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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 FOR ENTRY OF:  
(I) AN INTERIM ORDER  
AUTHORIZING RIH ACQUISITIONS  
NJ, LLC TO PAY OR HONOR  
PREPETITION OBLIGATIONS TO  
CERTAIN CRITICAL VENDORS AND  
AUTHORIZING FINANCIAL  
INSTITUTIONS TO HONOR ALL  
RELATED CHECKS AND  
ELECTRONIC PAYMENT REQUESTS  
RELATED THERETO; AND (II) A  
FINAL ORDER**

**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 of: (i) an interim order authorizing RIH Acquisitions to pay or honor prepetition obligations to certain Critical Vendors<sup>2</sup> in accordance with the proposed Procurement Policies defined in the Application, and authorizing financial institutions to receive, process, honor, and pay all checks and electronic payment requests related thereto; and (ii) a final order authorizing the relief requested therein with regard to Critical Vendor Claims (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.

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<sup>2</sup> 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 (the “**Application**”).

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 requested relief 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/ Warren A. Usatine  
Michael D. Sirota  
Warren A. Usatine  
Ryan T. Jareck  
Nicholas B. Vislocky

DATED: November 6, 2013

**COLE, SCHOTZ, MEISEL,  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY  
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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 MOTION FOR ENTRY OF: (I) AN  
INTERIM ORDER AUTHORIZING RIH  
ACQUISITIONS NJ, LLC TO PAY OR  
HONOR PREPETITION OBLIGATIONS  
TO CERTAIN CRITICAL VENDORS  
AND AUTHORIZING FINANCIAL  
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RELATED THERETO; AND (II) A  
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**HEARING DATE AND TIME:**

\_\_\_\_\_, 2013, at \_\_:\_\_ .m.

**ORAL ARGUMENT REQUESTED**

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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).

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-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 entry of: (i) an interim order authorizing RIH Acquisitions to pay or honor prepetition obligations to certain critical vendors (the “**Critical Vendor Claims**”) in accordance with the proposed procurement policies (as set forth below), and authorizing financial institutions to receive, process, honor, and pay all checks and electronic payment requests related thereto; and (ii) a final order authorizing the relief requested herein with regard to Critical Vendor Claims (the “**Motion**”). The Debtors request limited relief on an emergent basis under Federal Rule of Bankruptcy Procedure 6003 and the scheduling of a final hearing no later than 30 days after the Filing Date (as defined below).

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.

### **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.

**A. RIH Acquisitions' Critical Vendors**

7. RIH Acquisitions relies in the ordinary course of business on certain third parties to supply goods and materials without which the Atlantic Club Casino could not operate properly. RIH Acquisitions' vendors provide the numerous services and products that are necessary at all stages of the gaming and hospitality business, including gambling, food, beverage, and other material supplies.

8. Many of the supplies RIH Acquisitions uses in its operations are fungible or available from a variety of different sources, such that no one supplier's refusal to conduct business with RIH Acquisitions would have a significant adverse impact on business operations. There are certain discrete vendors, however, who are critical to the Atlantic Club Casino's operations. Those vendors generally (a) provide either "single source" goods or other goods and services that are indispensable to the Atlantic Club Casino's operations and cannot be obtained

elsewhere or cannot be replaced except at very high additional cost or excessive delay, and (b) do not have long-term written supply contracts or other relationships with RIH Acquisitions such that they could be compelled to continue providing goods or services to RIH Acquisitions post-petition (collectively, the “**Critical Vendors**”).

(a) **Gaming Vendors**

9. As of September 30, 2013, the Atlantic Club Casino floor offered 1,641 slot machines. Slot revenues account for approximately 88% of the Debtors’ total revenue on an annual basis. RIH Acquisitions believes slots are the most profitable and stable revenue segment in the gaming sector given their consistent popularity and advantages derived from their predictable hold percentages.

10. RIH Acquisitions uses approximately 1,641 slot machines on its gaming floor and a number of slot machines are operated under participation lease agreements, whereby RIH Acquisitions leases the gaming system from vendors on a “cost-per-day” or “percentage of handle” basis (the “**Leased Systems**”). The Leased Systems represent many of the most popular game titles and generate a significant level of revenues.

11. The continued operation of the Leased Systems is essential to the RIH Acquisitions’ slot revenue. There are only a few vendors that are licensed to supply the Leased Systems. The Leased Systems frequently are upgraded to include popular game titles so as to continue to attract slot market players. Any weakening in the relationship with these vendors could prevent RIH Acquisitions from receiving upgraded machines, thereby negatively impacting its ability to cater to slot market customers and jeopardizing a significant revenue stream attributable to such gaming operations.

12. Moreover, some of the Leased Systems are part of a Progressive Gaming solution (the “**Progressive Systems**”). Select Progressive Systems are part of a wide-area progressive system whereby they are linked with other casinos within Atlantic City and allow players across all houses to compete against one another. The Progressive Systems, as well as the software and operating systems upon which they rely, are monitored by a few select vendors according to licensing protocols. Each casino, including the Atlantic Club Casino, is obligated to use these vendors in order to participate in Progressive Gaming. Failure to utilize one of these vendors would seriously jeopardize RIH Acquisitions’ Progressive Gaming revenue.

13. In addition to the actual gaming devices and related software, there are several vendors that supply goods and services that are essential to the operation of the gaming devices and table games, including vendors that provide parts, cards, dice, chips, tiles and ticket-tape for slot machines. Because the New Jersey gaming industry is highly regulated by the New Jersey Casino Control Commission (the “**Commission**”) and other regulatory bodies, those vendors have to pass a rigorous screening and licensing process by the Service Industry License Bureau of the Division of Gaming Enforcement to be eligible to provide gaming-related goods and services to casinos within the State of New Jersey. As a result of this selective process, most of the vendors falling into this category are “single-source” suppliers.

14. If the “single-source” gaming suppliers refuse to provide goods and services to RIH Acquisitions post-petition because of an unpaid prepetition claim, RIH Acquisitions’ only other option would be to convince a third-party vendor to *begin* the process of being licensed through the Enterprise License Bureau. At best, this process would take six to eight weeks, and assumes the vendor would become licensed. Given that RIH Acquisitions keeps relatively low



inventory levels for all gaming-related goods, this delay and uncertainty could cause irreparable damage to the Atlantic Club Casino's operations.

(b) **Food and Beverage Vendors**

15. The Atlantic Club Casino has restaurants, bars, catering, and room amenity options in its 801 hotel rooms, requiring a significant number of vendors to supply food and beverage items at a very high volume. There are a limited number of suppliers that can cater to Atlantic Club Casino's extensive and complex operation. For example, there are certain beverage vendors that exclusively supply name brand beverages. RIH Acquisitions' post-petition ability to maintain the relationships with its food vendors and exclusive beverage suppliers is vital to its overall business operations.

(c) **Material Vendors**

16. RIH Acquisitions hotel operations rely on select vendors who supply hospitality-related goods and maintenance services (the "**Material Vendors**"), and only a few Material Vendors can meet RIH Acquisitions multi-faceted operational needs. The Material Vendors have longstanding relationships with RIH Acquisitions and, in most instances, are the only vendors that can supply a high-volume of necessary goods in an efficient manner. For example, RIH Acquisitions relies on a single vendor to provide laundry services for its hotel operations. In addition, RIH Acquisitions relies on a single vendor to supply linens and hotel supplies for its 801 room hotel. Although linens may be available from a variety of different sources, RIH Acquisitions is concerned the linen supplier could be replaced, if at all, only through exorbitant additional cost, excessive delay in supply and likely less favorable trade terms.

17. Absent the Material Vendors' agreement to continue their prepetition relationships and practices with RIH Acquisitions postpetition, RIH Acquisitions would struggle to find replacement vendors that can meet its needs, if at all, on similar trade and delivery terms.

(d) **Marketing Vendors**

18. RIH Acquisitions maintains a database of hundreds of thousands of customers. RIH Acquisitions engages in various direct marketing campaigns, such as direct mailing, telemarketing and radio promotions, which include ticket giveaways, package winners, or other materials used to promote upcoming entertainment programs to attract new customers and encourage existing customers to return to the Atlantic Club Casino. RIH Acquisitions often outsources certain services relating to its direct marketing efforts, such as graphic design, media buying, and public relations (the "**Marketing Vendors**"). The use of the Marketing Vendors allows RIH Acquisitions to reduce the costs of such services if performed in-house and to maximize the target audience and impact of its direct marketing campaigns. RIH Acquisitions also advertises through television, magazines, newspapers, social media, radio and billboards. Those advertising opportunities typically are purchased through the Marketing Vendors.

19. Absent the Marketing Vendors' agreement to continue their prepetition relationships and practices with RIH Acquisitions post-petition, RIH Acquisitions would incur significant cost and difficulty in finding replacement vendors. In addition, RIH Acquisitions and the Marketing Vendors already have created direct mailing, giveaways and other materials with the Atlantic Club Casino's logo and rewards offerings that would be wasted should the Marketing Vendors cease to perform services for RIH Acquisitions. RIH Acquisitions' post-petition ability to maintain relationships with its Marketing Vendors is vital to ongoing customer patronage and its overall business operation.

20. If the Critical Vendors refuse to work with RIH Acquisitions during these Chapter 11 cases, RIH Acquisitions' ability to maintain and preserve going concern value and, in turn, the Debtors' ability to maximize the value of their assets would be compromised. RIH Acquisitions' gaming and hospitality businesses would be severely disrupted if a Critical Vendor refused to provide goods or services on a timely basis, in the required quantity and on acceptable terms. Moreover, a failure to receive goods or services may cause the shutdown of a restaurant, bar or catering facility until an agreement could be reached with the provider in question or an alternate source secured. Furthermore, given an intensely competitive and challenging hospitality and gaming market, even a temporary halt in service at any particular site within the Atlantic Club Casino could adversely affect the Atlantic Club Casino's reputation and cause customer attrition at a time when the loyalty and support of those customers is particularly crucial.

21. In addition to the negative impact on future sales, a breakdown in supply relationships with one vendor in the industry may erode the confidence of other vendors in RIH Acquisitions' ability to continue operations and pay for the post-petition delivery of goods and provision of services on a timely basis, thus resulting in a spiraling tightening of liquidity at a time when RIH Acquisitions' relationships with its vendors already may be stressed by these Chapter 11 filings.

22. Despite the critical need for the receipt of essential goods and services, RIH Acquisitions historically has sought to bargain with its vendors to achieve the lowest price, the best service and quality and the most favorable payment terms possible for each necessary product or service. RIH Acquisitions recognizes that efficiency in procurement is critical to achieving profitability. To that end, RIH Acquisitions has developed valued relationships with

many suppliers who have met RIH Acquisitions' standards for price, service, quality, and payment terms, and hopes to maintain those vendor relationships on a postpetition basis, when the claims of vendors who provide goods and services that benefit the Debtors' estates will be entitled to administrative priority status.

23. To preserve needed liquidity, the Debtors do not necessarily seek authorization to pay all Critical Vendor Claims, and the Debtors did not develop their list of such vendors with the expectation of paying those vendors immediately on account of their prepetition claims. Nevertheless, the Debtors believe that, despite the protections of administrative priority status, a small number of their most Critical Vendors may refuse to provide goods or services to RIH Acquisitions on a post-petition basis absent payment of all or part of the vendors' prepetition claims. Accordingly, the Debtors request authority for RIH Acquisitions to pay all or part of the Critical Vendor Claims, in an aggregate amount not to exceed \$2,200,000 (the "**Critical Vendor Fund**"), and only in accordance with the policy set forth below.

24. Subject to a final hearing in connection with the Motion, RIH Acquisitions is seeking authorization to pay all or part of the prepetition claims of the Critical Vendor Claims in an amount not to exceed \$1,200,000 in the aggregate during the interim period. RIH Acquisitions will seek approval to pay all or part of the prepetition claims of the Critical Vendor Claims in the additional amount of \$1,000,000 on a final basis.

**B. RIH Acquisitions' Proposed Procurement Policy for their Critical Vendors**

25. In the event a Critical Vendor threatens to discontinue services or the provision of goods and, RIH Acquisitions deems, in the exercise of its business judgment, that full or partial payment of the Critical Vendor's claim is necessary to ensure that particular Critical Vendor will provide necessary goods and services to RIH Acquisitions on a post-petition basis on terms

agreeable to RIH Acquisitions, RIH Acquisitions proposes to make such payment in accordance with the procurement policy for its Critical Vendors set forth below. RIH Acquisitions seeks to condition such payment or payments upon an agreement by the Critical Vendor in question to provide reasonable and customary price, service, quality, and payment terms (the “**Customary Trade Terms**”) to RIH Acquisitions on a postpetition basis in accordance with the procurement policy for its Critical Vendors set forth below.

26. The Debtors’ proposed procurement policy (the “**Critical Vendor Procurement Policy**”) is summarized as follows:

a. Vendor Agreements: To ensure that the Critical Vendors deal with the Debtors on Customary Trade Terms, RIH Acquisitions will send a letter to the Critical Vendors substantially in the form attached as **Exhibit A**, along with a copy of any order granting this Motion (the “**Critical Vendor Order**”). Such letter requires the Critical Vendor to execute and return same to RIH Acquisitions, memorializing the Critical Vendor’s agreement to the following information and terms, prior to the receipt of payment on account of the Critical Vendor Claim:

i. The amount of such Critical Vendor’s estimated Critical Vendor Claim, accounting for any setoffs, other credits and discounts thereto, shall be determined mutually in good faith by the Critical Vendor and RIH Acquisitions (but such amount shall be used only for the purposes of determining such Critical Vendor Claim under the Critical Vendor Order and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to such claim shall be fully preserved until further order of the Court);

ii. The Critical Vendor’s agreement to provide goods and services to RIH Acquisitions based upon Customary Trade Terms or upon such other favorable terms as RIH Acquisitions and the Critical Vendor may agree;

iii. The Critical Vendor’s acknowledgement that it has reviewed the terms and provisions of the Critical Vendor Order and consents to be bound by it; and

iv. The Critical Vendor's agreement that it will not seek payment for reclamation claims outside the terms of the Critical Vendor Order unless the Critical Vendor's participation in the program to pay Critical Vendor claims pursuant to the Critical Vendor Order is terminated and any monies received thereunder in relation to prepetition goods returned; provided, however, that such reclamation claims shall, if thereafter raised by the Critical Vendor as permitted by the Critical Vendor Order, be treated as though raised on the date of the Critical Vendor Order.

Such a letter, once agreed to and accepted by a Critical Vendor via execution and return to RIH Acquisitions, shall be referred to herein as a "**Vendor Agreement.**" To the extent RIH Acquisitions and the Critical Vendor in question have not, despite diligent efforts, entered into a Vendor Agreement, RIH Acquisitions may pay such Critical Vendor if it determines, in its sole business judgment, that failure to pay the Critical Vendor Claim is likely to result in irreparable harm to RIH Acquisitions' business operations. RIH Acquisitions further shall retain the right, on a case-by-case basis, to obtain other written acknowledgement from Critical Vendors of the Customary Trade Terms to which the parties may agree.

b. Designation of Critical Vendor Payments: Any checks used to pay Critical Vendor Claims (to the extent checks are issued) or the letter sent in accordance with subparagraph (a) (to the extent payments are made by electronic transfer) shall contain a legend substantially in the following form:

"By accepting this payment, the payee agrees to the terms of that certain Order of the United States Bankruptcy Court for the District of New Jersey (the "**Bankruptcy Court**"), dated \_\_\_\_\_, 2013, in the payor's Chapter 11 cases, entitled "Order (A) Authorizing RIH Acquisitions to Pay or Honor Prepetition Obligations to Certain Critical Vendors and (B) Authorizing Financial Institutions to Honor All Related Checks and Electronic Payment Requests" and submits to the jurisdiction of the Bankruptcy Court for enforcement thereof. "

c. Breach of Vendor Agreement: If a Critical Vendor refuses to supply goods and/or services to RIH Acquisitions on Customary Trade Terms following receipt of payment of its Critical Vendor Claim, or fails to comply with any Vendor Agreement (or another written agreement entered into between such Critical Vendor and

RIH Acquisitions), RIH Acquisitions may, in its sole discretion and without further order of the Court, declare that such Critical Vendor is in breach of its Vendor Agreement with RIH Acquisitions. To the extent such Critical Vendor fails to cure such default or reach a more favorable alternative agreement with RIH Acquisitions, RIH Acquisitions may seek appropriate relief from the Court, including, without limitation, injunctive relief to compel performance pursuant to the existing Vendor Agreement.

In addition, if a Critical Vendor refuses to comply with the agreed Customary Trade Terms, any payment made to such Critical Vendor on account of its prepetition claim shall be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and such Critical Vendor shall be required to immediately repay to RIH Acquisitions any payment made to it on account of its prepetition claim to the extent the aggregate amount of such payments exceeds the postpetition obligations then outstanding, without the right of any setoffs, claims, provision for payment of reclamation, trust fund claims, or otherwise.

d. Critical Vendor List: The Debtors shall maintain a summary list of all payments made to Critical Vendors and shall provide updated copies of such list to the Office of the United States Trustee for the District of New Jersey (the “UST”), counsel to any official committee appointed in these cases, and counsel to the DIP lender on a bi-weekly basis.

27. The Debtors also propose that all payments of Critical Vendor Claims shall be applied first to the Critical Vendor’s claims for goods received by the Debtors within 20 days prior to the Filing Date. These claims are entitled, in most instances, to priority as administrative claims pursuant to Section 503(b)(9) of the Bankruptcy Code. Accordingly, such payments will only affect the timing of the distribution, but not the amount, of the Critical Vendor Claims.

### **III. RELIEF REQUESTED AND BASIS THEREFOR**

#### **A. Ample Authority Exists to Justify Payment of the Critical Vendor Claims**

##### **a. The Court May Permit Payment of the Critical Vendor Claims Under Section 363 of the Bankruptcy Code**

28. Under Section 363(c) of the Bankruptcy Code, a debtor is authorized to operate its business in the ordinary course of business, including entering into transactions to use, sell, or lease property of the estate. Section 363(b)(1) of the Bankruptcy Code empowers the bankruptcy court to allow a debtor to expend funds in the bankruptcy court's discretion outside the ordinary course of business. A debtor's decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of that debtor. See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Co. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992) (holding that a court determining an application pursuant to Section 363(b) must find from the evidence a good business reason to grant such application).

29. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)). In fact, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.” Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts have consistently and appropriately been loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and will uphold a board's decisions as long as they are attributable to any “rational business purpose.” In re Integrated Res., Inc., 147 B.R. at 656.

30. Here, because the relief requested in the Motion is necessary to the continued operation and restructuring of RIH Acquisitions' business, the transactions between the Debtors



and the Critical Vendors fall well within the parameters of Section 363 of the Bankruptcy Code. In addition, because the relief requested in the Motion contemplates payments to be made to Critical Vendors who agree to provide goods or services on Customary Trade Terms in accordance with the Critical Vendor Procurement Policy, the contemplated transactions between the Debtors and such Critical Vendors are further authorized by Section 363 of the Bankruptcy Code as a sound exercise of the Debtors' business judgment.

**b. Payment of the Critical Vendor Claims Is Authorized Under Sections 1107(a) and 1108 of the Bankruptcy Code**

31. The Debtors, operating their businesses as debtors in possession under Sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries "holding the bankruptcy estate and operating the business for the benefit of its creditors and (if the value justifies) equity owners." In re CoServe, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business' going-concern value." Id.

32. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty "only ... by the preplan satisfaction of a prepetition claim." Id. The CoServ court specifically noted that pre-plan satisfaction of pre-petition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate." In re CoServe, L.L.C., 273 B.R. at 497. The court provided a three-pronged test for determining whether a pre-plan payment on account of a pre-petition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is

disproportionate to the amount of the claimant's prepetition claim.  
Third, there is no practical or legal alternative by which the debtor  
can deal with the claimant other than by payment of the claim.

In re CoServe, L.L.C., 273 B.R. at 497.

33. Payment of the Critical Vendor Claims satisfies each element of the CoServ standard. RIH Acquisitions' management believes that failing to satisfy the Critical Vendor Claims creates substantial risk of interruption to the Debtors' operations. RIH Acquisitions submits that the harm that would stem from the failure of any of the Critical Vendors to timely ship goods and provide services is grossly disproportionate to the amount of the prepetition claims that would have to be paid in order to ensure the continued supply of critical goods and services to RIH Acquisitions. Therefore, payment of the Critical Vendor Claims is consistent with the Debtors' fiduciary duties as debtors-in-possession under Sections 1107(a) and 1108 Bankruptcy Code.

**c. Payment of the Critical Vendor Claims Is Authorized Under Section 105 of the Bankruptcy Code**

34. RIH Acquisitions also should be authorized to pay the Critical Vendor Claims in accordance with the respective Critical Vendor Procurement Policy set forth above pursuant to Section 105(a) of the Bankruptcy Code and the "necessity of payment" doctrine.<sup>2</sup> Under that doctrine, a bankruptcy court may permit a reorganizing debtor to make post-petition payments on account of pre-petition claims when such payments are necessary to effectuate a successful reorganization. In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (S.D.N.Y. 1989); In re Columbia Gas System, Inc., 171 B.R. 189, 192 (Bankr. D. Del. 1994).

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<sup>2</sup> Section 105(a) provides that the Bankruptcy Court can "issue any order . . . that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

35. Case law in the Third Circuit recognizes the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services and materials essential to the conduct of the business until their pre-petition claims shall have been paid.” In re Lehigh & New England Railway. Co., 657 F.2d 570, 581 (3d Cir. 1981) (citing In re Penn Central Transp. Co., 467 F.2d 100, 102 n.1 (3d Cir. 1972)) (emphasis added); Columbia Gas System, Inc., 171 B.R. at 191-92; In re Just for Feet, Inc., 242 B.R. 821 (D. Del. 1999). The Third Circuit has noted the economic realities and respective positions of the parties are central to the inquiry:

the *sine qua non* of the application of the “necessity of payment” doctrine is the possibility that the creditor will employ an immediate economic sanction, failing such payment. In such a circumstance, it is evident that the payment, made under the “necessity of payment” rule is in the best interest of all parties . . . because such payment will facilitate the continued operation of the [debtor].

New England Railway. Co., 657 F.2d at 581.<sup>3</sup>

36. Payment of critical vendor claims in accordance with similar critical vendor procurement policies have been approved in this District in other casino cases. See Adamar of New Jersey, Inc., Case No. 09-20711 (JHW) [Docket No. 54] (authorizing the debtors to pay all or part of the prepetition claims of the critical vendors in an amount not to exceed \$750,000 on an interim basis); See TCI 2 Holdings, LLC, et al., Case No. 09-13654 (JHW) [Docket No. 58] (authorizing the debtors to pay all or part of the prepetition claims of the critical vendors in an amount not to exceed approximately \$19 million on a final basis).

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<sup>3</sup> Other courts considering the “critical-vendor” issue have held debtors must show that preferential treatment accorded to critical vendors also must confer a benefit to the debtor’s other creditors. See In the Matter of KMart Corp., 359 F.3d 866 (7<sup>th</sup> Cir. 2004); In re United American, Inc., 327 B.R. 776 (Bankr. E.D. Va. 2005). In the first instance, those decisions are not binding on this Court. If required, however, the Debtors are prepared to elaborate on the demonstration herein that payment of the Critical Vendor Claims benefits all their creditors.

37. Taken together, the nature and importance of the goods provided to RIH Acquisitions by the Critical Vendors, the substantial harm to RIH Acquisitions' business that would be caused if the pre-petition claims of the Critical Vendors are not honored post-petition and the potential significant resulting loss in operating revenue, all lead to the conclusion that the prepetition claims of the Critical Vendors fall well within the scope of obligations whose payment may be authorized pursuant to the doctrine of necessity.

38. In addition, some of the Critical Vendors may be entitled to administrative expense priority to the extent those vendors delivered goods during the period from and including 20 days before the Filing Date under 11 U.S.C. § 503(b)(9) (the "**20 Day Claims**"). To the extent the Critical Vendors hold valid 20 Day Claims, those claims would have to be satisfied under a plan of reorganization. See 11 U.S.C. § 1129(a)(9). Thus, RIH Acquisitions' payment of the Critical Vendor Claims that are also 20 Day Claims at this time and in RIH Acquisitions' sole discretion, will not prejudice junior creditors.

39. The Debtors strongly believe the uninterrupted supply of goods, on customary trade terms, is imperative to RIH Acquisitions' ongoing operations and viability of its business. Pursuant to the proposed Critical Vendor Procurement Policy, RIH Acquisitions seeks to pay the claims of Critical Vendors only where non-payment likely would lead to the interruption of the delivery of critical goods or otherwise would seriously disrupt the Atlantic Club Casino's operations. Thus, the proposed Critical Vendor Procurement Policy is crafted to minimize the number and amount of prepetition claims that are paid and to maximize the value RIH Acquisitions gains from such payments. The Debtors submit the relief requested is narrowly tailored to foster the goals of the Debtors' chapter 11 proceeding.

**B. Cause Exists to Authorize RIH Acquisitions' Financial Institutions to Honor Checks and Electronic Fund Transfers**

40. The Debtors represent that RIH Acquisitions will have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves and anticipated financing. Also, under RIH Acquisitions' existing cash management system, the Debtors represent that checks or wire transfer requests can be identified readily as relating to an authorized payment made to a Critical Vendor. Accordingly, the Debtors believe checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by RIH Acquisitions, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the Critical Vendors.

**C. The Requirements of Bankruptcy Rule 6003 Are Satisfied**

41. 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 twenty-one (21) days after the filing of the petition if the relief is necessary to avoid immediate and irreparable harm. As described above, the Critical Vendors are vital to the Atlantic Club Casino's operations because they supply the Atlantic Club Casino with goods and materials without which it could not operate at full capacity or would operate at significantly reduced profitability. Therefore, failure to satisfy the Critical Vendor Claims in the ordinary course of business during the first twenty-one (21) days of these cases will jeopardize RIH Acquisitions' business at this critical juncture when preservation of vendor relations is of utmost importance, and would likely compromise the Debtors' operations in an already challenging gaming market and general economic environment.

42. Accordingly, the Debtors submit they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment by RIH Acquisitions of the Critical Vendor Claims pursuant to the Critical Vendor Procurement Policy.

**D. Debtors' Reservation of Rights**

43. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim or an approval or assumption of any agreement, contract or lease under Section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any invoice of a Critical Vendor under applicable non-bankruptcy law. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently as set forth herein.

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.

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

By: /s/ Warren A. Usatine  
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**



**Critical Vendor Trade Agreement**

\_\_\_\_\_, 2013  
TO: [Critical Vendor]  
[Name]  
[Address]

Dear Critical Vendor:

As you are undoubtedly aware, on November 6, 2013 (the “**Filing Date**”), RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel and RIH Propco NJ, LLC, the within debtors and debtors-in-possession (the “**Debtors**”), filed voluntary petitions for relief pursuant to Chapter 11, Title 11, United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”). On the Filing Date, counsel for the Debtors requested the Bankruptcy Court’s authority to pay certain critical suppliers or service providers in recognition of the importance of the Debtors’ relationship with such suppliers and service providers and their desire that the Chapter 11 cases have as little effect on the suppliers and service providers as possible.

On November\_\_\_\_, 2013, the Bankruptcy Court entered an order (the “**Order**,” a copy of which is annexed hereto) authorizing the Debtors, under certain conditions, to pay prepetition claims of certain trade creditors (the “**Critical Vendors**”) that agree to the terms set forth below and agree to be bound by the terms of the Order (the “**Critical Vendor Trade Program**”). To receive payment under the Critical Vendor Trade Program, the Critical Vendors must agree to continue supplying goods or services to the Debtors based on acceptable and “Customary Trade Terms.” Customary Trade Terms are defined as the normal and customary trade terms in effect between such creditor and the Debtors pursuant to the master agreement between the parties or such other trade terms, practices and programs that are at least as favorable to the Debtors as those in effect prior to the Filing Date.

For purposes of administration of this Critical Vendor Trade Program as authorized by the Bankruptcy Court, the Debtors and you agree as follows:

(a) The estimated Balance of the Prepetition claim (net of any setoffs, credits or discounts (the “**Claim**”)) that the Debtors will pay you is \$ \_\_\_\_\_ (the “**Prepetition Claim Payment**”).

(b) You will hereafter extend to the Debtors terms at least as favorable as all Customary Trade Terms in effect between you and the Debtors before the Filing Date. Payment of your Claim under the Critical Vendor Trade Program in the manner set forth in the Order may occur only upon execution of this letter by a duly authorized representative of your company and the return of this letter to the Debtors. Your execution of this letter and return of the same to the Debtors constitutes an agreement by you and the Debtors. You agree to be bound by the Critical Vendor Trade Program and Order and you submit to the jurisdiction of

the Bankruptcy Court for enforcement thereof, and you further agree and/or represent:

(1) to the Customary Trade Terms and, subject to the reservations contained in the Order, to the amount of the Prepetition Claim Payment set forth above;

(2) that, from and after the Filing Date, you will continue to supply goods and services to the Debtors, as applicable, pursuant to the Customary Trade Terms and that the Debtors will pay for such goods and services in accordance with Customary Trade Terms;

(3) that you have reviewed the terms and provisions of the Critical Vendor Trade Program and Order and that you consent to be bound by such terms; and

(4) that you will not separately seek payment for reclamation and similar claims outside the terms of the Critical Vendor Trade Program and Order unless your participation in the program to pay Critical Vendor claims pursuant to the Order is terminated; provided, however, that such reclamation claims shall, if thereafter raised by you as permitted by the Order, be treated as though raised on the date of the Order.

(c) Notwithstanding the foregoing, if you receive the Prepetition Claim Payment from the Debtors based on any amount owing to you before the Filing Date and you do not extend to the Debtors all Customary Trade Terms, you are required to return the Prepetition Claim Payment to the Debtors within ten (10) days.

(d) The Debtors and you also hereby agree that any dispute with respect to this Agreement, the Order and/or your participation in the Critical Vendor Trade Program shall be determined by the Bankruptcy Court.

If you have any questions about this Agreement or our financial restructuring, please do not hesitate to call (\_\_\_\_\_) \_\_\_\_\_ or (\_\_\_\_\_) \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
By:  
Its:

Agreed and Accepted By:  
[Name of Vendor]  
By:  
Its:  
Dated

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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

COLE, SCHOTZ, MEISEL,  
FORMAN & LEONARD, P.A.  
A Professional Corporation  
Court Plaza North  
25 Main Street  
P.O. Box 800  
Hackensack, NJ 07602-0800  
Michael D. Sirota, Esq.  
Warren A. Usatine, Esq.  
Ryan T. Jareck, Esq.  
Nicholas B. Vislocky, Esq.  
(201) 489-3000  
(201) 489-1536 Facsimile  
Proposed attorneys for RIH Acquisitions NJ, LLC, *et al.*,  
Debtors-in-Possession

In re:

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

Debtors-in-Possession.

Case No. 13-  
(Joint Administration Pending)

Judge:

Chapter 11

**Hearing Date and Time:**

\_\_\_\_\_, 2013, at \_\_\_\_:\_\_\_ .m.

**INTERIM ORDER (A) AUTHORIZING RIH ACQUISITIONS NJ, LLC TO PAY OR  
HONOR PREPETITION OBLIGATIONS TO CERTAIN CRITICAL VENDORS, AND  
(B) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR ALL RELATED  
CHECKS AND ELECTRONIC PAYMENT REQUESTS  
RELATED THERETO**

The relief set forth on the following pages, numbered two (2) through nine (9), is hereby  
**ORDERED.**

<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).

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Debtors: RIH ACQUISITIONS NJ, LLC, *et al.*  
Case No. 13-  
Caption of Order: INTERIM ORDER (A) AUTHORIZING RIH ACQUISITIONS NJ, LLC  
TO PAY OR HONOR PREPETITION OBLIGATIONS TO CERTAIN  
CRITICAL VENDORS, AND (B) AUTHORIZING FINANCIAL  
INSTITUTIONS TO HONOR ALL RELATED CHECKS AND  
ELECTRONIC PAYMENT REQUESTS RELATED THERETO

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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., for the entry of: (i) an interim order authorizing RIH Acquisitions to pay or honor prepetition obligations to certain critical vendors (the “**Critical Vendor Claims**”) in accordance with the proposed procurement policies defined in the Verified Application, and authorizing financial institutions to receive, process, honor, and pay all related checks and electronic payment requests related thereto; and (ii) a final order authorizing the relief requested therein with regard to Critical Vendor Claims (the “**Motion**”); and good and sufficient notice of the hearing on 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 the moving papers, the opposition thereto, if any, and the arguments of counsel; and good cause appearing for the entry of this Order,

IT IS ORDERED as follows:

1. The Motion is granted on an interim basis until such time as the Court conducts a final hearing on this matter, to be held on \_\_\_\_\_, 2013, at \_\_\_\_:\_\_\_\_ .m. prevailing

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Debtors: RIH ACQUISITIONS NJ, LLC, *et al.*  
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Eastern Time (the “**Final Hearing**”), and without prejudice to the Office of the United States Trustee’s rights pending further review of the Debtors’ critical vendor program.

2. Any party-in-interest may object to the relief sought in the Motion; *provided, however*, that such party shall file and serve a written objection with the Clerk of this Court and serve upon counsel for the Debtors, counsel to the Official Committee of Unsecured Creditors (“**Committee**”) if any such Committee is appointed at that time, the Office of the United States Trustee, and counsel to the DIP lender, by or before \_\_\_\_\_, 2013, at \_\_\_\_:\_\_\_\_.m. prevailing Eastern Time (*i.e.*, 7 days before the Final Hearing).

3. Subject to the Final Hearing, RIH Acquisitions is authorized to pay and honor prepetition claims of the Critical Vendors<sup>2</sup> to the extent RIH Acquisitions, in its sole discretion and judgment on a case-by-case basis, deems such payment necessary to ensure that the particular Critical Vendor will provide necessary goods to RIH Acquisitions on a post-petition basis and in accordance with the Budget.

4. Subject to the Final Hearing, RIH Acquisitions is authorized to pay all or part of the prepetition claims of the Critical Vendors in an amount not to exceed \$1,200,000 in the aggregate during the interim period from the date of this Order until the date the Final Order is

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

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Debtors: RIH ACQUISITIONS NJ, LLC, *et al.*  
Case No. 13-  
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issued on this matter, unless otherwise ordered by the Court pursuant to the Critical Vendor Procurement Policy, defined in detail in the Verified Application, which is hereby approved in its entirety.

5. RIH Acquisitions shall use reasonable efforts to condition payment to any Critical Vendor upon an agreement by the Critical Vendor in question to provide reasonable and customary price, service, quality and payment terms (“**Customary Trade Terms**”) to RIH Acquisitions on a post-petition basis.

6. RIH Acquisitions shall send a letter to the Critical Vendors substantially in the form attached as Exhibit A to the Motion, along with a copy of the order granting the Motion. The checks used to pay Critical Vendor Claims (to the extent checks are issued) or the letter attached as Exhibit A to the Motion (to the extent payments are made by electronic transfer) shall contain a proviso substantially in the following form:

By accepting payment, the payee agrees to the terms of that certain Order of the United States Bankruptcy Court of the District of New Jersey (the “**Bankruptcy Court**”), dated \_\_\_\_\_, 2013, in the payor’s Chapter 11 case entitled “Order (A) Authorizing RIH Acquisitions to Pay or Honor Prepetition Obligations to Certain Critical Vendors, and (B) Authorizing Financial Institutions to Honor All Related Checks and Electronic Payment Requests” and submits to the jurisdiction of the Bankruptcy Court for enforcement thereof

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Debtors: RIH ACQUISITIONS NJ, LLC, *et al.*  
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7. The letter sent to Critical Vendors shall include, without limitation, the following information and terms:

- a. The amount of such Critical Vendor's estimated Critical Vendor Claim, accounting for any setoffs, other credits and discounts thereto, which shall be mutually determined in good faith by the Critical Vendor and RIH Acquisitions (but such amount shall be used only for the purposes of determining such Critical Vendor Claim under the Critical Vendor Order and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to such claim shall be fully preserved until further order of the Court);
- b. The Customary Trade Terms between such Critical Vendor and RIH Acquisitions, or such other terms as the Critical Vendors and RIH Acquisitions may agree, and the Critical Vendor's agreement to provide goods to RIH Acquisitions based upon Customary Trade Terms or upon such other favorable terms as RIH Acquisitions and the Critical Vendor may agree;
- c. The Critical Vendor's acknowledgement that it has reviewed the terms and provisions of the Critical Vendor Order and consents to be bound thereby; and
- d. The Critical Vendor's agreement that it will not separately seek payment for reclamation claims outside the terms of the Critical Vendor Order unless the Critical Vendor's participation in the program to pay Critical Vendor Claims pursuant to the Critical Vendor Order is terminated; provided, however, that such reclamation claims shall, if thereafter raised by the Critical Vendor as permitted by the Critical Vendor Order, be treated as though raised on the date of the Critical Vendor Order.

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Debtors: RIH ACQUISITIONS NJ, LLC, *et al.*  
Case No. 13-  
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8. Such a letter, once agreed to and accepted by the Critical Vendor, shall be referred to herein as a “Vendor Agreement.” RIH Acquisitions is authorized, but not required, to enter into Vendor Agreements, it being the express intention of the Court that RIH Acquisitions shall enter into Vendor Agreements only when RIH Acquisitions determines, in the exercise of its reasonable business judgment, that it is appropriate to do so.

9. RIH Acquisitions is authorized to pay any Critical Vendor Claim even if RIH Acquisitions and the Critical Vendor in question have not, despite diligent efforts, entered into a Vendor Agreement, if RIH Acquisitions determines, in its reasonable business judgment that failure to pay the Critical Vendor Claim is likely to result in irreparable harm to RIH Acquisitions’ business operations.

10. If a Critical Vendor refuses to supply goods to RIH Acquisitions on Customary Trade Terms following receipt of payment on its Critical Vendor Claim, or fails to comply with any Vendor Agreement entered into between such Critical Vendor and RIH Acquisitions, RIH Acquisitions may, in its sole discretion and without further order of the Court, declare that such Critical Vendor is in breach of its Vendor Agreement with RIH Acquisitions. To the extent such Critical Vendor fails to cure such default or reach a more favorable alternative agreement with RIH Acquisitions, RIH Acquisitions may seek appropriate relief from the Court, including,



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---

without limitation, injunctive relief to compel performance pursuant to the existing Vendor Agreement in place.

11. If a Critical Vendor fails to comply with the agreed Customary Trade Terms, any payment made to such Critical Vendor on account of its prepetition claim shall be deemed to have been in payment of then outstanding post-petition obligations owed to such Critical Vendor, and such Critical Vendor shall be required to immediately repay to RIH Acquisitions any payment made to it on account of its prepetition claim to the extent the aggregate amount of such payments exceed the post-petition obligations then outstanding, without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or otherwise.

12. RIH Acquisitions shall maintain a summary list of all payments to Critical Vendors, and provide updated copies of such list to (i) the Office of the United States Trustee for the District of New Jersey, (ii) counsel to the Committee, and (iii) counsel to the DIP lender on a bi-weekly basis.

13. RIH Acquisitions is hereby authorized to issue post-petition checks and to make post-petition fund transfer requests to replace any prepetition checks and prepetition transfers to Critical Vendors that may be dishonored by any bank.

14. In accordance with this Order and any other order of this Court, each of the financial institutions at which RIH Acquisitions maintains its accounts relating to the payment of

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Debtors: RIH ACQUISITIONS NJ, LLC, *et al.*  
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the Critical Vendor Claims are authorized to receive, process, honor and pay all checks presented for payment and all fund transfer requests made by RIH Acquisitions related thereto, to the extent that sufficient funds are on deposit in such accounts.

15. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of RIH Acquisitions' rights to subsequently dispute such claim.

16. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall constitute, nor is it intended to constitute, RIH Acquisitions' assumption of any contract or agreement under 11 U.S.C. § 365.

17. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall create, nor is it intended to create, any rights in favor of or enhance the status of any claim held by, any person or entity.

18. Nothing herein shall prejudice RIH Acquisitions' rights to request additional authority to pay Critical Vendor Claims pursuant to this Order.

19. The relief granted herein shall be binding upon any Chapter 11 trustee appointed in these Chapter 11 cases and upon any Chapter 7 trustee appointed in the event of a subsequent conversion of these Chapter 11 cases to cases under Chapter 7.

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Debtors: RIH ACQUISITIONS NJ, LLC, *et al.*  
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20. The requirements set forth in Rule 6003(b) of the Bankruptcy Rules are satisfied by the contents of the Motion or otherwise deemed waived.

21. Notice of the Motion as provided therein shall be deemed good and sufficient notice, and the requirements of Bankruptcy Rule 6004(a) have been satisfied by such notice or otherwise deemed waived.

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

23. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this order in accordance with the Application.

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

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

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
<b>Caption in Compliance with D.N.J. LBR 9004-2(c)</b> COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A. A Professional Corporation Court Plaza North 25 Main Street P.O. Box 800 Hackensack, NJ 07602-0800 Michael D. Sirota, Esq. Warren A. Usatine, Esq. Ryan T. Jareck, Esq. Nicholas B. Vislocky, Esq. (201) 489-3000 (201) 489-1536 Facsimile Proposed attorneys for RIH Acquisitions NJ, LLC, <i>et al.</i> , Debtors-in-Possession	Case No. 13- Judge: Chapter 11 (Joint Administration Pending) <b>Hearing Date and Time:</b> _____, 2013, at __: __ .m.
In Re:  RIH ACQUISITIONS NJ, LLC, <i>et al.</i> , <sup>1</sup>  Debtors-in-Possession.	

**FINAL ORDER (A) AUTHORIZING RIH ACQUISITIONS NJ, LLC TO PAY OR  
HONOR PREPETITION OBLIGATIONS TO CERTAIN CRITICAL VENDORS, AND  
(B) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR ALL RELATED  
CHECKS AND ELECTRONIC PAYMENT REQUESTS  
RELATED THERETO**

The relief set forth on the following pages, numbered two (2) through nine (9), is hereby  
**ORDERED.**

---

<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).

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Debtors: RIH ACQUISITIONS NJ, LLC, *et al.*  
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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 a motion (the “**Motion**”)<sup>2</sup> for the entry of a final order (a) authorizing, but not directing, RIH Acquisitions to pay the prepetition claims of certain critical vendors (the “**Critical Vendor Claims**”) in accordance with the proposed Procurement Policy defined in the Verified Application in support of the Motion (the “**Verified Application**”), and (b) authorizing financial institutions to receive, process, honor and pay all related checks and electronic payment requests related to the aforesaid payments; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and the Court having entered an Interim Order granting the Motion on \_\_\_\_\_, 2013 [Docket No. \_\_\_\_]; and the Court having considered all the pleadings filed in support of the Motion and the Affidavit of Eric Matejevich in support of the Debtors’ “First Day Motions” [Docket No. \_\_\_\_] (the “**Matejevich Affidavit**”); and it further appearing that due and proper notice of the Motion having been provided as evidenced by Certificates of

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<sup>2</sup> 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.

(Page 3)

Debtors: RIH ACQUISITIONS NJ, LLC, *et al.*  
Case No. 13-  
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Service filed with the Court and that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The Motion is granted on a final basis.
2. Subject to further order by this Court, RIH Acquisitions is authorized to pay and honor prepetition claims of the Critical Vendors, as defined in the Verified Application, to the extent RIH Acquisitions, in its sole discretion and judgment on a case-by-case basis, deem such payment necessary to ensure that the particular Critical Vendor will provide necessary goods and services to RIH Acquisitions on a post-petition basis.
3. Subject to further order by this Court, RIH Acquisitions is authorized to pay all or part of the prepetition claims of the Critical Vendors in an amount not to exceed \$2,200,000 in the aggregate on a final basis pursuant to the Budget and Critical Vendor Procurement Policy, defined in detail in the Verified Application, which is hereby approved in its entirety.
4. RIH Acquisitions shall make a reasonable effort to condition payment to any Critical Vendor upon an agreement by the Critical Vendor in question to provide reasonable and customary price, service, quality and payment terms (“**Customary Trade Terms**”) to RIH Acquisitions on a post-petition basis.

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5. RIH Acquisitions shall send a letter to the Critical Vendors substantially in the form attached as Exhibit A to the Motion, along with a copy of the order granting the Motion. The checks used to pay Critical Vendor Claims (to the extent checks are issued) or the letter attached as Exhibit A to the Motion (to the extent payments are made by electronic transfer) shall contain a proviso substantially in the following form:

By accepting payment, the payee agrees to the terms of that certain Order of the United States Bankruptcy Court of the District of New Jersey (the “**Bankruptcy Court**”), dated \_\_\_\_\_, 2013, in the payor’s Chapter 11 case entitled “Order (A) Authorizing RIH Acquisitions to Pay or Honor Prepetition Obligations to Certain Critical Vendors, and (B) Authorizing Financial Institutions to Honor All Related Checks and Electronic Payment Requests” and submits to the jurisdiction of the Bankruptcy Court for enforcement thereof

6. The letter sent to Critical Vendors shall include, without limitation, the following information and terms:

a. The amount of such Critical Vendor’s estimated Critical Vendor Claim, accounting for any setoffs, other credits and discounts thereto, which shall be mutually determined in good faith by the Critical Vendor and RIH Acquisitions (but such amount shall be used only for the purposes of determining such Critical Vendor Claim under the Critical Vendor Order and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to such claim shall be fully preserved until further order of the Court);

b. The Customary Trade Terms between such Critical Vendor and RIH Acquisitions, or such other terms as the Critical Vendors

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and RIH Acquisitions may agree, and the Critical Vendor's agreement to provide goods and services to RIH Acquisitions based upon Customary Trade Terms or upon such other favorable terms as RIH Acquisitions and the Critical Vendor may agree;

c. The Critical Vendor's acknowledgement that it has reviewed the terms and provisions of the Critical Vendor Order and consents to be bound thereby; and

d. The Critical Vendor's agreement that it will not separately seek payment for reclamation claims outside the terms of the Critical Vendor Order unless the Critical Vendor's participation in the program to pay Critical Vendor Claims pursuant to the Critical Vendor Order is terminated; provided, however, that such reclamation claims shall, if thereafter raised by the Critical Vendor as permitted by the Critical Vendor Order, be treated as though raised on the date of the Critical Vendor Order.

7. Such a letter, once agreed to and accepted by a Critical Vendor, as evidenced by the Critical Vendor's execution and return of same, shall be referred to herein as a "Vendor Agreement." RIH Acquisitions is authorized, but not required, to enter into Vendor Agreements, it being the express intention of the Court that RIH Acquisitions shall enter into Vendor Agreements only when RIH Acquisitions determines in the exercise of its reasonable business judgment, that it is appropriate to do so.

8. RIH Acquisitions is authorized to pay any Critical Vendor claim even if RIH Acquisitions and the Critical Vendor in question have not, despite diligent efforts, entered into a Vendor Agreement, if RIH Acquisitions determines in its business judgment that failure to pay



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the Critical Vendor claim is likely to result in irreparable harm to RIH Acquisitions' business operations.

9. If a Critical Vendor refuses to supply goods and/or services to RIH Acquisitions on Customary Trade Terms following receipt of payment on its Critical Vendor Claim, or fails to comply with any Vendor Agreement entered into between such Critical Vendor and RIH Acquisitions, RIH Acquisitions may, in its sole discretion and without further order of the Court, declare that such Critical Vendor is in breach of its Vendor Agreement with RIH Acquisitions. To the extent such Critical Vendor fails to cure such default or reach a more favorable alternative agreement with RIH Acquisitions, RIH Acquisitions may seek appropriate relief from the Court, including, without limitation, injunctive relief to compel performance pursuant to the existing Vendor Agreement.

10. If a Critical Vendor fails to comply with the agreed Customary Trade Terms, any payment made to such Critical Vendor on account of its prepetition claim shall be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and such Critical Vendor shall be required to immediately repay to RIH Acquisitions any payment made to it on account of its prepetition claim to the extent the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or otherwise.

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11. RIH Acquisitions shall maintain a summary list of all payments to Critical Vendors, and provide updated copies of such list to (i) the Office of the United States Trustee for the District of New Jersey, (ii) counsel to any official committee appointed in these cases, and (iii) counsel to the DIP lender on a bi-weekly basis.

12. RIH Acquisitions is hereby authorized to issue post-petition checks and to make post-petition fund transfer requests to replace any prepetition checks and prepetition transfers to Critical Vendors that may be dishonored by any bank.

13. In accordance with this Final Order and any other order of this Court, each of the financial institutions at which RIH Acquisitions maintains its accounts relating to the payment of the Critical Vendor Claims are authorized to receive, process, honor and pay all checks presented for payment and all fund transfer requests made by RIH Acquisitions related thereto, to the extent that sufficient funds are on deposit in such accounts.

14. Any payment made pursuant to this order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of RIH Acquisitions' rights to subsequently dispute such claim.

15. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall constitute, nor is it intended to constitute, RIH Acquisitions' assumption of any contract or agreement under 11 U.S.C. § 365.

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16. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall create, nor is it intended to create, any rights in favor of or enhance the status of any claim held by, any person or entity.

17. Nothing herein shall prejudice RIH Acquisitions' rights to request additional authority to pay Critical Vendor claims pursuant to this order.

18. The relief granted herein shall be binding upon any Chapter 11 trustee appointed in these Chapter 11 cases and upon any Chapter 7 trustee appointed in the event of a subsequent conversion of these Chapter 11 cases to cases under Chapter 7.

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

20. Notice of the Motion as provided therein shall be deemed good and sufficient notice, and the requirements of Bankruptcy Rule 6004(a) have been satisfied by such notice or otherwise deemed waived.

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

22. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this order.

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23. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

24. A true copy of this order shall be served on all parties-in-interest within seven (7) days hereof.