
UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Ellen R. Greenberg (EG2568)
88 East Main Street, 301
Mendham, New Jersey 07095
973-610-3685 elleng543@yahoo.com
Attorney for Debtor
Donald Nix LLC

In Re:

: Case No: 17-24171
: (Adv. Pro No. 17-01441)

: Chapter 11

Donald Nix, LLC

:Hearing Date: 2/27/2018 10:00am
: oral argument waived

: Judge: VFP

NOTICE OF MOTION

PLEASE TAKE NOTICE:

Donald Nix LLC, debtor-in-possession herein, by its counsel, Ellen R. Greenberg, will move, on February 27, 2017, at 10:00am or as soon thereafter as counsel may be heard, for an Order of the Bankruptcy Court, authorizing debtor-in-possession to sell property located at 259-367 Hamilton Avenue, Paterson, New Jersey, 07524 approving a Contract of Sale of said property, and authorization to reject a lease of a portion of said property.

YOUR RIGHTS MAY BE AFFECTED. You should read these papers
Carefully and discuss them with your attorney, if you have one in this bankruptcy case.
(If you do not have an attorney, you may wish to consult one).

If you do not want this court to grant this motion, or if you want the court to consider
your views, you or your attorney must file with the clerk at the address listed below, a
written response explaining your position no later than 7 days prior to the hearing date.

Hearing Date: February 27, 2018

Hearing Time 10:00 am

Hearing Location: 50 Walnut Street, Newark, New Jersey 07102

Courtroom Number: 3B

If you mail your response to the clerk for filing, you must mail it early enough so the
court will receive it on or before 7 days prior to the hearing date.

You must also mail your response to all parties listed in this Notice.

If you, or your attorney, do not take the steps outlined above, the court may decide that
you do not oppose the relief sought in the motion and may enter an order granting that
relief.

January 30, 2017

/s/ Ellen R. Greenberg
Ellen R. Greenberg
Attorney for debtor

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DISTRICT OF NEW JERSEY

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STATEMENT AS TO WHY NO BRIEF IS NECESSARY

In accordance with D.N.J. LBR 9013-1(a)(3), it is respectfully submitted that no brief is necessary in the court's consideration of this motion, as it does not involve complex issues of law.

January 30, 2018

/s/ Ellen R. Greenberg, Esq.

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CERTIFICATION OF SERVICE

1. I, Ellen R. Greenberg, Esq., represent the debtor, Donald Nix LLC in this matter.
2. On January 30, I personally mailed, by first class mail, as to all interested persons as named below a copy of the following:

- Notice of Motion
- Certification of Service
- Certification in support of Motion
- Proposed form of Order
- Copy of Contract as Exhibit A
- Copy of Notice of Private Sale as Exhibit B
- Copy of Lease as Exhibit C (to tenant only)
- Statement as to why no brief is necessary

Dennis Cummings, Esq.
24-07 Broadway
Fairlawn, NJ 07410

Andrew Drake
Handex Consulting & Remediation
92 North Main Street
Bldg 20, Unit C
P.O. Box 36
Windsor, NJ 08561

John Fressie Rev Trust
Bascom Corporation
495 River Street
Paterson, NJ 07524

Allen J. Underwood II, Esq.
Becker LLC
Eisenhower Plaza II
354 Eisenhower Parkway, Suite 1500
Livingston, New Jersey 07039

Miguel Rivera
516 River Street
Paterson, NJ 07514

US Bank Cust LLF 1-NJ
50 South 16th Street, Ste1950
Philadelphia, Pa 19102

U.S. Trustee
U.S. Department of Justice
Office of the U.S. Trustee
One Newark Center, Suite 2100
Newark, NJ 07102

3. I certify under penalty of perjury that the above documents were sent using the mode of service indicated.

January 30, 2018

/s/ Ellen R. Greenberg
Ellen R. Greenberg
Attorney for debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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Donald Nix, LLC : Hearing Date: 2/27/2018 10:00am
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: Judge: VFP

MOTION BY DONALD NIX LLC FOR AN ORDER AUTHORIZING DEBTOR-IN-POSSESSION TO SELL PROPERTY OUTSIDE THE ORDINARY COURSE OF BUSINESS, APPROVING CONTRACT OF SALE FREE AND CLEAR OF LIENS PURSUANT TO 11 U.S.C. SECTION 363(b), AND FOR APPROVAL TO REJECT A LEASE PURSUANT TO 11 U.S.C. SECTION 365

Debtor-in-possession, Donald Nix LLC, (hereinafter "Debtor") in the above Chapter 11 case, hereby moves, pursuant to Bankruptcy Code Section 363(b), and Bankruptcy Rule 6004(c) for authority to sell the real property located at 359-367 Hamilton Avenue, Paterson, New Jersey, Passaic County, Block 3507, Lot 17, (hereinafter, "Property")

free and clear of liens, to a buyer, JCM Investors 1012 LLC, 441 East 18th Street, Paterson, NJ, (hereinafter “Buyer”), for approval of a Contract of Sale, (hereinafter “Contract”), between said Debtor and said Buyer for the total sum of \$300,000.00, and further, for approval to reject a nonresidential lease of a portion of said Property. (A copy of the Contract is attached hereto as Exhibit A).

The Buyer wishes to close soon, and while we understand that approval by the court is contingent on a favorable ruling on the Application for Judgement by Default, we wanted to put the matter before the court now with the hope and expectation that the court will rule on the Default Judgment application before the return date of the motion to approve the sale.

History

Debtor acquired the Property for \$275,000 in 2004. A tax lien certificate acquired in 2014 by John A. Fressie Revocable Living Trust UAD 11/12/ 20 (hereinafter “Defendant/Lienholder”) in the amount of \$15,937.63 was foreclosed upon on April 17, 2016.

1. By 2016, Debtor realized the Property needed to be sold for economic reasons. Prior to filing for Bankruptcy, Debtor caused the Property to be multiple listed for 6 months which produced one credible offer.
2. The Buyer, a prominent investor/developer in the community, and Debtor had terms agreed and were about to execute a contract.
3. On March 1, 2017, Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code ahead of a tax lien foreclosure. The intention was to allow time to execute the contract and complete the sale of the Property, the proceeds from which would have enabled Debtor to pay the tax liens in full and realize

substantial equity in the Property. The automatic stay would provide Debtor time necessary to accomplish this.

4. On March 15, 2017, Debtor's Chapter 11 case was dismissed due to inadvertent electronic filing error through no fault of the Debtor. Short Notice application for motion to reinstate was denied, despite recitation that a foreclosure judgment entry was imminent and that irreparable harm would be done without Stay protection. On April 17, 2018, judgment of foreclosure was entered just days before the return date of the motion to reinstate.

5. On July 12, 2017, Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code for the purpose of avoiding the real estate transfer and selling the Property as had been previously planned.

6. On July 12, 2017, Debtor also retained Special Counsel Michael J. Viscount, Jr. of Fox Rothschild, to bring an adversary proceeding.

7. An Adversary Proceeding, (17-1441), was immediately commenced against Defendant/Lienholder. The Complaint asked for relief to be granted, avoiding preference and fraudulent transfer of the "Property" pursuant to 11 U.S.C. Sections 544b, 547 and 548, as well as other relief.

8. Defendant/Lienholder failed to answer the complaint despite Plaintiff/Debtor's informally offering an extension of more than 2 months. Defendant/Lienholder made it known he had no plan to answer.

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9. On November 9, 2017, a Default was entered. Special Counsel for Plaintiff/Debtor moved for a Default Judgment and we were advised the Judge would be deciding on

the papers, as the proofs were previously put on the record at the Adversary Proceeding hearing.

10. Starting early in the case, the attorneys for Plaintiff/Debtor and Defendant/Lienholder had entered into negotiations. Plaintiff/ Debtor asked Judge Meisel to withhold her default ruling in anticipation of a settlement. However, after many months Plaintiff/Debtor and Defendant/Lienholder were unable to come to terms. As a result, Special Counsel for Debtor wrote to Judge Meisel last week to inform her that there would be no settlement. He requested she provide her ruling on the Default Judgment. Shortly thereafter, Judge Meisel recused herself from the case.

11. After the New Year, Debtor reached out to several realtors, one from Coldwell Banker, and one from Weichert. Each reported back that they were unaware of any potential buyers at this time. This past week Debtor was approached by the same buyer who was about to purchase the 'Property' just before the foreclosure judgment was entered.

12. Negotiations resulted in the subject 'Contract' with a purchase price and terms beneficial to the Estate. All approved creditors claims, administrative and Trustee fees, would be fully satisfied from the proceeds of the sale. All encumbrances shall attach to the Debtors proceeds to the extent that they are valid and perfected, in the same priority as they are entitled under applicable law. Further, the sale would allow Debtor to realize equity and serve to resolve the issues in not only the Adversary Proceeding, but the underlying Chapter 11 case as well.

14. This is a private, arms-length transaction on favorable terms. The Buyer is not an insider, and the purchase price would enable all creditors to be fully satisfied and all administrative fees to be paid. **Moreover, this is a clean contract and the Property is being sold 'As Is'. There is no mortgage contingency, no inspection contingency and no real estate broker involved, and the Buyer takes the Property subject to an environmental condition, all as more fully described below.** For these reasons, the sale would benefit the Estate and enable resolution of the underlying Chapter 11 case. A Notice of Private Sale is attached hereto and made a part hereof as Exhibit B, and is being served on all parties in interest by way of service of this motion.

15. Debtor has entered into a Contract with Buyer, a copy of which is attached hereto as Exhibit A. The material terms are as follows:

- a. Purchase Price: The full purchase price is \$300,000.00
Deposit: There is a good faith deposit of \$15,000. In the event the Court does not approve the sale, or if marketable title cannot be obtained, Buyer shall be entitled to a refund of his Deposit.
- b. Closing Date: The date is tentatively scheduled for February 27, 2018. Buyer is aware of the necessity for court approval and that it may delay the scheduled closing date.
- c. Taxes: All past due taxes, tax liens, and costs of sale shall be paid at closing. Current taxes will be prorated.

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- d. Debtor asks that all remaining proceeds be used to pay all approved administrative expenses, valid creditors' claims, trustee fees, and amounts, all fees necessary to close be disbursed from proceeds at closing

without further court order and that the balance of the proceeds be released to the Debtor.

e. Contract Conditions:

(i) Property is being sold 'As Is'

The Property shall be vacant, and free and clear of possessory leasehold interests Except: Buyer is agreeing to allow continuation of the tenancy of Nix Transportation, Inc.; Nix Transportation shall be allowed to remain on the premises rent free for 4 months from the date of closing.

Thereafter, Nix Transportation will have to pay \$500 per day until it vacates the premises. \$40,000.00 will be held in escrow from Debtor's equity proceeds to be drawn upon if necessary, to cover per diem in the event of such holdover, should Nix Transportation fail to vacate at the end of 4 months.

(i) Property shall be conveyed free and clear of liens, and with marketable title.

(ii) Buyer takes subject to an environmental condition caused by an underground oil tank, long since removed. Buyer shall at his expense undertake to do what is required to obtain a Letter of 'No further action necessary' from the DEP.

(iii) There are no realtors involved in this transaction.

(iv) Buyer is not an 'insider'.

(v) This is a cash Buyer and there is no mortgage contingency.

(vi) Buyer has already inspected the Property and is satisfied.

There is no inspection contingency.

(vii) Debtor will make application to engage a real estate attorney.

15. Debtor, (as debtor-in possession) acting in its capacity as trustee, asks for court approval to reject the nonresidential lease of Miguel Rivera, (which is attached hereto as Exhibit C), for the following reasons:

- a. To satisfy the condition of 'vacant premises' under the Contract,
- b. habitual late payment of tenant
- c. tenant 's rent is well below market for the area, and not in the best interest of the estate.

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Disbursement of Contract Proceeds*

Contract price is		\$300,000.00
defendant lienholder	108,000(approx.)	

jr lienholder	40,000 (approx.)	
counsel fee	10,000	
special counsel fees	20,000 (bal. after 18,500 retainer pd)	
r.e. closing attorney	5,000	
trustee disbursement fee	<u>1,750</u>	
unsecured creditors claims disputed by debtor. No proofs of claims filed Time to file expired in November:	<u>10,000</u> (maximum if allowed)	
property taxes	10,000 (estimated)	
realty transfer tax	2,200 (estimated)	
escrow to cover rental if main tenant overstays	<u>40,000</u> (maximum amount)	
	246,950 Total Distribution	
		\$300,000
		<u>-246,950</u>
		53,050

*15. Distribution amounts set forth above are estimated at the high end and account for contingencies some of which may not occur. A more definitive distribution list shall be provided to this court. It is clear that the proceeds from this contract will be enough to satisfy all creditors, administrative fees, trustees fees, and expenses.

16. The Debtor seeks to pay all debts and also realize equity from the proceeds of the sale of the Property. This would resolve the issues in the adversary proceeding and the underlying Chapter 11 case.

WHEREFORE, Debtor respectfully requests:

1. That this Court approve the Contract attached as Exhibit A;

2. That this Court authorize Debtor in its capacity as debtor-in-possession to sell the subject Property, free and clear of all liens, and possessory leasehold interests;
3. That all encumbrances shall attach to the Debtor's proceeds of the Sale to the extent that they are valid and perfected, in the same priority as they are entitled to under applicable law;
4. That the Debtor be authorized to execute all documents necessary to complete the sale;
5. That Debtor be authorized to make all disbursements from sale proceeds as described above; and
6. For such further relief as this Court deems just and proper.

January 30, 2018

/s/ Ellen R. Greenberg
Ellen R. Greenberg, Esq.
Attorney for Debtor

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DISTRICT OF NEW JERSEY

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: Chapter 11

Donald Nix, LLC : Hearing Date:02/27/2018
: oral argument waived

: Judge: VFP

ORDER GRANTING SALE OF PROPERTY
AND REJECTION OF LEASE

The relief set forth on the following pages numbered 2 through 3 is hereby ORDERED.

Upon consideration of the motion (“the Motion”) of Donald Nix LLC, the above captioned debtor and debtor-in-possession (collectively, the “Debtor”), for an order authorizing the Debtor to sell property, approving a contract private of sale, and authorizing Debtor to reject a lease; and it appearing that notice of the Motion including a Notice of Private Sale was adequate and proper under the circumstances and that no other or further notice need be given; and upon consideration of the Motion and after due deliberation; and sufficient cause appearing therefore;

It is hereby ORDERED that:

1. Authorization for the Debtor to sell the property located at 359-367 Hamilton Avenue, Paterson, NJ, being Lot 17, Block 5707 on the Official Tax Map of the City of Paterson (the “Property”) is hereby Granted;
2. Approval of the Contract of sale between JCM Investors 1012, 441 East 18th Street, Paterson, NJ (the “BUYER”), and the Debtor, Donald Nix LLC (the “Seller”) for a purchase price of \$300,000, free and clear of liens, with proceeds being distributed to satisfy all interests and claims against the estate, and all encumbrances to attach to Debtor’s proceeds of the sale, to the extent that they are valid and perfected, in the same priority as they are entitled to under applicable law, is hereby Granted;
3. Authorization for Debtor to execute all documents necessary to complete the sale, is hereby Granted;

4. Authorization for Debtor to make payments from sale proceeds as described above, is hereby Granted;

5. Authorization to reject the lease of Miguel Rivera of a portion of the Property located at 359-367 Hamilton Avenue, Paterson NJ is hereby Granted.

6. Any such other relief as the Court deems just and proper shall be Granted.

USBJ

CONTRACT FOR SALE OF REAL ESTATE

THIS CONTRACT FOR SALE is made on January 19, 2018

BETWEEN Donald Nix, LLC, having an address of 359-367 Hamilton Avenue,
Paterson, New Jersey 07524, referred to as Seller,

AND JCM INVESTORS 1012, LLC, having an address of 441 East 18th
Street, Paterson, New Jersey, referred to as Buyers,

1. **PURCHASE AGREEMENT.** For payment of the stated purchase price, the Seller shall sell and the Buyer shall purchase the real property commonly known as:

359-367 Hamilton Avenue
Paterson, New Jersey

PASSAIC COUNTY, NEW JERSEY
LOT: 17 BLOCK: 3507

Said Property is defined as the land, including buildings, improvements and fixtures, as well as any rights the Seller may have pertaining to same.

2. **PURCHASE PRICE.** The purchase price shall be \$300,000.00

3. **PAYMENT AGREED AS FOLLOWS:**

Deposit (upon signing contract) \$15,000.00

Balance due at closing of title, by certified,
bank cashier's, attorney's trust check \$285,000.00

TOTAL \$300,000.00

4. **DEPOSIT MONIES:** All deposit money shall be held in the Seller's attorney's non-interest bearing trust account.

5. **MORTGAGE CONTINGENCY** N/A

6. **TIME AND PLACE OF CLOSING.** The parties agree to make February 27, 2018 or as soon thereafter as bankruptcy trustee approval has been obtained, the date for closing. The closing will take place at the office of the Buyer's attorney, or as otherwise agreed upon.

7. **OWNERSHIP TRANSFERRED BY DEED.** On the date of closing, the Sellers shall transfer ownership of the Property to the Buyers by written deed. The Sellers shall tender and Buyers shall accept a Deed known as a Bargain and Sale Deed with covenant against grantor's acts.

8. **PHYSICAL CONDITION OF PROPERTY.** This Property is being sold "as is" and the Seller makes no claims or representations concerning either the condition and/or value of the subject Property. The Buyer has inspected the property and relies on the inspection rights provided for in this Contract. Until closing, the Seller agrees to maintain the grounds, buildings and improvements subject to ordinary wear and tear.

DUE DILIGENCE: The Buyer represents that they have conducted sufficient due diligence with respect to this transaction.

The Seller represents that an environmental clean-up has been ongoing at the property during its ownership and will continue after the transfer of title. The Seller shall provide the Buyer all documentation in their possession relating to this clean-up. The Buyer shall be responsible for the completion of the clean-up and all costs associated with obtaining a No Further Action Letter from the State of New Jersey.

9. **INSPECTION OF THE PROPERTY.** The Seller agrees to permit the Buyer to inspect the Property at any reasonable time before the closing. The Seller will permit access for all inspections provided for in this Contract.

10. **BUILDING AND ZONING LAWS.** The Buyer intends to use this property as a commercial warehouse property. The Seller states to the best of their knowledge that this use does not violate any applicable zoning ordinance. This representation shall not survive closing.

11. **SELLER'S BANKRUPTCY** The Seller represents that he is currently in bankruptcy and this sale requires approval of the Bankruptcy Trustee. The parties acknowledge that this contract requires the approval of the Bankruptcy Court and the Trustee.

12. **RISK OF LOSS.** Except for normal wear and tear, the Seller is responsible for any

damage to the Property until the time of closing. In the event there is damage in excess of 10% of the purchase price, then the Buyer may cancel the contract of sale.

13. **OWNERSHIP.** Ownership of the Property shall be delivered free of all claims and rights of others, except for:

(a) the rights of utility companies to maintain pipes, poles, cables and wires on, around or under the subject Property,

(b) recorded agreements which limit the use of the Property, unless the agreements: (1) are presently violated, (2) provide that the Property will be forfeited if they are violated, or (3) unreasonably limit the normal use of the Property, and

(c) the following tenancies, which the Seller warrants are not in violation of existing Municipal, County, State or Federal rules, regulations or laws:

Donald Nix, LLC

14. **CORRECTING DEFECTS.** The Buyer's ownership must be insurable by a licensed New Jersey title company at regular rates. If the Seller's title is either uninsurable or reveals defects other than those stated in paragraph 13 above, the Buyer must notify the Seller in writing and afford the Seller a period of ten (10) days to correct said defects. If after this time, or any agreed upon extensions, the Property still does not comply, the either party may cancel this Contract in writing, unless the Buyer accepts the title "as is." In such event, the Seller's only obligation will be to refund Buyer's deposit money.

17. **ASSESSMENTS FOR MUNICIPAL IMPROVEMENTS.** Sidewalks and sewers are examples of municipal improvements for which the municipality may charge the Property owner. Such unpaid charges are called "assessments". Any assessments charged against the Property for improvements completed prior to closing shall be paid by the Seller at closing. If the improvement is not completed before the closing, then same shall be the responsibility of the Buyer. If the improvement is completed but the assessment not yet determined, the Seller shall pay an estimated amount at closing. When the added assessment is finally determined, the Seller will pay any deficiency to the Buyer (if the estimate proves to have been too low), or the Buyer will return any excess to the Seller (if the estimate proves to have been too high).

18. **CLOSING ADJUSTMENTS.** Rents, municipal water charges, sewer charges, and taxes will be adjusted as of the date of closing. The Buyers or Sellers may require that any person holding a claim or right affecting the property be paid from the proceeds from this sale.

Seller represents that there will be sufficient proceeds to pay all open liens, including all mortgages, open real estate taxes and tax sale certificates at the time of closing.

18. **POSSESSION.** At the closing the Buyer will be given possession of the property, subject to the following tenancies:

Donald Nix, LLC

No other tenants will have any right to the property.

19. **COMPLETE AGREEMENT.** The parties represent: (1) that this is the entire and only agreement relative to the purchase of the subject Property, (2) that any previous agreements between the parties are replaced by this Contract, and (3) this Contract can only be modified by a written agreement executed by all parties.

20. **PARTIES LIABLE.** This Contract is binding upon all parties who sign it and all who succeed to their rights and responsibilities.

21. **NOTICES.** Notices, pursuant to this Contract, must be in writing and transmitted via facsimile, certified or regular mail to the other parties' attorney, if applicable, and if no attorney, alternatively, to the other party at the address recited in this Contract. Notice to a party's attorney shall be deemed notice to that party.

22. **SELLER'S CLOSING DUTIES:** At closing, the Seller will deliver possession of the premises and the following:

- (a) affidavit of title including a disclaimer of all judgments of record against the seller;
- (b) deed;
- (c) keys, if any;
- (d) residency affidavit;
- (e) tax bill for the current year;

22. REPRESENTATIONS AND WARRANTIES OF SELLER:

The Seller represents to the best of his knowledge and belief that:

- (a) Seller has received no official notice of any condemnation proceedings and has no unofficial information that all or part of the premises might be taken by eminent domain;
- (b) The Seller has not received any notice of and has no unofficial knowledge of any unconfirmed assessment affecting the premises.
- (c) Seller has not received notice of violation of any statute, ordinance, rule or regulation or insurance requirement which has not been corrected nor has Seller any knowledge of such violation or insurance requirement

23. **BULK SALE NOTICE.** If the property has ever been used as a rental property and the Sellers are subject to the Bulk Sales Requirements set forth in N.J.S.A. 54: 50-38. et. seq. then the Sellers shall be required to file an asset transfer declaration pursuant to such statute in connection with this transaction. The Seller shall provide the appropriate Bulk Sales Notice form to the attorney for the Buyers along with the fully executed Contract of Sale and agree to comply with any requirements set forth by the State of New Jersey, Department of the Treasury, Division of Taxation.

24. **REALTORS.** The parties acknowledge that there are no other realtors involved in this transaction. Seller agrees to indemnify the Buyer for any claims made by any realtors for commissions.

25. **POST CLOSING OCCUPANCY.** The parties agree that the Seller may remain in possession of the premises at no cost for a period of four (4) months after the closing. The Seller may not make any changes of any kind to the premises during this period of post-closing occupancy. The parties agree to hold the sum of \$40,000.00 from the sale proceeds in the escrow account of the Buyer's attorney. In the event the Seller does not vacate or otherwise deliver the premises vacant at the expiration of the four (4) month period, the Seller agrees that the Buyer's attorney may deduct the sum of \$500.00 per day for each day that the Seller remains in possession. If the escrow sums are exhausted and the Seller remains in possession, the parties may agree to create a month to month tenancy at the monthly rental of \$7,000.00.

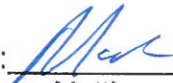
The Buyer and Seller agree to cooperate in good faith to prepare an appropriate Use and Occupancy Agreement to be executed at the time of closing.

SIGNED AND AGREED TO BY:


Witnessed or Attested by:

JCM Investors 1012, LLC

1/22/18
As to Buyer

By: 
Matthew R. Florio,
Managing Member

1/22/18
As to Seller

By: 
Donald Nix, LLC
Seller

In Re: Case No.: 17-24171, (adv pro 17-1441)
DONALD NIX LLC Chapter: 11
Judge: VFP

NOTICE OF PROPOSED PRIVATE SALE

DONALD NIX LLC, DEBTOR-IN-POSSESSION, in this case proposes to sell property of the estate to the persons and on the terms described below. If you object to the sale, you must file a written objection with the Clerk of the United States Bankruptcy Court and serve it on the party listed below not later than 7 days before the hearing date.

Address of the Clerk:

50 Walnut Street, Third Floor
Newark, New Jersey 07102

If an objection is filed, a hearing will be held before the Honorable Vincent F. Papalia on February 27, 2018 at 10:00 a.m. at the United States Bankruptcy Court, courtroom no. 3B, 50 Walnut Street, Newark NJ 07102. (Hearing date must be at least 28 days from the date of this notice). If no objection to the sale is filed, the clerk will enter a Certification of No Objection and the sale will be held as proposed.

Description of property to be sold:

359-367 Hamilton Avenue
Paterson, New Jersey 07524

Proposed Purchaser:

JCM Investors 1012
441 East 18th Street
Paterson, New Jersey

Sale price: \$300,000.00 (Three Hundred Thousand Dollars)

Pursuant to D.N.J. LBR 6004-5, I request to pay the real estate broker and/or real estate attorney at closing on the terms set forth below.

Name of Professional: There is no real estate broker involved.

My real estate closing attorney will be Caroline Record, Hill Wallack

Amount to be paid: \$5,000.

Services rendered: Contract review and amendments; Preparation and Review of Documents and Letters, including but not limited to Hud, Closing Statement, and Cancellations of Recorded Liens; Telephone Calls and Conferences; Attending Closing; Any Additional Work that may be required.

Higher and better offers will be received. They must be in writing and filed with the clerk not later than 7 days before the hearing date set forth above.

Objections must be served on, and requests for additional information directed to:

Name: Ellen R. Greenberg, attorney for Debtor/Seller

Address: 88 East Main Street, Mendham, New Jersey 07945

Telephone No.: 973-610-3685

rev.8/1/15

F. Martinez
 RETURN TO AND SUBSCRIBED BEFORE BE THIS DATE

COMMERCIAL LEASE AGREEMENT (NEW JERSEY)

MAR 21 2016

THIS LEASE made effective as of the 1st day of April 2016 (the "Effective Date")

FRANCIS M. MARTINEZ
 Notary Public of New Jersey
 My Commission Expires 2/2/2017

BETWEEN:

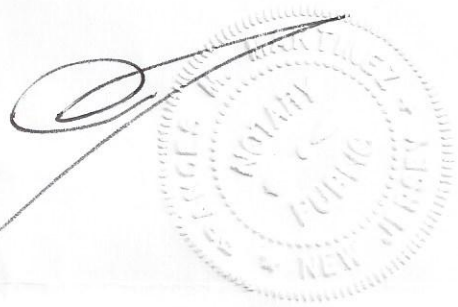
LESSOR

Name: DONALD NIX
 Address: 473-11th Ave
PATERSON, NJ 07514
 (the "Lessor")

- and -

LESSEE

Name: Miguel Rivera
 Address: 516 RIVER STREET
PATERSON, NJ 07514
 (the "Lessee")



IN CONSIDERATION of the mutual promises and at the rental and upon the covenants, conditions and provisions herein set forth, contained and other good and valuable consideration, Lessor leases to Lessee and Lessee leases from Lessor, the following real property:

Leased Premises Address: 359 Hamilton Ave
 Legal Description: PATERSON, NJ. 07514 (1 Bay)

all as more particularly described in Schedule "A" attached to this Lease, which is incorporated herein by this reference, together with all improvements now or hereafter located thereon and all appurtenances and privileges related thereto, all of which area is hereinafter referred to as the "Premises."

1. Term of Lease

(a) **Initial Term.** Lessor hereby leases the Leased Premises to Lessee, and Lessee hereby leases the same from Lessor, for an Initial Term beginning on April 1st, 2016 ("Commencement Date") and ending on April 30th, 2021 ("Expiry Date"). Lessor shall use its best efforts to give Lessee possession as nearly as possible at the beginning of the Lease term. If Lessor is unable to provide Lessee with possession of the Leased Premises in a timely fashion, rent shall abate for the period of delay. Lessee shall make no other claim against Lessor for any such delay.

with additional 5 yrs at Landlords discretion.

(b) **Renewal Term.** Lessee shall have the option to renew the Lease for an additional Renewal Term of 5 yrs year(s). Lessee shall exercise such renewal option, if at all, by giving written notice to Lessor not less than ninety (90) days prior to the expiration of the Initial Term. The Renewal Term shall be at a rental rate as agreed to between the parties and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

2. Rent Payments

Rent is due in advance on the 1st day of each calendar month, beginning in April 1st, 202016. Lessee shall prepay the first and last month's rent to Lessor at the time that the parties execute this Lease. All rent payments shall be paid to Lessor at the following address:

Street Address: 359 Hamilton Ave
 City: PATERSON, NJ, New Jersey

or at such other place as Lessor may from time to time notify Lessee in writing. If the lease term commences on a day other than the first day of a calendar month, the first month's rent shall be adjusted accordingly. If Lessor fails to make a rent payment in full within 10 days after it is due, a late payment penalty of % will be applied and will be payable as additional rent.

3. Base Rent

Subject to any cost of living increases (if provided for in this Lease), the Base Rent payable under this Lease for each year of the Initial Term shall be as set out in the table below:

Includes utilities
minus

Lease Year	Annual Rent	Monthly Payment
Year 1	\$ <u>15,600</u>	\$ <u>1,300</u>
Year 2	\$ <u>15,600</u>	\$ <u>1,300</u>
Year 3	\$ <u>15,600</u>	\$ <u>1,300</u>
Year 4	\$ <u>15,600</u>	\$ <u>1,300</u>
Year 5	\$ <u>15,600</u>	\$ <u>1,300</u>

minus
 First Payment 3-31-16
 Tenant paid \$11,000.
 Balance \$4100.
 by April 30, 2016

- (b) Lessor may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrears of rent or to satisfy any other covenant or obligation of Lessee hereunder. Following any such application of the Security Deposit, Lessee shall pay to Lessor on demand the amount so applied in order to restore the Security Deposit to its original amount.
- (c) If Lessee is not in default at the Expiry Date or earlier termination of this Lease or any extension or renewal thereof, the Security Deposit (or remaining balance after deductions for arrears of rent or other amounts owing by Lessee, if any) shall be returned by Lessor to Lessee. The party who is eventually entitled to the fund in whole or in part shall also be entitled to the interest accrued or its pro rata share of the interest accrued.
- (d) If Lessor transfers its interest in the Premises during the term of this Lease, Lessor may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit.

(Delete the following section if it is not applicable.)

5. Percentage Rent

Lessee shall pay, as additional rent, a percentage rent ("Percentage Rent") calculated as set out below.

- (a) Within 45 days following the end of each Lease Year (as hereinafter defined), Lessee shall provide Lessor with a written statement certified by Lessee setting out Lessee's total gross sales for the preceding Lease Year, together with a check for a sum equal to five percent (5%) of such gross sales, less the Base Rent for such Lease Year (if previously paid), and copies of the monthly state sales tax returns.
- (b) "Lease Year" shall mean each period of 12 consecutive calendar months during the term of the Lease, commencing on the Commencement Date, provided that if the term shall commence on a day between the 1st of the month and the 14th of the month, the Lease Year shall be deemed to start on the 1st of the then current month. If the term shall commence on a day between the 15th and the end of the month, the Lease Year shall be deemed to start on the 1st day of the following month. Gross sales for the period falling outside of that period shall be adjusted and calculated pro rata on a daily basis.
- (c) The term "gross sales" as used herein shall mean the total amounts received, whether for cash or on credit, for sales and services of every kind made upon the Leased Premises, less the amount Lessee is obligated to pay on account of all retail sales taxes.
- (d) Lessee shall keep complete and accurate books and accounts of its daily gross sales in every part of its business operating at any time during the currency of this Lease in any part of the Leased Premises. Lessor and its agents and employees shall have the right at any time during regular business hours to examine and inspect all the books and accounts of Lessee related to gross sales, including sales tax reports, tax returns, or other reports to any governmental agency, for the purpose of verifying the accuracy of any statement of gross sales provided under sub-clause (a) hereof. Lessor may, at its option and no more than once in any consecutive 12-month period, cause an audit of Lessee's business to be performed by a certified public accountant of Lessor's choice. If such audit shows that any statement of gross sales previously made by Lessee is more than ten percent (10%) less than the amount of gross sales determined by such audit, the cost of such audit shall be borne by Lessee; otherwise it shall be borne by Lessor.

(Delete the following section if it is not applicable.)

6. Cost of Living Increases

Since the Base Rent is predicated upon the retail cost of living index remaining constant, then, should this Lease be for more than one year, and should the Statistical Abstract of the United States, as published by the United States Government, evidence that on the January next following the first year of this Lease the retail cost of living index has increased, then the amount of each monthly rent payment hereunder shall be increased by the same percentage, beginning with the first rent payment due following the date that Lessor serves written notice on Lessee of such increase, with a copy or citation of the governmental reference reflecting and verifying the increase. Any increase in Base Rent from a cost of living increase shall be retroactive to the date that such cost of living increase first became effective according to the government publication.

7. Use of Premises

The Leased Premises shall be used solely for the purpose of Lessee's business, specifically:

12 space
Lessee agrees to use the Leased Premises for reasonable business, commercial, retail, warehousing or industrial uses which do not materially damage the Leased Premises. Lessee's use of the Leased Premises shall be in a lawful, careful, safe, and proper manner, and Lessee shall carefully preserve, protect, control and guard the same from damage, at Lessee's sole expense. Lessee shall not use the parking area or the ingress and egress area of the Premises in an unreasonable manner so as to interfere with the normal flow of traffic or the use of such areas by occupants of properties adjacent to the Leased Premises. Lessee shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device. Lessee shall, on the Expiry Date or, if earlier terminated upon such termination, surrender possession of the Leased Premises without further notice to quit, in as good condition as reasonable use will permit. Lessee shall not use the Leased Premises for living quarters or as a residence. Lessee shall not use the Leased Premises for any unlawful, immoral or improper purpose, or in any manner which is contrary to law or to any directions, rules, regulations, regulatory bodies, or officials having jurisdiction thereof or which shall be injurious to any person or

9. Sublease and Assignment

Lessee shall have the right without Lessor's consent, to assign this Lease to a corporation with which Lessee may merge or consolidate, to any subsidiary of Lessee, to any corporation under common control with Lessee, or to a purchaser of substantially all of Lessee's assets. Except as set forth above, Lessee shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Lessor's written consent, such consent not to be unreasonably withheld or delayed. Provided, however, that no assignment of this Lease, whether by act of Lessee or by operation of law, and no sublease of the Leased Premises, or any part thereof, by or from Lessee, shall relieve or release Lessee from any of its obligations hereunder.

10. Maintenance and Repairs

- (a) Subject to anything contained herein with respect to destruction of, damage to or condemnation of the Leased Premises, Lessee shall, at its sole cost and expense, keep and maintain the Leased Premises, including without limitation, the roof, exterior, foundation, structural and operational parts (cooling, heating, air conditioning, plumbing equipment and fixtures), windows, doors, locks and security systems, paving and landscaping, snow and ice removal, interior maintenance (floors, doors, toilets, light replacement, etc.), and all other elements or systems of the Leased Premises, in a condition and repair similar to its original condition and repair, reasonable wear and tear excepted.
- (b) Except as otherwise hereinafter provided, Lessor shall have no obligation whatsoever with respect to the maintenance and repair of the Leased Premises.
- (c) Replacement and repair parts, materials, and equipment used by Lessee to fulfill its obligations hereunder shall be of a quality equivalent to those initially installed within the Leased Premises. All repair and maintenance work shall be done in compliance with the then existing federal, state, and local laws, regulations and ordinances pertaining thereto.
- (d) If Lessee refuses or neglects to commence repairs within ten (10) days after receipt of written demand from Lessor, or fails to adequately complete such repairs without liability to lessor for any loss or damage that may accrue to Lessee's stock or business by reason thereof, Lessor may at its option make such repairs and Lessor shall pay to Lessor, on demand as additional rent, the costs thereof with interest at the maximum rate allowable by law calculated from the date such repairs commenced until the date Lessee pays Lessor in full for such repairs.

11. Alterations and Improvements

Lessee shall have the right to make, at no expense to Lessor, improvements, alterations, or additions (hereinafter collectively referred to as "Alteration") to the Leased Premises, whether structural or nonstructural, interior or exterior, provided that:

- (a) no Alteration shall be made without the prior written consent of Lessor, which consent shall not be unreasonably withheld;
- (b) no structural Alteration shall be made without first obtaining Lessor's written approval of plans and specifications;
- (c) no Alteration shall materially alter the character or substantially lessen the value of the Leased Premises;
- (d) no Alteration shall be commenced until Lessee has first obtained and paid for all required permits and authorizations of all regulatory bodies with respect to such Alteration;
- (e) any Alteration shall be made in a good workmanlike manner and in compliance with all laws, ordinances, regulations, codes, and permits;
- (f) Lessee shall not decorate or paint the exterior of the Leased Premises, or any part thereof, except in such manner and of such color(s) as are approved by Lessor;
- (g) any Alteration shall become and remain the property of Lessor unless Lessor otherwise agrees in writing.

12. Liens

Lessee shall keep the Leased Premises and the improvements thereon, at all times during the currency of this Lease, free of mechanics and materialmen's liens and other liens of like nature, except for liens created and claimed by reason of any work done by or at the direction of Lessor, and shall indemnify and hold Lessor harmless from and against any mechanics or materialmen's liens and claims for work, labor, or materials supplied to the Leased Premises at the direction of Lessee and against all attorneys' fees and other costs and expenses arising out of or incurred by reason or on account of any such liens and claims. In the event that any such liens or claims shall be filed for work, labor or materials supplied to the Leased Premises at the direction of Lessee, Lessee shall, at Lessor's option, either escrow an amount equal to the amount of the lien or claim being filed, or obtain a bond for the protection of Lessor in an amount not less than the amount of the lien or claim being filed

13. Taxes and Assessments

- (a) Lessee shall pay all real estate taxes and assessments becoming due and payable with respect to the Leased Premises and improvements thereon during the Initial Term and any extension or renewal thereof, and all taxes or other charges imposed during the Initial Term and any extension or renewal thereof.

or imposed wholly or partially as a capital levy, or otherwise, on the rents received therefrom, Lessee shall pay and discharge the same with respect to the rents due hereunder.

- (d) Nothing contained in this Lease shall require Lessee to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of Lessor, or Lessor's federal income tax, state income tax, or excess profits or revenue tax, unless such taxes are in substitution for real property taxes as a result of a change in the method of taxation described in subclause (c) above.
- (e) If Lessee wishes to contest any assessment or levy of taxes on the Leased Premises, Lessor covenants and agrees that it will execute such documents and do all such things as are necessary to aid Lessee in contesting or litigating said assessment, provided, however, that such contest or litigation shall be at the sole cost and expense of Lessee. Any resulting reduction or rebate of taxes paid or to be paid by Lessee shall belong to Lessee.

14. Sales and Transaction Tax

Lessee shall pay with each rent payment the amount of any sales or transaction tax on the rental transaction. If any sales or similar tax shall be levied or assessed by the United States Government, any state, county, municipality, district or agency or instrumentality thereof, upon or against Lessor by reason of the execution of this Lease, or upon the rentals reserved thereby, then in such case Lessee shall forthwith, upon demand, reimburse Lessor for the amount of any such taxes or assessments paid by Lessor.

15. Insurance

- (a) Lessee shall, at its sole cost and expense, obtain and thereafter maintain in full force and effect, at all times during the Initial Term and any extension or renewal thereof, fire and extended coverage insurance in the amount of no less than eighty percent (80%) of the full insurable value of the Leased Premises. Lessee shall maintain fire insurance coverage on all of Lessee's stock in trade, furniture, fixtures and other property within the Leased Premises, in an amount equal to the full insurable value thereof. Lessee shall promptly deliver to Lessor copies of any and all such policies of insurance. Lessee covenants that any insurance coverage in this regard shall contain a waiver of the insurer's right of subornation against Lessor.
- (b) Lessor hereby releases Lessee, to the extent of its insurance coverage, from any and all liability for loss or damage caused by fire or any of the extended coverage casualties, notwithstanding such fire or other casualty shall be due to the fault or negligence of Lessee or its agents or employees, provided, however, that this release shall be in full force and effect only with respect to loss or damage occurring during such time as the policies for such fire and extended coverage insurance shall contain a clause to the effect that this release shall not affect such policies or the right of Lessor to recover thereunder. Lessee agrees that such insurance policies shall include such clause as long as the same can be included without extra costs.
- (c) If Lessee shall fail at any time to maintain the insurance coverage required under this Section, Lessor may at its option pay for the same on Lessee's behalf, and Lessee shall reimburse Lessor for the same.
- (d) Lessee shall not carry any item of inventory, or do any act, or fail to do any act in or about the Leased Premises which will in any way impair or invalidate any policy of insurance on or in reference to the Leased Premises.
- (e) The parties shall use good faith efforts to have any and all fire, extended coverage, and material damage insurance which may be carried on the Leased Premises endorsed with the following subornation clause:

"This insurance shall not be invalid should the insured waive in writing, prior to a loss, any and all right of the coverage against any party for a loss occurring to the property described herein."
- (f) The parties mutually agree that any right of subornation afforded to the insurance carriers of their respective property insurance policies with respect to real or personal property situated in or on the Leased Premises is waived, and the parties undertake to give their respective insurance carriers notice of this waiver.
- (g) Lessee shall, at its sole cost and expense, obtain and thereafter maintain in full force and effect, at all times during the Initial Term and any extension or renewal thereof, procure and maintain in force policies of liability insurance, with Lessor as an additional insured thereunder, insuring Lessee:
 - (i) to the amount of \$ 100,000 against any loss or damage, or any claim thereof, resulting from injury or death of any one person, and
 - (ii) to the amount of \$ _____ against any loss or damage, or any claim thereof, resulting from injury or death of any number of persons from any one accident,

as a result of or by reason of the ownership by Lessor of the Leased Premises, parking area and adjacent areas owned by Lessor or the use and occupancy thereof by Lessee, and to procure and maintain in full force and effect, during the term specified, a policy or policies of insurance, with Lessor as additional insured thereunder, in an amount not less than \$ _____, insuring Lessor against any loss or damage or any claim thereof resulting from the damage to or destruction of any property belonging to any person whomsoever as a result of or by reason of the ownership by Lessor of the Leased Premises, parking area and adjacent areas owned by Lessor or the use and occupancy thereof by Lessee.