

Attorneys for Debtor and Debtor-in-Possession  
Edward N. Gewirtz [EG6801]  
BRONSTEIN, GEWIRTZ & GROSSMAN, LLC  
60 East 42<sup>nd</sup> Street, Suite 4600  
New York, NY 10165  
(212) 697-6484

**Hearing Date: Nov. 6, 2017**  
**Hearing Time: 10:30 a.m.**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

-----X

**In re**

**488-486 Lefferts LLC,**

**Chapter 11**

**Debtor.**

**Case No. 1-15-42716-ess**

-----X

**NOTICE OF HEARING ON DEBTOR'S MOTION FOR AN ORDER AUTHORIZING  
THE SALE OF REAL PROPERTY LOCATED AT 486-488 LEFFERTS AVENUE,  
BROOKLYN, NEW YORK 11225 (THE "PROPERTY") FREE AND CLEAR OF ALL  
LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO BANKRUPTCY CODE  
SECTION 363(B), (F).**

**PLEASE TAKE NOTICE** that upon the attached motion dated October 4, 2017 (the "Motion") of 488-486 Lefferts LLC, the above-captioned debtor and debtor in possession (the "Debtor"), by its attorneys, Bronstein, Gewirtz & Grossman, LLC, will move at a hearing before the Honorable Elizabeth S. Stong, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Eastern District of New York, Conrad B. Duberstein Courthouse, 271-C Cadman Plaza East, Brooklyn, New York 11201-1800 on November 6, 2017 at 10:30 a.m., or as soon thereafter as counsel can be heard, for the entry of an order (the "Order") attached as Exhibit "A" to the Motion, authorizing the sale of the Property Free and Clear of all Liens, Claims and Encumbrances(as defined in the Motion) to an entity to be formed by attorney Abraham Weisel, Esq. for his client (the "Proposed Purchaser") pursuant to Bankruptcy Code Section 363(b), (f) and (h) and 365(a) and Rule 6006 of the Federal Rules of Bankruptcy

Procedure, pursuant to the terms and conditions of the Contract of Sale Agreement dated August 18, 2017 attached to the Motion as Exhibit “B”.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the relief requested therein must be in writing, must conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of the Bankruptcy Court for the Eastern District of New York (the “Court”), must set forth the name of the objecting party, and the basis for the objection and the specific grounds therefor, and must be filed with the Court electronically, (with a hard copy delivered directly to Bankruptcy Judge Stong’s chambers), and any objection must further be served upon: (i) Bronstein, Gewirtz & Grossman, LLC 60 East 42<sup>nd</sup> Street, Suite 4600, New York, New York 10165, Attention: Edward N. Gewirtz, Esq.; (ii) the United States Trustee’s Office for the Eastern District of New York U.S. Federal Office Building 201 Varick Street, Suite 1006 New York, New York 10004; and (iii) Abraham Weisel, Esq., attorney for the Purchaser, 4309 13<sup>th</sup> Avenue, Brooklyn, New York 11219, so as to be received no later than seven days before the date of the hearing.

Dated: October 4, 2017

Attorneys for Debtor and Debtor-in-Possession  
BRONSTEIN, GEWIRTZ & GROSSMAN, LLC  
By:     /s/ Edward N. Gewirtz      
Edward N. Gewirtz [EG6801]  
60 East 42<sup>nd</sup> Street, Suite 4600  
New York, New York 10165  
Tel. No.: (212) 697-6484  
Fax. No.: (212) 697-7296  
Chona@bgandg.com

Attorneys for Debtor and Debtor-in-Possession  
Edward N. Gewirtz [EG6801]  
BRONSTEIN, GEWIRTZ & GROSSMAN, LLC  
60 East 42<sup>nd</sup> Street, Suite 4600  
New York, NY 10165  
(212) 697-6484

**Hearing Date: Nov. 6, 2017**  
**Hearing Time: 10:30 a.m.**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

-----X

**In re**

**Chapter 11**

**488-486 Lefferts LLC,**

**Debtor.**

**Case No. 1-15-42716-ess**

-----X

**DEBTOR’S MOTION FOR ORDER AUTHORIZING THE SALE OF REAL  
PROPERTY LOCATED AT TWO ADJACENT PARCELS OF UNDEVELOPED LAND  
LOCATED AT 488-486 LEFFERTS AVENUE, BROOKLYN, NY (THE “PROPERTY”)  
FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES PURSUANT  
TO 11 U.S.C. §363(B), (F) AND (H).**

488-486 Lefferts LLC the above-captioned debtor and debtor-in-possession (the "Debtor"), submits this motion (the "Motion"), for entry of an order, substantially in the form of Exhibit "A" attached hereto (the "Sale Order"), authorizing the sale of the Property Free and Clear of All Liens, Claims and Encumbrances pursuant to Bankruptcy Code Section 363(b), (f) and (h), and Rule 6006 of the Federal Rules of Bankruptcy Procedure to an entity to be newly formed represented by Abraham Weisel, Esq. (the "Proposed Purchaser"), pursuant the terms and conditions of a Purchase and Sale Agreement dated August 18, 2017 (the "Sale Agreement") attached hereto as Exhibit "B", and hereby represents as follows:

**JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested are sections 105(a), 363(b), (f)

and (h) of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 2002, 3012, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **Preliminary Statement**

2. The Proposed Sale is in the best interest of all interested parties. The Debtor has been marketing the Property for over two years and this represents the best offer for the Property. Importantly, the proceeds of the sale provide a significant “cushion” to all secured parties, and will be more than sufficient to pay all creditors in full. Thus, the only party that could possibly be prejudiced in any manner from the Proposed Sale are the equity holders who unanimously support the sale. Furthermore, time is of the essence, as the Court is aware, the 9019 Stipulation places a strict time line on the sale of the Property, or else the Property can be sold at a foreclosure sale by the secured creditor.

### **FACTS**

#### The Bankruptcy Case

1. The Debtor filed its voluntary petition for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§101 *et seq.* (the “Bankruptcy Code”) on June 9, 2015(the “Petition Date”).

2. The Debtor continues to manage its property as a debtor and debtor-in-possession. No trustee or examiner has been appointed in this case. Also, no official committee of unsecured creditors has been appointed.

3. The Debtor’s assets consist of two adjacent parcels of undeveloped land located at 488-486 Lefferts Avenue, Brooklyn, NY (the “Property”).

4. The Debtor purchased the Property in 2008. As a result of the financial crisis, the Debtor was unable to develop the Property and, as a result, the Debtor was unable to

pay its lender Madison Park Investors, LLC (the “Bank”) which claimed to hold a mortgage (the “Mortgage”) against the Property. In 2009 the Bank sued on the loan note in New York State Supreme Court, Richmond County and obtained a money judgment in the amount of \$835,640. In 2013, the Bank, based on the Richmond County Judgment and the Mortgage, sought to foreclose on the property in New York State Supreme Court, Kings County (the “Foreclosure Action”). Thereafter, the Mortgage and the Foreclosure Action were assigned to Vintage Equities Corp.

#### 9019 Settlement

5. With great assistance from the Court, the Debtor and Vintage Equities, Inc. (which claimed the mortgage against the Property) and Fay Capital Corp. (which claimed a contract to purchase the Property for \$1.375 million), entered into a formal settlement agreement (the “Settlement Agreement”), which they executed on May 25, 2017, and which was approved by this Court following the Debtor’s Rule 9019 motion for such approval.

6. Pursuant to the 9019 Settlement:

- Vintage Equities Corp.’s claim, designated herein as Claim Number 7 was deemed modified to an allowed secured claim in the sum of \$1,399,804.38.
- In the event the Allowed Secured Claim is not fully paid by November 10, 2017, the Debtor and each of its members, hereby irrevocably agreed to not oppose any motion by Vintage Equities Corp. for relief from the automatic stay to complete the Foreclosure Action, except that it was also expressly agreed that under no circumstances shall a foreclosure sale take place prior to May 10, 2018.

**Employment of the Ariel Property Advisors, LLC As Real Estate Broker**

7. By order of the Bankruptcy Court dated August 1, 2016, the Bankruptcy Court approved the retention Ariel Property Advisors, LLC (“Ariel”).

8. Ariel marketed the Property and brought the proposed buyer, who is willing to pay \$2.1 million with a time of the essence closing date of November 30, 2017. The proposed buyer has deposited \$105,000 in escrow with the debtor’s attorney as a deposit on the proposed contract.

**Disclosure Statement Hearing:**

9. Debtor filed a second disclosure statement filed on August 1, 2017 (“Disclosure Statement”).

10. On October 2, 2017 a hearing (the “Disclosure Statement Hearing”) was held and the Court approved of the Disclosure Statement. A formal order approving the Disclosure Statement is pending, and a hearing on approval of the Debtor’s Chapter 11 Plan is to be held on November 6, 2017 at 10:30 a.m.

11. The Disclosure Statement and Plan contemplate a 100% payout to all creditors, and a sales price of \$2.1 million would enable Debtor to make such a payout, with hundreds of thousands of dollars left over for equity holders, all of whom have approved of the sale.

**Contemplated Sale without the opportunity for Competitive Bidding is warranted.**

12. As demonstrated, the Debtor submits that the private sale is appropriate, as the proceeds of the sale will be more than ample to satisfy all creditors in full and leave a several hundred thousand dollars to equity. Thus, the only parties that could possibly be prejudiced in any manner from the private sale would be the equity holders, who unanimously

support the sale. Moreover, as the Court is aware, the 9019 Stipulation places time constraints on the time to close which are inconsistent with a bidding process. Finally, the Debtor has extensively marketed the Property for nearly two years, including with brokers and, thus, demonstrates that the contemplated transaction represents the best offer.

Liens, Claims, and Interests in the Property.

13. Notwithstanding certain impediments, the Debtor's tireless efforts in identifying a purchaser have succeeded, as it has secured a purchaser for the Property for the amount of \$2.1 million.

14. Most importantly, the Proposed Sale will generate sufficient funds to satisfy all the creditors and provide payment to equity holders.

15. To reiterate, the only party that would benefit from a higher sales price would be the equity holders. The equity holders support the Proposed Sale and believes it is in their best interest.

16. Accordingly, the Debtor respectfully submits that the Proposed Sale is extremely fair and reasonable, represents a prudent exercise of business judgment, and is in the best interests of the Debtor's estate and creditors.

The Agreement.

17. The material terms of the Sale Agreement include, without limitation, the following:

- a. **Purchase Price: \$2,100,000.00**
- b. **Payment: (i) \$105,000.00 shall be paid to and held in escrow concurrent with entering into the Proposed Purchase Agreement (the "Deposit").**
- c. **Time of the Essence Closing Date of November 30, 2017.**

- d. **Court Authorization and Approval:** The Court authorizes and approves the sale, transfer and conveyance of the Premises to Purchaser free and clear of all Liens, Claims and Encumbrances of any kind or nature, pursuant to Section 363 of the Bankruptcy Code, without the requirement of obtaining the consent of any person or entity, with all Liens, Claims and Encumbrances to attach to the proceeds of the sale of the Premises to the same validity, extent and priority as immediately prior to the sale of the Premises. For purposes hereof, “Liens, Claims and Encumbrances” means any and all liens, claims (as such term is defined in Section 101(5) of the Bankruptcy Code), encumbrances, mortgages, pre-existing leases at the Premises identified in Section 13(g) below, pledges, security interests, equity security interests, interests of any kind or nature, charges, actions, title defects, taxes (including liens for taxes), equitable interests, restrictions on transfer, options, conditional sale or other title retention devices or restrictions on the creation of any of the foregoing, whether relating to the Seller or the Premises, of any kind or nature, whether or not asserted, known or unknown, whether relating to any property or the right or the income or profits therefrom.
  
- e. **Finding of *bona fide* Purchaser (Section 363(m)):** The Court finds and determines that Purchaser is a *bona fide* purchaser for value entitled to the protections of Section 363(m) of the Bankruptcy Code, including that Purchaser is purchasing the Premises in “good faith”.
  
- f. **Waiver of Stay:** The Order provides that any stay that would otherwise be applicable pursuant to Bankruptcy Rules 6004(h) or otherwise under the Bankruptcy Code shall be waived to the extent necessary to permit a Closing as soon as possible after entry of the Sale Order. Purchaser reserves the right, at its sole option, to at any time waive any condition precedent to the Closing of this transaction set forth in this Section. Any such waiver must be in writing and be signed by Purchaser. Seller and Purchaser shall consult with one another regarding pleadings that either of them intends to file, or positions either of them intend to take, with the Bankruptcy Court in connection with or that might reasonably affect, the Bankruptcy Court’s entry of the Sale Order.

## **REQUEST FOR RELIEF**

18. The Debtor seeks an order, pursuant to Bankruptcy Code sections 105, 363(b), (f), and (h) and Bankruptcy Rules 2002 6004, and 6006: (a) authorizing the sale of the Property to the Purchaser free and clear of Liens, Claims and Encumbrances and (b) the assumption and assignment to the Purchaser of the Leases in accordance with the terms of the Agreement.

## **BASIS FOR RELIEF REQUESTED**

### **The Sale Satisfies the Applicable Standard for Section 363(b) Sales.**

**Section 363(b)(1) of the Bankruptcy Code authorizes a debtor, after notice and a hearing, to use, sell or lease, property of the estate other than in the ordinary course of business. *See* 11 U.S.C. § 363(b)(1). The Bankruptcy Rules provide that “[a]ll sales not in ordinary course of business may be by private sale or by public auction.” Fed. R. Bank. P. 6004(f)(1). Courts in the Second Circuit, and elsewhere, require that a decision to sell or use property pursuant to section 363(b)(1) be based upon the sound business judgment of the debtor. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Licensing By Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 387 (2d Cir. 1997); *Official Committee of Unsecured Creditors of LTV Aerospace and Defense Co. v. LTV Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr.S.D.N.Y. 2003).**

19. The Second Circuit has adopted the widely followed and liberal business justification test that is applied where a debtor seeks to sell all, or substantially all, of its assets prior to confirmation of a plan of reorganization. *See e.g., Lionel Corp.*, 722 F.2d at 1070; *In re Thomson McKinnon Sec., Inc.*, 120 B.R. 301, 307 (Bankr. S.D.N.Y. 1990); *In re Oneida Lake Dev., Inc.*, 114 B.R. 352, 355-56 (Bankr. N.D.N.Y. 1990); *In re Au Natural Rest., Inc.*, 63 B.R. 575, 580 (Bankr. S.D.N.Y. 1986).

20. Courts in this Circuit do not require a debtor to make an exhaustive showing of a sound business justification. Rather, a debtor may conduct a sale other than in the ordinary course of business “if a good business reason exists to support it.” *In re Gucci*, 126 F.3d at 387; *see In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). What constitutes “good business reason” is determined by consideration of the following nonexclusive factors: “(a) the proportionate value of the asset to the estate as a whole; (b) the amount of elapsed time since the filing; (c) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (d) the effect of the proposed disposition on future plans of reorganization; (e) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; (f) which of the alternatives of use, sale or lease the proposal envisions; and ‘most importantly perhaps,’ (g) whether the asset is increasing or decreasing in value.” *In re General Motors Corp.*, 407 B.R. 463, 490 (S.D.N.Y. 2009). The facts and circumstances of each case determine whether or not there are sufficient business reasons to justify a sale. *Lionel Corp.*, 722 F.2d at 1071.

21. In addition to the standard set forth above for evaluating a proposed 363(b) sale, courts in this Circuit have also considered additional factors when evaluating a proposed private sale. These factors include: (a) whether there are compelling facts and circumstances that support approval of the sale; (b) whether the debtor has solicited other

prospective purchasers; (c) whether the price paid is fair and reasonable; (d) whether the sale is in the best interests of the estate; (e) whether notice is reasonable; and (f) whether the sale is being made in good faith. *See In re Ancor Exploration Company (In re Ancor)*, 30 B.R. 802, 808 (D.N.D.Okla. 1983); *In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc.*, 77 B.R. 15, 21 (Bankr. E.D.Pa. 1987). While “the bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the estate assets not in the ordinary course of business under § 363(b) . . . each such proposed sale must be examined from its own facts to determine if approval is justified.” *In re Ancor*, 30 B.R. at 808; *see also Stephens Industries, Inc. v. McClung*, 789 F.2d 386, 388 (6th Cir. 1986).

22. The Debtor has determined that, in the exercise of its business judgment, the sale of the sale of the Property to the Purchaser, in accordance with the Agreement, is in the best interests of its estate and its creditors. As discussed ante the sale proceeds will satisfy all claims against the estate; with a surplus for the Debtor’s sole equity holder.

#### Sale Free and Clear of Liens, Claims and Encumbrances

23. Bankruptcy Code section 363(b)(1) provides: "The 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). Bankruptcy Code section 105(a) provides in relevant part: "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

24. The Debtor proposes to sell the Property free and clear of Liens, Claims, and Encumbrances. Under Bankruptcy Code section 363(f), a Debtor may sell property free and clear of any interest in such property of an entity other than the estate only if, at least one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
  - (2) such entity consents;
  - (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
  - (4) such interest is in 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).

25. Because Bankruptcy Code section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to approve the sale of the Property "free and clear" of Liens, Claims and Encumbrances. See 11 U.S.C. § 363(f); *In re Boston Generating, LLC, et al.*, 440 B.R. 302, 331 (Bankr. S.D.N.Y. 2010) ("Section 363(f) of the Bankruptcy Code authorizes a debtor to sell property under section 363(b) 'free and clear of any interest in such property of an entity other than the estate' if one of the [the subsections of 363(f) are satisfied]"); *Mich. Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (recognizing that Bankruptcy Code section 363(f) is written in disjunctive, and holding that court may approve sale "free and clear" provided that at least one subsection of section 363(f) is met), *cert. dismissed*, 503 U.S. 978 (1992); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

26. The Debtor respectfully submits that sections 363(f)(3) and (5) are all satisfied, thereby allowing the Property to be sold free and clear of all Liens, Claims and Encumbrances. Here, the Property is being sold for a price (\$2.1 million) which is greater than the aggregate value of liens of less than \$1.6 million on the Property and, as such, the requirements for section 363(f)(3) is satisfied. Likewise, the secured lenders and the taxing

authority could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest and, as such, the requirements for section 363(f)(5) is satisfied.

Good Faith Protection for Purchaser

27. Bankruptcy Code section 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

28. While the Bankruptcy Code does not define “Good faith,” the Second

Circuit has held that:

A [good] faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings ... A purchaser’s good faith is lost by “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

*Licensing by Paulo v. Sinatra (In re Gucci)*, 1216 F.3d 380, 390 (2d Cir. 1977) (*quoting In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978) (interpreting Bankruptcy Rule 805, the precursor of section 363(m) of the Bankruptcy Code); *see also Evergreen Int’l Airlines Inc. v. Pan Am. Corp. (In re Pan Am Corp.)*, Nos. 92 Civ. 8319 (LMM) to 91 Civ. 8324 (LMM), 1992 WL 154200 at \*4 (S.D.N.Y. June 18, 1002); *In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988).

29. The Agreement was negotiated at arms’ length, and in good faith and the

proposed purchase price is far in excess of the of Fay’s original purchase price of \$1,375,000.

The Property was marketed extensively prior to the Debtor entering into the Agreement and good

and sufficient notice of sale will be given. The Purchaser is not an “insider” of the Debtor, as that term is defined in section 101(31) of the Bankruptcy Code. Neither the Debtor nor the Purchaser has engaged in any conduct that would cause or permit the Agreement to be avoided under section 363(n) of the Bankruptcy Code. Accordingly, the Debtor submits that the Purchaser should be afforded the protections of Bankruptcy Code section 363(m).

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

3. The Debtor also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As demonstrated above, the relief that the Debtor seeks in this Motion is necessary for the Debtor to preserve value for its estate and that “time is of the essence”. Accordingly, the Debtor respectfully requests that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

**NOTICE**

4. Notice of this Motion will be given to (a) the Office of the United States Trustee for the Eastern District of New York; (b) the Purchaser’s counsel; and (c) all known creditors and parties in interest. The Debtor submits that, under the circumstances, no other or further notice is required.

**WHEREFORE**, the Debtor respectfully requests that this Court enter an order, substantially in the form annexed hereto as Exhibit “A,” and grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED:

Dated: October 3, 2017

488-486 Lefferts LLC  
Debtor and Debtor in Possession

By: s/ Nir Zeer, Shlomo Zeer and David Marom  
as Managing Members

Attorneys for Debtors and Debtors-in-Possession  
BRONSTEIN, GEWIRTZ & GROSSMAN, LLC  
By: /s/ Edward N. Gewirtz  
Edward N. Gewirtz [EG6801]  
60 East 42nd Street, Suite 4600  
New York, New York 10165  
Tel. No.: (212) 697-6484  
Fax. No.: (212) 697-7296

NY 008 - CONTRACT OF SALE NYSLTA 8041 (Rev. 11/78)

**WARNING:**

**NO REPRESENTATION IS MADE THAT THIS FORM OF CONTRACT FOR THE SALE AND PURCHASE OF REAL ESTATE COMPLIES WITH SECTION 5-702 OF THE GENERAL OBLIGATIONS LAW ("PLAIN ENGLISH"). CONSULT YOUR LAWYER BEFORE SIGNING IT.**

**NOTE: FIRE AND CASUALTY LOSSES:**

This contract form does not provide for what happens in the event of fire or casualty loss before the title closing. Unless different provision is made in this contract, Section 5-1311 of the General Obligations Law will apply. One part of that law makes a purchaser responsible for fire and casualty loss upon taking of title to or possession of the premises.

**DATE:** CONTRACT OF SALE made as of the 18<sup>th</sup> day of August, in the year 2017  
**PARTIES:** BETWEEN 488-486 Lefferts LLC as debtor in possession, a New York Limited Liability Company,

hereinafter called "SELLER", who agrees to sell;

and TBD, 1342 51<sup>st</sup> Street, Brooklyn, NY 11219,

**PREMISES:** hereinafter called "PURCHASER" who agrees to buy the property, including all buildings and improvements thereon (the "PREMISES"), more fully described on a separate page marked "Schedule A," and also known as:

Street Address: 486 Lefferts Avenue, Brooklyn, New York and 488 Lefferts Avenue, Brooklyn, New York

Tax Map Designation: Block 1332, Lots 12 and 13, County of Kings

Together with SELLER'S interest, if any, in streets and unpaid awards as set forth in Paragraph 9.

**PERSONAL PROPERTY:**

The sale also includes all fixtures and articles of personal property attached to or used in connection with the PREMISES, unless specifically excluded below. SELLER states that they are paid for and owned by SELLER free and clear of any lien other than the EXISTING MORTGAGE(S). They include but are not limited to plumbing, heating, lighting and cooking fixtures, bathroom and kitchen cabinets, mantels, door mirrors, venetian blinds, shades, screens, awnings, storm windows, window boxes, storm doors, mail boxes, weather vanes, flagpoles, pumps, shrubbery, fencing, outdoor statuary, tool sheds, dishwashers, washing machines, clothes dryers, garbage disposal units, range, refrigerators, freezers, air conditioning equipment and installations, and wall to wall carpeting.

Excluded from this sale are: Furniture and household furnishings.

**PURCHASE PRICE:**

1. (a) The purchase price is \$2,100,000.00  
 On the signing of this contract, by check subject to collection: \$105,000.00  
 By allowance for the principal amount still unpaid on EXISTING MORTGAGE(S): \$0.00  
 By a Purchase Money Note and Mortgage from PURCHASER (or assigns) to SELLER: \$0.00  
 BALANCE AT CLOSING: \$ \$1,995,000.00

~~(b) If this sale is subject to an EXISTING MORTGAGE, the Purchase Money Note and Mortgage will also provide that it will remain subject to the prior lien of any EXISTING MORTGAGE even though the EXISTING MORTGAGE is extended or modified in good faith. The Purchase Money Note and Mortgage shall be drawn on the standard form of New York Board of Title Underwriters by the attorney for SELLER. PURCHASER shall pay the mortgage recording tax, recording fees and the attorney's fee as incurred if not subject to waiver or exemption for its preparation.~~

~~(c) If any required payments are made on an EXISTING MORTGAGE between now and CLOSING which reduce the unpaid principal amount of an EXISTING MORTGAGE below the amount shown in paragraph 2, then the balance of the price payable at CLOSING will be adjusted. SELLER agrees that the amount shown in paragraph 2 is reasonably correct and that only payments required by the EXISTING MORTGAGE will be made.~~

~~(d) If there is a mortgage escrow account that is maintained for the purpose of paying taxes or insurance, etc. SELLER shall assign it to PURCHASER, if it can be assigned. In that event PURCHASER shall pay the amount in the escrow account to SELLER at CLOSING.~~

**EXISTING MORTGAGE(S):** 2. The PREMISES will be conveyed subject to the continuing lien of "EXISTING MORTGAGE(S)" as follows: Mortgage now in the unpaid principal amount of \$N/A and interest at the rate of N/A per cent per year, presently payable in installments of \$N/A, which include principal, interest, and with any balance of principal being due and payable on N/A. SELLER hereby states that no EXISTING MORTGAGE contains any provision that permits the holder of the mortgage to require its immediate payment in full or to change any other term thereof by reason of the fact of CLOSING.

**ACCEPTABLE FUNDS:** 3. All money payable under this contract unless otherwise specified, shall be either:  
a. Cash, but not over one thousand (\$ 1,000.00) Dollars,  
b. Good certified check of PURCHASER, or official check of any bank, savings bank, trust company, or savings and loan association having a banking office in the State of New York, payable to the order of Edward N Gewirtz as attorney for SELLER.  
c. Money other than the purchase price, payable to SELLER at CLOSING, may be by check of PURCHASER up to the amount N/A (\$ N/A ) dollars, or  
d. As otherwise agreed to in writing by SELLER or SELLER'S attorney.

**"SUBJECT TO" PROVISIONS:** 4. The PREMISES are to be transferred subject to:  
a. Laws and governmental regulations that affect the use and maintenance of the PREMISES, provided that they are not violated by the buildings and improvements erected on the PREMISES.  
b. Consents for the erection of any structures on, under or above any streets on which the PREMISES abut.  
c. Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway.

**TITLE COMPANY APPROVAL:** 5. SELLER shall give and PURCHASER shall accept title any reputable Title Insurance Company will be willing to approve and insure in accordance with their standard form of title policy, subject only to the matters provided for in this contract.

**CLOSING DEFINED AND FORM OF DEED:** 6. "CLOSING" means the settlement of the obligations of SELLER and PURCHASER to each other under this contract, including the payment of the purchase price to SELLER, and the delivery to PURCHASER of such deed as the PURCHASER shall accept in proper statutory form for recording so as to transfer full ownership (fee simple title) to the PREMISES, free of all encumbrances except as herein stated. The deed will contain a covenant by SELLER as required by Section 13 of the Lien Law.  
  
If SELLER is a corporation, it will deliver to PURCHASER at the time of CLOSING (a) a resolution of its Board of Directors authorizing the sale and delivery of the deed, and (b) a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and setting forth facts showing that the transfer is in conformity with the requirements of Section 909 of the Business Corporation Law. The deed in such case shall contain a recital sufficient to establish compliance with that section.

**CLOSING DATE AND PLACE:** 7. CLOSING will take place on or before November 30, 2017 with Time of the Essence as against Purchaser at a mutually convenient location in Brooklyn.

**BROKER:** 8. PURCHASER hereby states that PURCHASER has not dealt with any broker in connection with this sale other than Ariel Property Advisors. Seller agrees to pay the broker the commission earned thereby (pursuant to separate agreement).

**STREETS AND ADJOINMENT OF UNPAID AWARD:** 9. This sale includes all of SELLER'S ownership and rights, if any, in any land lying in the bed of any street or highway, opened or proposed, in front of or adjoining the PREMISES to the center line thereof. It also includes any right of SELLER to any unpaid award by reason of any taking by condemnation and/or for any damage to the PREMISES by reason of change of grade of any street or highway. SELLER will deliver at no additional cost to PURCHASER, at CLOSING, or thereafter, on demand, any documents which PURCHASER may require to collect the award and damages.

**MORTGAGEE'S CERTIFICATE OR LETTER AS TO EXISTING MORTGAGE(S):** 10. Omitted.


**COMPLIANCE WITH STATE AND MUNICIPAL DEPARTMENT VIOLATIONS AND ORDERS:** 11. a) SELLER will comply with payment of the monetary portion of all notices of violations of law or municipal ordinances, orders or requirements noted or issued by any governmental department having authority as to lands, housing, building, fire, health and labor conditions affecting the PREMISES at the date of Closing. The SELLER shall furnish PURCHASER with any authorizations necessary to make the searches that could disclose these matters.  
b) All obligations affecting the PREMISES, incurred pursuant to the Administrative Code of the City of New York prior to CLOSING and payable in money shall be discharged by SELLER at CLOSING. Seller is only responsible for the removal of any monetary part of any violations.

**ONLY IF THE PROPERTY IS NOT IN THE CITY OF NEW YORK:** 12. If at the time of CLOSING the PREMISES are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this contract all the unpaid installments shall be considered due and are to be paid by SELLER at CLOSING.

**INSTALLMENT AGREEMENT:**

- APPORTIONMENTS**
13. The following are to be apportioned as of midnight of the day before the CLOSING:  
 (a) Rents as and when collected. (b) ~~Interest on EXISTING MORTGAGE(S).~~ (c) ~~Premiums on existing uncollectable insurance policies and renewals of those expiring prior to CLOSING.~~ (d) Taxes, water charges and sewer rents, on the basis of the fiscal period for which assessed. (e) ~~Fuel, if any.~~ (f) ~~Vault charges, if any.~~
- If CLOSING shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the old tax rate for the preceding period of applied to the latest assessed valuation.
- Any errors or omissions in computing apportionments at CLOSING shall be corrected. This provision shall survive CLOSING.
- WATER METER READINGS**
14. If there be a water meter on the PREMISES, SELLER shall furnish a reading to a date not more than thirty days before CLOSING date and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading.
- ALLOWANCE FOR UNPAID TAXES ETC.**
15. SELLER has the option to credit PURCHASER as an adjustment of the purchase price with the amount of any unpaid taxes, assessments, water charges and sewer rents, together with any interest and penalties thereon to a date not less than five business days after CLOSING, provided that official bills therefore computed to said date are produced at CLOSING.
- USE OF PURCHASE PRICE TO PAY ENCUMBRANCES**
16. If there is anything else affecting the sale, which SELLER is obligated to pay and discharge at CLOSING, SELLER may use any portion of the balance of the purchase price to discharge it. As an alternative, SELLER may deposit money with the title insurance company employed by PURCHASER required by it to assure its discharge, but only if the title insurance company will insure PURCHASER'S title clear of the matter or insure against its enforcement out of the PREMISES. Upon request made within a reasonable time before CLOSING, PURCHASER agrees to provide separate certified checks as requested to assist in clearing up these matters.
- AFFIDAVIT AS TO JUDGMENTS, BANKRUPTCIES**
17. If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of SELLER, SELLER shall deliver a satisfactory detailed affidavit at CLOSING showing that they are not against SELLER.
- DEED TRANSFER AND RECORDING TAXES**
18. At CLOSING, SELLER (if not exempt from payment pursuant to an approved Chapter 11 Bankruptcy Plan) shall deliver a certified check payable to the order of the appropriate State, City or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the deed, together with any required tax return. PURCHASER agrees to duly complete the tax return and to cause the check(s) and the tax return to be delivered to the appropriate officer promptly after CLOSING.
- PURCHASER'S LIENS**
19. All money paid on account of this contract, and the reasonable expenses of examination of the title to the PREMISES and of any survey and survey inspection charges are hereby made liens on the PREMISES and collectable out of the PREMISES. Such liens shall not continue after default in performance of the contract by PURCHASER.
- SELLER'S INABILITY TO CONVEY AND LIMITATION OF LIABILITY**
20. If SELLER is unable to transfer title to PURCHASER in accordance with this contract, SELLER'S sole liability shall be to refund all money paid on account of this contract. Upon such refund and payment, this contract shall be considered canceled, and neither SELLER nor PURCHASER shall have any further rights against the other.
- CONDITION OF PROPERTY**
21. PURCHASER has inspected the PREMISES (there is no personal property included in this sale) and is thoroughly acquainted with their condition. PURCHASER agrees to purchase them "as is" and in their present condition subject to reasonable use, wear, tear, and natural deterioration between now and CLOSING. PURCHASER shall have the right, after reasonable notice to SELLER, to inspect them before CLOSING.
- ENTIRE AGREEMENT**
22. All prior understandings and agreements between SELLER and PURCHASER are merged in this contract. It completely expresses their full agreement. It has been entered into after full investigation, neither party relying upon any statements made by anyone else that are not set forth in this contract.
- CHANGES MUST BE IN WRITING**
23. This contract may not be changed or canceled except in writing. The contract shall also apply to and bind the, distributees, heirs, executors, administrators, successors and assigns of the respective parties. Each of the parties hereby authorize their attorneys to agree in writing to any changes in dates and time periods provided for in this contract.
- SINGULAR ALSO MEANS PLURAL**
24. Any singular word or term herein shall also be read as in the plural whenever the sense of this contract may require it.

In Presence of:

488-486 Lefferts LLC  
 By:   
 David Marom, Manager/Member

TBD



By: Bhat N.G.  
Law office of Abraham  
Weiss as authorized  
agent to sign on  
behalf of Purchaser

By: Nir Zoor, Manager/Member



By: Shlomo Zoor, Manager/Member

By:  As and In the Capacity of court-appointed Debtor in Possession

**Schedule A**

**RIDER TO CONTRACT OF SALE**

**DATED:** August 18, 2017  
**SELLER:** 488-486 Lefferts LLC  
**PURCHASER:** TBD LLC  
**PREMISES:** 486 and 488 Lefferts Avenue, Brooklyn, New York

25. Said premises are sold and are to be conveyed subject to:

- (a) Zoning regulations and ordinances of the city, town or village in which the premises lie which are not violated by existing structures;
- (b) Consents by the Seller or any former owner of the premises for the erection of any structure(s) on, under or above any street(s) on which said premises may abut;
- (c) Encroachments of stoops, areas, cellar steps retaining walls, trim and cornices, if any, upon any street or highway;
- (d) Any state of facts an accurate survey may show provided such facts do not render title unmarketable;
- (e) Covenants, restrictions, agreements and consents of record, if any, provided they do not prohibit the erection, use and maintenance of structures now on the premises;
- (f) Public utility easements and agreements, if any;
- (g) Variances between fences, hedges and retaining walls as presently exist and the record property lines;
- (h) Party walls and party wall agreements;
- (i) Possible lack of right to maintain vault or vaulted area under sidewalk;
- (j) Proposed widening of any street or road in front of said premises and to the provisions of Section 35 of the General City Law;

Provided (a) to (j) does not render title unmarketable or unmarketable without additional fee.

26. Seller represents that the premises are vacant land and shall be delivered free of debris at Closing.

27. Purchaser shall diligently proceed with the examination of title to the premises and at least thirty (30) days prior to closing of title shall furnish Seller's attorneys a written notice of any violations of record, encumbrances, defects or objections to title (other than those specifically mentioned herein or incorporated by reference to which the premises is being sold subject), separately specify and setting forth each of such violations of record, defects, encumbrances or objections to title, which conditions shall be met upon Seller's attorney receiving a copy of the title report. The delivery of a title report shall be deemed written notice required pursuant to the immediately-preceding sentence. If the premises are affected by violations of record, encumbrances, defects or objections to title (other than those specifically mentioned herein or incorporated by reference)

which may render Seller's title not in accordance with this Contract, Seller shall not have the obligation of removing the violations, but shall be required to pay the monetary amount owed to the government with respect to the violation(s). Upon the acceptance of a deed by Purchaser, the Seller shall be released from any and all obligations or liability in connection with such violations, encumbrances, defects or objections.

28. Any notice or communication required or desired to be given hereunder shall be written and (1) delivered personally or (2) sent by email and facsimile transmission to the email address and facsimile number of counsel to the parties set forth in this contract, or (3) sent by certified mail, return receipt requested, Express Mail or overnight courier service, and regular first class mail addressed:

TO THE SELLER: c/o EDWARD N. GEWIRTZ, ESQ.  
Bronstein, Gewirtz & Grossman, LLC  
283 Kingston Avenue  
Brooklyn, New York 11213  
Chona@bandg.com  
Fax no.: 212 697-7296

TO THE PURCHASER:  
c/o Avi Weisel, Esq.  
The Law Offices of Abraham Weisel ESQ. PLLC  
4309 13th Avenue  
Brooklyn, NY 11219  
Tel: 718-437-6900  
Fax no.:  
Email: av.weisel@gmail.com/legal@weisellaw.com

or to such other addressee or address as the parties hereto may hereafter designate by a notice in writing given as aforesaid. The date of delivery of any such notice if delivered personally, or by email and facsimile, shall be deemed the effective date thereof, or, if such notice is sent by certified mail, Express Mail, or overnight courier service, the date of delivery to an official depository of a United States Post Office within the State of New York or to the courier service shall be deemed the effective date thereof. Each attorney is authorized to give and receive notice for his client.

29. If the Seller is unable to convey good title subject to and in accordance with the terms and conditions of this agreement, the sole obligation of the Seller shall be to refund Purchaser's down payment made hereunder, and upon the making of such refund, this agreement shall wholly cease and terminate and neither party shall have any claims against the other by reason of this agreement. Notwithstanding anything to the contrary herein contained, Seller shall not be required to bring any action or proceedings or otherwise incur any expense to render title to the

premises marketable or in accordance with Seller's obligations under this Contract. Purchaser may nevertheless accept such title as the Seller may be able to convey without reduction of the purchase price or any credit or allowance against the same and without any liability on the part of the Seller. The acceptance of a deed by the Purchaser shall be deemed to be a full performance of and discharge of any and all agreements and obligations on the part of the Seller to be performed pursuant to the provisions of this agreement, except those, if any, which are herein specifically stated to survive the delivery of the deed. The term "cost" of title examination is defined, for the purpose of this agreement, as the expense actually incurred by Purchaser for title examination, in no event, however, to exceed the net amount which would be charged by a title company in the City of New York for title examination of the above premises, without issuance of a policy, plus the cost to the Purchaser of any survey actually obtained, such cost not to exceed however, the amount charged by such title company for a similar survey.

30. The Purchaser shall have the right within forty-eight (48) hours prior to closing of title or possession to make an inspection of the premises and the various items of property being conveyed herein to determine whether the condition of same conform to the terms of the Contract.
31. The Purchaser, represents and agrees that the Purchaser has fully and completely investigated, examined and inspected said premises included in this sale and is purchasing the same "AS IS" at the date hereof, without any representation of any kind by Seller as to the condition of the premises or personal property, subject to reasonable wear and tear, casualty, obsolescence and natural deterioration between the date hereof and the closing date. Seller is not responsible or liable or bound in any manner by any verbal or written statements, representations, real estate brokers "set ups" or information pertaining to the premises furnished by any real estate broker, agent employee or any other person, unless the same is specifically set forth herein. It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this Contract, which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation not embodied in this Contract made by the other.
32. Unpaid franchise taxes or unfilled reports of any corporation in the chain of title shall not be deemed an objection to title, provided that the title company insuring title for Purchaser will agree to insure against collection of any such franchise taxes out of or from the subject premises.

33. It is expressly understood and agreed that delivery of this Contract for inspection or otherwise by the Seller to the Purchaser shall not constitute an offer or create any rights in favor of the Purchaser or others and shall in no way obligate or be binding upon the Seller, and this Contract shall have no force or effect unless and until the same is fully executed and delivered by the Seller and the Purchaser, and fully executed copies of this Contract are exchange and received by the parties hereto or their respective counsel.
34. Purchaser and Seller represent, understand and acknowledge that Purchaser has dealt with NO BROKER other than Ariel Property Advisors in connection with this transaction and the bringing about the making of this Contract and Seller shall pay the Broker.
35. If Purchaser willfully defaults or fails to close title by November 30, 2017, with TIME OF THE ESSENCE AS AGAINST PURCHASER, Seller shall be entitled to retain the down payment as liquidated damages. This provision for liquidated and agreed upon damages is a *bona fide* provision for such and is not a penalty. The parties understand and agree that by reason of the binding themselves to this sale of the premises and by reason of the withdrawal of the premises from sale at a time when other parties are interested in acquiring it, that the Seller will have sustained damages if Purchaser defaults, which damages will be substantial, but which will not be capable of determination with mathematical precision. Therefore, as aforesaid, this provision for liquidated and agreed upon damages has been incorporated in this Contract as a provision beneficial to both parties.
36. If there is a water meter or meters on the premises, the unfixed meter charge shall be apportioned on the basis of the last actual reading for each such meter, provided same is not less than forty-five (45) days before closing.
37. The acceptance and delivery of a deed of conveyance at the time of closing shall be deemed to be full performance and discharge of any and all of the obligations on the part of the Seller to be performed pursuant to the provisions of this Contract, except those which are herein specifically stated to survive the delivery of the deed. It is further agreed that none of the terms, covenants, conditions, and representations contained in this Contract, except those specifically made to survive the title closing, shall survive such title closing.
38. Anything to the contrary set forth herein above notwithstanding, it is understood and agreed between the parties hereto that the deposit transmitted herewith (the "Escrow Amount") pursuant to the requirements of Paragraph 3(a) of this Contract, is to be made payable to "EDWARD N. GEWIRTZ, as Attorney" (the "Escrow Agent"), and to be held in a non-interest bearing IOLA escrow account upon the following terms and conditions:
- (a) Upon receipt of notice in writing, signed by Seller and Purchaser stating that the sale contemplated by this Contract has been consummated, the Escrow Agent shall promptly deliver the Escrow Amount to Seller.

- (b) Upon receipt of notice in writing, by certified mail, return receipt requested (the "Claim" from either Seller or Purchaser (the "Claiming Party")) that such Claiming Party is solely entitled to be paid the Escrow Amount pursuant to this Contract, the Escrow Agent shall forthwith send notice in writing by certified mail, return receipt requested (the "Notice") to the other party (the "Non-Claiming Party") shall send written objection by certified mail, return receipt requested together with a copy of such Claim, and unless the Non-Claiming Party shall send written objection (the "Objection") to such claim to the Escrow Agent within ten (10) days of the Notice, the Escrow Agent shall distribute the Escrow Amount to the Claiming Party. If an Objection shall be timely received, the provisions of Subparagraph (f) hereof shall apply.
- (c) In the absence of a notice described in Subparagraph (a) or (b) above, the Escrow Agent shall distribute the Escrow Amount only upon receipt of, and in accordance with, a written notice signed by the Seller and the Purchaser, or upon the final order of a court of competent jurisdiction.
- (d) The Escrow Agent may rely and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties.
- (e) The Escrow Agent shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Contract, and may consult with counsel of its own choice and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith or in accordance with the opinion of counsel, except for the Escrow Agent's gross negligence, willful misconduct or fraud.
- (f) If conflicting demands are made or notices are served upon the Escrow Agent with respect to the Escrow Amount, or if the Escrow Agent shall hold a good faith belief that the rights of a claimant to the Escrow Amount are not absolutely clear, the parties hereto agree that the Escrow Agent shall be entitled to refuse to comply with any such claim or demand and to withhold and stop all further proceedings in the performance of this agreement so long as such disagreement shall continue. In so doing, the Escrow Agent shall not be or become liable for damages or interest to either of the parties hereto or to any other person for its failure to comply with such conflicting or adverse demands or notices. The Escrow Agent shall be entitled to continue to so refrain and so refuse to act until (i) the rights of the adverse claimants have been finally adjudicated in a court having and assuming jurisdiction of the parties and/or the Escrow Amount, or (ii) all differences shall have been adjusted by mutual agreement of the parties, and the Escrow Agent shall have been notified

thereof in writing signed by both of said parties. In the alternative, the Escrow Agent may, but shall not be obligated to, file a suit in interpleader for a declaratory judgment for the purpose of having the respective rights of the claimants adjudicated, and/or may deposit with a court of competent jurisdiction the Escrow Amount held hereunder, in which event the Seller and the Purchaser, jointly and severally, agree to pay all costs, expenses and attorneys' fees incurred by the Escrow Agent in connection therewith. In the event that the Escrow Agent shall deposit the Escrow Amount with such court, the Escrow Agent shall be fully released and discharged from any and all duties and obligations thereunder.

- (g) The Purchaser and Seller hereby agree to indemnify the Escrow Agent for, and to hold it harmless against any loss, liability or expense incurred without bad faith on the part of the Escrow Agent, arising out of or in connection with its entering into this agreement and carrying out its duties hereunder including the costs and expenses of defending itself against any claim or liability.
- (h) The Escrow Agent shall receive no compensation for the services to be performed hereunder, but shall be entitled to recover all costs and expenses as aforesaid.
- (i) The parties agree that notwithstanding this paragraph and the appointment of EDWARD N. GEWIRTZ, as Escrow Agent hereunder, EDWARD N. GEWIRTZ may act as counsel for Seller in any dispute hereunder.

39. If there is a mortgage or other encumbrance on the premises, the said mortgage or encumbrance may be paid by the Seller at the closing of title from the proceeds of sale by delivery to the title company representative the amount necessary to discharge and satisfy the same in accordance with a statement thereof (to be received from the holder of said mortgage or encumbrance) together with the title company charges for obtaining and recording the satisfaction of said mortgage or encumbrance. In such case, the existence of said mortgage or encumbrance of record as of the date of closing title shall not constitute an objection to the title.

40. Omitted.

41. In the event that the check given by the Purchaser to the Seller on the signing of this Contract shall not be honored for any reason by the bank on which it was drawn, the Seller, in addition to any other available remedies, may cancel and terminate this Contract without further notice.

42. This is an all cash deal. No financing contingencies apply, though the Purchaser may finance the acquisition.

43. The following items shall be adjusted and apportioned at closing, or possession, whichever is later:

- (a) Real estate taxes on the basis of the fiscal year for which assessed;
- (b) Water meter charges;

All adjustments and apportionments shall be made on the basis of a thirty (30) day month, regardless of the number of days actually in the month of closing.

44. This Contract is subject and contingent upon Purchaser obtaining a risk assessment or inspection of the premises for the presence of lead-based paint and/or lead-based paint hazards or other hazardous materials including asbestos, at the Purchaser's sole cost and expense within ten (10) days from the date of this Contract. This contingency will terminate and will be of no further force and effect after fifteen (15) days from the date fully executed contracts are received by Purchaser's attorney, unless the Purchaser delivers to the Seller or Seller's attorney the inspection and/or risk assessment report listing the specific existing deficiencies and corrections needed. The Seller shall be under no obligation to cure or remediate any condition or deficiencies found, or to reduce the purchase price. Purchaser's sole option upon receipt of a positive finding of any hazardous material as aforesaid shall be to cancel this Contract, and thereupon Seller shall return the Purchaser's down payment and net title charge paid hereunder whereupon this Contract shall be deemed null and void. Purchaser must give notice of cancellation hereunder within five (5) days of receipt of his risk assessment or inspection, which in no event may be later than twenty (20) days from the date hereof.
45. The Purchaser, at his own cost and expense, may have an environmental study done of the premises within fifteen (15) days of the date fully executed contracts are received by Purchaser's attorney, and shall notify Seller's attorneys of the results thereof, in default of which notification this provision shall become null and void. If any condition requiring remediation is found and the Purchaser elects not to take the premises with said condition and the cost of repair of the damages is greater than \$1,000.00, Seller shall have the option of curing said condition prior to the closing, or canceling the Contract and refunding the deposit paid thereunder. Notwithstanding the foregoing, if cost to remedy the condition is greater than \$1,000 and Seller elects not to remedy the condition, purchaser may elect to purchase premises "as is", with no remediation, and be given a \$1,000 purchase price abatement.
46. Upon payment to Purchaser as provided in paragraph 20 all rights and obligations hereunder by either party against the other shall cease and terminate, and this Contract shall be null and void and the lien, if any, of the Purchaser against the Premises shall wholly cease. Seller's liability for failure to perform its obligations pursuant to the terms of this Contract is limited wholly to its interest in the Premises, which is the subject of this Contract, and there shall be no recourse against any other assets of Seller, or against Seller or its members personally.
47. It is understood that the Seller shall not be required to accept at the time of Closing any endorsed checks or third-party checks. The balance due at Closing must be paid by official cashier's check or by Purchaser's certified personal check or federal wire transfer, in either case drawn on a New York clearing house bank,

payable to the Purchaser and drawn on the Purchaser's checking account, for endorsement, or drawn to the order of the Seller directly, unless advice to the contrary is given to the Purchaser.

48. Except as prohibited by law, the parties shall, and they hereby do, expressly waive trial by jury in any litigation arising out of, connected with, or related to this Contract or the relationship created hereby. The parties further agree that the United States Bankruptcy Court for the Eastern District of New York, shall have exclusive jurisdiction with respect to any lawsuit or dispute that may arise with respect to this agreement.
49. In the event of a conflict between the provisions of the printed Contract and the provisions of this Rider, the provisions of this Rider shall control.
50. This Contract may be executed in any number of counterparts and in each counterpart will be deemed an original instrument, but all such counterparts together will constitute but one and this same Contract.
51. This Contract shall not be recorded by Purchaser and any recordation or attempted recordation by Purchaser hereof shall be void and shall constitute a default by Purchaser hereunder.
52. All pertinent dates in the contract run from the date a fully executed copy of this contract is received by Purchaser's attorney's office in Brooklyn, NY.
53. This contract is subject to the approval of the United States Bankruptcy Court for the Eastern District of New York. Seller shall promptly seek said approval. The Premises shall be sold pursuant to a Chapter 11 bankruptcy plan (the "Plan") that allows the Premises to be sold to Purchaser, and allows the sale to not be subject to transfer/stamp taxes. Purchaser agrees to cooperate with Seller in completing any and all paperwork, if any, required by the bankruptcy judge of the Purchaser in order for Seller to obtain approval of this contract of sale, the sale contemplated herein, and any aspect of its Chapter 11 Plan and confirmation thereof as relates to this sale.
54. Purchaser may ~~not~~ assign this Contract without Seller's consent to a newly formed entity related To Purchaser and assignee shall be bound by all terms of this contract.
55. This Contract may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one instrument.

TBD

By: 

Blat. N. G.  
Law office of Abraham Weisel  
as authorized agent to  
sign on behalf of Purchaser.

488-486 Lefferts LLC

By:   
David Marom, Manager/Member

By:   
Nir Zeev, Manager/Member

payable to the Purchaser and drawn on the Purchaser's checking account, for endorsement, or drawn to the order of the Seller directly, unless advice to the contrary is given to the Purchaser.

48. Except as prohibited by law, the parties shall, and they hereby do, expressly waive trial by jury in any litigation arising out of, connected with, or related to this Contract or the relationship created hereby. The parties further agree that the United States Bankruptcy Court for the Eastern District of New York, shall have exclusive jurisdiction with respect to any lawsuit or dispute that may arise with respect to this agreement.
49. In the event of a conflict between the provisions of the printed Contract and the provisions of this Rider, the provisions of this Rider shall control.
50. This Contract may be executed in any number of counterparts and in each counterpart will be deemed an original instrument, but all such counterparts together will constitute but one and this same Contract.
51. This Contract shall not be recorded by Purchaser and any recordation or attempted recordation by Purchaser hereof shall be void and shall constitute a default by Purchaser hereunder.
52. All pertinent dates in the contract run from the date a fully executed copy of this contract is received by Purchaser's attorney's office in Brooklyn, NY.
53. This contract is subject to the approval of the United States Bankruptcy Court for the Eastern District of New York. Seller shall promptly seek said approval. The Premises shall be sold pursuant to a Chapter 11 bankruptcy plan (the "Plan") that allows the Premises to be sold to Purchaser, and allows the sale to not be subject to transfer/stamp taxes. Purchaser agrees to cooperate with Seller in completing any and all paperwork, if any, required by the bankruptcy judge of the Purchaser in order for Seller to obtain approval of this contract of sale, the sale contemplated herein, and any aspect of its Chapter 11 Plan and confirmation thereof as relates to this sale.
54. Purchaser may ~~not~~ assign this Contract without Seller's consent to a newly formed entity related to Purchaser and assignee shall be bound by all terms of this contract.
55. This Contract may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one instrument.

TBD

By: [Signature]  
Blat. N.G.  
Law Office of Abraham Wessel  
as authorized agent to  
sign on behalf of Purchaser.

488-486 Lefferts LLC  
By: [Signature]  
David Marom, Manager/Member

By: \_\_\_\_\_  
Nir Zoor, Manager/Member

By: Shlomo Zeer  
Shlomo Zeer, Manager/Member

By: 

Member in the capacity of Court-Appointed Debtor-in-Possession