

**COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.**

A Professional Corporation
Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, New Jersey 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

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

Chapter 11
(Joint Administration Pending)

In re:

RIH ACQUISITIONS NJ, LLC, *et al.*,¹

Debtors-in-Possession.

**NOTICE OF DEBTORS' MOTION FOR
AN ORDER: (A) GRANTING INTERIM
RELIEF PURSUANT TO 11 U.S.C. §
366(b); (B) AUTHORIZING THE
PAYMENT OF ADEQUATE
ASSURANCE FOR POST-PETITION
UTILITY SERVICES; (C) FIXING
FINAL HEARING DATE TO
DETERMINE ADEQUATE
ASSURANCE; AND (D) GRANTING
OTHER RELATED RELIEF**

HEARING DATE AND TIME:

_____, 2013, at __: __ .m.

ORAL ARGUMENT REQUESTED

TO: All Parties-in-Interest

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal identification number are: RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel (1695) and RIH Propco NJ, LLC (5454).



PLEASE TAKE NOTICE that pursuant to and in accordance with 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 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 United States Courthouse, 400 Cooper Street, Fourth Floor, Camden, New Jersey 08101, for entry of an Order: (a) granting interim relief pursuant to 11 U.S.C. § 366(b); (b) authorizing the payment of adequate assurance for post-petition utility services; (c) fixing final hearing date to determine adequate assurance; and (d) granting other related relief (the “**Motion**”).

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

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

PLEASE TAKE FURTHER NOTICE that unless objections are timely presented, the Motion shall be deemed uncontested in accordance with D.N.J. LBR 9013-1(a), and the 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/ Ryan T. Jareck
Michael D. Sirota
Warren A. Usatine
Ryan T. Jareck
Nicholas B. Vislocky

DATED: November 6, 2013

**COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.**

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

Chapter 11
(Joint Administration Pending)

In re:

RIH ACQUISITIONS NJ, LLC, *et al.*,¹

Debtors-in-Possession.

**APPLICATION IN SUPPORT OF THE
DEBTORS' MOTION FOR AN ORDER:
(A) GRANTING INTERIM RELIEF
PURSUANT TO 11 U.S.C. § 366(b); (B)
AUTHORIZING THE PAYMENT OF
ADEQUATE ASSURANCE FOR POST-
PETITION UTILITY SERVICES; (C)
FIXING FINAL HEARING DATE TO
DETERMINE ADEQUATE
ASSURANCE; AND (D) GRANTING
OTHER RELATED RELIEF**

HEARING DATE AND TIME:

_____, 2013, at __:__.m.

ORAL ARGUMENT REQUESTED

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal identification number are: RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel (1695) and RIH Propco NJ, LLC (5454).

TO: Honorable Judge of the
United States Bankruptcy Court

The 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 Application is submitted in support of the Debtors’ motion for an order: (a) granting interim relief pursuant to 11 U.S.C. § 366(b); (b) authorizing the payment of adequate assurance for post-petition utility services; (c) fixing a final hearing date to determine the sufficiency of adequate assurance; and (d) granting other related relief (the “**Motion**”).

2. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

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

II. BACKGROUND

4. On November 6, 2013 (the “**Filing Date**”), the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code. Since the Filing Date, the Debtors have remained in possession of their assets – and RIH Acquisitions continues management of its business – as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5. A detailed description of RIH Acquisitions’ business and the facts precipitating the filing of the Debtors’ Chapter 11 proceedings are set forth in the Affidavit of Eric Matejevich

in support of the Debtors' various "First Day Motions" (the "**Matejevich Affidavit**"). Those facts are incorporated herein by reference.

6. As set forth in the Matejevich Affidavit, RIH Acquisitions is in the hotel and gaming business and owns and operates The Atlantic Club Casino Hotel (formerly The Atlantic City Hilton and ACH) located at Boston Ave. & The Boardwalk in Atlantic City, New Jersey (the "**Atlantic Club Casino**"). The Atlantic Club Casino has 801 hotel rooms, over 75,000 square feet of casino gaming space including state of the art low denomination slots and table games, as well as seven restaurants. The Atlantic Club Casino also offers over 37,000 square feet of versatile event space and can accommodate gatherings of up to 1,600 people.

III. RELIEF REQUESTED AND BASIS THEREFOR

7. In connection with its business operations, RIH Acquisitions obtains electric, gas, water, heat, telephone, and other utility services (the "**Utility Services**") from numerous utility providers (the "**Utility Companies**" and each one individually, a "**Utility Company**"). A schedule identifying each of the Utility Companies is attached as Exhibit A.

8. RIH Acquisitions believes its estimated average monthly utility payments to the Utility Companies ranges between \$500,000 to \$600,000. Before the Filing Date, RIH Acquisitions paid all undisputed invoices for Utility Services on a timely basis and, with the exception of invoices covering September 2013, was substantially current on its utility bills. As of the Filing Date, the only amounts outstanding are those for services performed, but not yet billed.

9. For RIH Acquisitions to operate the Atlantic Club Casino without disruption and ensure a "soft landing" into Chapter 11, it must continue to receive post-petition services from

the Utility Companies. Loss of any Utilities Services or even a temporary interruption thereof would be extremely harmful to RIH Acquisitions' business operations and the Debtors' estates.

10. Pursuant to Section 366(b) of the Bankruptcy Code, a utility company cannot alter, refuse or discontinue service to a debtor within twenty (20) days after the commencement of a bankruptcy case solely on the basis of the filing of the bankruptcy proceeding. 11 U.S.C. § 366(a) and (b). A utility may, however, discontinue services if a debtor does not provide satisfactory adequate assurance of the performance of its postpetition obligations to the utility within thirty (30) days of the commencement of the case. 11 U.S.C. § 366(c)(2).

11. The term "adequate assurance of payment" is defined as: (a) a cash deposit; (b) a letter of credit; (c) a certificate of deposit; (d) a surety bond; (e) a prepayment of utility consumption; or (f) another form of security that is mutually agreed on between the utility and the debtor or the trustee. 11 U.S.C. § 366(c)(1)(A).

12. To comply with that statutory mandate, the Debtors respectfully submit that the posting of security deposits by RIH Acquisitions to the Utility Companies in an amount equal to \$228,337.27 in the aggregate, which is equal to two (2) weeks of average monthly utility bills as set forth in Exhibit A, except in those circumstances where a Utility Company receives a partial or full prepayment equal to at least the amount of the proposed deposit will, constitute "adequate assurance of payment" under Section 366 of the Bankruptcy Code.² See, e.g., In re Big M, Inc., Case No. 13-10233 (Bankr. D.N.J. Jan. 8, 2013) (two (2) weeks' deposit); In re Revel AC, Inc., et al., Case No. 13-16253 (Bankr. D.N.J. March 26, 2013) (two (2) weeks' deposit), In re Christ

² The existing deposits held by Atlantic City Electric and South Jersey Energy will be used as a credit against the Debtors' proposed adequate assurance deposit under Section 366 of the Bankruptcy Code.

Hospital, Case No. 12-12906 (MS) (Bankr. D.N.J. Feb. 7, 2012) (ten (10) days); Adamar of New Jersey, Inc., et al., Case No. 09-20711 (Bankr. D.N.J. May 8, 2009) (two (2) weeks); TCI 2 Holdings, LLC, et al., Case No. 09-13654 (Bankr. D.N.J. February 17, 2009) (two (2) weeks); In re Tarragon Corporation, et al., Case No. 09-10555 (Bankr. D.N.J. January 14, 2009) (ten (10) days for all but three (3) utilities); Shapes/Arch Holdings, L.L.C., et al., Case No. 08-14631 (Bankr. D.N.J. March 16, 2008) (two (2) weeks). Consistent with RIH Acquisitions' past practices, RIH Acquisitions will pay all undisputed utility invoices for post-petition services on a timely basis during the Debtors' Chapter 11 proceedings.

13. Moreover, the Debtors propose a procedure whereby a Utility Company objecting to the adequate assurance payments proposed by RIH Acquisitions may file objections before the final hearing on the Motion (the "**Final Hearing**"). That procedure is set forth in detail in the accompanying proposed form of Order.

14. Based on the foregoing, the Debtors submit that the assurance of payment by RIH Acquisitions to the Utility Companies is adequate and conforms with the express provisions and intent of Section 366 of the Bankruptcy Code, is not prejudicial to the rights of any Utility Company to object to the proposed adequate assurance payments at the Final Hearing and is in the best interests of the Debtors and their estates.

IV. NOTICE

15. The Debtors request that the Court schedule the Final Hearing no later than thirty (30) days after the Filing Date, which would allow the Debtors ample time to provide notice of said hearing date to the Utility Companies by regular first-class mail.

16. No prior application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an Order granting the Motion and such other 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/ Ryan T. Jareck
Michael D. Sirota
Warren A. Usatine
Ryan T. Jareck
Nicholas B. Vislocky

DATED: November 6, 2013

EXHIBIT A

RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel
 Utilities / Adequate Assurance Schedule

Utility Name	Address	Telephone Number	Service Provided	Average Two (2) Week Usage	Existing Deposit	Proposed Adequate Assurance Deposit
Atlantic City Electric	800 N. King Street, 5th Floor Wilmington, DE 19801 PO Box 231 Wilmington, DE 19899- 0231	302-429-3765	Electricity	180,256.52	12,854.92	167,401.60
South Jersey Gas Co.	PO Box 3121 Southeastern, PA 19398-3121	800-766-9900	Gas	29,487.81	200,000.00	-
Verizon Wireless	PO Box 17464 Baltimore, MD 21297- 1464	800-922-0204	Wireless Services	1,304.32		1,304.32
Verizon, NJ	PO Box 4833 Trenton, NJ 08650	888-892-5200	Telephone	6,210.23		6,210.23
AT&T Communications	PO Box 277019 Atlanta, GA 30384-7019	800-242-1927	Telephone	2,120.88		2,120.88
Comcast Business Communication	PO Box 37601 Philadelphia, PA 19101- 0601	888-262-7300	Cable/Internet	2,993.71		2,993.71
Atlantic City Sewerage Co.	1200 Atlantic Avenue, Ste. 300 Atlantic City, NJ 08401	609-345-0131	Sewer	29,403.27		29,403.27
Atlantic City MUA	401 N. Virginia Avenue Atlantic City, NJ 08401	609-345-3315	Water	18,903.26		18,903.26

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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

RIH ACQUISITIONS NJ, LLC, *et al.*,¹

Debtors-in-Possession.

Case No. 13-

Judge:

Chapter 11

(Joint Administration Pending)

Hearing Date and Time:

_____, 2013, at ____:____.m.

ORDER: (A) GRANTING INTERIM RELIEF PURSUANT TO 11 U.S.C. § 366(b); (B) AUTHORIZING THE PAYMENT OF ADEQUATE ASSURANCE FOR POST-PETITION UTILITY SERVICES; (C) FIXING FINAL HEARING DATE TO DETERMINE ADEQUATE ASSURANCE; AND (D) GRANTING OTHER RELATED RELIEF

The relief set forth on the following pages, numbered two (2) through four (4), is hereby **ORDERED**.

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal identification number are: RIH Acquisitions NJ, LLC d/b/a The Atlantic Club Casino Hotel (1695) and RIH Propco NJ, LLC (5454).

(Page 2)

Debtor: RIH ACQUISITIONS NJ, LLC, *et al.*,
Case No. 13-
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ASSURANCE; AND (D) GRANTING OTHER RELATED RELIEF

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: (a) granting interim relief pursuant to 11 U.S.C. § 366(b); (b) authorizing the payment of adequate assurance for post-petition utility services; (c) fixing final hearing date to determine adequate assurance; and (d) granting other related relief (the “**Motion**”);² 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 Motion, 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. Within twenty (20) business days hereof, RIH Acquisitions shall pay a cash deposit in an amount equal to \$228,337.27 in the aggregate, which is equal to two (2) weeks of utility service for the Utility Companies in the amounts set forth in Exhibit A to the Debtors’

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

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Debtor: RIH ACQUISITIONS NJ, LLC, *et al.*,
Case No. 13-
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Application, except to the extent any of the Utility Companies receives partial or full prepayment in the ordinary course of business with the practice to continue post-petition, which collectively shall constitute “adequate assurance of payment” under 11 U.S.C. § 366. Said deposits shall be applicable solely to Utility Services provided from and after the Filing Date and shall not be applied by the Utility Companies to any prepetition Utility Services.

2. RIH Acquisitions shall pay on a timely basis, in accordance with prepetition practices, all undisputed invoices with respect to postpetition Utility Services.

3. A hearing to consider entry of a final order fixing the amount of adequate assurance to be paid to the Utility Companies shall be held on _____, 2013, at __: __ .m. (the “**Final Hearing**”). A Utility Company may seek an earlier hearing date by filing an application for entry of an order shortening time with this Court. RIH Acquisitions reserves all rights to oppose any request for a hearing on shortened time to consider the amount of adequate assurance to be paid to the Utility Companies.

4. Objections to the proposed adequate assurance amounts may be filed by the Utility Companies so as to be received by Debtors’ counsel no later than seven (7) days before the Final Hearing Date. In the event no objections are filed, this Order shall continue in full force and effect and shall be deemed a final Order without the need for further notice or hearing in accordance with Federal Rules of Bankruptcy Procedure, including the Final Hearing.

(Page 4)

Debtor: RIH ACQUISITIONS NJ, LLC, *et al.*,
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5. Absent any further order of this Court, the Utility Companies are hereby enjoined through and including the date of the Final Hearing from: (a) altering, refusing, or discontinuing Utility Services to, or discriminating against, RIH Acquisitions; or (b) requiring the payment by RIH Acquisitions of any deposit or other security for Utility Services, except as provided for herein.

6. Within two (2) business days from the date hereof, a true copy of this Order shall be served by regular first class mail to the Utility Companies. For Utility Companies that may have been omitted from Exhibit A to the Debtors' Application, the Debtors shall promptly provide notice of this Order upon learning of such Utility Company.

7. Nothing in this Order or the Motion shall be deemed or construed to constitute the postpetition assumption or adoption of any agreement pursuant to Section 365 of the Bankruptcy Code.

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

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