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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.*,<sup>1</sup>

Debtors-in-Possession.

**NOTICE OF MOTION PURSUANT TO  
11 U.S.C. § 105(a) FOR AN ORDER  
AUTHORIZING RIH ACQUISITIONS  
NJ, LLC TO HONOR CASINO CHIPS  
AND OTHER CUSTOMER-RELATED  
CLAIMS, PROGRAMS AND  
OBLIGATIONS**

**HEARING DATE AND TIME:**  
\_\_\_\_\_, 2013, at \_\_:\_\_ a.m.

**ORAL ARGUMENT REQUESTED**

TO: All Parties-in-Interest

<sup>1</sup> 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, 4<sup>th</sup> Floor, Camden, New Jersey 08101, for entry of an Order pursuant to 11 U.S.C. § 105(a) authorizing RIH Acquisitions to honor casino chips and other customer-related claims, programs and obligations (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 Federal Rules of Bankruptcy Procedure and the local rules of this Court.

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 AcquisitionsNJ, 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)

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In re:

RIH ACQUISITIONS NJ, LLC, *et al.*,<sup>1</sup>

Debtors-in-Possession.

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**VERIFIED APPLICATION IN SUPPORT  
OF DEBTORS' MOTION PURSUANT  
TO 11 U.S.C. § 105(a) FOR AN ORDER  
AUTHORIZING RIH ACQUISITIONS  
NJ, LLC TO HONOR CASINO CHIPS  
AND OTHER CUSTOMER-RELATED  
CLAIMS, PROGRAMS AND  
OBLIGATIONS**

**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-

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<sup>1</sup> 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 pursuant to 11 U.S.C. § 105(a) for an Order authorizing RIH Acquisitions to honor casino chips and other customer-related claims, programs and obligations (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**”).<sup>2</sup> 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’ CUSTOMER-RELATED CLAIMS, PROGRAMS AND OBLIGATIONS**

7. In the ordinary course of its business, and due to the highly competitive industry in which it operates, the Atlantic Club Casino offers certain programs and services aimed at attracting business and sustaining a loyal customer base. Most of these programs and services are similar to those offered by other casinos in Atlantic City and generally fall into the following categories: (a) Customer Complimentary (“**Comp**”), Rewards, and Marketing Programs; (b) Safekeeping and Front Money; (c) Customer Deposits; (d) Outstanding Gaming Currency; (e) Outstanding Gift Certificates; (f) Miscellaneous Customer Claims; and (g) other similar miscellaneous customer programs and services (collectively “**Customer Programs**”).

8. The success of the Atlantic Club Casino’s operations depends on its ability to solicit new customers and to secure ongoing customer patronage. The Debtors are concerned that if the Atlantic Club Casino ceases honoring the pre-petition obligations arising from or related to the Customer Programs (collectively, the “**Pre-Petition Customer Obligations**”) as a result of the Debtors’ Chapter 11 cases, the goodwill engendered from the Customer Programs would be damaged, resulting in a loss of business that could be irretrievable. For these reasons and those set forth in greater detail below, the Debtors request authorization for RIH Acquisitions to honor the Pre-Petition Customer Obligations in the ordinary course of business.

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<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the same meaning ascribed to them in the Matejevich Affidavit.

**A. Customer Comps, Reward, and Marketing Programs**

9. In the ordinary course of business and commensurate with the practices of other casino establishments worldwide, the Atlantic Club Casino offers a variety of programs designed to enhance their customers' experience, reward continued patronage and encourage new and return business (collectively, the "**Customer Marketing Programs**"). One example of the Customer Marketing Programs is the use of the Atlantic Club Casino Rewards Program (the "**Rewards Program**"), which allows customers to earn special benefits and services, including Comps, "Deferred Incentive Cash," and "Tier Credits" on a rewards card (the "**Atlantic Club Casino Rewards Card**").

10. Comps are goods or services, such as food, drink, hotel services, or entertainment, provided to customers free of charge or at a discount, in recognition of their patronage. Comps, which are valid for six months, are earned through the Rewards Program based on a percentage of a customer's tracked slot and table play and may be redeemed at the customer's discretion. Deferred Incentive Cash is awarded based on a percentage reinvestment for tracked slot play, is available in the form of non-cashable free slot play from 24 to 48 hours after the close of a customer's trip, and expires upon sixty days of customer inactivity. Tier Credits, which are stored on a Atlantic Club Casino Reward Card, are available to customers who use slot machines or table games. The customer earns Tier Credits towards higher Atlantic Club Casino Reward Card levels with increased awards and benefits at each tier. Tier Credits are earned based on the amount of play in the annual qualification period.

11. In addition, the Atlantic Club Casino offers the "Player's Club" to its customers through the Rewards Program, which is a member-only customer loyalty rewards program. Depending on their level of patronage, Player's Club members receive Tier Credits, cash offers,

complimentary meals, rooms, show tickets, and trade Comps to be used through “Club Local” vouchers and various other promotional items.

12. In addition, the popularity of the Customer Marketing Programs is due in part to the Atlantic Club Casino’s arrangements with highly acclaimed businesses through “Club Local,” a rewards program open to all Atlantic Club Casino Rewards cardholders. Through Club Local, customers receive discounts and rewards in the form of Club Local vouchers, which can be used at over 150 local participating businesses, including restaurants, golf clubs, bakeries, and liquor, photo and candy stores. Club Local vouchers are earned through customer redemption of earned Comp dollars at a 2:1 ratio and have no expiration date.

13. As of September 30, 2013, RIH Acquisitions’ pre-petition claims on account of the Rewards Programs, such as the Player’s Club, Deferred Incentive Cash, Club Local, and other Comp programs total approximately \$1,369,094.

**B. Safekeeping and Front Money**

14. “Safekeeping” and “Front Money” allows a customer to deposit casino chips and/or cash or wire transfers of funds into a deposit account established for the customer while he or she is a guest at the Atlantic Club Casino. “Safekeeping” refers to deposits that are held at the casino cage and can be withdrawn, as needed, by the patron. “Front Money” is deposited by the customer at the casino cage and can be withdrawn later by the customer at the cage or a gaming table. If the customer withdraws Front Money at the gaming table, the customer endorses a counter check for the value of the chips requested as a Front Money withdrawal. The amount of the counter check is then debited against the customer’s Front Money balance.

15. As of September 30, 2013, RIH Acquisitions held approximately \$4,967 in Safekeeping and Front Money. However, because the amount of Safekeeping and Front Money held by RIH Acquisitions can fluctuate dramatically in a very short period of time, RIH



Acquisitions cannot ascertain with certainty the exact amount of Safekeeping and Front Money held as of the Filing Date.

**C. Customer Deposits**

16. RIH Acquisitions requires and holds customer deposits in connection with hotel room rentals, banquet halls and catering functions (collectively, the “**Customer Deposits**”).

While some Customer Deposits are non-refundable, RIH Acquisitions is required to refund certain deposits, either in part or in full, upon cancellation by a customer.

17. As of September 30, 2013, RIH Acquisitions estimates that it holds approximately \$36,237 in Customer Deposits.

**D. Outstanding Gaming Currency and Claims**

18. RIH Acquisitions issues gaming currency, such as casino chips, free slot play, a variety of coupons, eTickets, and tokens to customers in the ordinary course of business, which can be used by customers to play at gaming tables and slot machines at the casino (collectively, the “**Gaming Currency**”). While most customers redeem Gaming Currency before leaving the Atlantic Club Casino, some customers do not. It is difficult for RIH Acquisitions to detect when a particular chip, eTicket or token was issued to a customer, and any effort to discern whether such Gaming Currency was issued pre- or post-petition would be extremely costly, time consuming and overly burdensome. RIH Acquisitions reasonably estimates, however, that as of September 30, 2013, approximately \$721,770 exists in outstanding Gaming Currency.

**E. Outstanding Gift Certificates**

19. RIH Acquisitions offers gift certificates (the “**Gift Certificates**”) in the ordinary course of business, which can be redeemed by the bearer for certain retail goods and/or certain hotel, restaurant or entertainment services offered by the Atlantic Club Casino. Because the Gift

Certificates do not expire, it is both possible and likely that a Gift Certificate purchased pre-petition will be presented to RIH Acquisitions after the Filing Date.

20. RIH Acquisitions reasonably estimates that as of September 30, 2013, approximately \$7,840 in Gift Certificates have been issued, but not redeemed.

**F. Miscellaneous Customer Claims**

21. From time to time, in the ordinary course of RIH Acquisitions' business, customers assert various claims or complaints against RIH Acquisitions with respect to inconvenience or minor property damage (such as scratches on a vehicle parked on the Atlantic Club Casino's premises), or assertions of minor personal injuries (collectively, the "Miscellaneous Customer Claims"). In response to Miscellaneous Customer Claims, RIH Acquisitions, in the ordinary course of its business and customary to the gaming industry, without admission of any liability or fault, provide Comps to certain customers as a showing of appreciation for the customers' continued patronage. The Debtors request authority to honor the Miscellaneous Customer Claims in the ordinary course of RIH Acquisitions' business.

**IV. RELIEF REQUESTED AND BASIS THEREFOR**

22. The Debtors respectfully submit that the relief requested herein is warranted by Section 105(a) of the Bankruptcy Code and the "necessity of payment" doctrine. Section 105 authorizes 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)).

23. Here, because the success of the Atlantic Club Casino depends primarily on the loyalty and confidence of its customers and reputation in the gaming industry, continued customer allegiance and the appearance of seamless and unchanged Customer Programs despite the Chapter 11 filings are essential to RIH Acquisitions’ ability to generate revenue and preserve going concern value while the Debtors pursue a sale of substantially all their assets.

24. In order to accomplish those critical goals, it is imperative for RIH Acquisitions to be able to honor the Pre-Petition Customer Obligations in the ordinary course of business. Absent such authority, it is likely Atlantic Club Casino customers would choose to take their business elsewhere, and RIH Acquisitions’ revenue could be adversely jeopardized. Indeed, the power granted by Section 105(a) and accompanying “doctrine of necessity” have been recognized heretofore as authority for the payment of pre-petition claims and obligations where such payment is necessary for the debtor’s survival. Ionosphere Clubs, 98 B.R. at 177; see also Adamar of New Jersey, Inc., Case No. 09-20711 (JHW) (Bankr. D.N.J. May 1, 2009) (granting authorization to a casino debtor to continue customer programs); In re TCI 2 Holdings, LLC, Case. No. 09-13654 (JHW) (Bankr. D.N.J. Feb. 19, 2009) (same); In re Tropicana Entertainment, LLC, et al., Case No. 08-10856 (KJC) (Bankr. D. Del. May 5, 2006) (same).

25. Additionally, to the extent the Pre-Petition Customer Obligations represent priority claims for “deposits” under Section 507(a)(7) of the Bankruptcy Code, pursuant to Section 1129(a)(9), holders of those claims are entitled to receive payment in full (subject to the statutory cap) under a Chapter 11 plan. Therefore, other creditors of the Debtors will not be prejudiced by the Court’s approval of RIH Acquisitions’ request to pay and/or honor the Pre-Petition Customer Obligations.

26. 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. Based on the foregoing, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of the Pre-Petition Customer Obligations.

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the Motion and such further relief as the Court deems just and appropriate under the circumstances.<sup>3</sup>

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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<sup>3</sup> Nothing in this Motion should be deemed or construed as an assumption of any executory contract.

**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)**  
COLE, SCHOTZ, MEISEL,  
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In re:

RIH ACQUISITIONS NJ, LLC, *et al.*,<sup>1</sup>

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 HONOR CASINO CHIPS  
AND OTHER CUSTOMER-RELATED CLAIMS, PROGRAMS AND OBLIGATIONS  
PURSUANT TO 11 U.S.C. § 105(a)**

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

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<sup>1</sup> 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 HONOR  
CASINO CHIPS AND OTHER CUSTOMER-RELATED CLAIMS,  
PROGRAMS AND OBLIGATIONS PURSUANT TO 11 U.S.C. § 105(a)

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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 authorizing RIH Acquisitions to honor casino chips and other customer-related claims, programs and obligations pursuant to 11 U.S.C. § 105(a) (the “**Motion**”); and it appearing that 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,

IT IS ORDERED as follows:

1. RIH Acquisitions hereby is authorized, in its discretion, to honor the Pre-Petition Customer Obligations<sup>2</sup> arising from the Customer Programs, including the Customer Marketing Programs, Rewards Program, Player’s Club program, Club Local, and other Comp programs

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



(Page 3)

Debtors: RIH ACQUISITIONS NJ, LLC, *et al.*  
Case No. 13-  
Caption of Order: ORDER AUTHORIZING RIH ACQUISITIONS NJ, LLC TO HONOR  
CASINO CHIPS AND OTHER CUSTOMER-RELATED CLAIMS,  
PROGRAMS AND OBLIGATIONS PURSUANT TO 11 U.S.C. § 105(a)

---

offered by the Debtors, Safekeeping and Front Money, Customer Deposits, Gaming Currency and Gift Certificates.

2. RIH Acquisitions hereby is authorized to honor Comps issued pre-petition in connection with the Miscellaneous Customer Claims, and continue honoring Comps related to Miscellaneous Customer Claims in the ordinary course of its business.

3. The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order.

4. The requirements set forth in Rule 6003(b) of the Bankruptcy Rules are satisfied by the contents of the Motion.

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