

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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|-------------------------|---|--|
| IN RE: | § | |
| | § | Chapter 11 |
| PELICAN BAY GROUP, INC. | § | Case No. 14-11706 |
| | § | |
| Reorganized Debtor. | § | Hearing Date: December 21, 2017 at |
| | § | 2:00p.m. |
| | § | Objection Deadline: December 14, 2017 at |
| | | 4:00 p.m. |

**MOTION FOR ORDER AUTHORIZING THE SALE OF
REAL AND PERSONAL PROPERTY TO SANJAY PATEL OR HIS PERMITTED
ASSIGNS PURSUANT TO 11 U.S.C. § 363 AND THE REORGANIZED DEBTOR'S
CONFIRMED CHAPTER 11 PLAN**

Pelican Bay Group, Inc. (“Reorganized Debtor”), under the terms of the Confirmed Plan of Reorganization, by and through its undersigned counsel, hereby moves this Court for entry of an Order pursuant to 11 U.S.C. §363 and the terms of the Confirmed Plan authorizing the transfer of certain real and personal property to Sanjay Patel or his permitted assigns (“Buyer”), as described herein as described herein (the “Motion”). In support of the Motion, the Reorganized Debtor states the following:

Jurisdiction

1. This Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The statutory predicates for relief are 11 U.S.C. §§363, 1141 and 1145. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The Reorganized Debtor consents to the entry of a final order with respect to this matter.

Background

2. On July 14, 2014 (the “Petition Date”), the Reorganized Debtor commenced its bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”).

3. The Reorganized Debtor continued in possession of its property as a debtor-in-possession, pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4. On September 23, 2015, this Court entered the Order confirming the Third Amended Chapter 11 Plan of Reorganization of Pelican Bay Group, Inc. dated September 18, 2015 with final modifications (the “Plan”), (Docket Entry 173).

5. The Plan became effective on October 12, 2015.

6. The Plan provided for payments to all classes of creditors and required that the Reorganized Debtor use its best efforts to either refinance the debt with WSFS and, if that was not successful, to sell the Reorganized Debtor’s motel (the “Property”) within 2 years after the Effective Date.

7. Article II, Section 6.1(b) of the Plan specifically required the Reorganized Debtor to actively seek replacement financing. In addition, Section 6.1(b) mandated that the Reorganized Debtor not sell the Property for less than the full remaining amount due to all creditors without their consent or by separate approval of this Court.

8. The Reorganized Debtor now seeks this Court’s approval to sell the Property to avoid further delay and to minimize the risk that the Property will be subjected to a sheriff sale if not sold in the next 60 days.

9. WSFS Bank (“WSFS”) holds 3 mortgages on the Property. The Reorganized Debtor has paid WSFS and all its other creditors, except one, all of the required payments under the Plan (except the November 15th Plan payments which will be paid shortly).

10. In March, 2017, pursuant to its obligations under the Plan, the Reorganized Debtor listed the Property for sale with DSM Commercial for a listing price of \$2,800,000. DSM had over 100 inquiries on the property and DSM received 10 letters of intent. However, no offer received exceeded \$2,100,000.

11. On October 24, 2017, the Reorganized Debtor executed an Agreement of Sale for \$2,100,000 to sell the Property. A copy of the contract is attached as Exhibit A to this Motion.

12. The Debt due to WSFS Bank is approximately \$1,940,000 and a 4% commission of \$88,000 will be due to DSM Commercial.

13. Pursuant to the Plan, if the sale is completed under the terms of the Plan, no transfer tax will be due and payable saving \$88,000 which, after expenses of the sale and payment of WSFS and certain unpaid administrative expenses, may leave funds for a small final dividend to creditors.

14. The Buyer is conducting its due diligence and has indicated that it may want to close in 2017.

Relief Requested

15. By this Motion, the Reorganized Debtor seeks authority under Sections 105(a) and 363(b) of the Bankruptcy Code, and Bankruptcy Rules 2002(a), 6004, 6006, and 9014, to authorize it to sell the motel, equipment, furnishings, leases and other operating assets.

Applicable Authority

16. 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”. 11 U.S.C. §363(B)(1). Additionally, Bankruptcy Code section 105(a) allows this Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]”. 11 U.S.C. §105(a).

17. This decision is permitted under the terms of the Plan and is in the exercise of the Reorganized Debtor’s sound business judgment. Pursuant to §363 of the Bankruptcy Code, the following four elements must be satisfied for this Court to approve the sales requested herein: (i) the “sound business purpose” test, (ii) the requirement of a fair and reasonable price, (iii) the “good faith” test, and (iv) adequate notice. The agreement with Sanjay meets the standards set forth for the sound business purpose. In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983) (setting forth the "sound business purpose" test); Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986) (adopting the Lionel standard and adding the "good faith" requirement); and In re Delaware & Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991) (adopting Lionel in this District). With the filing of this Motion, the Reorganized Debtor has given interested parties notice of its intent to enter into the Agreement with Mr. Patel or his permitted assigns to sell the Property.

18. Accordingly, the Reorganized Debtor requests an order authorizing it to consummate the sale of the Property.

Notice

19. The Reorganized Debtor has given notice of this Motion to the United States Trustee, all creditors and those requesting service pursuant to Fed. R. Bankr. P. 2002. All

interested parties have therefore been given proper notice of the proposed sale and of the objection deadline.

20. No previous request for the relief requested herein has been made to the Court.

WHEREFORE, the Reorganized Debtor respectfully requests this Court to enter an order (i) approving the Agreement with Sanjay Patel or his permitted assigns; (ii) approving the sale of the Property pursuant to the terms of the Agreement of Sale and the proposed order attached hereto; and (iii) granting such other relief as it deems just and proper.

BAIRD MANDALAS BROCKSTEDT, LLC

/s/ Stephen W. Spence

Stephen W. Spence, Esquire (#2033)

1413 Savannah Road, Suite 1

Lewes, DE 19958

(302) 645-2262

*Counsel to Reorganized Debtor Pelican Bay
Group, Inc.*

Date: November 21, 2017

Exhibit A

AGREEMENT OF SALE

This Agreement of Sale (the "Agreement") is made this 27 day of October, 2017, between Sanjay Patel and/or assigns (the "Purchaser") and Pelican Bay Group, Inc., (the "Seller"). In consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. Sale and Purchase. Subject to the terms and conditions hereinafter set forth, Seller hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to purchase and accept from Seller, (a) all those certain lots or pieces of ground, together with the buildings, structures and other improvements erected thereon, known as Sea Esta Village, 100 Rudder Road, Millsboro, Delaware 19966 further identified as tax parcel 2,34-24,00-310.00 and (b) all fixtures, supplies of every nature and description attached or pertaining to, or otherwise used in connection with all or any part of the Real Estate (except such as are owned by tenants of the Real Estate and except those items of personal property, including, without limitation, all intangible personal property used or useful in connection with the foregoing, including, without limitation, trade names, contract rights, guarantees, licenses, permits, and warranties (collectively, the "Personalty"). Within seven (7) calendar days of the execution of this Agreement, Seller shall provide a complete itemization of all Personalty to Purchaser, whereupon said itemization shall be attached as Exhibit "A" hereto. The Real Estate and the Personalty are referred to herein collectively as the "Property".

2. Purchase Price. The aggregate purchase price for the Property (the "Purchase Price") shall be Two Million One Hundred Thousand (\$2,100,000) which shall be paid to Seller as follows:

2.1. Within five (5) days of the full execution of this Agreement, Purchaser shall deposit Ten Thousand Dollars (\$10,000) (the "Deposit") in escrow with _____ at _____ (the "Escrow Agent").

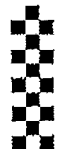
2.2. At Closing, the Purchase Price less the Deposit shall be delivered by certified check, electronic wire, or check of the attorney/title agent selected by Purchaser to close the transaction contemplated hereby.

3. Covenants, Representations and Warranties of Seller. Seller covenants, represents and warrants to Purchaser as follows:

3.1. Seller is the legal fee simple title holder of the Property and has the power and authority to execute, deliver and perform this Agreement and to sell, transfer, convey and deliver the Property, and will convey and transfer to Purchaser good and marketable title to the Property, free and clear of all mortgages, liens, encumbrances or other matters affecting title, excepting existing tenants under current leases and such matters as may be acceptable to Purchaser and such as will be insured by a licensed title insurance company of the State of Delaware selected by Purchaser (the "Title Insurer") at its standard rates. If any mechanic's, materialmen's or similar liens are filed before or after Closing for work performed prior to Closing, Seller shall promptly discharge the same;

3.2. Within seven(7) calendar days of execution of this Agreement, Seller shall provide Purchaser access to all surveys, reports, plans, inspections and similar documents and materials relating to the Property and all agreements with respect to or affecting the Property, including but not limited to, all agreements regarding equipment, supplies, pest control, management, maintenance, repairs, cleaning, concessions, service, landscaping, cleaning and janitorial services,

[Handwritten signature]
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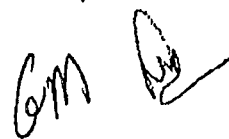
trash removal, alarm and security contract (if any) ("Ancillary Contracts"). Neither Seller, nor any of its agents, has received any notice from any party to such agreements claiming the existence of any default or breach there under. All parties to such agreements will be notified by Seller prior to Closing that their agreements will be subject to termination at the time of Closing, at the option of the Purchaser. Upon expiration of the Due Diligence Period and assuming the Purchaser has not terminated this Agreement, Purchaser shall inform Seller of which agreements, if any, Purchaser will assume. To the extent applicable, Seller has carried and will continue to carry all necessary workmen's compensation insurance with respect to all employees up to the date of Closing, has filed and will continue to file all tax returns and other required filings and has withheld and will continue to withhold all amounts required by law to be withheld or paid in respect thereof. All insurance policies respecting the Property shall be maintained and kept in full force and effect by Seller pending Closing.

3.3. To the best of Seller's actual knowledge and belief there are no existing violations of any federal, state, county, or municipal laws, ordinances, orders, codes, regulations or requirements affecting all or any portion of the Property including without limitation, violations of the housing, building, safety, health, fire or zoning ordinances, codes and regulations of the municipality within which the Property is located, and no written notice of any such violation has been issued by any governmental or quasigovernmental authority. Seller shall cure, prior to Closing or as soon thereafter as reasonably practical, any violation of which Seller or Purchaser receives written notice prior to the Closing from any governmental or quasi-governmental authority having jurisdiction over the Property.

3.4. No polluting, toxic or hazardous substances were used, generated, treated, stored, released, discharged or disposed of on the Property by the Seller, or, to Seller's actual knowledge, by others, at any time. No notification of release of a "hazardous substance" or "hazardous waste" as such terms are defined in and pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.* ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* or the Federal Clean Water Act 33 U.S.C. Section 1251 *et seq.* or any state or local environmental law, regulation or ordinance, has been received by Seller and, to the best of Seller's knowledge, none has been filed as to the Property, and the Property is not listed or formally proposed for listing on the National Priority List promulgated pursuant to CERCLA or on any state list of hazardous substance sites requiring investigation or clean-up. To the best of Seller's knowledge, no PCB contaminated, lead paint, friable asbestos or formaldehyde-based insulation items are present at the Property. To the best of Seller's knowledge, no activities or occurrences are taking place or have taken place at the property which might give rise to any basis for any of the foregoing.

4. Operations Pending Closing. Between the date of execution of this Agreement and the date of Closing, Seller shall operate and maintain the Property in the same manner as it presently does. Seller shall give to Purchaser or Purchaser's agents, and shall cause the management of the Property to give to Purchaser or Purchaser's agents, upon reasonable notice, full access to the Property and to all books, records and files relating thereto, and shall furnish or cause to be furnished to Purchaser all information concerning the Property which Purchaser or Purchaser's agents shall reasonably request. Seller shall not enter in any lease for any portion of the Property prior to Closing.

5. Purchaser's Due Diligence Period. Purchaser shall have the right at any time on or before sixty (60) calendar days from the date of full execution of this Agreement (the "Contingency Date") to perform and undertake any and all tasks Purchaser deems necessary to satisfy itself as to the



adequacy of the Property for Purchaser's intended use ("Due Diligence Period"). If on or before the Contingency Date Purchaser is not satisfied for any reason whatsoever, Purchaser may notify Seller in writing of Purchaser's desire to cancel this Agreement, in which case the Deposit shall be released and returned to Purchaser within five (5) calendar days and neither party shall have any further obligation hereunder other than confidentiality of all information related to the Property. If Purchaser does not cancel this Agreement prior to the Contingency Date then the Deposit shall become non-refundable.

6. Closing. Closing under this Agreement (the "Closing") will be held thirty days (30) from the Contingency Date (the "Closing Date"), or earlier at the option of Purchaser.

6.1 At Closing, Seller shall deliver to Purchaser the following:

6.1.1. A special warranty deed to the Real Estate;

6.1.2. A valid assignment to Purchaser of any assignable guarantees and warranties issued in connection with the construction, improvement, alteration or repair of the buildings, structures and other improvements on the Real Estate, together with the original of each such guarantee and warranty (or copies, if originals are not available);

6.1.3. All records and files relating to the current operation and maintenance of the Property;

6.1.4. Such affidavits or letters of indemnity as Title Insurer shall require in order to issue policies of title insurance free of any exceptions for unfilled mechanic's, materialmen's or similar liens, which items shall be provided by Seller at no charge to Purchaser;

6.1.5. A valid assignment to Purchaser of all of Seller's right, title and interest in and to the Ancillary contracts, and other agreements which Purchaser has chosen to accept;

6.1.6. Such other documents, plans, instruments or items as may reasonably be required to consummate this transaction and to otherwise effect the agreements of the parties hereto.

6.2. At Closing, Purchaser shall deliver or cause to be delivered to Seller the following:

6.2.1 The Purchase Price, by certified check, electronically wired funds, or check of Purchaser's attorney/ title agent.

6.2.2 Such other documents and instruments as may reasonably be required to consummate this transaction and to otherwise effect the agreements of the parties hereto.

7. Liabilities Assignment and Assumption of Certain Contract Obligations.

7.1. Except as expressly provided herein, Purchaser shall not assume any liabilities or obligations of the Property or Seller existing as of the date of Closing, and Seller shall pay the same



as they mature and shall hold Purchaser harmless with respect to all thereof. Liabilities and obligations of the Property incurred after the date of Closing are hereby assumed by Purchaser.

7.2. Seller will assign to Purchaser all of its right, title and interest in and to the Leases (if applicable) and such contracts and other agreements that Purchaser has chosen to accept, and Purchaser will assume and agree to perform Seller's duties and obligations there under as of the date of closing.

8. Apportionments; Taxes; Expenses. The following items shall be adjusted and apportioned between Seller and Purchaser at Closing as follows:

8.1. All real estate taxes and other state and local taxes, charges and assessments affecting the property shall be pro-rated on a per diem basis as of midnight on the date of Closing.

8.2. Charges for water, electricity, sewer, gas, telephone and all other utilities shall be pro-rated on a per diem basis as of midnight of the day preceding the date of closing. Seller and Purchaser shall cooperate to cause the transfer of utility accounts from Seller to Purchaser.

8.3. The unpaid monetary obligations of Seller with respect to any of the contracts, or other agreements to be assumed by Purchaser shall be pro-rated on a per diem basis as of midnight on the date of Closing.

8.4. At Closing, Purchaser and Seller shall each pay one half of the state and local realty transfer taxes, if any, imposed upon or relating to the transaction contemplated by this Agreement.

8.5. Each party will pay all its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

9. Damage, Destruction, or Condemnation. If at any time prior to the date of Closing all or such portion of the Property is destroyed or damaged as a result of fire or any other casualty whatsoever so that the cost of repair or restoration thereof is \$50,000 or more, or if all or any material portion of the Property is condemned or taken by eminent domain proceedings by any public authority, this Agreement may be canceled at Purchaser's option within five (5) calendar days of such casualty or condemnation event, in which case the Deposit shall be returned to Purchaser within five (5) calendar days of such notice, and neither party shall have any further obligation or liability hereunder. If any such damage or destruction to the Property can be repaired for less than \$50,000 then Purchaser shall proceed to Closing, and Seller shall be obligated to repair such damage at Seller's sole expense, or, at Purchaser's election, Purchaser may repair such damage and reduce the Purchase Price by an amount equal to the cost of such repair or restoration. If there is any material or total condemnation or taking, or if the cost of repairing casualty damage to the Property exceeds \$50,000, and if Purchaser elects not to terminate this Agreement, all condemnation proceeds or awards, and/or all insurance proceeds paid or payable to Seller shall belong to Purchaser and shall be paid over and assigned to Purchaser at Closing, and Seller shall execute all assignments, documents or instruments necessary to transfer all interest in all proceeds to Purchaser.

10. Quality of Title. In the event Seller is not able to convey title to the Property on the date of Closing in accordance with the provisions of this Agreement, Purchaser shall have the option of (a) taking such title as the Seller can give, (b) canceling this Agreement and having the Deposit

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returned to Purchaser within five (5) calendar days, in which case there shall be no further liability or obligation by either of the parties hereunder, or (c) instructing Seller to undertake to make said title good and marketable or permit Purchaser to undertake to make said title good and marketable, in which case Seller agrees to reimburse Purchaser for any expenses actually incurred therein and to assist Purchaser, without cost or expense to Purchaser, in such title clearance.

11. Default. If, at any time after the Contingency Date, Seller determines that Purchaser fails to fulfill any of its obligations in the manner required by this Agreement, and such failure continues for a period of fifteen (15) calendar days after notice thereof, Seller may instruct Escrow Agent to pay over the Deposit, at which time Escrow Agent shall notify Purchaser of Seller's demand and unless Escrow Agent receives, within five (5) calendar days from the date of Escrow Agent's notice, an affidavit from Purchaser stating that there is a genuine dispute as to which party is entitled to the Deposit, Escrow Agent shall pay over the Deposit to Seller. If Escrow Agent does receive an affidavit from Purchaser within five (5) calendar days after Escrow Agent's notice, Escrow Agent shall hold the Deposit in escrow until the dispute as to which party is entitled to the proceeds is resolved. If Purchaser is not in default hereunder, the Deposit shall be applied to the Purchase Price at Closing. Should Seller be entitled to retain the Deposit as a result of a breach by Purchaser, said proceeds shall be Seller's sole and exclusive remedy for such breach as liquidated damages.

If at any time Purchaser determines that Seller fails to fulfill any of its obligations in the manner required by this Agreement, and such failure continues for a period of fifteen (15) calendar days after notice thereof, Purchaser may instruct Escrow Agent to pay over the Deposit, at which time Escrow Agent shall notify Seller of Purchaser's demand and unless Escrow Agent receives, within five (5) calendar days from the date of Escrow Agent's notice, an affidavit from Seller stating that there is a genuine dispute as to which party is entitled to the Deposit, Escrow Agent shall pay over the Deposit to Purchaser. If Escrow Agent does receive an affidavit from Seller within five (5) calendar days after Escrow Agent's notice, Escrow Agent shall hold the Deposit in escrow until the dispute as to which party is entitled to the proceeds is resolved. If Seller is not in default hereunder, the Deposit shall be applied to the Purchase Price at Closing. Should Purchaser be entitled to a return of the Deposit as a result of a breach by Seller.

12. Assignment by Purchaser. Subject to Seller's prior written consent, Purchaser may assign all of Purchaser's rights and obligations hereunder. Notwithstanding the foregoing, Purchaser may assign this Agreement to an entity in which Purchaser is the sole owner or holds a majority of the interests.

13. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered or mailed, first class postage prepaid, to the addresses first appearing below, or to such other address as a party may hereafter designate for itself by written notice to the other party. Written notice delivered electronically by email or facsimile shall be deemed as acceptable, upon receiving a written confirmation of receipt by other party.

14. Headings. The headings preceding the text of the paragraphs hereof are inserted solely for convenience and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

15. Survival. The covenants, representations and warranties of Seller shall survive Closing.

Handwritten signature and initials, possibly "AM" and "CM", in black ink.

16. Commissions. Purchaser and Seller each represent to the other that neither has made any agreement or taken any action which may cause anyone to become entitled to a commission or fee as a result of the transactions contemplated by this Agreement, except for the commission to DSM Commercial to be paid by Seller at 5%, and each will indemnify and defend the other from any and all claims, actual or threatened, for compensation by any such person with whom either of them may have dealt.

17. Entire Agreement; Amendments. This Agreement and the Exhibits hereto set forth the full agreement between the parties and may be modified only by written agreement signed by both parties.

DSM during buyer's due diligence period *DSM*

18. Contingencies. In the event Purchaser, or Purchaser's Agent, is unable to obtain primary mortgage financing in the amount 80 percent of the purchase price with the terms and conditions satisfactory to the Purchaser, then and in that event this Agreement of Sale may be made void by the Seller and Escrow Agent shall refund the Deposit to Purchaser.

19. AGENCY RELATIONSHIPS IN EFFECT UNDER THIS AGREEMENT. This provision shall constitute a written memorandum confirming the applicable agency relationships among the broker(s) named below and the parties to this transaction.

Seller Agency: DSM Commercial, Seller's broker, is the exclusive agent of the Seller and Buyer.

The Seller's Broker is representing Seller's interests and has fiduciary responsibilities to Seller, but is obligated to treat all parties fairly. Broker, and any salesperson, without breaching the fiduciary responsibility to Seller, may, among other services, provide a potential buyer with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. Broker, and any salesperson, also has the duty to respond accurately and honestly to a potential buyer's questions and disclose material facts about properties, submit promptly any offers to purchase and offer properties without unlawful discrimination.


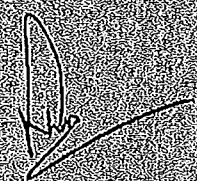
The above confirmation of the applicable agency relationship does not relieve a buyer or seller from the responsibility to protect their own interests. This Agreement between Purchaser and Seller as to purchase price and other terms is the result of negotiations between Purchaser and Seller acting in their own best interests and on their own behalf.


SELLER

By: 
Name: *George Metz*

Seller's Address:
100 Rudder Road
Millsboro, DE 19966

BUYER

By: SANJAY PATEL 
Name:
Title:

Buyer's Address:
17 WATSON LN
MIDDLETOWN DE 19709
Email: sapatel66@gmail.com

With a copy of any notices to:

Email:

