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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 DEBTORS' MOTION FOR
ENTRY OF AN ORDER AUTHORIZING
RIH ACQUISITIONS NJ, LLC TO PAY
CERTAIN PRE-PETITION TAXES AND
FEES PURSUANT TO 11 U.S.C. §§
507(a)(8) AND 105(a)**

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

ORAL ARGUMENT REQUESTED

TO: All Parties-in-Interest

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).



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 authorizing RIH Acquisitions to remit and pay certain taxes and fees, and granting such other and further relief as the Court deems appropriate (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) 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
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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 THE DEBTORS' MOTION FOR
ENTRY OF AN ORDER AUTHORIZING
RIH ACQUISITIONS NJ, LLC TO PAY
CERTAIN PRE-PETITION TAXES AND
FEES PURSUANT TO 11 U.S.C. §§
507(a)(8) AND 105(a)**

HEARING DATE AND TIME:

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

ORAL ARGUMENT REQUESTED

TO: Honorable Judge of the
United States Bankruptcy Court

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-

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).

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 authorizing RIH Acquisitions to pay certain pre-petition taxes and fees pursuant to 11 U.S.C. §§ 507(a)(8) and 105(a) (the “**Motion**”).

2. 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).

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

II. BACKGROUND

4. 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.

5. 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.

6. 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.

III. RIH ACQUISITIONS' TAX OBLIGATIONS

7. RIH Acquisitions is required to pay various taxes and fees to certain taxing, licensing and regulatory authorities at the local, state and federal levels (collectively, the “**Taxes and Fees**”). Certain Taxes and Fees, such as sales, use and hotel taxes, are collected from customers to be remitted to the relevant taxing authority, while other Taxes and Fees arise from RIH Acquisitions’ operation, ownership or lease of real property and other corporate activities, including their gaming, retail, entertainment, hotel, and parking operations. RIH Acquisitions’ payment obligations of Taxes and Fees may be due on a weekly, bi-weekly, monthly, quarterly, or annual basis. Accordingly, it is not possible for RIH Acquisitions to ascertain the exact amount of each of the Taxes and Fees owed as of the Filing Date, or to know whether, to the extent any payments were made before the Filing Date on account of Taxes and Fees, such payments cleared before the Filing Date (collectively, the “**Pre-Petition Taxes and Fees**”). A schedule of the Taxes and Fees identifying the nature of the tax/fee, payee, frequency and due dates of payment, and approximate amounts due, is attached as Exhibit A.

IV. RELIEF REQUESTED AND BASIS THEREFOR

8. RIH Acquisitions seeks entry of an order authorizing, but not directing, it in its sole and absolute discretion, to pay the Pre-Petition Taxes and Fees. RIH Acquisitions’ cash flow projections (the “**Budget**”) attached to its *Verified Application in Support of Debtors’ Motion for an Order Authorizing the Borrowing Under A Debtor-In-Possession Financing Facility From Northlight Financial LLC* (the “**DIP Lender**”) pursuant to 11 U.S.C. § 364 filed contemporaneously herewith reflect RIH Acquisitions’ ability to pay, and the DIP Lender’s

consent to the payment of, certain Pre-Petition Taxes and Fees, solely in accordance with the Budget.

9. 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. 11 U.S.C. § 105(a). As one court observed:

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 Debtors 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 Debtors’ businesses until their pre-petition claims are paid)); 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). Applying the “necessity of payment” doctrine here establishes the Debtors should be authorized to pay all Pre-Petition Taxes and Fees, as and when they become due, and all financial institutions where RIH Acquisitions maintains its accounts should be directed to honor the payment of all Pre-Petition Taxes and Fees.

10. The Pre-Petition Taxes and Fees are afforded priority status pursuant to Section 507(a)(8) of the Bankruptcy Code and, thus, must be paid in full pursuant to a plan of reorganization. See 11 U.S.C. § 1129(a)(9)(C). Accordingly, authorizing RIH Acquisitions to pay the Pre-Petition Taxes and Fees serves only to expedite payment to the taxing and other relevant authorities and does not prejudice the rights of other creditors. See In re Continental Airlines, Inc., 146 B.R. 520, 531 (Bankr. D.Del. 1992) (the timing of the payment of priority claims is a matter left to the bankruptcy court's discretion) (citing In re Chips & Twigs, Inc., 58 B.R. 109, 110-11 (Bankr. E.D.Pa. 1986)).

11. Additionally, New Jersey law characterizes sales taxes as “trust fund” taxes and imposes personal liability on “responsible” officers to the extent the seller fails to turn over the sales taxes to the taxing authorities. See, e.g., Skaperdas v. Director, Div. of Taxation, 14 N.J. Tax 103, 106, aff'd, 16 N.J. Tax 454, 1996 (App. Div. 1996); Cooperstein v. State, Div. of Taxation, 13 N.J. Tax 68 (Tax 1993), aff'd, 14 N.J. Tax 192 (App. Div. 1994), cert. denied, 140 N.J. 329 (1995). Similarly, New Jersey's Sales and Use Tax Act holds “responsible” officers and directors personally liable for the failure to turn over use taxes to the taxing authorities. Id. Thus, if RIH Acquisitions is not authorized to remit pre-petition sales and use taxes, the potential actions against its officers and directors that may follow would be extremely unfair, disruptive and damaging to the Debtors' restructuring efforts.

12. Furthermore, RIH Acquisitions' inability to pay timely tax liabilities incurred before the Filing Date could result in an audit of RIH Acquisitions by the various taxing authorities. A tax audit at this critical stage of the Chapter 11 cases would be extremely onerous and expensive, and would cause a significant and unnecessary distraction from the Debtors' efforts to sell their assets and maximize value for the benefit of their creditors and stakeholders.

13. Lastly, RIH Acquisitions and certain of the Debtors are required to comply with numerous state and local rules and regulations that relate specifically to the gaming and casino industry. To avoid any potential interference with RIH Acquisitions' normal business operations from a failure to comply with those rules and regulations, it is crucial for RIH Acquisitions to be authorized to pay pre-petition fees that may be owed to governing regulatory authorities, even if they arose or accrued before the Filing Date.

14. Pursuant to Rule 6003 of the Federal Rules of Bankruptcy Procedure, 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. Here, the irreparable harm that would result if RIH Acquisitions was unable to pay the Pre-Petition Taxes and Fees includes potential actions against RIH Acquisitions' officers and directors, audits of RIH Acquisitions by the various taxing authorities as well as potential violations of gaming regulations, all of which would impede the Debtors' efforts to achieve their Chapter 11 objectives for the benefit of their estates. Based on the foregoing, the Debtors respectfully submit they have satisfied the requirements of Bankruptcy Rule 6003 to support RIH Acquisitions' immediate payment and/or honoring of the Pre-Petition Taxes and Fees.

WHEREFORE, the Debtors respectfully request that the Court grant 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

EXHIBIT A

The Atlantic Club Casino Hotel
Taxes / Fees

Tax / Fee	Description	Payee	Frequency	Due Date	Payment Type	Approximate Amount	Estimated Outstanding as of 11/1/2013
Gross Revenue Tax	Casino Revenue Tax	General State Treasury	Weekly	Every Monday	ACH	\$50,000 - \$270,000	\$160,000
1042 Tax	Federal Withholding tax on jackpots won by non US citizens	Department of Treasury	Twice per Week	Every Tuesday & Thursday	ACH	\$500 - \$10,000	\$2,500
945 Tax	Federal Withholding tax on jackpots won by US citizens	Department of Treasury	Twice per Week	Every Tuesday & Thursday	ACH	\$500 - \$10,000	\$2,500
Sales Tax	7%, Paid Monthly; Filed Quarterly	State of New Jersey	Monthly	20th of the Month	Wire	\$16,000 - \$70,000	\$30,000
Use Tax	7%, Paid Monthly; Filed Quarterly	State of New Jersey	Monthly	20th of the Month	Wire	\$7,000 - \$30,000	\$10,000
Occupancy	\$2 per Occupied Room	State of New Jersey	Monthly	20th of the Month	Wire	\$20,000 - \$48,000	\$27,500
Parking Fee	\$3 per parked car	State of New Jersey	Monthly	20th of the Month	Wire	\$87,000 - \$255,000	\$175,000
CRDA Parking Fee	\$1 per parked car	Casino Fee Revenue Account	Monthly	20th of the Month	Wire	\$29,000 - \$85,000	\$60,000
Luxury Tax - Occupancy	1% of Cash Room Revenue	State of New Jersey	Monthly	20th of the Month	Wire	\$2,000 - \$9,000	\$3,000
Luxury Tax - Beverage	3% of Cash Beverage Revenue	State of New Jersey	Monthly	20th of the Month	Wire	\$1,000 - \$6,500	\$1,000
AC Luxury Tax	9% of Cash Room and Entertainment Revenue	State of New Jersey	Monthly	20th of the Month	Wire	\$24,000 - \$81,000	\$35,000
NJ Luxury Tax	4% of Cash Room and Entertainment Revenue	State of New Jersey	Monthly	20th of the Month	Wire	\$10,000 - \$35,000	\$16,000
Tourism Fee	\$3 per Occupied Room	State of New Jersey	Monthly	20th Quarterly	Wire	\$29,000 - \$72,000	\$41,000
Regulatory Fee	DGE/CCC Inspections, enforcement, compliance, etc.	Casino Control Commission	Monthly	30 days from Invoice Date	Check	\$125,000 - \$400,000	\$825,000
CRDA Obligation	Quarterly Payment of 1.25% of Gross Gaming Revenue	General State Treasury	Quarterly	1/15, 4/15, 7/15, 10/15	Wire	\$300,000 - \$600,000	\$140,000
Property Taxes	Property Taxes	City of Atlantic City, City of Ventnor	Quarterly	2/1, 5/1, 8/1, 11/1	Check	\$975,000	\$2,820,810
Atlantic City Alliance	Atlantic City Alliance	Atlantic City Alliance	Quarterly	1st day of the quarter	Check	\$300,000	\$405,651
Slot License Fee	Annual fee of \$500 per slot machine	Casino Control Commission	Annual	7/1	Check	\$750,000	\$0
Boardwalk Vehicle	Ability to drive on boardwalk- 5 vehicles	City of Atlantic City	Yearly	1/1	Check	\$950	\$0
Mercantile	Operation of casino and adjacent parking garage and two surface parking lots,	City of Atlantic City	Yearly	8/1	Check	\$10,832	\$0
Store Milk	Sale of Milk Containers	State of New Jersey	Yearly	1/1	Check	\$25	\$0
Life Hazard Use Registration	Periodic inspection of non-life hazard uses, i.e. inspection of building and structures, smoke detectors, fire extinguishers	State of New Jersey	Yearly	7/1	Check	\$14,493	\$0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)
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In re:

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Debtors-in-Possession.

Case No. 13-

Judge:

Chapter 11

(Joint Administration Pending)

Hearing Date and Time:

_____, 2013, at ____:____.m.

**ORDER AUTHORIZING RIH ACQUISITIONS NJ, LLC TO PAY PRE-PETITION TAXES
AND FEES PURSUANT TO 11 U.S.C. §§ 507(a)(8) AND 105(a)**

The relief set forth on the following pages, numbered two (2) and three (3), 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).

(Page 2)

Debtors: RIH ACQUISITIONS NJ, LLC, *et al.*
Case No. 13-
Caption of Order: ORDER AUTHORIZING RIH ACQUISITIONS NJ, LLC TO PAY PRE-
PETITION TAXES AND FEES PURSUANT TO 11 U.S.C. §§ 507(a)(8)
AND 105(a)

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**”), upon motion for entry of an Order authorizing RIH Acquisitions to pay certain pre-petition taxes and fees pursuant to 11 U.S.C. §§ 507(a)(8) and 105(a) (the “**Motion**”);² and good and sufficient notice of the Motion having been given 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 the moving papers, the opposition thereto, if any, and the arguments of counsel, if any; and good cause appearing for the entry of this Order;

IT IS ORDERED as follows:

1. RIH Acquisitions is authorized in its sole and absolute discretion, but not directed, to pay and remit to the respective taxing, licensing and regulatory authorities the Pre-Petition Taxes and Fees in the approximate amounts set forth on Exhibit A to the Application, as and when they become due and payable in the ordinary course of business.

2. Each of the financial institutions at which RIH Acquisitions maintains its accounts for the payment of Pre-Petition Taxes and Fees are directed to honor checks presented

² All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Verified Application in support of the Motion (the “**Application**”).

(Page 3)

Debtors: RIH ACQUISITIONS NJ, LLC, *et al.*
Case No. 13-
Caption of Order: ORDER AUTHORIZING RIH ACQUISITIONS NJ, LLC TO PAY PRE-
PETITION TAXES AND FEES PURSUANT TO 11 U.S.C. §§ 507(a)(8)
AND 105(a)

for payment and all fund transfer requests made by RIH Acquisitions with respect to Pre-Petition Taxes and Fees, to the extent that sufficient funds are on deposit in such accounts.

3. The relief requested in the Motion is necessary to avoid immediate and irreparable harm and, thus, notwithstanding the applicability of Bankruptcy Rule 6003, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

4. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

5. A true copy of this Order shall be served on all parties-in-interest by regular mail within seven (7) days hereof.