

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

IN RE:  
**HALAIS GROUP, INC.**  
  
DEBTOR

**CASE NO. 16-01361 MCF**  
  
**CHAPTER 11**

**MOTION REQUESTING LOAN AUTHORIZATION UNDER 11 USCS § 364**

**TO THE HONORABLE COURT:**

**COMES NOW** debtor in possession (DIP) through the undersigned counsel, and very respectfully states and prays as follows:

**I. Introduction**

1. Halais Group, Inc., hereinafter also referred to as the debtor in possession, filed a Chapter 11 Bankruptcy petition on February 24<sup>th</sup>, 2016.

2. Since then, the debtor has made multiple efforts to get the necessary funding's in order to handle its financial duties, and at the same time, continue with the business operations.

3. Recently, Parliament Capital (hereinafter Parliament) has reviewed Halais group application for financing. In order to approve said loan, Parliament requested several conditions. Some of them states as follows (Exhibit 1):

***Collateral and Security:*** (i) first priority mortgage lien position on property number 60,075 of Caguas, Puerto Rico (collectively known as, the **"Property"**), together with all improvements, fixtures and equipment thereon; (ii) a first priority security interest in and over any and all assets and property, including, without limitation, equipment, fixtures, inventory, accounts, accounts

*receivables, equipment, contracts and general intangibles (including, without limitation, trademarks); (iii) a first priority lien and collateral assignment and security interest over all leases and Rents thereunder, and Other Revenues arising from or relating to the Property and any leases thereto; (iv) a first priority lien over the Applicants operational depository account; and (v) first priority pledge of and security interest over 100% of all the issued and outstanding direct and indirect ownership interests in the Applicant (all such collateral and security described in the foregoing clauses from (i) to (v) shall mean, collectively, the "Collateral"). The Loan shall also be subject to the creation of a lockbox account whereas all business accounts, rents and any other revenues arising from or relating to the Property and any leases thereto shall be deposited therein, at the sole discretion of Lender, which shall be pledged; and assigned to Lender. For the avoidance of any doubt, the term Rents and Other Revenues shall include, without limitation, any rental, proceeds, sale, commissions, revenues, fees, incentives or income produced by any billboards, telecommunication antenna, and/or any other advertisements activities affixed to or being carried out from the Property, as well as all proceeds and products of the foregoing, less expenses.*

## **II. Applicable Law**

4. The Bankruptcy Code, in order to delegate the power to administrate cases, expressly allows the trustee to obtain unsecured credit in the ordinary course of business if the trustee is authorized to operate the business<sup>1</sup>.

5. According to that section of the code, after notice and hearing, the court may authorize the trustee to incur in an unsecured debt, different than the ones provided by section (a)<sup>2</sup>.

6. If the trustee is unable to obtain unsecured credit allowable under section 503(b), the Bankruptcy Code allows, after notice and hearing, the court to authorize the attainment of credit or the incurring debt:

- a. With priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title.

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<sup>1</sup> 11 USCS §364 (a)

<sup>2</sup> 11 USCS §364 (b)

- b. Secured by a lien on property of the estate that is not otherwise subject to a lien or
- c. Secured by a junior lien on property of the estate that is subject to a lien.

7. In re Sterling Mining Co., 62 CBC2d 1100 (2009 Idaho), the Bankruptcy Court granted Chapter 11 debtor's motion under 11 USCS § 364 (c) to resume business operations, although company that owned the business and the company that possessed the business claimed that the agreement won't be enough to cover the amounts owed on lease and resume operations.

8. Bankruptcy Courts from other jurisdictions have even allowed debtor to incur in secured debt with super priority status by borrowing funds from debtor's mother, when the debtor was unable to obtain other financing, and the funds where necessary to maintain the property and preserve the value of it, to keep running business. In re Devlin (1995, BC MD Fla) 185 BR 376, 27 BCD 801, 9 FLW Fed B 76<sup>3</sup>.

### III. Details of the transaction

9. The proposed budget for the funds will be as follows:

<i><b>Creditor</b></i>	<i><b>Description</b></i>	<i><b>Amount</b></i>
<i>IRS claim</i>	Claim #2	\$71,202.35
<i>Swift Capital</i>	Pay off current balance claim #3	\$10,000
<i>Municipal Revenue Collection Center (CRIM)</i>	Secured portion of claim #4	\$54,827.94
<i>State Insurance Fund</i>	Priority portion of the claim #6	\$5,347.08

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<sup>3</sup> Even the fact that the intention of the DIP is to pay all secured and priority claims, these transaction will not affect adversely the potential for recovery of the unsecured non priority claims.

<i>Corporation (Fondo del Seguro del Estado)</i>		
<i>Bautista Cayman Asset Company</i>	Secured claim #7	\$420,000
<i>Department of Treasury</i>	Priority sales tax claim	\$41,879.05
<i>Department of Labor</i>	Priority portion of claim #11	\$1892.13
<b><i>TOTAL</i></b>		<b>\$605,148.55</b>

### Loan related expenses

Description	Amount
<b>4% prepaid interest</b>	\$28,000
<b>2% interest to be paid at the loan pay off</b>	\$14,000
<b>Application fee</b>	\$5,000
<b>2% Broker services charge (to be paid to Caribe Capital Advisors, LLC)</b>	\$14,000
<b>Legal fees retainer</b>	\$10,000
<b>Total</b>	<b>\$71,000</b>

10. The amount requested for the loan is \$700,000, and the current estimated potential expenses are near to **\$676,148.55** (sum of the amounts to be paid of each claim, and the loan related expenses).

11. This loan will consolidate all the creditor's secured and priority claims, that will make the reorganization plan more feasible.

12. The biggest benefit for the bankruptcy estate is that it will be possible to buy - at a discounted price- all the mortgage promissory notes under Bautista Cayman creditor control, for \$420,000 (claim #7, with a balance at the moment of filing of \$2,158,511.30).

13. If the loan is approved, the debtor will be in a better position to fulfill all secured and priority claims.

#### **IV. Conclusion**

14. We respectfully request from this honorable court to approve the loan in the amount of \$700,000.00 which proceeds will be distributed according to the aforementioned table.

15. We also request this court to grant a 5 days extension to file the proposed form of order, as established by the Puerto Rico LBR 4001-2(a).

**WHEREFORE**, Debtor prays this Honorable Court to grant this motion, granting 5 days to comply with the proposed form of order, and subsequently, approve the loan for the amount of \$700,000, which proceeds will be fairly distributed amongst creditors.

#### **RESPECTFULLY SUBMITTED**

In Caguas, Puerto Rico, this 21<sup>st</sup> day of July, 2017.

**NOTICE:** Within twenty one (21) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by

mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the clerk's office of the United States Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper 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; or (iii) in the opinion of the court, the interest of justice requires otherwise.

**CERTIFICATE OF SERVICE:** I CERTIFY that on this same date the foregoing document has been electronically filed WITH THE Clerk of the Court using the CM/ECF system which sends notification of such filing to all system's participants, including the U.S. Trustee's Office and the Trustee.

Specifically, and in compliance with Puerto Rico LBR 4001-2, the foregoing document has been notified to: (1) all creditors asserting an interest in the cash collateral, and, if known, their attorneys; (2) taxing authorities having a claim against the debtor; (3) debtor's twenty (20) largest unsecured creditors; any official committee appointed and serving in the case under 11 U.S.C. §; and any party that has requested service of all documents and notices in the case.

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