

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:

**PICCADILLY RESTAURANTS, LLC,
ET AL.,**

DEBTORS

* **CASE NO. 12-51127**
*
* **(JOINT ADMINISTRATION)¹**
*
* **CHAPTER 11**
*
* **JUDGE ROBERT SUMMERHAYS**

**DEBTORS' MOTION FOR AUTHORITY TO APPROVE LEASE EXTENSION
AGREEMENT WITH INCORPORATED RELEASE UNDER RULE 9019**

NOW IN COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"),² who submit this Motion for Authority to Approve Lease Extension Agreement with Incorporated Settlement Under Rule 9019 (this "Motion"). In support of their Motion, the Debtors attach as Exhibit A the Second Amendment to Office Lease, with the incorporated Release, with Pelican State Credit Union (the "Agreement"). In further support of the Motion, the Debtors show as follows:

JURISDICTION AND VENUE

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

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

² The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC and Piccadilly Investments, LLC.

BACKGROUND

2. On September 11, 2012 (the "Petition Date"), the Debtors filed for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. No trustee or examiner has been appointed. An Official Committee of Unsecured Creditors (the "Unsecured Creditors' Committee") was appointed in these procedurally consolidated Chapter 11 cases (collectively, the "Bankruptcy Case") on October 23, 2012.

4. The statutory predicates for the relief requested herein are §§ 105(a), 363(c)(1), 1107(a), and 1108 of the Bankruptcy Code and Bankruptcy Rule 9019.

THE HEADQUARTERS' LEASE

5. The Debtors currently have their headquarters and training center (the "Headquarters") on the first floor of the office building known as the Richards Building, located at 3232 South Sherwood Forest Boulevard, Baton Rouge, Louisiana. The Headquarters are leased to the Debtors pursuant to that certain Office Lease dated December 12, 2009, as amended by that certain First Amendment to Office Lease, effective December 16, 2011 (the "Headquarters' Lease"), by and between Piccadilly Restaurants, LLC, as lessee, and Pelican State Credit Union, as lessor ("Pelican"). The Headquarters' Lease is scheduled to expire on December 31, 2012.

6. For months, Pelican has made it clear that it would not and could not enter into any extensions of the Headquarters' Lease, because Pelican needed the office space for its own bank operations.

7. Before the unexpected commencement of the Bankruptcy Case, the Debtors were actively pursuing their options for a new headquarters, and were negotiating a lease with third

parties to move its headquarters to another location in Baton Rouge. After the filing of this Bankruptcy Case, however, the dynamics of the Debtors' lease negotiations have changed, and the Debtors are sensitive to the expectations of the constituents of this Bankruptcy Case. Based on these circumstances, the Debtors requested an extension of the Headquarters' Lease from Pelican. As of the filing of this Motion, the longest extension the Debtors have been able to obtain from Pelican is a 3-month extension, as described herein.

**THE SHORT-TERM EXTENSION AND INCORPORATED SETTLEMENT
OF ANY CLAIM RELATED TO THE SEPTEMBER RENT PAYMENT**

8. More particularly, the short-term extension of the Headquarters' Lease (the "Extension") will allow the Debtors to remain at their current Headquarters for an additional three (3) months. The Extension will give the Debtors indispensable time to locate replacement space for its Headquarters, taking into account the realities of both the market for rental space and this Bankruptcy Case.

9. Without the Extension, the Debtors would be forced to move at a critical time in the reorganization effort, and without sufficient time to locate and negotiate a suitable replacement lease.

10. As part of the consideration for the Extension, in addition to paying the same rent that the Debtors currently pay,³ the Debtors will release Pelican from any liability for the payment of September 2012 rent paid by the Debtors under on the Headquarters' Lease.

11. More particularly, the Debtors' check, dated September 1, 2012, in the amount of \$20,582.62 (the "September Rent Payment"), did not clear the Debtors' bank account, and thus was not paid until September 13, 2012, after the Petition Date.

³ The current rent payment to Pelican is \$20,582.62, and does not require any escalations, common area maintenance payments or utility charges. Pelican also holds one-month's rent as a deposit.

12. Although the September Rent Payment constitutes an unauthorized payment under section 549 of the Bankruptcy Code, the compromise of this claim is more than justified by the fact that (a) Pelican has an administrative expense claim under section 503(b)(1) and section 365(d)(3) for September Rent, inasmuch as the Debtors have occupied the Headquarters in September 2012, and (b) Pelican has agreed to enter into the Extension Agreement for the same rent as paid before the Petition Date. Therefore, as part of the Agreement, Pelican would receive a release of any claim under section 549, or any other voiding power action of the Bankruptcy Code, with respect to the September Rent Payment.

13. The Debtors have consulted with their secured lenders, acting through its Agent, Atalaya Administrative LLC, and they do not object to the relief sought in this Motion.

THE LEGAL STANDARD

14. Section 363(c)(1) of the Bankruptcy Code provides that, unless the court orders otherwise, a trustee may enter into transactions, including the use, sale or lease of estate property in the ordinary course of business, without notice and a hearing. Section 1107 of the Bankruptcy Code provides that a debtor in possession has all the rights of a trustee.

15. Although the Bankruptcy Code vests broad operating authority in debtors in possession, their discretion is not completely unfettered. Section 363(b) provides that a debtor-in-possession may enter into transactions, including the use, sale or lease of property, other than in the ordinary course of business only after notice and a hearing. As a practical matter, this means that creditors and other parties in interest, particularly the creditors' committee and other appointed committees, may have the opportunity to appear and question or oppose these non-ordinary course of business transactions and that courts will have an opportunity to scrutinize

them. If a non-ordinary course transaction is undertaken without notice and hearing, it may be avoided under section 549(a)(2)(B) of the Bankruptcy Code.

16. The purpose of section 363(b) is not to 'straightjacket' debtors in possession and "prevent [them] from responding quickly to normal business demands." *In re Leslie Faye Cos.*, 168 B.R. 294, 304 (Bankr. S.D.N.Y. 1994), *quoted in In re Crystal Apparel, Inc.*, 220 B.R. 816 (Bankr. S.D.N.Y. Apr. 15, 1998). Nor is it to get courts involved in "micro managing" day-to-day business affairs. *Bagus v. Clark (In re Buyer's Club Markets, Inc.)*, 5 F.3d 455, 457 (10th Cir. 1993). "Rather, the purpose is to give trustees and debtors in possession the flexibility to engage in ordinary transactions without judicial oversight, while protecting creditors and other parties in interest by giving them the opportunity to be heard when transactions are out of the ordinary and could materially affect their interests." 7 COLLIER ON BANKRUPTCY at ¶ 1108.02 (2012).

17. The Debtors respectfully suggest that, absent the settlement that is incorporated within the Agreement with Pelican, the Extension is the type of day-to-day business affairs that does not require Bankruptcy Court approval. Nevertheless, because Court approval is required where a compromise is involved, the Debtors seek authority to enter into the Agreement.

18. Bankruptcy Rule 9019(a) provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Pursuant to Bankruptcy Rule 9019(a), approval of a compromise settlement is within the sound discretion of this Court. *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mort. Corp.)*, 68 F.3d 914, 917 (5th Cir. 1994); *United States v. Alaska Nat'l Bank of North (In re Walsh Constr., Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982); *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986); *In re Resorts Int'l, Inc.*, 145 B.R. 412, 451 (Bankr. D.N.J. 1990). The

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standard for approval of a compromise is whether the proposed settlement is "fair and equitable" and "in the best interest of the estate." *Protective Comm. For Indep. Stockholders of TNT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Energy Co-Op., Inc.*, 886 F.2d 921, 927 (7th Cir. 1989).

19. In *In re Apex Oil Co.*, the court explained the meaning of the "fair and equitable" and "best interests of the estate" standards in connection with a proposed release of claims and causes of action:

This Court need not conclusively determine claims subject to compromise, nor find that the settlement constitutes the best result obtainable. Instead, this Court need only canvass the issues to determine that the settlement does not fall "below the lowest point in the range of reasonableness.

In re Apex Oil, 92 B. R. 847, 867 (Bankr. E.D. Mo. 1988) (citing *Cossof v. Rodman (In re W. T. Grant Co.)*, 699 F.2d 599, 608, 613 (2^d Cir. 1983).

20. In considering the fairness, reasonableness, and adequacy of a settlement, courts have considered the following factors:

- (a) the probability of success in the litigation;
- (b) the difficulties to be encountered in collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- (d) the paramount interest of the creditors.

Official Unsecured Creditors' Comm. of Pa. Truck Lines, Inc. v. Pa. Truck Lines, Inc. (In re Pa. Truck Lines, Inc.), 150 B. R. 595, 598 (E. D. Pa. 1992); *In re Grant Broadcasting of Phila., Inc.*, 71 B. R. 390, 395 (Bankr. E.D. Pa. 1984). The settlement need not be the best that the debtor could have achieved, but must only fall "within the reasonable range of litigation possibilities."

In re Penn Cent. Transp. Co., 596 F.2d 1102, 1114 (3d Cir. 1979) (citation omitted). In making

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its determination, a court should not substitute its own judgment for that of the debtor. *Neshaminy Office*, 62 B. R. at 803.

21. The settlement of any claim against Pelican regarding the September Rent Payment easily satisfies the “fair and equitable” and “best interest of the estate.” Not only does Pelican have an administrative expense claim for rent under the Headquarters’ Lease, but the consideration received for the execution of the Extension of the Headquarters’ Lease more than compensates for any remaining issue that might remain concerning the return of the September Rent Payment.

NOTICE

21. Notice of this Motion has been given to (a) the secured creditor, through Atalaya Administrative, LLC, and its counsel of record, Brent R. McIlwain and David F. Waguespack, (b) the largest unsecured creditors, the identity of which may be amended from time to time, (c) the twenty (20) additional random unsecured creditors, (d) all parties who have requested special notice pursuant to Bankruptcy Rule 2002, (e) the members of the Unsecured Creditors’ Committee, and (f) the Office of the United States Trustee. The Debtors submit that no further notice is necessary for this Court to enter an Order granting the relief requested herein.

WHEREFORE, the Debtors respectfully request that this Court grant it authority to enter into the Lease Extension Agreement with Settlement Agreement that is attached to this Motion as Exhibit A, and for such further relief as is just.

Respectfully submitted,

/s/ Elizabeth J. Futrell

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Piccadilly Food Service, LLC and

Piccadilly Investments, LLC

Second Amendment to Office Lease and Release

This Second Amendment to Office Lease and Release (this "Second Amendment"), effective as of _____, 2012, is entered into by and between:

Pelican State Credit Union, a Louisiana chartered credit union, whose address for purposes hereof is 3232 South Sherwood Forest Boulevard, Baton Rouge, Louisiana 70816 ("Lessor") and

Piccadilly Restaurants, LLC, a Delaware limited liability company, in the capacity as debtor and debtor-in-possession, whose address for purposes hereof is 3232 South Sherwood Forest Boulevard, Baton Rouge, Louisiana 70816 ("Lessee").

Preliminary Statements

A. Lessor and Lessee entered into that certain Lease Agreement (Office Lease) dated December 17, 2009 (the "Original Lease") whereby Lessor is leased to Lessee that certain office space containing 15,437 square feet located in the first floor known of the office building known as the Richards Building, located at 3232 South Sherwood Forest Boulevard, Baton Rouge, Louisiana.

B. Lessor and Lessee entered into that certain First Amendment to Office Lease on December 16, 2011 (the "First Amendment" and together with the Original Lease, collective ly and individually, the "Lease").

C. The term of the Lease runs through 11:59 p.m. on December 31, 2012.

D. Lessor and Lessee each desire to extend the terms of the Lease under the terms and conditions of this Second Amendment.

E. On September 11, 2012, Seller commenced that certain bankruptcy case pending in the United States Bankruptcy Court, Western District of Louisiana, Lafayette Division (the "Bankruptcy Court") styled: *In re Piccadilly Restaurants, LLC, et al*, Case No. 12-51127 (Lead Case).

F. Lessee paid Lessor rent for September 2012 with a check dated September 1, 2012 in the amount of \$20,582.67 (the "September Rent Payment"), which check did not clear the Lessee's bank account until September 13, 2012.

G. The September Rent Payment constitutes an unauthorized payment under Section 549 of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

H. As consideration to Lessor for Lessor granting the extension of the Lease term through March 31, 2013, Lessee desires to release Lessor and Lessor desires to be released, subject to Bankruptcy Court Approval, from any claim under Section 549 or any other voiding power action of the Bankruptcy Code, with respect to the September Rent Payment.

Agreement

For, and in consideration of the above statements and the mutual covenants and obligations set forth hereafter and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **Lease Term.** The term of the Lease is hereby extended for a period of three (3) successive calendar months, commencing on January 1, 2013 and extending through 11:59 p.m. on March 31, 2013 (the "Second Extended Term").

2. **Release.** Subject to Bankruptcy Court approval, Lessee hereby releases Lessor, from any claim under Section 549 or any other voiding power action of the Bankruptcy Code, with respect to the September Rent Payment.

3. **Introduction and Preliminary Statements.** The introduction and Preliminary Statements set forth above are acknowledged as true and correct and are incorporated herein as if set forth in full.

4. **Entire Agreement and Effect.** This Second Amendment sets for the entire agreement between the parties with respect to the subject matter of this Second Amendment. Except as amended and/or modified by this Second Amendment, the terms and conditions of the Lease shall remain in full force and effect. The Lease, as amended and/or modified herein, shall constitute the full, true, complete and correct agreement and understanding between the parties. In the event of a conflict between the terms and/or conditions of this Second Amendment and the terms and/or conditions of the Lease, the terms and/or conditions of this Second Amendment shall control.

5. **Successors, Transferees and Assigns.** This Second Amendment will inure to the benefit of and be binding upon the parties hereto and their respective successors, transferees and assigns.

6. **Opportunity to Consult Counsel.** The parties to this Second Amendment have had the opportunity to consult with counsel of their choice prior to executing this Second Amendment and have done so.

7. **Modifications.** This Second Amendment shall not be modified or amended in any respect except by written instrument executed by or on behalf of the parties in the same manner as this Second Amendment is executed.

8. **Attorneys' Fees.** If either party begins an action against the other arising out of or in connection with this Second Amendment, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit, as awarded by a court of competent jurisdiction.

9. **No Other Inducement.** No promise, representation, statement, or conduct by the parties hereto, or by any person acting on behalf of the parties hereto, other than the express provisions in this Second Amendment, has influenced any of the parties to enter into this Second Amendment.

10. **No Third Party Beneficiaries.** There are no third party beneficiaries of this Second Amendment. No provision of this Second Amendment is intended or shall be construed to confer upon or to give any person other than the parties to this Second Amendment, any rights, basis for reliance, or remedies under or by reason of this Second Amendment, or to create a cause of action for enforcement thereof.

11. **Governing Law.** This Second Amendment shall be governed by the laws of the State of Louisiana for all purposes, including its interpretation and enforcement.

12. **Severability.** In case any one or more of the provisions contained in this Second Amendment will or any reason be held to be invalid, illegal or unenforceable in any respect, such provision shall (i) be reformed to the minimum extent necessary to cause such provision to be valid, legal and enforceable while preserving the intent of the parties as expressed in, and the benefits to the parties provided by, this Second Amendment; or (ii) if such provision cannot be so reformed, such provision shall be severed from this Second Amendment and an equitable adjustment shall be made so as to give effect to the intent so expressed and the benefits so provided. Such holding, reformation or severance shall not affect or impair the legality, validity or enforceability of any other provision of this Second Amendment.

13. **Counterparts.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

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SIGNED in the presence of the undersigned competent witnesses on the dates set below our names.

WITNESSES:

(Print Name)

(Print Name)

WITNESSES:

(Print Name)

(Print Name)

PICCADILLY RESTAURANTS, LLC,
in the capacity as debtor and debtor-in-possession

By: _____
THOMAS J. SANDEMAN, CFO

Date: _____

PELICAN STATE CREDIT UNION

By: _____

Date: _____