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors' business operations and the value of the Debtors' estates, and that Bankruptcy Rule 6003 has been satisfied to permit such payments.

45. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14 day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

WHEREFORE, the Debtors respectfully request that the Court enter an Order granting the Motion and such other relief as the Court deems just and appropriate under the circumstances.

Respectfully submitted,

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
Proposed attorneys for RIH Acquisitions NJ, LLC, *et al.*,
Debtors-in-Possession

By: /s/ Michael D. Sirota
Michael D. Sirota
Warren A. Usatine
Ryan T. Jareck
Nicholas B. Vislocky

DATED: November 6, 2013

VERIFICATION

ERIC MATEJEVICH, of full age, certifies as follows:

1. I am the Co-Chief Operating Officer of RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel and Chief Financial Officer, Senior Vice President and Secretary of RIH Propco NJ, LLC, the within debtors and debtors-in-possession (the “**Debtors**”). As such, I have full knowledge of the facts set forth in, and pursuant to the written consents of the members of and/or the boards of directors of the Debtors dated November 6, 2013, am duly authorized to make this Verified Application on the Debtors’ behalf.
2. I have read the foregoing Verified Application and certify that the statements contained therein are true based upon my personal knowledge, information and belief.
3. I am aware that if any of the factual statements contained in the Verified Application are willfully false, I am subject to punishment.

DATED: November 6, 2013



ERIC MATEJEVICH

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)
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Debtors-in-Possession

In re:

RIH ACQUISITIONS NJ, LLC, *et al.*,¹

Debtors-in-Possession.

Case No. 13-

Judge:

Chapter 11

(Joint Administration Pending)

Hearing Date and Time:

_____, 2013, at __: __.m.

ORDER: (I) AUTHORIZING RIH ACQUISITIONS NJ, LLC TO (A) SATISFY AND, TO THE EXTENT APPLICABLE, DIRECTING ANY PAYROLL BANKS TO HONOR, PRE-PETITION GROSS SALARIES, PAYROLL TAXES AND RELATED OBLIGATIONS TO OR FOR THE BENEFIT OF ITS EMPLOYEES, AND (B) HONOR, IN ITS DISCRETION, PRE-PETITION SICK, VACATION, PERSONAL, AND SIMILAR THEMED DAYS; AND (II) GRANTING OTHER RELATED RELIEF

The relief set forth on the following pages, numbered two (2) through six (6), 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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Case No. 13-
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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 (“**RIH Acquisitions**”) and RIH Propco NJ, LLC, the within debtors and debtors-in-possession (the “**Debtors**”), by and through their proposed counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., upon motion for entry of an Order: (i) authorizing RIH Acquisitions to (a) satisfy and, to the extent applicable, directing any payroll banks to honor, pre-petition gross salaries, payroll taxes and related obligations to or for the benefit of the Debtors’ employees, and (b) honor, in its discretion, pre-petition sick, vacation, personal, and similar themed days; and (ii) granting other related relief (the “**Motion**”);² and good and sufficient notice of the Motion having been provided in accordance with the Order Regarding Application for Expedited Consideration of First Day Matters previously entered by the Court, as evidenced by the Affidavit of Service filed with the Court; and the Court having considered all the motion papers, the opposition thereto, if any, and the arguments of counsel, if any; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and other good cause having been shown,

² All capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to them in the Verified Application submitted in support of the Motion.

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IT IS ORDERED as follows:

1. To the extent the relief set forth in this paragraph previously has not been approved by that *Emergency Interim Order Authorizing RIH Acquisitions to Satisfy and, to the Extent Applicable, Directing Any Payroll Banks to Honor, Certain Pre-Petition Gross Salaries and Payroll Taxes of their Employees Pending Hearing on "First Day" Motions* entered by the Court on November ____, 2013, RIH Acquisitions hereby is authorized and empowered to satisfy in the ordinary course of business the Pre-Petition Employee Compensation Obligations including, but not limited to, the Uncleared Payroll Checks, the Pre-Petition Payroll, Payroll Taxes, and Expense Reimbursements, subject to the limitations set forth in 11 U.S.C. §§ 507(a)(4) and 507(a)(5).

2. RIH Acquisitions hereby is authorized and empowered, but not directed, in its sole and absolute discretion, in the ordinary course of business: (i) to honor the Employees' earned pre-petition Total Benefit Days by allowing the Employees to use all or portions of their pre-petition Total Benefit Days post-petition; and (ii) to continue paying and/or honoring the Other Employee Benefits, including, but not limited to, the RIH Acquisitions' Insurance Obligations, Severance Practice, RIH Acquisitions 401(k) Costs, FSA withholdings and

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remittances, life, accidental death and dismemberment insurance obligations, union benefits contributions, workers' compensation claims, and obligations incurred through the Sunshine Fund.

3. To the extent any pre-petition accrued Total Benefit Days or Other Employee Benefits are utilized by the Employees post-petition, the Employees shall use and be charged the oldest accrued Total Benefit Days or Other Employee Benefits, as the case may be.

4. Notwithstanding the relief granted in the preceding paragraph, nothing herein shall be construed to create or impose any administrative expense liability on RIH Acquisitions with regard to the pre-petition Total Benefit Days or to obligate RIH Acquisitions to compensate its Employees for pre-petition Total Benefit Days in cash.

5. The relief granted herein shall not be deemed as an assumption or an authorization to assume any of RIH Acquisitions' employee compensation, benefits or reimbursement policies, plans or programs as outlined in the preceding paragraphs pursuant to Section 365 of the Bankruptcy Code.

6. Any and all financial institutions honoring the aforementioned obligations to RIH Acquisitions' Employees (including ADP) are authorized and directed to receive, process, honor

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and pay all checks, drafts, and automatic clearing house and wire transfers drawn on bank accounts of RIH Acquisitions to the extent authorized herein or directed by RIH Acquisitions, whether presented, drawn or issued before or after the commencement of the bankruptcy cases for payment by the holder thereof, provided that sufficient funds, whether deposited prior to, or subsequent to, the commencement of these bankruptcy cases, are in, or otherwise are available pursuant to RIH Acquisitions' cash management system to fund the relevant bank accounts to cover and permit payment thereof.

7. RIH Acquisitions is hereby authorized (consistent with this Order) to issue post-petition checks (or electronic fund transfers) in payment of pre-petition obligations to its Employees, including, but not limited to, wage garnishments, child support payments and alimony covered by a check that is dishonored or rejected as a consequence of the commencement of these bankruptcy cases.

8. Nothing in this Order or the Motion shall be construed as prejudicing any rights the Debtors may have to dispute or contest the amount of or basis for any claims asserted against the Debtors arising in connection with the Pre-Petition Employee Compensation Obligations or as an admission as to the validity or priority of any claim against the Debtors.

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9. The requirements set forth in Rule 6003(b) of the Bankruptcy Rules are satisfied by the contents of the Motion or otherwise deemed waived.

10. Notice of the Motion shall be deemed good and sufficient notice, and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice or otherwise deemed waived.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. The Debtors' proposed counsel shall serve a copy of this Order on all parties-in-interest by regular mail within seven (7) days hereof.