

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

BTB CORPORATION,

Debtor(s).

Case No. 15-03681 (MCF)

Chapter 11

**JOINT STIPULATION CONFIRMING FORECLOSURE OF CERTAIN
ACCOUNTS RECEIVABLE AND FOR ADEQUATE PROTECTION**

**TO THE HONORABLE UNITED STATES
BANKRUPTCY COURT:**

COME NOW the secured creditor Banco Santander Puerto Rico (“BSPR” or “Lender”) and BTB Corporation (the “Debtor”) (collectively, the “Parties”), through their respective undersigned counselors, and respectfully submit this “Joint Stipulation Confirming Foreclosure of Certain Accounts Receivable and for Adequate Protection” (the “Stipulation”).

PRELIMINARY STATEMENT

After certain discussions, Debtor and BSPR have agreed to the Stipulation contained herein, whereby, among other things, Debtor admits and confirms that certain of its accounts receivable were properly foreclosed by BSPR pre-petition and, thus, do not constitute part of Debtor’s bankruptcy estate. Therefore, the Parties respectfully submit that the terms of this Stipulation should be promptly approved as they are critical for Debtor’s ability to reorganize under this bankruptcy case.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the scope of 28 U.S.C. § 157(b)(2).
2. Venue of this proceeding and of the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory basis for the relief requested herein are Sections 105(a), 361, 1107 and 1108 of Title 11 of the United States Code (the “Bankruptcy Code”), Fed. R. Bank. P. 4001(b) and Local Bankruptcy Rule 4001-2.

PROCEDURAL HISTORY

1. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Code”) on May 17, 2015 (the “Petition Date”). See, Docket No.

2. Prior to the Petition Date, the Debtor and/or its subsidiaries entered into various loan agreements with BSPR, pursuant to which BSPR provided certain credit facilities to the Debtor and/or its subsidiaries (the “Loans”).

3. The Loans are evidenced by the loan documents (collectively, the “Loan Documents”) detailed in and/or attached at BSPR’s Proof of Claim No. 21 (the “POC”).

4. As part of the Loan Documents and collateral for the Loans, the Debtor granted to BSPR a priority lien over its inventories, accounts receivable, and any proceeds thereof (the “Cash Collateral” or the “Collateral”).

5. Prior to the Petition Date, the Debtor defaulted on its obligations under the Loans, which defaults were duly notified to the Debtor.

6. On May 7, 2015, BSPR initiated a collection of money and foreclosure proceeding against the Debtor before the Puerto Rico Court of First Instance, Bayamon Section, Civil No. D CD2015-1117 (601) (the “State Court Action”).

7. As of the Petition Date, the amounts due under the Loans exceeded \$10,641,134.00.

STIPULATION

8. The Debtor has been negotiating in good faith with BSPR to determine the extent of BSPR’s Cash Collateral and stipulate the provision of sufficient adequate protection as per section 361 of the Code.

9. Pursuant to section 361 of the Bankruptcy Code, a debtor may provide adequate protection by either making periodic cash payments, providing additional or replacement liens, or providing such other relief which will result in the realization of the “indubitable equivalent” of the entity’s interest in the property under consideration. 11 U.S.C. § 361.

10. Debtor and BSPR have negotiated and agreed to the following interim terms of adequate protection as described below:

- **Pre-petition Accounts Receivable.** The Parties stipulate that, on or around May 7, 2015, BSPR properly foreclosed on Debtor’s pre-petition accounts receivable (the “Foreclosed Accounts”), and any proceeds thereof, became the property of BSPR, which accounts receivables do not constitute property of Debtor’s bankruptcy estate pursuant to 11 U.S.C. § 541. See, In re AA 10000 Corp., 2007 Bankr. LEXIS 5091, *11-13 (Bankr. D.P.R. 2007). The Parties hereby agree to remit a joint letter (or other form of communication) to the individual(s) or party(ies) obliged to satisfy those outstanding Foreclosed Accounts, informing and notifying them that the obliged party(ies) must forthwith and indefeasibly submit any and all payments under the Foreclosed Accounts to BSPR at a designated bank account to be identified by BSPR as part of the joint communication.
- **Adequate Protection –Remaining Cash Collateral.** BSPR believes that it properly foreclosed pre-petition on all of the Debtor’s accounts receivables. However, in the event that there remain any unforeclosed accounts, pursuant to section 361 of the Bankruptcy Code, as adequate protection for BSPR, the Debtor hereby acquiesces and agrees that, with regards to any remaining pre-petition accounts receivable (or other Cash Collateral) that has not been foreclosed pre-petition (if any so remain), as

stated in the previous paragraph (the “Remaining Cash Collateral”), the Parties shall remind a joint letter (or other form of communication) to the individual(s) or party(ies) obliged to satisfy those outstanding Remaining Cash Collateral, informing and notifying them that, from the date of issuance of said joint communication, the obliged party(ies) must forthwith and indefeasibly submit any and all payments under the Remaining Cash Collateral to BSPR at a designated bank account to be identified by BSPR as part of the joint communication.

- **Application of Payments**. Debtor hereby agrees, affirms, acknowledges, and consents that BSPR may, in its sole discretion, apply any and all post-petition payments to any of the following: (a) any portion of the amounts due under the Loan Agreements; and/or (b) any amount due, incurred, or accrued under any of the Loan Documents after the Petition Date, including, but not limited to post-petition interest (to the extent allowed by the Bankruptcy Code).
- **Reservation of Rights as to Inventory**. Debtor hereby acknowledges and agrees that BSPR has a lien over the Debtor’s inventory. Debtor represents that whatever inventory it had in its possession is being held for third parties. BSPR understands that it may have a perfected security interest in the foregoing inventory. This dispute remains unresolved, and nothing in this Stipulation shall be deemed a waiver or release of any claims or defenses of either Party relative to the Inventory or other collateral.
- **Additional Adequate Protection - Credit Bid**. BSPR shall have the right to credit bid the indebtedness owed thereto under the Loan Documents, in whole or in part, in connection with any sale or disposition of Debtor’s assets (whether or not such asset

sale or disposition is undertaken or proposed under or pursuant to the terms of any consensual or nonconsensual chapter 11 plan of reorganization or liquidation of or for Debtor (including under section 1129(b)(2)(A)(i), (ii) and/or (iii) of the Bankruptcy Code), whether proposed by Debtor, a creditor committee, or any other party, by motion under section 363 of the Bankruptcy Code, or otherwise under applicable law), and Debtor hereby waive all rights to oppose such credit bid rights of BSPR.

- **Ratification of Loan Documents.** Debtor hereby consents: (i) to the transaction contemplated herein and acknowledges, reaffirms, and ratifies all security interests granted and liens constituted pursuant to the Loan Documents as security for the payment and performance of all of Debtor's obligations under the Loan Documents and their priority rank; (ii) acknowledges and agrees that the guarantees, if any, (and all security therefore) contained in the Loan Documents are, and shall continue to remain, in full force and effect after giving effect to this Stipulation; and (iii) ratifies the Loan Agreements, the Collateral and the Loan Documents.
- **Ratification of Obligations.** Debtor acknowledges, represents, covenants, and agrees with BSPR that (i) Debtor's obligation to pay in full the outstanding balance of principal of the Loans and any other sums due to BSPR including, without limitation, accrued interest under the Loan Agreements is valid, binding and enforceable in all respects; and (ii) Debtor's obligations under the Loan Agreements, as well as any and all of their other obligations under any of the other Loan Documents (including, without limitation, the guarantees, if any, and this Stipulation) are valid, binding and enforceable in all respects.

- **Reservation of Rights.** Notwithstanding anything to the contrary contained in this Stipulation, BSPR shall have the right to seek any relief it deems necessary or appropriate before this Court including, but not limited to, a motion seeking adequate protection in addition to those provided in this Stipulation in the event of a change in circumstances.
- **No Novation.** It is hereby understood and agreed by each of the parties hereto that this agreement is not intended to constitute an extinctive novation (“novación extintiva”) of the obligations and undertakings of the parties under any of the Loan Documents, as amended to date. The Debtor ratifies, reaffirms, confirms, consents to and acknowledges all of the terms, priority and conditions of, security interest, mortgages or liens over the Collateral provided for in the Loan Documents and the Debtor’s obligations under such documents.
- **Events of Default.** The following shall constitute an event of default and entitle BSPR to exercise all of its remedies, and shall cause the automatic, immediate and irrevocable termination of the automatic stay over all BSPR’s Collateral: (1) any representation, warranty or other written statement made by Debtor, or by an authorized representative of Debtor, to BSPR with regards to the initiation, negotiation, discussion, and/or obtention of this Stipulation proves to have been false or misleading in any material respect when made; or (2) Debtor shall breach any covenant or obligation contained in the Stipulation, or fail to comply with, or fail to perform, any of the terms, conditions or covenants or its obligations set forth in the Stipulation; or (3) Debtor and/or any of the guarantors, if any, shall challenge in any form, way, manner, or action the validity or enforceability of any of the Loan

Documents, the enforceability of the obligations thereunder, or the perfection or priority of any lien granted to BSPR, or if any of the Loan Documents ceases to be in full force or effect; or (4) a trustee or an examiner with enlarged powers relating to the operation of any of the Debtor's business (powers beyond those set forth in sections section 1106(a)(3) and (a)(4) of the Bankruptcy Code), shall be appointed in the Bankruptcy Case; or (5) any lien on any of the Collateral which is *pari passu* with or senior to the claims of the BSPR shall be granted or Debtor shall file a motion seeking approval of any such lien; or (6) the termination of any of Debtor's exclusive rights under section 1121 of the Bankruptcy Code; or (7) the filing of any motion to approve a sale of all or a substantial portion of Debtor's assets without the prior written approval of BSPR; or (8) Debtor seeking, or the filing of any motion by any other party to obtain, additional or replacement post-petition financing for Debtor; or (9) Debtor's failure to comply with any of its adequate protection obligations to BSPR under the Stipulation; or (10) the Bankruptcy Case shall be dismissed or converted into a Chapter 7 case; or (11) the commencement of any challenge against BSPR's liens, claims, and/or security interests.

- **Effect of Stipulation on Third Parties.** The Stipulation and any admissions, releases and waivers contained herein shall be binding upon the Debtor and all other parties in interest. Accordingly, (i) the obligations under the Loan Documents shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, or defense, for all purposes in the bankruptcy case, (ii) the liens under the Loan Documents on the Collateral and the Replacement Liens shall be deemed to be legal, valid, binding, perfected, not subject to recharacterization,

subordination, avoidance or reduction and (iii) the obligations under the Loan Documents, the Collateral, the Replacement Liens, and the Loan Agreements shall not be subject to any other or further challenge by any party in interest, and any such party in interest shall be enjoined from, seeking to exercise the rights of Debtor's estate. Nothing in this Stipulation vests or confers on any Person (as defined in the Bankruptcy Code) standing or authority to pursue any cause of action belonging to Debtor or its estate.

WHEREFORE, Debtor and BSPR stipulate to the above, and jointly request the Court's approval thereof, as well requests the approval of the shortened notice period to this Stipulation as described below.

WE HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants in this case, including, but not limited to, Debtor's counsel and the U.S. Trustee. Copy of this notice will be sent by postage prepaid to those parties listed on Debtor's List of Creditors Holding the 20 Largest Unsecured Claims.

NOTICE OF TIME TO RESPOND

If within twenty one (21) days after service as evidenced by this certification, and an addition three (3) days if you were served by mail pursuant to F.R.B.P. 9006(f), any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, must serve and file an objection or the appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the Motion will be deemed unopposed and may be granted unless: (I) the requested relief is forbidden by law, (II) the requested relief is against public policy, (III) in the opinion of the Court the interests of justice requires otherwise.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14th day of August, 2015.

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