

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

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In re:

PETER S. RES & BARBARA A. RES,

Debtors.

Case No. 14-12776 (RG)

Chapter 11

Hon. Judge: Rosemary Gambardella

Hearing Date and Time:
September 13, 2017 @ 10 AM

FILED
JEANNE A. NAUGHTON, CLERK

NOV - 1 2017

U.S. BANKRUPTCY COURT
NEWARK, N.J.

BY _____ DEPUTY

**ORDER AUTHORIZING AND APPROVING (A) SALE OF
DEBTOR'S REAL PROPERTY FREE AND CLEAR OF ALL LIENS,
CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO 11
U.S.C. §§ 105(a) AND 363(b), (f) AND (m)**

The relief set forth on the following pages, numbered two (2) through six (6), is hereby

ORDERED.

11-1-17

USBJ

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Debtors: Peter S. Res & Barbara A. Res
Case No.: 14-12776 (RG)
Caption of Order: Order Authorizing and Approving Sale of Real Property Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105(a) and 363(b), (f) and (m)

THIS MATTER being brought before the Court by Peter S. Res & Barbara A. Res, the reorganized debtor herein (the “Debtor”), by way of its Motion for Entry of Orders (a) authorizing the sale of real property, free and clear of all liens, claims, interests and encumbrances (the “Sale”); (b) approving bidding procedures in connection with the auction; (c) approving the form and manner of notice of the auction; (d) authorizing compensation to retained professionals for approved fees and costs from sale proceeds; and (e) granting other and related relief (the “Motion”); and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O), and (iii) notice of the Motion and proposed form of Order was served on those parties required to receive notice pursuant to Title 11 of the United States Code (the “Bankruptcy Code”), the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the District of New Jersey Local Bankruptcy Rules; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in accordance with the confirmed chapter 11 plan; and after due deliberation and sufficient cause appearing therefore;

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of the Motion is proper pursuant to 27 U.S.C. §§ 1408 and 1409.

B. Approval of the Sale¹ at this time will maximize the value of the estate, and hence, such approval is in the best interest of the Debtor, its creditors, and its estate.

¹ All capitalized terms not defined herein are intended to have the meanings ascribed to them in the Motion.

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C. The Debtor has articulated sound business reasons for consummating the Sale and for selling the Property, and it is a reasonable exercise of the Debtor's business judgment to consummate the Sale at this time.

D. The Debtor may sell the Property to Naim Abuhadba (or an entity to be formed to hold his interest) ("Purchaser") free and clear of all liens, claims, interests and encumbrances in accordance with, and to the extent permitted by, Bankruptcy Code section 363(f).

E. The transfer of the Property to Purchaser does not and will not subject Purchaser to any liability whatsoever with respect to the operations of the Property and/or the ownership of the Debtor's assets prior to the closing.

F. The purchase price to be paid by Purchaser pursuant to the Asset Purchase Agreement attached hereto as **Exhibit "A"** is fair consideration and constitutes reasonably equivalent value for the Real Property.

G. Purchaser is a purchaser in good faith, as that term is used in Bankruptcy Code section 363(m), with respect to the Sale. The Sale was negotiated, proposed and entered into by the parties in good faith, from arms'-length bargaining positions and without collusion, and therefore, Purchaser is entitled to the protections of Bankruptcy Code section 363(m) with respect to the Sale. Neither the Debtor nor Purchaser has engaged in any conduct that would cause or permit the Sale to be voided, nor that would justify the imposition of costs or damages, under Bankruptcy Code section 363(n).

H. As evidenced by the certificates of service filed with the Court, (i) proper, timely, adequate and sufficient notice of the Motion has been provided in accordance with Bankruptcy Code sections 363 and Bankruptcy Rules 2002, 6004, 9007, and 9014; (ii) such notice was good, sufficient and appropriate under the particular circumstances; and (iii) no other or further notice of the Motion or the entry of this Order shall be required.

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I. Non-debtor parties holding either valid liens, claims, interests or encumbrances with respect to the Debtor's sold assets who did not object, or who withdrew their objections to the Motion are deemed to have consented to the Sale of the Property free and clear of all liens, claims, interests and encumbrances pursuant to Bankruptcy Code section 363(f)(2).

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. All of the findings of fact and conclusions of law set forth above are incorporated herein by reference, and the Motion is granted.

2. The Sale and all ancillary documents and transactions contemplated therein, including the transfer of the Property by Debtor to Purchaser, are approved and authorized under the Bankruptcy Code, including sections 105 and 363 thereof.

3. The transfer of the Property by Debtor to Purchaser upon closing will be a valid, legal, and effective transfer of the Property notwithstanding any requirement for approval or consent by any entity (as defined in section 101(15) of the Bankruptcy Code).

4. Pursuant to Bankruptcy Code section 363(b), the Debtor is hereby authorized to sell and transfer the assets pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement between the Debtor and Purchaser and to take all other actions as are necessary to effectuate all of the terms thereof and to consummate the transactions contemplated therein, including, without limitation, such actions as are necessary to execute and deliver all documents referenced in and/or contemplated in connection with the Sale without any further authorization of the Court.

5. Customary closing adjustments payable by the Debtor for municipal charges or assessments shall be satisfied from the proceeds of the sale at closing. Thereafter, Selene Finance LP (or its assignee) shall be satisfied from the proceeds of the sale at closing. Thereafter title to the Property shall pass to Purchaser pursuant to, and to the fullest extent permitted by, Bankruptcy Code

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section 363 and all other applicable laws, free and clear of any and all liens, claims, interest and encumbrances, including, but not limited to: (i) any lien, replacement lien, claim, interest or charge granted to the any party under any Order entered in this case; and (ii) mechanics', materialmen's and other consensual and non-consensual liens and statutory liens), security interests, encumbrances and claims (including, but not limited to, any "claim" as defined in Bankruptcy Code section 101(5)), reclamation claims, malpractice claims, tort claims, any liability or obligations under COBRA, mortgages, deeds of trust, pledges, covenants, restrictions, hypothecations, charges, indentures, loan agreements, causes of action, instruments, contracts, leases, licenses, options, rights of first refusal, offsets, recoupment, rights of recovery, judgments, orders and decrees of any court or foreign or domestic government entity, claims for reimbursement, contribution, indemnity or exoneration, assignment, preferences, debts, charges, suits, rights of recovery, interests, products liability, alter-ego, environmental, successor liability, tax and other liabilities, causes of action and claims, and in such case whether secured or unsecured, choate or inchoate, filed or unfilled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, or known or unknown, whether arising prior to, on, or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise (collectively, the "Liens and Claims"), with any Liens and Claims to attach only to the proceeds of sale with the same priority, validity, force, and effect as they existed with respect to the Property before the closing, subject to any and all rights, claims, defenses, and objections of Debtor and any other party-in-interest.

6. The Sale shall not subject Purchaser to any liability by reason of such transfers and assignments under the laws of the United States, any state, territory or possession thereof or the

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District of Columbia based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of successor or transferee liability, and all creditors and parties-in-interest are prohibited from asserting such claims against Purchaser.

7. The Sale constitutes legal, valid, and effective transfers and shall vest Purchaser with all right, title, and interest of the Debtor in and to the Property.

8. All objections to the Motion and the relief requested therein that have not been withdrawn, waived or settled, and all reservations of rights included in such objections, are hereby overruled on the merits and denied.

9. This Court shall retain exclusive jurisdiction to enforce the provisions of this Order and to resolve any issue or dispute concerning the interpretation, implementation or enforcement of this Order or the rights and duties of the parties hereunder or thereunder, including, without limitation, any issue of dispute concerning the transfer of the assets free and clear of Liens and Claims.

10. The provisions of this Order shall be self-executing, and neither the Debtor, Purchaser nor any other party shall be required to execute or file releases, termination statements, assignments, cancellations, consents or other instruments to effectuate, consummate and/or implement the provisions hereof with respect to such sale; provided, however, that this paragraph shall not excuse such parties from performing any and all of their respective obligations under the Sale.

11. The Sale approved by this Order is not subject to avoidance or the imposition of costs and damages pursuant to Bankruptcy Code section 363(n).

12. The consideration to be provided by Purchaser in exchange for the Property is hereby deemed to constitute reasonably equivalent value and fair consideration.

13. A true copy of this Order shall be served on all parties who received notice of the Motion within seven (7) days of the date hereof.

EXHIBIT A

CONTRACT FOR THE SALE OF REAL ESTATE

This Contract for Sale is made on Sept. 6th, 2017, between ~~Moses and Nelly Apsan~~, chapter 11 debtors in New Jersey Bankruptcy Case No. ~~14-24181~~ ^{Peter and Barbara Res DS} 14-12776 (RG) DS hereinafter referred to as the "Sellers" and Naim AbuHajba, whose address is 174 MAPLEWOOD AVE hereinafter referred to as the "Buyer."
CCIFTON NJ 07017

1. **Purchase Agreement.** The Buyer as the high qualified bidder at the auction of the property being sold hereunder which took place on September ~~18, 2017~~ ^{6th 2017} pursuant to the applicable provisions of the U.S. Bankruptcy Code and Rules of Bankruptcy Procedure hereby agrees to buy the Property described herein below. DS

2. **Property.** The Property being sold hereunder is commercial real estate located at 91 Ogile Road, Old Tappan ~~7 Arrowhead Lane, Saddle River~~, New Jersey (the "Property").

3. **Purchase Price.** The purchase price is \$ 925,000.

4. **Payment of Purchase Price.** The Buyer has tendered a deposit of \$ 10,000 receipt of which is hereby acknowledged and the balance of the purchase price shall be due and payable at closing which is to take place within 30 days from the date hereof with the understanding that time is of the essence. The Deposit is not refundable. The Deposit will only be returned to the Buyer if the Sellers are unable to close.

5. **Deposit Monies.** The deposit will be held by the Sellers' attorney in a segregated account until closing.

6. **Adjustments.** Adjustments with respect to real estate taxes, other municipal assessments and utilities will be made at closing.

7. **Transfer of Ownership.** At closing, the Sellers will convey the Property to the Buyer via a Trustee's Deed, or similar deed, which shall convey a clear and marketable title.

8. **Conditions of Sale.** The Property, as announced at Auction, is being sold "as is" without any representations or warranties of any kind, nature or description except for the delivery of a clear and marketable title. The sale shall include all fixtures and any other personal property permanently attached to the Property but will not include any personal belongings of the Sellers.

The Sellers make no representation, or warranties, concerning, and assumes no liability for any environmental conditions or liabilities, municipal code violations, etc. Any and all environmental conditions and/or municipal code violations that need to be remedied and any well certifications required, are the sole responsibility of the Buyer and shall be remedied or obtained at the Buyer's expense.

9. **Possession.** At closing, the Buyer will be given possession of the Property in a vacant condition.

10. **Realtor's Commission.** The parties acknowledge that this sale arises out of an auction conducted pursuant to the applicable provisions of the U.S. Bankruptcy Code and Rules and that no commission shall be due and owing to any party other than what the Court may allow to the Auctioneer.

11. **Complete Agreement.** This Contract is the entire and only Agreement between the Buyer and the Sellers and the provisions hereof shall be binding upon all parties who sign hereinbelow.

12. **Exclusive Jurisdiction of Bankruptcy Court.** This Contract and any disputes relating thereto are subject to the exclusive jurisdiction of the Bankruptcy Court presiding over the case of the Sellers- Case No. ~~14-24181-~~ **14-12776 (RG)**

13. **Buyer's Responsibilities.** It shall be the Buyers' responsibility to obtain a Certificate of Occupancy and any related state licenses or permits, if necessary, at the Buyer's expense.

14. **Court Approval.** This contract is subject to the Confirmation of the Auction Sale by the United States Bankruptcy Court on the date of September 26, 2017.

SIGNED AND AGREED TO BY:

Witness:

~~Moses Apsan, Seller~~

~~Nelly Apsan, Seller~~

Dated:

Naim Abuhadra

Witness:

Naim Abuhadra

, Buyer

9-6-17

Dated:

, Buyer

Dated:

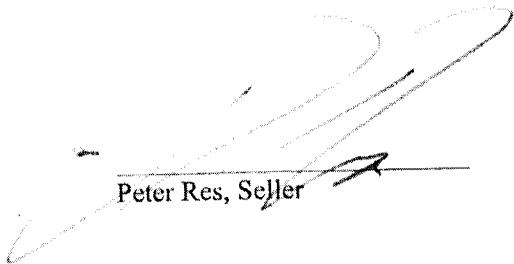
ADDENDUM TO CONTRACT OF SALE

BUYER: 91 OGLE RD OLD TAPPAN LLC
SELLERS: PETER RES AND BARBARA RES
PROPERTY: 91 OGLE ROAD, OLD TAPPAN, NEW JERSEY

The parties to the above-referenced contract of sale agree to amend same as follows:

1. The purchase price shall be changed to \$965,000.00;
2. Buyer is going to be 91 Ogle Rd Old Tappan LLC;
3. The deposit shall be \$92,500.00; and
4. All other terms and conditions to remain unchanged.

Date signed:



Peter Res, Seller

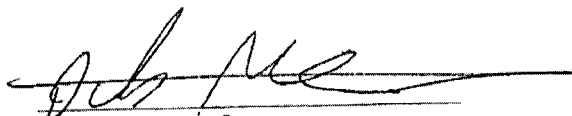
Date signed:



Barbara Res, Seller

91 Ogle Rd Old Tappan LLC

Date signed: *sep-23-17*



By: Diab Mustafa,
Managing Member, Buyer