

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:) Chapter 11
)
BAY CIRCLE PROPERTIES, LLC, *et al.*¹) Case No.: 15-58440-wlh
) (Jointly Administered)
Debtors.)
_____)

MOTION FOR ORDER APPROVING SALE OF PROPERTY FREE AND
CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES

COMES NOW Sugarloaf Centre, LLC, a debtor in the above-captioned case (the “Debtor”), and moves this Court for entry of an order pursuant to Sections 105(a) and 363 of Title 11, United States Code (the “Bankruptcy Code”) and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) approving the sale of certain real property and improvements to Sachin Patel or his assignee (“Purchaser”), free and clear of all liens, claims, and encumbrances, for a purchase price of \$1,340,000.00, pursuant to the Agreement for the Sale and Purchase of Real Property attached hereto as Exhibit “A” (the “Agreement”). The subject property is more specifically identified in the Agreement (the “Property”)

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are Bay Circle Properties, LLC (1578), DCT Systems Group, LLC (6978), Sugarloaf Centre, LLC (2467), Nilhan Developers, LLC (6335), and NRCT, LLC (1649).

In support of this Motion, the Debtor shows the Court as follows:

JURISDICTION

1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On May 4, 2015 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the Clerk of this Court. The Debtor continues to operate its business as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. The Property which is the subject of this Motion consists of 2.68 acres of vacant land at 1930 Satellite Boulevard, Gwinnett County, Georgia.

4. SIMBA Global PTY LTD (“SIMBA”) holds a first in priority lien on the Property pursuant to a Deed to Secure Debt, Security Agreement, Assignment of Rents and Fixture Filing dated October 28, 2016, executed by Debtor in favor of SIMBA, recorded at Deed Book 54702, Page 0138, of the Gwinnett County, Georgia records (the “Security Deed”). The Security Deed encumbers additional property of the Debtor and secures repayment of a note in the original principal amount of \$7,500,000, as approved by the Court on October 28, 2016 [Doc. No. 454].

5. The Debtor seeks authority to sell the Property to the Purchaser, pursuant to the Agreement for a price of \$1,340,000.00 to be paid all in cash at closing. The Purchaser is an unaffiliated third party which negotiated the Agreement on an arm's length basis. The sale of the Property shall be free and clear of all liens, claims and encumbrances pursuant to 11 U.S.C. § 363. The Debtor further seeks authorization to make disbursements and execute and deliver all necessary deeds, affidavits, certificates and other closing documents necessary to consummate the sale.

6. The Debtor seeks authority to pay, in its discretion, the cost to cure title objections that may arise, as more fully set forth in the Agreement.

PROPOSED SALE OF THE PROPERTY

7. The Debtor proposes to enter into an Agreement which provides for the sale of the Property to the Purchaser.

8. The pertinent terms of the Agreement and the resulting transaction are summarized as follows:

- Payment by the Purchaser of \$1,340,000.00 by wire transfer of federal funds at closing, adjusted by earnest money payment;
- Debtor shall pay real estate transfer taxes, pro-rated ad valorem taxes for the year of closing to the closing date, and Debtor's attorney's fees. Debtor will not be responsible for any commissions in connection with the proposed sale.;

- The Agreement is not contingent on any financing and is a cash offer;
- The Purchaser is paying an earnest money deposit of \$50,000;
- The Purchaser has a sixty (60) day inspection period;
- If the Agreement is not approved by the Court within forty-five days of execution by the parties, either party may terminate the Agreement.

9. Pursuant to Bankruptcy Rule 2002(a)(2) and (c), the Debtor is required to notify, *inter alia*, the Debtor's creditors of a proposed sale of the assets outside of the ordinary course of business. This Motion and an accompanying Notice of Hearing will be served on all creditors of the Debtor.

AUTHORITY

10. Courts afford a debtor substantial deference in formulating procedures for selling assets. See, e.g., Official Committee of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.), 147 B.R. 650, 656-57 (S.D.N.Y. 1992); In re 995 Fifth Ave. Assoc., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989).

11. The paramount goal for any proposed sale of the property of a bankruptcy estate is to maximize the proceeds received by the estate. See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.), 107 B.R. 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to

enhance the value of the estate at hand”); Integrated Resources, 147 B.R. at 659 (“It is a well-established principle of bankruptcy law that the objective of bankruptcy sales and the Debtors’ duty with respect to such sales is to obtain the highest price or overall greatest benefit possible for the estate.”) (quoting In re Atlanta Packaging Prods., Inc., 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)).

12. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” A debtor in possession is given these rights by Section 1107(a) of the Bankruptcy Code. Moreover, Section 105(a) of the Bankruptcy Code provides that the bankruptcy courts “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].”

13. The proposed use, sale, or lease of property of the estate may be approved under Bankruptcy Code Section 363(b) if it is supported by sound business justification. See Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); accord Stephens Indus. V. McClung, 789 F.2d 386, 389-90 (6th Cir. 1986). Moreover, pursuant to Section 105 of the Bankruptcy Code, the Court has expansive equitable powers to fashion any order or decree which is in the interests of preserving or protecting the value of a

debtor's assets, see, e.g., In re Chinichian, 784 F. 2d 1440, 1443 (9th Cir. 1986), such as structuring an orderly sale process.

14. As set forth in this Motion, the Debtor believes that good cause exists to authorize the sale of the Property on the terms prayed for in this Motion.

15. Pursuant to the Bankruptcy Rule 6004 and Section 363(f), the sale of the Property to the Buyer will be free and clear of all liens, claims, interests and encumbrances. The purchase price of \$1,340,000.00 represents the fair market value of the Property. The Debtor proposes that the liens of SIMBA and of any other lienholders, if any, attach to the proceeds of the transaction received by the Debtor, with the same priority and validity that such liens existed on the Property in accordance with Section 363(f), subject to the Debtor being permitted to make the proposed disbursements set forth in this Motion.

16. The Debtor does not require the Property in order to successfully reorganize in bankruptcy. The sale of the Property will allow the Debtor to receive the maximum value for the Property.

NOTICE

17. Notice of this Motion will be given in accordance with Bankr. R. 2002.

WHEREFORE, the Debtor requests that the Court enter an Order approving the sale of the Property to Purchaser pursuant to a contract substantially in the form

attached hereto as Exhibit "A" , free and clear of liens, claims and encumbrances, granting the Debtor authority to execute and deliver any and all closing documents, deeds, affidavits, closing statements, resolutions as may be necessary to consummate the sale of the Property and to make the disbursements as set forth in this Motion.

This 21st day of August, 2017.

\s\ John A. Christy
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EXHIBIT "A"

**AGREEMENT FOR THE SALE AND
PURCHASE OF REAL PROPERTY**

THIS SALE AND PURCHASE AGREEMENT ("Agreement"), made by and among **Sugarloaf Centre, LLC**, a Georgia limited liability company (herein called "Seller"), and **Sachin Patel** (herein called "Purchaser"), and **The Title Guaranty and Trust Company of Chattanooga**, a Tennessee Title Company (herein called "Escrow Agent"). The Effective Date of this Agreement shall be the date on which the last party executes the Agreement.

This Agreement is subject to approval by the Bankruptcy Court in *In re: Sugarloaf Centre, LLC*, Case No. 15-58442-wlh, United States Bankruptcy Court, Northern District of Georgia, Atlanta Division. Seller will within five (5) business days after execution of this Agreement by Seller and Purchaser submit this Agreement for approval by the Bankruptcy Court. If the Bankruptcy Court does not issue an order (the "Approval Order") approving this Agreement within forty-five (45) days after the Effective Date, either Seller or Purchaser may terminate this Agreement by written notice to the other at any time thereafter, provided prior to Bankruptcy Court issuance of the Approval Order. In the event of such termination neither party shall have any further liability under this Agreement.

WITNESSETH:

WHEREAS, Seller owns that certain tract of real property located in Gwinnett County, Georgia described on Exhibit "A" attached hereto and incorporated herein (herein referred to as the "Land"); and

WHEREAS, Purchaser desires to purchase the Property, including any and all rights, easements, and appurtenances pertaining thereto.

WHEREAS, on the terms and conditions hereinafter set forth Seller desires to sell the Property to Purchaser and Purchaser desires to buy the Property from Seller;

NOW THEREFORE, for and in consideration of **TEN AND NO/100 DOLLARS (\$10.00)** in hand paid by Purchaser to Seller and the mutual promises contained herein, the receipt, adequacy and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree that the foregoing provisions are incorporated in this Agreement as integral hereto and further as follows:

ARTICLE 1.

Agreement to Sell and Buy

1.1 **Land.** Seller shall sell to Purchaser, and Purchaser shall buy from Seller the Land, TOGETHER WITH any and all rights, easements, awards, and appurtenances, pertaining thereto (herein collectively called the "Property").

1.2 **Quality of Title.** Seller shall convey to Purchaser good, marketable and insurable fee simple title to the Property using Georgia Bar Association "Title Standards" and the Land shall be insurable by a national title company selected by Purchaser at standard rates without

exception other than the Permitted Exceptions as herein defined by limited warranty deed, free and clear of any and all liens, claims of lien, preliminary notices of lien, judgments, leases, deeds to secure debt, mortgages, security agreements, except for any matters that Purchaser waives in accordance with Section 1.3 hereof (herein called the "Permitted Exceptions").

1.3 Title Examination and Objections.

1.3.1 Purchaser, at Purchaser's expense, shall have Seller's title to the Land examined twenty (20) days prior to the last day of the Inspection Period defined below. Purchaser shall give notice to Seller on or before five (5) days prior to the last day of the Inspection Period of any title objections disclosed by such examination which are unacceptable to Purchaser. If Purchaser fails to give any such notice with respect to any title objections, then Purchaser shall be deemed to have waived such title objections. Purchaser shall have the continuing right to update such examination of title from time to time until the expiration of the Inspection Period and to give Seller notice of any additional title objections. Such additional title objections shall only be as matters of record since the date of the prior title examination. Seller shall be solely responsible for the cost incurred in clearing all such title objections, if any, at closing ("Closing"). Seller is not required to clear any title objection but may do so at Seller's election.

1.3.2 If, prior to Closing, Seller fails to satisfy or cure any such title objections of which it is so notified, then Purchaser shall by written notice to Seller elect one of the following:

1.3.2.1 To waive such title objections, in which event such title objections shall become part of the Permitted Exceptions, and to close the transaction contemplated hereby in accordance with the terms of this Agreement; or

1.3.2.2 To cancel this Agreement and to receive a complete refund of the Earnest Money, in which event the parties hereto shall have no further rights, duties, or obligations under this Agreement.

1.3.2.3 Unless Purchaser terminates this Agreement within the Inspection Period as set forth below, *not later than the last day of the Inspection Period*, Purchaser shall deposit an additional fifty thousand dollars (\$50,000) ("Additional Earnest Money") with the Escrow Agent. From and after the expiration of the Inspection Period, all Earnest Money defined below and the Additional Earnest Money shall be nonrefundable under any and all circumstances but shall be credited against the purchase price at Closing as hereinafter defined. The Purchaser shall have until November 30th 2017 to close the purchase of the Land.

ARTICLE 2.

Price and Payment; Survey

2.1 Purchase Price. The purchase price for the Property (herein called the "Purchase Price") shall be the sum of **ONE MILLION THREE HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$1,340,000.00)**. The Purchase Price shall be paid in immediately-available funds to Seller on the Closing Date (as hereinafter defined), against which the Earnest Money, Additional Earnest Money and any net credit or proration due Purchaser hereunder shall be a credit.

2.2 Earnest Money. Within ten (10) business days of the execution of the Agreement by Seller, Purchaser shall pay to Escrow Agent the sum of **FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00)** (herein called the "Earnest Money") to be held by Escrow Agent and applied as hereinafter provided. The Earnest Money and Additional Earnest Money shall be held by Escrow Agent in Escrow Agent's Trust Account and applied as part payment of the Purchase Price of the Land at Closing (as hereinafter defined) except as otherwise provided herein. The Earnest Money shall be non-refundable from and after the expiration of the Inspection Period after the expiration of the Inspection Period.

2.3 Survey. On or before the expiration of the Inspection Period Purchaser, at the election of the Purchaser and at Purchaser's expense, may obtain a survey of the Land, prepared by a Georgia registered surveyor or engineer ("Survey"). If the Purchaser elects to obtain a current Survey, the Survey shall show, and the surveyor shall certify, the acreage of the Land computed to the nearest 1/1000th (.001) of an acre. Purchaser shall prepare or cause to be prepared a legally sufficient description of the metes and bounds of the Land, based upon the Survey. The limited warranty deed delivered by Seller shall convey the Property by the legal description thereof attached hereto as Exhibit "A". Seller shall upon request by Purchaser execute and deliver at Closing a quitclaim deed conveying the Property by reference to the legal description derived from the Survey.

2.4 Inspection Period. Purchaser shall have a period commencing on the Effective Date and expiring sixty (60) days after the Effective Date (the "Inspection Period") in which to determine whether Purchaser can successfully develop a 110 unit hotel on the Land. In addition, from the Effective Date through Closing, Purchaser and Purchaser's agents, employees and independent contractors shall have the right and privilege to enter upon the Land to survey and inspect the Land and all improvements located thereon and to conduct soil borings and other geological, engineering, environmental or landscaping tests or studies, all at Purchaser's sole cost and expense. Purchaser agrees to defend, indemnify and hold Seller harmless from and against any and all loss, cost, damage or liens relating to or arising from activities on the Land and against any and all claims of death or injury of persons or damage of property arising out of or as a result of the activities of Purchaser, or designees and/or agents of Purchaser pursuant to this paragraph. Purchaser's forgoing indemnity of Seller shall survive the Closing and any termination of this Agreement.

2.4.1 Right of Termination. At any time prior to the expiration of the Inspection Period, Purchaser shall have the right to terminate this Agreement by giving written notice to Seller, for any of the following reasons: (1) The site was unable to accommodate the development of a 110 unit hotel. (2) The geotechnical report deems the site unable to develop a hotel at a reasonable cost due to soil conditions. (3) Purchaser has determined, based on written confirmation from a licensed engineer, that the Land, soil and building site are not suitable for the construction of the six story hotel/motel. If Purchaser gives notice to Seller of its intention to terminate the Agreement for the reasons set forth in this Article 2.4.1 prior to the expiration of the Inspection Period, *this Agreement shall thereby be terminated and all Earnest Money shall be refunded to Purchaser and the parties shall have no further rights, obligations, or duties under this Agreement except as otherwise specifically provided herein.* If Purchaser fails to give such notice prior to the end of the Inspection Period, then such conditions shall be deemed to have been waived by Purchaser and this Agreement shall remain in full force and effect.

2.5 Environmental Reports. To the extent Seller has in its possession any environmental reports relating to the Land ("Reports") Seller will deliver such Reports to Purchaser within seven (7) days of the Effective Date of this Agreement without any representation or warranty. In addition, Seller agrees to cooperate with Purchaser, in obtaining a recertification of the most recent Reports to Purchaser, but Purchaser shall be solely responsible for any fee or charges relating to the recertification of such Reports to Purchaser.

ARTICLE 3.

Closing

3.1 Closing Date and Place. The closing shall be on or before 3 PM on November 30th, 2017 by means of an escrow closing with Escrow Agent.

3.2 Closing. The following shall occur at Closing, each being a condition precedent to the others and all being considered as occurring simultaneously:

3.2.1 Seller shall execute in recordable form and deliver to Purchaser a limited warranty deed conveying title to the Land subject only to the Permitted Exceptions. Seller shall deliver to Purchaser possession of the Land, subject to the Permitted Exceptions. Purchaser shall pay to Seller the Purchase Price in the amount and the manner specified in Section 2.1 hereof.

3.2.2 Seller and Purchaser shall each deliver to the other evidence of their respective authority to execute and deliver this Agreement and any and all other documents required hereunder.

3.2.3 Seller shall cause to be executed and delivered to Purchaser an affidavit of an appropriate officer of Seller stating that, to such officer's knowledge: (i) there are no boundary disputes affecting the Land, (ii) the Land is free and clear of all defects in title by, through or under Seller other than the Permitted Exceptions, (iii) no improvements or repairs have been made on the Land by Seller within ninety-five (95) days prior to Closing, or if such improvements or repairs have been made, that all costs with respect thereto have been paid in full, (iv) Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, (v) Seller is a resident of the State of Georgia for purposes of O.C.G.A. § 48-7-128, (vi) there are no pending suits, proceedings, judgments, bankruptcies, liens (except for property tax), or executions against Seller which affect title to the Land, and (vii) there are no persons or other parties in possession of the Land who have a right or claim to possession extending beyond the Closing Date, subject to the Permitted Exceptions.

3.3 Prorations; Expenses of Closing. Ad valorem taxes for the year of Closing shall be prorated as of the Closing Date based on the most current tax bill for the Land. If the actual tax bill for the year of Closing differs from the tax bill upon which the proration is based, the parties agree to make adjustments between themselves to conform to the actual bill when received. Seller shall the State of Georgia Real Estate Transfer Tax, and Seller's attorneys' fees. Purchaser shall its attorneys' fees, survey expense, the costs incurred in recording the deed, title insurance premium, if any, and examination fees, and any other investigation expense incurred.

ARTICLE 4.
Remedies

4.1 Default. In the event the transaction contemplated hereby does not close because of Purchaser's default, the Earnest Money may, upon request by Seller, be paid to Seller as full liquidated damages for such failure to close pursuant to O.C.G.A. § 13-6-7, the parties acknowledging the difficulty of ascertaining Seller's damages in such circumstances and that the amount specified as Earnest Money and Additional Earnest Money represents a reasonable, good faith estimate by the parties of the amount of damages that Seller would incur in such event; whereupon neither party hereto shall have any further rights, claims or liabilities under this Agreement, except for the provisions which are made to survive termination or cancellation of this Agreement. In the event the transaction contemplated hereby does not close because of Seller's default, Purchaser shall have the right to seek an action at equity for specific performance, or at Purchaser's election, terminating this Agreement and receiving the Earnest Money and Earnest Money from the Escrow Agent received by Purchaser from Seller, Purchaer waiving all other remedies at law or in equity.

ARTICLE 5.
Representations, Warranties and Covenants of Seller

Seller represents and warrants to Purchaser as follows to Seller's knowledge and subject to issuance of the Approval Order:

5.1 Authority. Seller has full legal power and authority to enter into and perform this Agreement in accordance with its terms, and this Agreement constitutes the valid and binding obligation of Seller, enforceable in accordance with its terms, except as such enforcement may be affected by bankruptcy, insolvency and other similar laws affecting the rights of creditors generally.

5.2 No Further Action. The execution and delivery of this Agreement and performance by Seller of its obligations hereunder require no further action or approval in order to constitute this Agreement as a binding and enforceable obligation of Seller.

5.3 Ownership.

(a) Seller is the owner of the Land.

(b) There are no leases, subleases, licenses or other rental agreements or rights to occupancy in effect covering all or any portion of the Land.

5.4 Litigation and Other Proceedings. There is no action, suit or proceeding pending or threatened against the Land or any portion thereof in any court or before or by any federal, state, county or municipal department, commission, board bureau or agency or other governmental instrumentality which would affect Seller's ability to perform their obligations hereunder.

5.5 Condemnation. To the best of Seller's knowledge and belief, there are no pending or contemplated condemnation or annexation proceedings affecting the Land or any part thereof.

All warranties, representations and indemnifications contained in this Agreement shall survive Closing for a period of six (6) months for the benefit of Purchaser and shall thereupon expire.

ARTICLE 6.
Representations and Warranties of Purchaser

Purchaser represents and warrants to Seller that the listed warranties shall survive Closing:

6.1 Authority. Purchaser has full legal power and authority to enter into and perform this Agreement in accordance with its terms, and this Agreement constitutes the valid and binding obligation of Purchaser, enforceable in accordance with its terms, except as such enforcement may be affected by bankruptcy, insolvency and other similar laws affecting the rights of creditors generally. Purchaser is not now bankrupt or insolvent and has made no assignment for the benefit of creditors. Purchaser knows of no bankruptcy proceeding which is pending or threatened against Purchaser. The execution, delivery and performance of this Agreement is not in contravention of or in conflict with any agreement or undertaking to which Purchaser is a party or by which Purchaser may be bound or affected.

6.2 No Further Action. The execution and delivery of this Agreement and performance by Purchaser of its obligations hereunder require no further action or approval in order to constitute this Agreement as a binding and enforceable obligation of Purchaser.

ARTICLE 7.
Miscellaneous

7.1 Notices. Any notice, demand, or request, which is required or permitted hereunder, shall be sent to the applicable address listed on the signature page by hand delivery in person (including delivery by reputable courier and air freight companies) or posted with the United States Postal Service, certified mail, postage prepaid, to the addresses appearing after the signatures of the parties below. Each notice shall be effective upon receipt, rejection or inability to deliver due to change of address of which the addressee failed to notify the other party. Simultaneous copies of all notices to Seller shall be sent to John E. Taylor, 4880 Lower Roswell Road, Suite 165, # 247, Marietta, GA 300068.

7.2 Assignment. Prior to Closing, Purchaser shall assign all of its right, title, and interest under this Agreement to a new entity managed by Purchaser to acquire the Land (hereinafter referred to as "New Entity"). Purchaser shall include Seller or Seller's designee as a non-voting member or limited partner of such New Entity and Seller's interest in such entity shall be ten percent (10%). New Entity shall expressly assume all of Purchaser's duties, obligations, and liabilities hereunder, and such assignment shall not relieve Purchaser of its duties, obligations and liabilities hereunder. A copy of any assignment shall be promptly delivered to Seller.

7.3 Brokerage Commission. Seller and Purchaser represent to each other that neither has retained a broker in regard to the transaction set forth herein, except for The Shopping Center Group ("Broker"). _____ shall upon Closing pay any commission due to Broker in regard to this Agreement in accordance with a separate agreement. Purchaser agrees

to indemnify and hold harmless Seller from any and all damage, loss, liability, expense and claim (including reasonable attorneys' fees) arising with respect to any such fee or commission claiming by, or through Purchaser.

7.4 Binding Effect. The provisions of this Agreement shall be binding upon and shall inure to the benefit of Purchaser, Seller, and their respective successors and assigns.

7.5 Time of Essence. All parties hereto do agree to act in good faith and acknowledge time is of the essence of this Agreement; provided, however, whenever under this Agreement performance is to be made on a Saturday, Sunday or a public holiday under the laws of the State of Georgia, such performance may be made on the next succeeding day which is not a Saturday, Sunday or public holiday under the laws of the State of Georgia.

7.6 Cumulative Rights; No Waiver. Except as otherwise expressly set forth in this Agreement, all rights, powers and privileges conferred hereunder upon the parties shall be cumulative, and not restricted to those given by law. No failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party to its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of any party's right to demand exact compliance with the terms hereof.

7.7 (a) Entire Agreement; Amendments. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement of the parties hereto and no representation, inducement, promise or agreement, oral or written, between the parties not embodied herein shall be of any force and effect. No amendment to this Agreement shall be binding on any of the parties to this Agreement unless such amendment is in writing and executed by all parties.

(b) Effective Date. The "Effective Date" shall be deemed to mean the date on which the last of Seller or Purchaser execute this Agreement.

7.8 Construction. This Agreement shall be construed and interpreted under the laws of the State of Georgia. The captions of each Article, Section and paragraph of this Agreement and the particular pronouns used herein, whether masculine, feminine, or neuter, singular or plural, are intended only to be used as a convenience in reference and shall not be construed to limit or change the meaning of the language of this Agreement taken by paragraph or as a whole. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such terms, covenants, and conditions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

7.9 Survival. No provision of this Agreement shall survive Closing except as expressly set forth herein.

7.10 Condemnation. Risk of loss resulting from any condemnation or eminent domain proceeding which is commenced or has been threatened prior to Closing, and risk of loss to the Land due to any other cause, remains with Seller until Closing. If, prior to the Closing, all or part of the Land shall be subjected to a bona fide threat of condemnation or other proceedings,

Seller shall so notify Purchaser immediately and, at the same time, shall provide Purchaser with such information as is in Seller's possession in order to aid Purchaser in making, on an informed basis, the following election: Purchaser, within ten (10) days after receipt of such notice from Seller, shall elect ("Purchaser's Election") to either (a) cancel this Agreement, in which event all parties shall be relieved and released of and from any further duties, obligations, rights or liabilities hereunder and all Earnest Money and Additional Earnest Money shall be refunded to Purchaser; or (b) declare this Agreement to remain in full force and effect in which event the Land conveyed by Seller at Closing shall be reduced by the land subjected to the threat of condemnation and the Purchase Price shall remain the same and Seller shall assign to Purchaser all of Seller's right, title and interest in and to any condemnation awards that may be made for such condemnation. In this event, the date for Closing shall be extended if necessary to be no earlier than fifteen (15) days and no longer than thirty (30) days after the end of the ten (10) days specified above within which Purchaser must make Purchaser's Election.

7.11 [INTENTIONALLY OMITTED]

7.12 Earnest Money. Escrow Agent accepts its appointment to hold the Earnest Money and Additional Earnest Money (collectively, to the extent deposited with Escrow Agent, the "Total Earnest Money") hereunder subject to the following conditions:

(a) The Total Earnest Money may be processed for collection in the normal course of business by Escrow Agent, who may commingle funds received by it with trust funds of others in its regular trust account maintained at a bank selected by Escrow Agent and insured by the Federal Deposit Insurance Corporation (hereinafter the "Depository"). Such funds shall be deposited in a non-interest bearing trust account.

(b) Escrow Agent shall not be liable for any loss caused by the failure, suspension, bankruptcy or dissolution of the Depository.

(c) Escrow Agent shall be liable only for loss or damage resulting from the malfeasance or negligence of Escrow Agent or its employees and shall not otherwise be liable for loss or damage resulting from (a) any good faith act or forbearance of Escrow Agent; (b) any default, error, action or omission of any party, other than Escrow Agent; (c) the expiration of any time limit or other delay which is not solely caused by failure of Escrow Agent to proceed in its ordinary course of business, and in no event where such time limit is not disclosed in writing to the Escrow Agent; (d) the lack of authenticity of any writing delivered to Escrow Agent or of any signature thereto, or the lack of authority of the signatory to sign such writing; (e) Escrow Agent's compliance with all attachments, writs, orders, judgments or other legal process issued out of any court; (f) Escrow Agent's assertion or failure to assert any cause of action or defense in any judicial or administrative proceeding; or (g) any loss or damage which arises after the Total Earnest Money has been disbursed in accordance with terms of this Agreement.

(d) INTENTIONALLY DELETED

(e) Escrow Agent shall disburse the Total Earnest Money in accordance with the terms of this Agreement.

(f) If Escrow Agent shall receive notice of a dispute concerning the disposition of the Total Earnest Money, Escrow Agent shall not disburse the Total Escrow Money, except in accordance with written instructions signed by both Purchaser and Seller. Pending resolution of any such dispute, Escrow Agent is authorized to pay the Total Earnest Money into court, upon which Escrow Agent shall be discharged from all further obligations hereunder. Escrow Agent is hereby indemnified, and saved and held harmless by the other parties hereto for all of its expenses, costs and reasonable attorney's fees incurred in connection with said payment into court and such expenses, costs and fees may be deducted from the funds held hereunder.

(g) If Escrow Agent is made a party to any judicial, nonjudicial or administrative action, hearing or process based on acts of any of the other parties hereto and not on the malfeasance, negligence or both of Escrow Agent in performing its duties hereunder, the expenses, costs and reasonable attorney's fees incurred by Escrow Agent in responding to such action, hearing or process may be deducted from the funds held hereunder and the party, or parties, whose alleged acts are a basis for such proceedings shall indemnify, save and hold Escrow Agent harmless from said expenses, costs and fees incurred.

7.12 DISCLAIMER; AS-IS WHERE-IS TRANSACTION.

(a) Purchaser acknowledges and agrees that it has been given a full opportunity to inspect and investigate each and every aspect of the Land, either independently or through agents of Purchaser's choosing, including, without limitation: (i) all matters relating to title and survey, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes; (ii) the presence or absence of hazardous substances on, within or under the Land; and (iii) the physical condition and aspects of the Land, including, without limitation, all improvements on the Land; seismic aspects of the Land; the foundation, roof, paving, parking facilities, utilities, and all other physical and functional aspects of the Land.

(b) Except as expressly set forth in this Agreement and in documents executed and delivered by Seller at Closing, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller to Purchaser in connection with the transaction contemplated hereby. Purchaser acknowledges and agrees that all materials, data and information delivered by Seller to Purchaser in connection with the transaction contemplated hereby are provided to Purchaser as a convenience only and that any reliance on or use of such materials, data or information by Purchaser shall be at the sole risk of Purchaser.

(c) EXCEPT AS EXPRESSLY SET FORTH HEREIN, PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND PURCHASER IS PURCHASING THE LAND ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT PURCHASER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER, ANY SELLER RELATED PARTIES, OR THEIR AGENTS OR BROKERS, OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT ON BEHALF OF SELLER, AS TO ANY MATTERS CONCERNING THE LAND, INCLUDING WITHOUT LIMITATION: (i) the quality, nature, adequacy and physical condition and aspects of the Land, including, but not limited to, the structural elements, seismic aspects of the Land, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities

servicing the Property, (iv) the development potential of the Land, and the Land's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Land for any particular purpose, (v) the zoning or other legal status of the Land or any other public or private restrictions on use of the Land, (vi) the compliance of the Land or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence of hazardous substances (including but not limited to asbestos or asbestos-containing materials) on, under or about the Land or the adjoining or neighboring property, (viii) the condition of title to the Land, (ix) the value, economics of the operation or income potential of the Land, or (x) any other fact or condition which may affect the Land, including without limitation, the physical condition, value, economics of operation or income potential of the Land.

7.13 Counterparts; Delivery. This Agreement may be executed and delivered in counterparts, all of which shall collectively constitute one agreement. This Agreement and counterparts hereof may be delivered in PDF format by email to the respective email addresses set forth below the signatures of the parties below, with any delivery to Seller to include copy to John E. Taylor at john@taylorlegal.net.

7.14 Exchange. Purchaser and Seller acknowledge that either or both of them may desire to structure the transaction contemplated hereby as a tax-deferred exchange pursuant to Section 1031 of the Internal Revenue Code, as amended. Accordingly, Purchaser and Seller agree that they shall cooperate with and assist one another in accomplishing any such exchange provided that (a) the consummation of the transaction contemplated hereby is not thereby delayed, and (b) no party hereto shall be obligated to incur any expense or liability beyond that which it is otherwise obligated to incur hereunder.

(SIGNATURES APPEAR ON FOLLOWING PAGE)

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement under seal as of the Effective Date.

Signed, sealed and delivered in the presence of:

Printed Name: _____

Signed, sealed and delivered in the presence of:

Todd E Lee
Printed Name: Todd E. Lee

Expires 11/15/2019



SELLER:

SUGARLOAF CENTRE, LLC

By: _____
Chittranjan Thakkar

[SEAL]

5100 Peachtree Industrial Boulevard
Suite 100
Norcross, GA 30071
cthagkar@dctsystems.net

Date: _____, 2017

PURCHASER:

S. Patel (SEAL)
SACHIN N. PATEL

2895 Creekside DR NW.
Cleveland, TN 37312
email: spatel@ehghotels.com

Date: 3-13-17, 2017

EXHIBIT "A"

TRACT 2: ALL THAT TRACT OR PARCEL OF LAND LYING and being in Land Lot 122 of the 7th Land District of Gwinnett County, Georgia, being more particularly described as follows:

To find The Point of Beginning Commerce at the Intersection of the Land Lot Corner common to Land Lots 114, 115, 122 and 123; THENCE leaving said Intersection and traveling along the Land Lot Line dividing Land Lots 115 and 122, South 59 degrees 48 minutes 47 seconds West for a distance of 648.82 feet to a 1" Open Top Pipe; THENCE leaving said Land Lot Line, North 30 degrees 21 minutes 17 seconds West for a distance of 324.64 feet to a Point at the Centerline of a Branch, said point being THE TRUE POINT OF BEGINNING.

THENCE from said point as thus established and continuing along the Centerline of a branch the following fourteen (14) courses and distances, South 76 degrees 50 minutes 36 seconds West for a distance of 35.14 feet to a point; THENCE North 59 degrees 27 minutes 16 seconds West for a distance of 29.30 feet to a Point; THENCE South 69 degrees 57 minutes 36 seconds West for a distance of 44.08 feet to a Point; THENCE North 89 degrees 26 minutes 22 seconds West for a distance of 57.59 feet to a Point; THENCE North 50 degrees 46 minutes 56 seconds West for a distance of 18.95 feet to a Point; THENCE South 71 degrees 05 minutes 45 seconds West for a distance of 38.48

feet to a Point; THENCE South 81 degrees 26 minutes 22 seconds West for a distance of 40.44 feet to a Point; THENCE South 11 degrees 17 minutes 07 seconds West for a distance of 27.76 feet to Point; THENCE South 70 degrees 16 minutes 01 seconds West for a distance of 28.41 feet to a Point; THENCE South 89 degrees 42 minutes 58 seconds West for a distance of 41.39 feet to a Point; THENCE North 55 degrees 49 minutes 38 seconds West for a distance of 24.78 feet to a Point; THENCE South 65 degrees 41 minutes 55 seconds West for a distance of 23.76 feet to a Point; THENCE North 72 degrees 00 minutes 58 seconds West for a distance of 40.27 feet to a Point; THENCE South 82 degrees 42 minutes 55 seconds West for a distance of 1.75 feet to a Point on the Easterly Right-of-Way of Satellite Boulevard (R/W varies);

THENCE leaving said Branch and traveling along the aforesaid Right-of-Way of Satellite Boulevard the following four (4) courses and distances, North 03 degrees 11 minutes 35 seconds West for a distance of 17.90 feet to a Point; THENCE along a curve to the left having a radius of 1492.39 feet and an arc length of 222.43 feet, being subtended by a chord of North 00 degrees 06 minutes 05 seconds West for a distance of 222.22 feet to a Point; THENCE South 85 degrees 37 minutes 44 seconds West for a distance of 10.00 feet to a Point; THENCE along a curve to the left having a radius of 1482.39 feet and an arc length of 96.24 feet, being subtended by a chord of North 06 degrees 13 minutes 52 seconds West for a distance of 96.22 feet to an Iron Pin Set; THENCE leaving said Right-of-Way, North 59 degrees 46 minutes 43 seconds East for a distance of 211.35 feet to a 1" Open Top Pipe; THENCE South 30 degrees 21 minutes 17 seconds East for a distance of 488.60 feet to a Point at the Centerline of the aforesaid Branch, said point being THE TRUE POINT OF BEGINNING. Said property contains 2.68 acres;

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:) Chapter 11
)
BAY CIRCLE PROPERTIES, LLC, *et al.*²) Case No.: 15-58440-wlh
) (Jointly Administered)
Debtors.)
_____)

NOTICE OF HEARING

PLEASE TAKE NOTICE that, on August 21, 2017, Debtor Sugarloaf Centre, LLC filed the “Motion for Order Approving Sale of Property Free and Clear of Liens, Claims and Encumbrances” (“Motion”) with the Court seeking entry of an order authorizing the Debtor to sell its property located at 1930 Satellite Boulevard, Duluth, Gwinnett County, Georgia 30097 free and clear of all liens, claims and encumbrances.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing (the “Hearing”) on the Motion in Courtroom **1403**, United States Courthouse, 75 Ted Turner Drive, S.W., Atlanta, Georgia, at **1:30 pm** on the **28th** day of **September, 2017**.

Your rights may be affected by the Court’s ruling on the Motion. You should read the Motion carefully and discuss it with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in the Motion or if you want the Court to consider your views, then you and/or your attorney must attend the Hearing. Any written response in opposition to the Motion must be filed with the Clerk of the United States Bankruptcy Court at the address stated below and also served on Debtor’s counsel noted below so that it is received five (5) days prior to the hearing on the Motion. Any response to the Motion must attach a certificate stating when,

² The Debtors and the last four digits of their respective taxpayer identification numbers are Bay Circle Properties, LLC (1578), DCT Systems Group, LLC (6978), Sugarloaf Centre, LLC (2467), Nilhan Developers, LLC (6335), and NRCT, LLC (1649).

how, and on whom (including addresses) you served the response. The address of the Clerk's office is: Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Spring Street, S.W., Atlanta, Georgia 30303. You must also serve a copy of the response on Debtor's counsel, John A. Christy, Schreeder, Wheeler & Flint, LLP, 1100 Peachtree St, NE, Suite 800, Atlanta, Georgia 30309-4516 so that it is received five (5) days prior to the Hearing.

This 21st day of August, 2017.

/s/ John A. Christy
JOHN A. CHRISTY
Georgia Bar No. 125518
jchristy@swfllp.com
J. CAROLE THOMPSON HORD
Georgia Bar No. 291473
chord@swfllp.com
JONATHAN A. AKINS
jakins@swfllp.com

Attorneys for Debtor

SCHREEDER, WHEELER & FLINT, LLP
1100 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-4516
(404) 681-3450

CERTIFICATE OF SERVICE

This is to certify that on the date specified below the undersigned caused to be served a true and correct copy of the foregoing *Motion for Order Approving Sale of Property Free and Clear of Liens, Claims and Encumbrances* and *Notice of Hearing on Motion for Order Approving Sale of Property Free and Clear of Liens, Claims and Encumbrances* via first class US mail or through the ECF System upon the parties on the attached Master Service List.

This 21st day of August, 2017.

/s/ Jonathan A. Akins
JONATHAN A. AKINS

SCHREEDER, WHEELER & FLINT, LLP
1100 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-4516
Telephone: (404) 681-3450

MASTER SERVICE LIST

<p>Anne P. Caiola, Esq. Elizabeth B. Rose, Esq. – VIA ECF SLOTKIN & CAIOLA, LLC 118 E. Maple Street Decatur, GA 30030</p>	<p>AT&T PO BOX 105262 ATLANTA, GA 30348</p>
<p>BELLSOUTH TELECOMMUNICATIONS, INC. / AT&T SERVICES, INC. C/O KAREN CAUAGNARO ONE AT&T WAY, ROOM 3A104 BEDMINSTER, NJ 07921</p>	<p>C. Edward Dobbs, Esq. – VIA ECF James S. Rankin, Jr., Esq. – VIA ECF Joshua J. Lewis, Esq. – VIA ECF PARKER, HUDSON, RAINER & DOBBS LLP 303 Peachtree Street, NE Suite 3600 Atlanta, Georgia 30308</p>
<p>CITY OF SMYRNA UTILITIES PO BOX 116296 ATLANTA, GA 30368-6296</p>	<p>COBB COUNTY WATER SYSTEM PO BOX 580440 CHARLOTTE, NC 28258</p>
<p>CREDITORS ADJUSTMENT BUREAU 14226 VENTURA BLVD SHERMAN OAKS, CA 91423</p>	<p>David L. Bury, Jr. – VIA ECF STONE & BAXTER, LLP Suite 800 577 Mulberry Street Macon, GA 31201</p>
<p>D&G CONSTRUCTION MANAGEMENT, LLC 6400 POWERS FERRY ROAD, SUITE 350 ATLANTA, GA 30339</p>	<p>GEORGIA POWER COMPANY 96 ANNEX ATLANTA, GA 30396</p>
<p>GWINNETT COUNTY WATER RESOURCES PO BOX 530575 ATLANTA, GEORGIA 30353</p>	<p>HCL AMERICA, INC. P.O. BOX 5932 SHERMAN OAKS, CA 91413</p>
<p>INTERNAL REVENUE SERVICE PO BOX 7346 PHILADELPHIA, PA 19101-7346</p>	<p>New South Commercial Properties, Inc. c/o James B McClung Carol Clark Law 6075 Lake Forrest Drive, Suite 200 Atlanta, Georgia 30328</p>

<p>Kenneth W. Stroud, Esq. – VIA ECF MAHAFFEY PICKENS TUCKER, LLP 1550 North Brown Road Suite 125 Lawrenceville, GA 30043</p>	<p>KIDS FIRST PEDIATRIC ALLIANCE 5500 INTERSTATE NORTH PARKWAY SUITE #200 ATLANTA, GEORGIA 30328</p>
<p>LECRAW ENGINEERING 3475 CORPORATE WAY SUITE A DULUTH, GEORGIA 30096</p>	<p>Michael E. Demont Whitney K. McGuire SMITH HULSEY & BUSEY 225 Water Street, Suite 1800 Jacksonville, FL 32202</p>
<p>NILHAN FINANCIAL 5100 PEACHTREE INDUSTRIAL BLVD NORCROSS, GA 30071</p>	<p>NILOY, INC. 5100 PEACHTREE INDUSTRIAL BLVD NORCROSS, GA 30071-5721</p>
<p>NORCROSS HOSPITALITY 5100 PEACHTREE INDUSTRIAL BLVD NORCROSS, GA 30071</p>	<p>PHOENIX ELEVATOR SERVICE 591 THORNTON ROAD, SUITE S LITHIA SPRINGS, GA 30122-1546</p>
<p>REPUBLIC SERVICES, INC. (DE CORP.) 18500 NORTH ALLIED WAY PHOENIX, AZ 85054</p>	<p>SECRETARY OF TREASURY 15TH & PENNSYLVANIA AVENUE, NW WASHINGTON, DC 20200</p>
<p>SERVICE MASTER PO Box 670053 MARIETTA, GA 30066</p>	<p>Thomas W. Dworschak OFFICE OF THE U.S. TRUSTEE Suite 362 Richard Russell Building 75 Ted Turner Drive, SW Atlanta, Georgia 30303</p>
<p>U.S. ATTORNEY 600 RICHARD B. RUSSELL BLDG. 75 TED TURNER DRIVE, SW ATLANTA, GA 30303</p>	<p>U.S. SECURITIES & EXCHANGE COMMISSION OFFICE OF REORGANIZATION SUITE 900 950 EAST PACES FERRY ROAD, NE ATLANTA, GA 30326-1382</p>
<p>SHAYNA M. STEINFELD – VIA ECF STEINFELD & STEINFELD, P.C. P.O. BOX 49446 ATLANTA, GEORGIA 30359</p>	<p>CLAY M. TOWNSEND MORGAN & MORGAN PA 20 N. ORANGE AVE, SUITE 1500 ORLANDO, FL 32801</p>

HEATHER D. BROWN – VIA ECF BROWN LAW, LLC 138 BULLOCH AVENUE ROSWELL, GA 30075	SIMBA GLOBAL PTY LTD. 189-311 BAYWATER ROAD BAYSWATER NORTH, VICTORIA AUSTRALIA 315323
JOHN F. ISBELL – VIA ECF THOMPSON HINE LLP TWO ALLIANCE CENTER 3560 LENOX ROAD, SUITE 1600 ATLANTA, GEORGIA 30326	New South Commercial Properties, Inc. Reg. Agent: Chuck Sechler 750 Hammond Drive, Building 16, Suite 350 Atlanta, Georgia 30328
Walter E. Jones – Via ECF Balch & Bingham, LLP 30 Ivan Allen Jr., Blvd Suite 700 Atlanta, GA 30308	Mark S. Marani Cohen Pollock Merlin & Small, PC 3350 Riverwood Parkway Suite 1600 Atlanta, Georgia 30339
Michael B. Weinstein MBW Law, LLC 949 Image Avenue -Suite B Atlanta, GA 30318	