

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

**IN RE:**

**VILLAS DEL MAR HAU, INC.**

**DEBTOR**

**CASE NO. 15-10146 ESL  
CHAPTER 11**

**EMERGENCY MOTION REQUESTING AUTHORIZATION TO USE CASH COLLATERAL TO  
AVOID IMMEDIATE AND IRREPARABLE HARM TO THE ESTATE AND REQUEST OF A  
HEARING PURSUANT TO 11 U.S.C. §363, FED. R. BANKR. P. 4001(b) AND L.B.R. 4001-2**

**TO THE HONORABLE COURT:**

**COMES NOW** Empresas Playa Joyuda, Inc. (hereinafter referred to as “Debtor”), through the undersigned attorney who respectfully requests and prays as follows:

1. Debtor files this emergency motion pursuant to 11 U.S.C. §363, Federal Bankruptcy Rule 4001(b) and Local Bankruptcy Rule 4001-2, in order for this Honorable Court to: (1) grant Debtor immediate use of cash collateral to avoid immediate and irreparable damage to the estate; and (2) to schedule a hearing to discuss this matter and the adequate protection Debtor will give to secured creditor Triangle REO PR 2 Corp.

2. On December 1, 2016, Debtor filed their voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101 *et seq.*

3. On April 7, 2016, Triangle REO 2 PR Corp. (hereinafter “Triangle”) filed a Proof of Claim for the secured amount of \$2,448,105.33. See, Proof of Claim No. 4.

4. Triangle holds a claim, secured by two properties located at Miradero Ward in the Municipality of Cabo Rojo (hereinafter “the Real Estate Collateral”).

5. Also, Triangle holds a lien over, among others, all of Debtor’s pre and post-petition rents and revenue generated by the real estate collateral. See, Proof of Claim No. 4.

6. However, it was not until October 2016 that Debtor came into knowledge that a cash collateral was given over all pre and post-petition rents and revenue generated by the real estate collateral.

7. Since Debtor came into knowledge of the existence of cash collateral, it has been making all possible arrangements to fulfill Triangle exigencies, all of which were too onerous and far away from Debtor's economical reality.

8. On November 23, 2016, Triangle filed a *Motion for Entry of Order Prohibiting the Use of Triangle's Cash Collateral and for Adequate Protection*. See, Docket No. 76.

9. By the instant emergency motion, Debtor requests the immediate use of the cash collateral, in order to avoid an immediate and irreparable harm to the estate, since it is critical and necessary to provide and assure the continuity of the Debtor's business and the preservation of the ongoing concern value of the Debtor's estate.

10. Debtor's request for Use of Cash Collateral is in the amount of \$26,600.00 for the month of November, 2016; \$35,500.00 for the month of December, 2016; and \$29,300.00 for the month of January, 2017, since these are the total projected expenses for these periods. See, **Exhibit C**.

### **DISCUSSION**

11. This Honorable Court should allow Debtor the use of the cash collateral in the amount projected in the Budget attached hereto as Exhibit A. The grounds for this request follow.

12. Debtor, Empresas Playa Joyuda is a corporation dedicated to hotel rental services. The hotel, which operates under the name Perichi's Hotel is located at State Road 102 Km. 14.3 Playa Joyuda in Cabo Rojo, Puerto Rico. The hotel comprises of two concrete buildings, the building located at Lot #1 has 33 rooms, restaurant, ballroom and an apartment used as Debtor's shareholders residence. The second building located at Lot #2 is composed of 16 hotel rooms, a conference room, a parking for 40 vehicles and a pool. The hotel also has a reception, laundry and office area.

13. For the resort to be able to generate profit, operate in the ordinary course of business, provide a service of excellence to its guests, and be kept in the best condition, Debtor needs to satisfy certain maintenance debts and make payments to some creditors, such as:

- a) Payroll and Social Security payments;
- b) Professional services;
- c) Insurances;
- d) Restaurant Purchases;
- e) Licenses and Permits;
- f) Repairs and Maintenance;
- g) Utilities, such as: electricity, water, gas, internet, cable TV and telephone;
- h) Fuels;
- i) Property taxes;
- j) Sales and Use taxes;
- k) Room taxes;
- l) Payroll taxes;
- m) Office and hotel supplies;
- n) Advertising;
- o) Uniforms; and
- p) Comisions.

14. As it can be seen in the Monthly Operating Reports submitted in this case, Debtor maintains all expenses to a minimum necessary, considering the complexity and size of its' business. A list of a budget for all the previously mentioned expenses of the property can be reviewed in the Monthly Operating Reports filed by Debtor; See, **Exhibit A** – *Current Monthly Operating Reports Summary and Exhibit B - Budget*.

15. Debtor by this motion request the use of the aforementioned cash collateral in order to continue to fulfill its obligations and continue the ordinary course of business. Also, in order to

the resort to continue to be occupied, attractive to future guests and, most important of all, profitable, Debtor needs to use the proceedings of the rents to be able to continue operating the resort, maintain the property functioning and in good condition, and to provide a service of excellence to all guests.

16. If Triangle received all the rent proceedings, it would mean a fatal detriment of Debtor's estate.

17. If Debtor is prohibited to use the rental proceeds and revenue generated by the real estate collateral, which constitutes a cash collateral, it will not be able to make any of the payments listed in paragraph 13 and consequently, the estate will suffer irreparable harm, it will devaluate, and Debtor will be force to close its operations, causing the loss of employments and making impossible a feasible reorganization.

18. In view of the circumstances stated above, Debtors request this Honorable Court to allow on an interim basis the use of cash collateral *Nunc Pro Tunc* up to the requested hearing. If this Honorable Court allows Debtor immediate access to cash collateral, Debtor will be able to maintain the proper operation of the resort, continue to make it profitable and Debtor will be able to reorganize its finances which will benefit creditors and provide funding for the Chapter 11 Plan of Reorganization. In addition, Debtor will during the time authorized for the use of the cash collateral make all payments listed in paragraph 13 of the instant motion.

19. This Honorable Court must have present that "[t]here may be situations in bankruptcy where giving a secured creditor an absolute right to his bargain may be impossible or seriously detrimental to the bankruptcy laws." 2016 Collier Pamphlet Ed., 11 U.S.C. § 361, Legislative History to Section 361, p. 234 (Lexis Nexis 2016). For this reason, in Wright v. Union Central Life, Ins., Co., 311 U.S. 273 (1940), the Court suggested that it was the value of the secured creditor's collateral, and not necessarily his rights in specific collateral, that was entitled to protection.

20. Should this Honorable Court allow Debtor's immediate access to cash collateral, within the fifteen (15) day period prescribed by Fed. R. Bankr. P. 4001(b)(2), Debtor will be able to operate the hotel and reorganize their finances which will benefit creditors and provide increase funding to the Chapter 11 Plan. (See, **Exhibit A**: Current Monthly Operating Reports Summary and **Exhibit B**: Budget).

**WHEREFORE**, Debtor pray for an Interim Order *Nunc Pro Tunc* effective upon its entry in docket granting this motion; deny Triangle's requests as made in the motion filed at Docket No. 76; and grant the continued used of cash collateral in the budget projected amounts until the hearing requested to discuss this matter, with any other relief that in accordance to law this Honorable Court deems just and proper.

**I HEREBY CERTIFY** that a copy of this motion has been electronically filed with the Clerk of the Bankruptcy Court using CM/ECF system, which will serve a copy of the same to the office of the U.S. Trustee and to all parties in interest, and by certified mail to: **Triangle REO PR 2 Corp. c/o Capital Crossing Puerto Rico, L.L.C.** at 221 Ponce De León Ave., 12<sup>th</sup> Floor, Suite 1204, San Juan, P.R. 00917; **Triangle REO PR 2 Corp. c/o Capital Crossing Puerto Rico, L.L.C.** at P.O. Box 70111, San Juan, P.R. 00936; **Luis C. Marini** at O'Neill & Borges, L.L.C., 250 Muñoz Rivera Avenue, Suite 800, San Juan, Puerto Rico 00918-1813; **Carolina Velaz-Rivero** at O'Neill & Borges, L.L.C., 250 Muñoz Rivera Avenue, Suite 800, San Juan, Puerto Rico 00918-1813; and **Gabriel L. Olivera Dubón** at O'Neill & Borges, L.L.C., 250 Muñoz Rivera Avenue, Suite 800, San Juan, Puerto Rico 00918-1813.

In Caguas, Puerto Rico, this 30 of November, 2016.

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**UNSWORN DECLARATION UNDER PENALTY OF PERJURY**  
**PURSUANT TO 28 U.S.C. §1746**

I, **JULIO CÉSAR PÉREZ PERICHI**, of legal age, married and resident of Cabo Rojo, Puerto Rico declare under penalty of perjury as follows:

1. I am the owner, president and shareholder of Empresas Playa Joyuda, Inc., the Chapter 11 Debtor in case number 15-10146, filed on December 22, 2016. My wife Marlene Cintrón Barber is also a shareholder of Empresas Playa Joyuda, Inc. and acts as Secretary of the corporation.
2. Empresas Playa Joyuda, Inc. is a corporation duly registered under the Laws of Puerto Rico. It operates a resort under the name of Perichi's Hotel located at State Road 102 Km. 14.3 Playa Joyuda, Miradero Ward in the Municipality of Cabo Rojo, Puerto Rico.
3. Triangle REO PR 2 Corp. alleges to hold a secured interest over the proceedings of the rents and revenues generated by the resort. The address of this secured creditor is. Its attorneys' names and direction are: **Triangle REO PR 2 Corp. c/o Capital Crossing Puerto Rico, L.L.C.** at 221 Ponce De León Ave., 12<sup>th</sup> Floor, Suite 1204, San Juan, P.R. 00917; **Triangle REO PR 2 Corp. c/o Capital Crossing Puerto Rico, L.L.C.** at P.O. Box 70111, San Juan, P.R. 00936; **Luis C. Marini, Carolina Velaz-Rivero, and Gabriel L. Olivera Dubón** at O'Neill & Borges, L.L.C., 250 Muñoz Rivera Avenue, Suite 800, San Juan, Puerto Rico 00918-1813.
4. Debtor has sustained good faith negotiations with secured creditor Triangle REO PR 2 Corp. in order to reach an agreement.
5. Debtor is willing to obtain a settlement agreement and to pay an adequate protection payment, which permit Debtor to use the cash collateral.
6. The prohibition to use the proceedings of the rents and revenues generated by the resort is detrimental to the operation of the hotel, since it is the only income received by

Empresas Playa Joyuda, Inc., to operate the business and to comply with all its obligations.

7. If no cash from the rents and revenues can be used, there is no way that Debtor can comply with the obligations of its business, and there is no way to satisfy the necessities of the guest that has booked to stay in the resort. If the Bankruptcy Court prohibit the use of the proceeds from the rents and revenue generated by Debtor's real estate property, it will cause a continued and irreparable harm to the image of the hotel and to the operation of the business, and will force Debtor to cease operations until the use of cash collateral is approved by this Court or by secured creditor Triangle REO PR 2 Corp.
8. Also, the fact that no employee will be able to collect their income will have a detrimental effect on the confidence they have on their employer and a terrible effect in their families' economic situation during these next days. This damage to third parties can be avoided if this Court permits the use of the proceedings of the rent and revenues generated by the resort.
9. Debtor understands that it needs an amount of the proceeding not less than the amount established in the budget prepared for the months of November, December and January, in order to comply with all the obligations it has and to continue the ordinary course of its business. Debtor needs at least the following amounts: \$26,600.00 for the month of November, 2016; \$35,500.00 for the month of December, 2016; and \$29,300.00 for the month of January, 2017
10. As an adequate protection, Debtor is willing to make a monthly payment adjust to the reality and critical economical situation of Debtor's business, which is reflected in the Monthly Operating reports filed in this Bankruptcy case.

I attest, under penalty of perjury, that the information in this declaration is the truth, to the best of my knowledge and belief.



In Caguas, Puerto Rico, on November 30, 2016.

*//s// Julio César Pérez Perichi*

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**JULIO CÉSAR PÉREZ PERICHI**  
**PRESIDENT OF EMPRESAS PLAYA JOYUDA, INC.**

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

**IN RE:**

**EMPRESAS PLAYA JOYUDA, INC.**

**DEBTOR**

**CASE NO. 15-09594 EAG**

**CHAPTER 11**

**PROPOSED ORDER**

Debtor's Emergency Motion requesting authorization to use cash collateral in the amounts of \$26,600.00 for the month of November, 2016; \$35,500.00 for the month of December, 2016; and \$29,300.00 for the month of January, 2017 is hereby granted. The Court enters a bridge order authorizing the use of cash collateral of creditor, Triangle REO PR 2 Corp., on an interim basis until \_\_\_\_\_ when the Court will hold a hearing on the matter, if contested.

This order will become final and effective immediately upon being entered in docket.

**IT IS SO ORDERED.**

In Ponce, Puerto Rico, this \_\_\_\_\_ of November of 2016.

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Edward A. Godoy  
U.S. Bankruptcy Judge