

**UNITED STATES BANKRUPTCY CODE
DISTRICT OF PUERTO RICO**

In re

PICHI'S, INC.

Debtor

CASE NO: 11-06583 (MCF)

CHAPTER 11

**URGENT JOINT MOTION FOR ENTRY OF INTERIM ORDER AUTHORIZING
POST-PETITION SENIOR SECURED FINANCING, USE OF
CASH COLLATERAL, AND ADEQUATE PROTECTION**

TO THE HONORABLE MILDRED CABÁN FLORES,
U.S. BANKRUPTCY JUDGE:

COME NOW PICHI'S, INC. (the "Debtor" or "Pichi's") and Banco Popular de Puerto Rico ("Banco Popular"), each by their undersigned counsel and respectfully state and request as follows:

Preliminary Statement

The Debtor and Banco Popular have agreed to the Stipulation contained herein, whereby, among other things, Banco Popular consents to the Debtor's limited use of certain of Banco Popular's cash collateral and to provide Debtor with debtor-in-possession financing to satisfy certain operating expenses solely under and pursuant to the terms of the Stipulation and the adequate protection provided herein. Currently, the Debtor requires the use of the Cash Collateral and the use of the DIP Facility (as defined below) to satisfy operating expenses and continue operating its business. Therefore, Banco Popular and the Debtor respectfully submit that the terms of this Stipulation should be approved as they are critical and necessary to provide and assure the continuity of the Debtor's business, the preservation of the going concern value of the Debtor's estate and the ability to maximize prospects for recoveries to the Debtor's stakeholders.

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 meaning 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, 362, 363, 364, 365, 1107 and 1108 of the Bankruptcy Code, Fed. R. Bank. P. 4001(b) and Local Bankruptcy Rule 4001-2.

Background

4. On August 3, 2011, the Debtor filed a voluntary petition for relief under the provisions of 11 U.S.C. Chapter 11, and as of that date has been managing its affairs and operating its business as debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. See Dkt. No. 1.

5. The Debtor and Westernbank Puerto Rico¹ (“Westernbank”) entered into the following agreements: (i) construction loan, conversion to permanent loan and security agreement (the “Construction Loan Agreement”) dated as of June 13, 2007, by and between the Debtor and Westernbank, pursuant to the terms and conditions of which Westernbank made available to the Debtor a loan in the principal amount of \$27,972,658.00, for the purposes therein set forth; (ii) line of credit agreement (Contrato de Línea de Crédito) dated as of May 21, 2008 as amended on November 24, 2009 by the Addendum (the “Addendum Agreement A”) and again on February 10, 2010 by the Second Addendum to (the “Addendum Agreement A-1”) (such

¹ All references to Westernbank Puerto Rico include Banco Popular de Puerto Rico –and vice versa- as the owner, as of April 30, 2010, of all credit relationships with Debtor.

credit agreement, as amended by the Addendum Agreement A and the Addendum Agreement A-1, referred to as the “Credit Agreement A”), by and between the Debtor and Westernbank pursuant to the terms of which Westernbank made available to the Debtor a line of credit facility in the principal amount of \$1,457,025 for the purposes therein set forth; (iii) line of credit agreement dated as of May 21, 2008, as amended on February 10, 2010 by the Addendum (the “Addendum Agreement B”) (such credit agreement, as amended by the Addendum Agreement B, the “Credit Agreement B”), by and between the Debtor and Westernbank, pursuant to the terms of which Westernbank made available to the Debtor a line of credit facility in the principal amount of \$2,203,551 for the purposes therein set forth; (iv) the permanent loan agreement dated as of February 10, 2010 (“Loan Agreement”) by and between the Debtor and Westernbank, pursuant to the terms of which Westernbank would convert the credit facility extended to the Debtor in the Construction Loan Agreement into a permanent long term loan² (“Term Loan”) in the principal amount of \$27,472,658.00, for the purposes therein set forth; (v) the line of credit agreement (Línea de Crédito Comercial a Corporaciones) dated as of February 10, 2010 (“Credit Agreement C”), by and between the Borrower and the Bank, pursuant to the terms of which Westernbank made available to the Debtor a line of credit facility (“Credit Line C”) in the principal amount of \$500,000, for the purposes therein set forth. The Construction Loan Agreement, the Credit Agreement, the Credit Agreement B, the Loan Agreement and the Credit Line C collectively referred to as the “Financing Agreements.”

² Having fully completed the construction of one hundred thirty-six (136) hotel rooms, casino and related facilities of Pichi's Convention Center Hotel and Casino, located in Guayanilla, Puerto Rico, the Borrower requested to the Bank, and the Bank agreed, under terms, conditions and covenants established therein, to convert the Credit Facility (Construction Loan) with the outstanding balance of \$27,472,658.00 to a permanent long-term loan.

6. To secure the payment and performance of all their obligations under the Financing Agreements, the Debtor granted to Westernbank, among other things, a continuing security interest over all or nearly all of their respective assets (collectively, the “Collateral”).

7. As inducement for, and in consideration of, the Bank making loans and advances and providing other financial accommodations to the Debtor under the Financing Agreements (and, to secure and satisfy the obligations under the Financing Agreements), the Debtor (among others) executed the following additional documents (each as may have been subsequently amended or modified): (i) certain promissory notes; (ii) individual and corporate guarantees; (iii) certain mortgage notes; (iv) certain deeds of mortgages; (v) assignment of personnel life insurance policies; (vi) certain collection account agreements; (vii) certain security agreements; (viii) assignment of lease contracts; (ix) assignment of proceeds agreements; and (x) any other agreements, financing statements, documents and instruments at any time executed and/or delivered in connection with the foregoing documents or related thereto (collectively with the Financing Agreements, the “Loan Documents”).

8. Further, the Debtor also executed the following documents:

- Assignment of Proceeds Agreement (Contrato de Cesión de Pago y/o Gravamen Mobiliario de la Compañía de Turismo del Estado Libre Asociado de Puerto Rico), dated as of November 24, 2009 (the “Assignment of Proceeds A”).
- Assignment of Proceeds Agreement (Gravamen Mobiliario y/o Pignoración) dated as of December 16, 2009 (the “Assignment of Proceeds B”), where the Debtor granted and transferred to Westernbank all of its right, title and interest to the proceeds, net of payments established by Act 16 of 1967 to the Puerto Rico Tourism Company (the

“Tourism Company”), of the operation of all slot machines at Pichi’s Convention Center Hotel and Casino (the “Tourism Company Revenue”).

9. Through the Assignment of Proceeds A and Assignment of Proceeds B, the Debtor assigned all of the Tourism Company Revenue to Westernbank. Copy of the Assignments Agreements and notifications are included as **Exhibit A**. The Tourism Company has acknowledged to deposit such revenue directly into an account controlled by Banco Popular. Banco Popular and the Debtor submit that this revenue was assigned by Debtor to Banco Popular, and, as such it is being made available to the Debtor as part of the DIP Funding.

10. As of the Petition Date, the Debtor recognizes and affirms that the following amounts are currently outstanding, due and payable under the Debtor’s Financing Agreements and the other Loan Documents: \$31,633,243.00 (the “Loans”).

Stipulation and Agreement on Cash Collateral and DIP Funding for Court Approval

11. The Debtor requires the use of the cash and revenues generated by the hotel and the casino (excluding the Tourism Company Revenue) (collectively, the “Cash Collateral”) to pay (among other things) present operating expenses in order to secure the going-concern of the business. Therefore, the Debtor has requested from Banco Popular that Banco Popular agree and authorize the Debtor to use certain of Banco Popular’s Cash Collateral during the Bankruptcy Case. Further, the Debtor has requested that Banco Popular provide a certain debtor in possession financing, to cover operating expenses in the event that the Cash Collateral is insufficient to cover such expenses. Banco Popular is willing to authorize such use and provide such financing solely under, and in reliance upon, the terms and conditions and adequate protection set forth herein.

12. Section 363(c)(2) of the Bankruptcy Code provides that the Debtor may not use, sell or lease Cash Collateral unless: “(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. §363(c)(2).

13. Pursuant to Section 361 of the Bankruptcy Code, the Debtor may provide adequate protection by making cash payments, providing additional or replacement liens, or other manners.

14. The Debtor and Banco Popular have negotiated and agreed upon the terms of adequate protection that will entitle the Debtor to use Banco Popular’s Cash Collateral and have access to the DIP Financing on a consensual basis, as detailed and pursuant to the terms described below:

- **Authorized Use of Cash Collateral.** Pursuant to this agreement, the Debtor shall be authorized to use the Cash Collateral solely to satisfy the permitted expenditures detailed and described and at the times set forth (the “Permitted Expenditures”) in the budget (the “Budget”, attached hereto as **Exhibit A**). The total authorized use of Cash Collateral for the period that commenced on August 3, 2011 and ending August 31, 2011, (the “Stipulation End Date”) is shown in the attached **Exhibit A**. Banco Popular’s consent to the use of Cash Collateral and the Debtor’s right to use the Cash Collateral shall terminate automatically on the Stipulation End Date, unless otherwise agreed to in unity by Debtor and Banco Populary (provided, however, that the adequate protection provisions and other stipulations provided to Banco Popular in this Stipulation shall continue in effect). Further, nothing contained herein shall obligate Banco Popular to extend any use of the Cash Collateral beyond the

Authorized Cash Collateral or the Stipulation End Date. Finally, the Debtor is not authorized to use the Cash Collateral beyond the Authorized Cash Collateral, for any expenditure other than the Permitted Expenditures, nor beyond the Stipulation End Date.

- **DIP Facility.** A total aggregate amount that shall not exceed at any time through the Stipulation End Date the amount of \$207,000 (the “DIP Facility”) in debtor-in-possession senior secured superpriority priming revolving credit facility funded pursuant to the Tourism Company Revenue received by Banco Popular and that was assigned to Banco Popular by the Debtor to be made available to the Debtor to satisfy the Permitted Expenses in the Budget only if there is insufficient Cash Collateral to satisfy such Permitted Expenses. Outstanding amounts under the DIP Facility shall accrue interest until indefeasible payment in full in cash at the same rate as under the Loan Documents.
- **DIP Facility Security.** The Debtor hereby grants to Banco Popular a perfected security interest in and lien (as defined in section 101(37) of the Bankruptcy Code) (the “DIP Liens”) upon all prepetition and postpetition properties and assets of the Debtor, whether owned on the Petition Date or at any time thereafter acquired or created by the Debtor or in which the Debtor now has or at any time in the future may acquire any right, title or interest (collectively, the “Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise), of the Debtor’s obligations under the DIP Facility, including but not limited to all tangible and intangible real (owned and leased) and personal property of the Debtor (including but not limited to accounts,

chattel paper, contracts, deposit accounts, goods, documents, inventory, equipment, general intangibles, investment property, intellectual property and intellectual property licenses, investment property, real property, cash, securities accounts, commercial tort claims, other claims, chooses in action, causes of action, letter of credit rights, intercompany notes, leases, leasehold improvements, rents, and all proceeds and supporting obligations, all books and records pertaining to the Collateral, and products and proceeds of any and all of the foregoing and all collateral security and guarantees given with respect to any of the foregoing). The following terms which are defined in the Uniform Commercial Code in effect in the Commonwealth of Puerto Rico, and titled as the “Commercial Transactions Act”, on the date hereof, are used in this Section 17 as so defined: accounts, certificated security, securities, chattel paper, documents, equipment, general intangibles, goods, instruments and inventory.

- **DIP Facility Priority.** All obligations under the DIP Facility shall: (i) have superpriority administrative claim status, pursuant to section 364(c)(1) of the Bankruptcy Code, over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code (the “Superpriority DIP Claims”); and (ii) be secured, pursuant to section 364(d)(1) of the Bankruptcy Code, by perfected first priority, priming security interests and liens in and on all Collateral, not subject to subordination, or any other liens, including without limitation, the prepetition liens (the “Prepetition Loan Agreement Liens”) granted to or for the benefit of Banco Popular under the Prepetition Loan Documents, which liens in each case shall be primed and made subject to and subordinate to the perfected first

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- priority priming liens (the “Priming DIP Liens”) to be granted to Banco Popular; and
- (iii) be secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by perfected first priority security interests and liens not subject to subordination, in and on all Collateral that is not otherwise subject to a valid, perfected and unavoidable lien existing as of the Petition Date.
- **Adequate Protection - Replacement Liens.** Pursuant to Sections 361 and 363 of the Bankruptcy Code, as adequate protection for Banco Popular, the Debtor hereby grants to Banco Popular a replacement lien and a post-petition security interest on all of the assets and Collateral acquired by the Debtor from the Petition Date through the Stipulation End Date, as provided in the Loan Documents, as entered into pre-petition, to the same extent and priority, and on the same types of property, as Banco Popular’s liens and security interests in the pre-petition Collateral (the “Replacement Liens”). The Replacement Liens shall be deemed effective and perfected as of the Petition Date without the necessity of the execution or filing by the Debtor or Banco Popular of any additional security agreements, pledge agreements, financing statements or other agreements.
 - **Additional Adequate Protection – Audit Rights.** Pursuant to Sections 361 of the Bankruptcy Code, as additional adequate protection, the Debtor shall allow Banco Popular to audit the Debtor’s books and records and shall provide access to the same.
 - **Additional Adequate Protection - Sale Proceeds.** As additional adequate protection, the Debtor hereby agrees that upon the consummation of any sale of substantially all of the Debtor’s assets encumbered in favor of Banco Popular, and in any event, if not earlier paid, upon the effective date of any plan confirmed in the

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- Bankruptcy Case, the proceeds of such sale or funding under such plan shall be paid immediately and indefeasibly to Banco Popular for its benefit in an amount equivalent to the total amount of the Loans, plus any post-petition interest and/or charges that continue to accrue in accordance with the Bankruptcy Code.
- **Additional Adequate Protection - Section 506(c) Waiver.** As additional adequate protection, except as may be subsequently expressly agreed to in writing with Banco Popular, the Debtor hereby covenants and agrees to waive any and all rights under Section 506(c) of the Bankruptcy Code as to any of Banco Popular's Collateral.
 - **Additional Adequate Protection - DIP Accounts.** As additional adequate protection, the Debtor will grant Banco Popular access to monitor its debtor-in-possession accounts with Banco Popular and the payments and deposits made therein.
 - **Events of Default.** The occurrence or existence of any of the events set forth herein shall constitute an event of default under this Stipulation (each, an "Event of Default" and collectively, "Events of Default"): (i) Debtor shall fail to pay any of the obligations under the DIP Facility on the due date thereof; or (ii) any representation, warranty or other written statement to Banco Popular by Debtor or by an authorized representative on behalf of Debtor proves to have been false or misleading in any material respect when made; or (iii) Debtor shall breach any covenant or obligation contained in this Stipulation; or (iv) the occurrence of any event since the Petition Date that has or would reasonably be expected to have a material adverse effect on (a) Debtor's condition (financial or otherwise), businesses, operations or property of Debtor, (b) the ability of Debtor to fully and timely perform its obligations under this Stipulation; provided, that (i) the filing of the Bankruptcy Case and (ii) any events of

default occurring under the Prepetition Loan Agreement shall not be taken into consideration (a “Material Adverse Change”); or (v) any lien on any of the Collateral or super-priority claim which is *pari passu* with or senior to the DIP Liens or Superpriority DIP Claims of Banco Popular shall be granted or Debtor shall file a motion seeking approval of any such lien or super-priority claim.

- **Remedies Events of Default.** At any time an Event of Default exists or has occurred and is continuing, Banco Popular, unless such Event of Default has been waived in writing by Banco Popular, (i) the commitment of Banco Popular to provide funds under the DIP Facility and the Debtor’s authority to use the Cash Collateral shall automatically terminate (unless such termination has been waived by Banco Popular in writing), and (ii) the due date for payment of all DIP Facilities obligations shall be automatically accelerated.
- **Ratification of Loan Documents.** The Debtor hereby: (i) consents to the transactions 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 the Debtor’s obligations under the Loan Documents; (ii) acknowledges and agrees that the guarantees (and all security therefor) contained in the Loan Documents are, and shall continue to remain, in full force and effect after giving effect to this Agreement; and (iii) ratifies the Financing Agreements, the guarantees and the other Loan Documents.
- **Ratification of Obligations.** The Debtor acknowledges, represents, covenants, and agrees with Banco Popular that (i) the Debtor’s obligation to pay in full the outstanding balance of principal of the Loans and any other sums due to Banco

Popular including, without limitation, accrued interest under the Financing Agreements, is valid, binding and enforceable in all respects; (ii) the Debtor's obligations under the Financing Agreements, as well as any and all of its other obligations under any of the other Loan Documents (including, without limitation, the guarantees and this Stipulation) are valid, binding and enforceable in all respects; and (iii) the Debtor's obligations to Banco Popular are absolute and unconditional, and – as of this date -- there exists no right of setoff or recoupment, counterclaim or defense of any nature whatsoever to payment or performance of any such obligations. Each of the Debtor's obligations to Banco Popular are not subject to any defenses, either in law or in equity, or otherwise, including without limitation, any offsets, claims or counterclaims against Banco Popular and any and all such defenses, offsets and claims are hereby expressly and forever waived and released. The Debtor further acknowledges and affirms that Banco Popular has faithfully, and in good faith, performed and discharged all of Banco Popular's obligations under the Financing Agreements and the other Loan Documents.

- **Insurance.** The Debtor agrees to maintain adequate insurance on all of the Collateral from and after the Petition Date, and to (a) list Banco Popular as an additional insured and loss payee under the corresponding insurance policies, and (b) upon request, provide to Banco Popular evidence of such insurance (the "Insurance Obligation").
- **Continuing Obligation.** The Debtor's obligation to grant the Replacement Liens, SuperPriority Claims, and the Insurance Obligation, and their representations, covenants and obligations under this Stipulation shall: (i) continue in full force and effect until all of the Debtor's obligations under the Loan Documents have been

satisfied in full; and (ii) be binding upon any successor to the Debtors including, but not limited to, any Chapter 11 trustee or any trustee appointed in any Chapter 7 case of Debtor in the event of a conversion. Furthermore, the terms of this Stipulation shall be incorporated in full into any plan of reorganization or liquidation submitted by the Debtor including, among others, the full payment of the Loans under the Bankruptcy Code. Further, such plan of reorganization shall provide and request that the Court shall retain jurisdiction to enforce the terms of this Stipulation.

- **Reservation of Rights.** Notwithstanding anything to the contrary contained in this Stipulation, Banco Popular shall have the right to seek any relief it deems necessary or appropriate before this Court including, but not limited to, a motion seeking (a) relief from the automatic stay upon any ground or cause in the event of a change in circumstances; and/or (b) adequate protection in addition to that provided for 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 hereby ratifies, reaffirms, confirms, consents to and acknowledges all 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.

RESPECTFULLY SUBMITTED.

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to

the parties appearing in said system, including the U.S. Trustee, and that on this same date true copies of this stipulation has been sent by first class mail to Debtor's' Creditors Holding the 20 Largest Unsecured Claims; to the ***Secretary of Justice of Puerto Rico***, P.O. Box 9020192, San Juan, PR 00902-0192; to the ***Internal Revenue Service***, PO Box 7346, Philadelphia PA 19101-7346; ***Civil Process Clerk***, Bankruptcy Unit, Office of the U.S. Attorney for the District of Puerto Rico, Torre Chardon Suite 1201, 350 Carlos E. Chardon Street, San Juan, PR 00918; and the ***Attorney General of the United States***, Department of Justice, 950 Pennsylvania Avenue, NW, Washington DC 20530-0001.

San Juan, Puerto Rico, this 25th day of August, 2011.

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