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16 Proposed Attorneys for Debtor
17 and Debtor-in-Possession

18 **IN THE UNITED STATES DISTRICT COURT**

19 **FOR THE NORTHERN MARIANA ISLANDS**

20 **BANKRUPTCY DIVISION**

21 In re
22 IMPERIAL PACIFIC
23 INTERNATIONAL (CNMI), LLC
24 Debtor and
25 Debtor-in-possession

26 Case No. 24-00002
27 (Chapter 11)

28 **MOTION FOR ORDER AUTHORIZING DEBTOR TO OBTAIN
POSTPETITION SECURED INDEBTEDNESS;
EXHIBITS "A" - "B"; DECLARATION OF HOWYO CHI**

Imperial Pacific International (CNMI), LLC, debtor and debtor-in-possession (the



1 “Debtor”), hereby moves this Court, pursuant to 11 U.S.C. §§ 105 and 364(c), and
2 Federal Rule of Bankruptcy Procedure 4001(c) and LBR 4001-2, for an order authorizing
3 the Debtor to incur secured debtor-in-possession financing (“DIP Financing”)
4 substantially on the terms set forth herein. In support of the Motion, the Debtor
5 respectfully represents as follows:

6 1. Entry of an order granting authority to obtain post-petition financing
7 pursuant to sections 364(c)(1) and (c)(3) of the Bankruptcy Code, to fund certain
8 expenses of the Debtor as set forth in the budget attached hereto as Exhibit “B” (the
9 “Budget”) through a post-petition loan of up to \$7,000,000.00 (the “DIP Facility”) from
10 Loi Lam SIT (the “DIP Lender”), pursuant to the terms set forth in the proposed term
11 sheet (the “DIP Term Sheet”) which is attached hereto as Exhibit “A.”
12
13

14 **JURISDICTION**

15 2. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C.
16 §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is
17 proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

18 **I. BACKGROUND**

19 3. On April 19, 2024, the Debtor filed a voluntary petition for relief under
20 Chapter 11 of the United States Bankruptcy Code.
21

22 4. The Debtor continues to operate its business and manage its properties,
23 affairs and assets as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

24 5. The Declaration of Howyo Chi in Support of First Day Motions filed
25 herewith is incorporated by reference.
26

27 6. None of the liens or security interests to be granted to the DIP Lender will
28 prime any valid, enforceable and binding liens or security interests of any prepetition

1 secured creditor on the assets of the Debtor existing as of the Petition Date. The DIP
2 Lender seeks a junior lien on the Debtor's leases.

3 **II. DEBTORS' PROPOSED POSTPETITION FINANCING ARRANGEMENT**

4 **A. NEED FOR POSTPETITION FINANCING**

5 7. In March, 2020, the Debtor was forced to cease casino operations due to
6 the COVID-19 pandemic. Since then, the Debtor has had no revenues. In 2021, the
7 Debtor's casino license was suspended due to non-payment of fees. The Debtor needs
8 additional capital to, among other things, pay its licensing fee to CCC and for general
9 operating expenses.
10

11 8. The significant terms of the DIP Term Sheet are as follows:¹

12 (a) Borrower: IMPERIAL PACIFIC INTERNATIONAL (CNMI), LLC

13 (b) DIP Lender: Loi Lam SIT

14 (c) Amount: The maximum loan amount under the DIP Credit Facility shall be
15 7,000,000 to be funded upon approval of the DIP Facility by the
16 Bankruptcy Court. Up to \$400,000.00 shall be immediately available
17 under the DIP Credit Facility upon entry of an interim order by the Court
18 approving the DIP Credit Facility, with the balance available upon entry of
19 a final order.

20 (d) Interest Rate: Simple interest at the rate of 10% per annum shall accrue.

21 (e) Default Interest: Default interest shall accrue at the rate of 12% per
22 annum.

23 (f) Use of Proceeds. The DIP Credit Facility shall be used to pay post-petition
24 administrative expenses of the Chapter 11 Case, including, but not limited
25 to, payment for maintenance and preservation of the property of the
26 Debtor's estate, rent, insurance, utility services, operating expenses and
court-approved professional fees and as such pre-petition expenses as may
be approved by the Bankruptcy Court, provided, however, that not less
than \$500,000 shall be "carved out" and set aside for (a) fees and expenses
of professionals employed at the expense of the estate (including

27 ¹ Capitalized terms in this summary not otherwise defined herein shall have the meanings
28 ascribed to such terms in the DIP Term Sheet.

1 attorneys, accountants and appraisers); and (b) U.S. Trustee quarterly fees
2 (“Carve Out”) as may be approved by the Bankruptcy Court, and as set
3 forth in the budget approved by the Lender, provided, however that the
4 Carve Out for any Committee professionals shall be limited to \$150,000.

5 (g) Security: The DIP Credit Facility shall be (a) secured by a junior mortgage
6 on [describe leases] pursuant to 11 U.S.C. § 364(c)(3); and (b)
7 “superpriority” status pursuant to 11 U.S.C. § 364(c)(1), provided,
8 however, that Lender’s priority shall be subject to the Carve Out.

9 (h) Fees and Expenses: Upon closing of the DIP Credit Facility, Borrower
10 will pay Lender’s reasonable fees and expenses.

11 (i) Events of Default. Customary defaults including, (a) failure to pay
12 principal, interest, fees and expenses when due; (b) violation of covenants;
13 (c) change of control; (d) granting of relief from automatic stay to any
14 creditor with a claim in excess of \$250,000 relief; (e) or a plan of
15 reorganization in a form reasonably acceptable to Lender regarding the
16 treatment of its DIP loan shall not have been filed by Debtor by July 1,
17 2024; (f) approved by the Court by February 28, 2025..

18 (j) Maturity Date. The DIP Credit Facility shall be due on or before
19 December 31, 2024, unless terminated earlier.

20 (k) Representations and Warranties. Usual and customary for facilities of this
21 nature, including the following: (i) organization, qualification and due
22 authorization of the Debtors; (ii) no undisclosed litigation; (iii) no breach
23 of law or regulations; (iv) all necessary third-party consents have been
24 obtained.

25 9. The Debtor and the DIP Lender have agreed to use the Budget attached
26 hereto which is identical to the Budget attached as Exhibit “B” to the Cash
27 Collateral Motion. The Debtors believe that the Budget is reasonable and the DIP Loan
28 will allow the Debtors to pay administrative expenses through July 31, 2024, including
any payments to the CCC as a result of any settlement that this Court may approve.

29 **III. THE DIP LOAN SHOULD BE APPROVED**

30 10. Approval of the DIP Financing will provide the Debtor with assurance of
31 having working capital during the Chapter 11 proceeding. Without working capital, the
32 Debtor will not be able to provide a return to its creditors. The credit provided under the

1 DIP Facility will enable the Debtor to preserve and enhance the value of its estate for the
2 benefit of all parties in interest. Accordingly, the timely approval of the relief requested
3 herein is imperative.

4 11. Section 364(c) of the Bankruptcy Code provides, among other things, that
5 if a debtor is unable to obtain unsecured credit allowable as an administrative expense
6 under section 503(b)(1) of the Bankruptcy Code, the court may authorize the debtor to
7 obtain credit or incur debt (a) with priority over any and all administrative expenses as
8 specified in sections 503(b) or 507(b) of the Bankruptcy Code, (b) secured by a lien on
9 property of the estate that is not otherwise subject to a lien, or (c) secured by a junior lien
10 on property of the estate that is subject to a lien. *See* 11 U.S.C. § 364. The Debtors
11 propose to obtain the financing set forth in the DIP Term Sheet by providing, inter alia, a
12 superpriority status and junior security interest pursuant to section 364(c)(1) and (c)(3) of
13 the Bankruptcy Code.
14

15
16 12. The Debtor is unable to obtain financing on terms better than those
17 proposed by the DIP Lender. Among the advantages of this DIP Loan, the DIP Lender is
18 not charging the typical up-front deposit, plus administrative, unused line, and exit fees.
19 Nor does the DIP Lender require any further due diligence. Finally, the loan does not
20 even mature until the end of December, 2024.
21

22 13. Provided that a debtor's business judgment does not run afoul of the
23 provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor
24 considerable deference in acting in accordance therewith. *See, e.g., In re Snowshoe Co.*,
25 789 F.2d at 1088; *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990)
26 (“cases consistently reflect that the court's discretion under section 364 is to be utilized
27
28

1 on grounds that permit reasonable business judgment to be exercised so long as the
2 financing agreement does not contain terms that leverage the bankruptcy process and
3 powers or its purpose is not so much to benefit the estate as it is to benefit parties in
4 interest”); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah
5 1981); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985).

6 14. The Debtor submits that the circumstances of this case require that the
7 Debtor obtain financing under section 364(c) of the Bankruptcy Code, and that the
8 exercise of the Debtor’s sound business judgment should be respected.
9

10 **IV. CONCLUSION**

11 WHEREFORE, the Debtor respectfully requests that the Court grant the Motion,
12 and enter an order: (a) authorizing the Debtor to enter into the DIP Facility substantially
13 on the terms attached hereto on an interim basis and authorizing the Debtors to borrow up
14 to \$400,000.00 from the DIP Lender; and (b) granting such other relief as the Court
15 deems fair and just.
16

17 DATED: Hagnata, Guam, April 23, 2024

18
19 /s/ Charles H. McDonald II
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23 Proposed Attorneys for Debtor
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