



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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

In re:

RIH ACQUISITIONS NJ, LLC, *et al.*,¹

Debtors-in-Possession.

Case No. 13- 34483
(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.**

11/8/13

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



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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 Dec. 2, 2013, at 11:00 a.m. prevailing

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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 NOV. 25, 2013, at 5:00 p.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 Vendors² 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

² 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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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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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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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.

in consultation with the DIP lender,

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.

in consultation with the DIP lender,

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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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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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.