

**UNITED STATES BANKRUPTCY COURT  
Northern District of Florida  
Pensacola Division**

IN RE: EMERALD COAST EATERIES, INC.,

Debtor.

Bankruptcy Case No. 17-30095-JCO

Chapter: 11

Judge: Jerry C. Oldshue, Jr.

**DEBTOR'S MOTION TO SELL ASSETS VIA AUCTION PURSUANT TO BANKRUPTCY  
CODE §363**

EMERALD COAST EATERIES, INC. (the "Debtor"), files this Motion (the "Motion") pursuant to 11 U.S.C. §363 seeking authorization to sell Debtor's Assets vis auction, and in support of the Application, the Debtor states:

1. On or about February 3, 2017 (the "Petition Date") the Debtor filed a petition for relief under chapter 11 of title 11 of the United States Bankruptcy Code, 11 U.S.C. §§101 *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Florida, Pensacola Division (the "Bankruptcy Court").
2. The Debtor is authorized to continue in possession of its property and operate its business.
3. The Debtor is an S Corporation organized under the laws of the State of Florida with its principal place of business located at PO Box 9185. Miramar Beach, Florida.
4. The Debtor is a "Small Business Debtor" pursuant to Bankruptcy Code §1121.
5. The Debtor's schedules listed among its assets restaurant furnishing, equipment and other personal property (the "Property"). Attached hereto and incorporated herein as Exhibit "A" is a copy of the attachments to Schedule B which further describes the Property.

6. The bulk of the Property is currently held in storage pods in Milton Florida<sup>1</sup>.

7. The Debtor has determined that it is in the best interest of its estate and its creditors to sell the Property.

8. Contemporaneously with the filing of the Motion, the Debtor has filed an Application to retain Northwest Florida Auction Group, Inc. ("NWFL Auction") (the "Application") to sell the Property subject to the terms and conditions set forth in the Application.

9. Upon approval of the Application, the Debtor intends to deliver to NWFL Auction all of the Property so that NWFL can schedule an auction of said Property.

10. NWFL Auction has advised that it will be able to conduct the auction of the Property in July.

11. Some of the Property to be sold at auction is subject to a valid lien of SunSouth Capital; however, the remainder is not subject to a lien.

12. By this Motion, the Debtor seeks authority to sell the Property, at auction, with any liens to attach to proceeds.

13. SunSouth Capital has consented to this Motion, with its lien to attached to net proceeds of the sale of any Property which is subject to its lien.

14. The Debtor seeks an order authorizing and approving the sale of the Property free and clear of all liens, claims, interests, and encumbrances, with liens, if any, to attach to the proceeds.

#### **BASIS FOR RELIEF REQUESTED**

15. This Court has the statutory authority to authorize the sale of the Property free and clear of all liens, claims, interests, and encumbrances, with liens, if any, to attach to the proceeds.

16. Bankruptcy Code §363(b)(1) provides Bankruptcy Code § 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business,

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<sup>1</sup> Some additional video and stereo equipment is housed at another location.

property of the estate." Bankruptcy Code § 363(b)(1). Courts interpreting this statutory provision have held that proposed transactions should be approved under section 363(b)(1) when (a) they are supported by the sound business judgment of the debtor's management, (b) interested parties are provided with adequate and reasonable notice, (c) the sale price is fair and reasonable, and (d) the purchaser is acting in good faith. *See, e.g. In re Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991); *see also, In re Parkstone Med. Info. Sys.*, 2001 WL 36189922 (Bankr. S.D. Fla. 2001).

17. Pursuant to Bankruptcy Code § 363(f), a debtor in possession may sell all or any part of its property free and clear of any and all liens, claims, encumbrances or interests if (1) such sale is permitted under non-bankruptcy law, (2) the party asserting the lien, claim or interest consents to the sale, (3) the interest is a lien and the purchase price is greater than the aggregate amount of all liens on the property, (4) the interest is subject to a bona fide dispute, or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

18. After due reflection of the circumstances, the Debtor finds that the sale of the Property via auction proposed herein is economical, efficient, and the best way to maximize the value of the Debtor's rights, title and interests in the Property. Accordingly, the Debtor, in the exercise of its sound business judgment, has determined that it is in the best interests of the estate to sell the Debtor's rights, title and interests in the Property pursuant to the terms described in the Application.

19. The Debtor submits that interested parties have been provided with adequate notice of the proposed auction sale through the filing of this Motion and the Application.

20. All liens, claims and encumbrances shall attach solely to the proceeds of the sale.

21. The Debtor requests that NWFL Auction be authorized to conduct an auction of the Property be immediately effective upon entry of a written Order approving the sale and that the fourteen (14) day stay of effectiveness of such an Order provided for in Fed. R. Bankr. P. 6004(h) be waived.

22. The Debtor has made no prior request for the relief requested herein to this or any other Court, other than the prior sale motions filed in this case.

23. The Debtor reasonably believes that the sale of the Debtor's rights, title and interest in the Property free and clear of liens, claims or encumbrances, will benefit the Debtor's estate.

WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) granting this Motion, (ii) authorizing the sale of the Debtor's right, title, and interest in the Property, free and clear of liens, claims and encumbrances, if any, pursuant to Bankruptcy Code §363, and (iii) for such other relief as this Court deems appropriate.

Respectfully submitted this  
17<sup>th</sup> day of May, 2017

ZALKIN REVELL, PLLC

/s/ Teresa M. Dorr

TERESA M. DORR

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Counsel for Debtor-in-Possession

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing:

**DEBTOR'S MOTION TO SELL ASSETS VIA AUCTION PURSUANT TO BANKRUPTCY  
CODE §363**

was served on the following parties by either electronic mail through the Courts CM/ECF system or by standard first class mail on the 17<sup>th</sup> day of May, 2017

Parties who are currently on the list to receive email notice/service for this case:

- United States Trustee, [USTPRegion21.TL.ECF@usdoj.gov](mailto:USTPRegion21.TL.ECF@usdoj.gov)
- Jason Egan, Esq. [Jason.h.egan@usdoj.gov](mailto:Jason.h.egan@usdoj.gov)
- Russell Neal Parrish, Esq. [rparrish@efphw-law.com](mailto:rparrish@efphw-law.com)

Manual Notice Parties

All creditors shown on the attached mailing matrix

*/s/ Teresa M. Dorr*  
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Counsel to Debtor-in-Possession

<b>Exhibit A to Schedule B</b>		
<b>Furniture and Equipment</b>	<b>Quantity</b>	<b>Value</b>
Tables	40	\$800.00
Chairs	100	\$1,000.00
Eco Hybrid, Brass Foot Rest, Walunt finish barstools	20	\$500.00
High Chairs	4	\$40.00
Cabinet on wheels with shelves	1	\$50.00
Large stand up safe	1	\$500.00
Stainless steel Kitchen tables	5	\$250.00
Double door freezer	1	\$1,200.00
Stand up coolers	2	\$600.00
Burners	2	\$50.00
Flat Top Grill	1	\$500.00
Convection oven	1	\$1,000.00
Salamander (Food Broiler)	1	\$1,000.00
Fryers (One New)	3	\$2,900.00
Refrigerated salad station, double doors below	1	\$1,500.00
Large Mixer	1	\$1,000.00
Microwave	1	\$25.00
Small upright freezer	1	\$50.00
Small refrigerator	1	\$25.00
25 gallon kettle	1	\$2,500.00
Large ice bin	1	\$900.00
Ice machine with bin	1	\$1,200.00
Heat lamps		
Pots, pans, dishes, glasses, stmware		\$1,500.00
Pizza oven with grates	1	\$1,000.00
Ansel System	1	\$2,500.00
Miscellaneous Items (Plastic, Aluminum pans, etc)		
<b>TOTAL</b>		<b>\$22,590.00</b>

EXHIBIT "A"

<b>Exhibit B to Schedule B</b>		
<b>Furniture and Equipment</b>	<b>Quantity</b>	<b>Value</b>
Satellite System Package-Xantec IR Repeating System, Sanus Articulating Wall Mount	4	\$300.00
Audio System-TOA Amplifier/Mixer 120 Wat	2	\$400.00
TOA Mixer/Amplifier 700 Ser	1	\$200.00
Niles Audio Outdoor Speakers	12	\$1,200.00
Charbroiler, Gas, Counter Model	1	\$500.00
Refrigerator, Reach in 2 Sections, Stainless Steel Doors	1	\$1,500.00
Refrigerated Counter, Griddle Stand	1	\$1,000.00
Hotplate, Counter Unit, Gas	1	\$50.00
Epson Powerlite Cinema w/Strong Universal Projector Mount	2	\$600.00
Epson Powerlite Cinema with Sanus	1	\$200.00
<b>TOTAL</b>		<b>\$5,950.00</b>

<b>Exhibit C to Schedule B</b>		
<b>Furniture and Equipment</b>	<b>Quantity</b>	<b>Value</b>
Pizza Prep Table, Refrigerated	1	\$1,500.00
Refrigerated Counter, Sandwich Top	1	\$1,500.00
Convection Oven	1	\$1,000.00
Range, 36", 6 Burners	1	\$1,200.00
Dual Temp Display	1	\$3,000.00
<b>TOTAL</b>		<b>\$8,200.00</b>