

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Haitian First Church of the Bretheren, Inc.,

Chapter 11

Debtor.

Case No. 14-43609 - CEC

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**NOTICE OF MOTION FOR AN ORDER (i) APPROVING CONTRACT OF SALE BETWEEN THE DEBTOR, AS SELLER AND DAVID ISRAEL, OR AN ENTITY TO BE FORMED BY HIM, AS PURCHASER; (ii) AUTHORIZING THE DEBTOR TO SELL REAL PROPERTY PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (iii) APPROVING COMPENSATION OF SPECIAL REAL ESTATE COUNSEL, (iv) APPROVING BROKER'S COMMISSION AND (v) GRANTING SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER**

**PLEASE TAKE NOTICE** that a hearing (the "Hearing") will be held before the Honorable Carla E. Craig, Chief United States Bankruptcy Judge, United States Bankruptcy Court, 271 Cadman Plaza East, Room 3529, Brooklyn, New York 11201, on May 24, 2017 at 3:00 p.m. (the "Sale Hearing"), or as soon thereafter as counsel can be heard, at which time and place the Court will consider the application (the "Application") of Haitian First Church of Brethren, Inc. (the "Debtor"), for an order inter alia (i) approving a contract of sale (the "Contract of Sale") between the Debtor, as Seller, and David Israel, or an entity to be formed by him ("Purchaser"), dated April 19, 2017 and annexed as Exhibit A to the Application; (ii) authorizing the Debtor to sell the real property known as and located at 1781-1787 Flatbush Avenue, Brooklyn, New York (the "Property"), free and clear of any liens, claims and encumbrances, pursuant to sections 363(b) and 363(f) of title 11 of the United States Code (the "Bankruptcy Code"), except as set forth in the Contract of Sale, for the sum of \$2,525,000.00, to Purchaser, or to such other entity as shall submit a higher and better offer at the Sale Hearing, on such terms as

may be announced by the Debtor at the Sale Hearing, including without limitation, the terms and conditions set forth in Exhibit B to the Application; (iii) approving compensation of \$10,000 to Kurt Roth, Esq., of Dickler & Roth, LLP, as Special Real Estate Counsel to the Debtor; (iv) approving a broker's commission to Geo Real Estate Group, Inc. of \$100,000.00 and (v) granting the Debtor such other and further relief as may be just and proper;

PLEASE TAKE FURTHER NOTICE, that objections to the Application and/or responsive papers, if any, must be in writing, must conform to the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of the United States Bankruptcy Court for the Eastern District of New York and must be filed on or before May 17, 2017 with the Clerk of the Bankruptcy Court (with a copy to Chambers), and served so as to be received by the attorneys for the Debtor, Rosenberg, Musso & Weiner, 26 Court Street, Suite 2211, Brooklyn, New York 11242, Attention: Bruce Weiner, Esq., and Kurt L. Roth, Esq., Dickler & Roth, LLP, 19 Fulton Street, Suite 306, New York, New York 10038, and the attorney for the Purchaser, Jack Israel, Esq., 2774 Coney Island Avenue, Brooklyn, NY 11235, on or before May 17, 2017 at 1:00 p.m.. Parties with legal representation shall file with the court: (a) (i) through the Bankruptcy Court's electronic filing system (in accordance with General Order M-182) which may be accessed through the internet at <https://ecf.nyeb.uscourts.gov> and (ii) in portable document format (PDF) using Adobe Exchange software for conversion, or (b) if a party is unable to file electronically, such party shall submit the response or objection in PDF format on a diskette in an envelope with the case name, case number and title of document: or (c) if a party is unable to file electronically or use PDF format, such party shall submit the response or objection on a diskette in either Word, Word Perfect, or DOS text (ASCII) format.

PLEASE TAKE FURTHER NOTICE, that the failure of any objecting person or entity

receiving Notice to file an Objection thereto on a timely basis may be a bar to the assertion of any Objection to the Application.

PLEASE TAKE FURTHER NOTICE, that the Sale Hearing may be adjourned from time to time without further notice to Creditors or parties in interest other than by an adjournment of such Sale Hearing in open Court or on the Court's calendar on the date scheduled for the Sale Hearing.

Dated: Brooklyn, New York  
April 24, 2017

ROSENBERG, MUSSO & WEINER, LLP  
Attorneys for Debtor

By: 

Bruce Weiner  
26 Court Street, Suite 2211  
Brooklyn, New York 11242  
(718) 855-6840

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Haitian First Church of the Bretheren, Inc.,

Chapter 11

Debtor.

Case No. 14-43609 - CEC

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**DEBTOR'S APPLICATION: FOR AN ORDER (i) APPROVING CONTRACT OF SALE BETWEEN THE DEBTOR, AS SELLER AND DAVID ISRAEL, OR AN ENTITY TO BE FORMED BY HIM, AS PURCHASER; (ii) AUTHORIZING THE DEBTOR TO SELL REAL PROPERTY PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (iii) APPROVING COMPENSATION OF SPECIAL REAL ESTATE COUNSEL, (iv) APPROVING BROKER'S COMMISSION AND (v) GRANTING SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER**

TO: THE HONORABLE CARLA E. CRAIG,  
Chief United States Bankruptcy Judge.

The application ("Application") of Haitian First Church of the Bretheren, Inc. (the "Debtor"), by its attorneys, Rosenberg, Musso & Weiner, for an order: (i) approving a contract of sale (the "Contract of Sale") between the Debtor, as Seller, and David Israel, or an entity to be formed by him ("Purchaser"), dated April 19, 2017 and annexed as Exhibit A; (ii) authorizing the Debtor to sell the real property known as and located at 1781-1787 Flatbush Avenue, Brooklyn, New York (the "Property"), free and clear of any liens, claims and encumbrances, pursuant to sections 363(b) and 363(f) of title 11 of the United States Code (the "Bankruptcy Code"), except as set forth in the Contract of Sale, for the sum of \$2,525,000.00, to Purchaser, or to such other entity as shall submit a higher and better offer at the Sale Hearing, on such terms as may be announced by the Debtor at the Sale Hearing; (iii) approving compensation of \$10,000 to Kurt Roth, Esq., of Dickler & Roth, LLP, as Special Real Estate Counsel to the Debtor; (iv) approving a broker's commission to Geo Real Estate Group, Inc. of \$100,000.00 and (v) granting the

Debtor such other and further relief as may be just and proper:

1. The Debtor filed a chapter 11 petition on July 15, 2014. The Debtor has continued to manage and operate its business pursuant to sections 1107 and 1108 of the Bankruptcy Code. No committees, trustee, or examiner has been appointed.

### **REAL PROPERTY**

2. The Property consists of a land and buildings located at 1781-1787 Flatbush Avenue, Brooklyn, New York, Block 7618, Lot 34.

3. The Property is owned by the Debtor.

### **THE SALE**

4. Purchaser has made the Debtor an offer to purchase the Property, on the terms set forth in the Contract, a copy of which is annexed as Exhibit A, for a purchase price of \$2,525,000, subject to higher and better offers at the Sale Hearing. Purchaser has given Debtor's counsel the sum of \$100,000.00, which is being held in escrow. If Purchaser is the successful bidder it will pay the balance of the purchase price at the closing. The Contract does not have a financing contingency and is an all cash purchase. Because the Debtor is a religious corporation, the sale must be approved by the New York State Attorney General. Special Counsel estimates that the approval should be obtained by mid-June.

5. By order dated March 25, 2016, this Court approved a sale of the Property to Mission of Mount Olives Church of God, Inc. Because the pastor of the Debtor died and after his death it was discovered that he never obtained approval of the Debtor's board for the sale, that sale did not proceed to closing. By letter dated October 13, 2016, the prior seller cancelled its contract to purchase the Property.

6. Purchaser came to the Debtor through Geo Real Estate Group, Inc. ("Geo"). The

Debtor has agreed to pay Geo a commission of \$100,000, subject to approval by the Court. The Debtor is filing an application to retain Geo effective January 1, 2017.

7. The offer made by Purchaser is the highest offer received by Geo by a party willing to sign a contract. Because the sales price for the Property is more than sufficient to pay all creditors in full, the Debtor has decided not to incur the expense of advertising the Property for sale, but Geo and the Debtor will continue to market the Property.

#### **ARMS LENGTH TRANSACTION**

8. The Debtor submits that the Contract was the result of arms-length negotiations. Purchaser has no known connection with the Debtor, or its creditors.

9. By this Application, the Debtor seeks the entry of an order:

- (a) approving the Contract and authorizing the Debtor to enter into and consummate the Contract;
- (b) pursuant to sections 363(b)(1) and 363(f) of the Bankruptcy Code, authorizing the Debtor to sell the Property, free and clear of all liens, claims, encumbrances and interests, except as set forth in the Contract of Sale, to the Purchaser or to such entity that submits a higher and better offer at the Sale Hearing; and
- (c) approving fees of \$10,000.00 to Kurt L. Roth, as special real estate counsel to the Debtor; and
- (d) approving the broker's commission to Geo of \$100,00.00;
- (e) granting the Debtor such other and further relief as may be just and proper.

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

10. The Bankruptcy Code provides in pertinent part that a 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). The Debtor, as a Chapter 11 debtor in possession has the rights of

a trustee to sell property. The proposed sale is outside the ordinary course of its business.

11. Section 363 does not articulate an express standard for determining whether a sale of property under section 363(b) should be approved; however, courts that have interpreted this section consistently apply an “articulated business judgment” standard. See Stephen Indus., Inc., v. McClung, 789 F.2d 386, 390 (6<sup>th</sup> Cir. 1986); In re Continental Airlines, Inc., 780 F. 2d 1223, 1226 (5<sup>th</sup> Cir. 1986); In re Lionel Corp., 722 F. 2d 1063 (2d Cir. 1984); In re Walter, 83 B.R. 14, 17 (Bankr. 9<sup>th</sup> Cir. 1988); In re Channel One Communications, Inc., 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989); In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984).

12. The Court of Appeals for the Second Circuit first enunciated this standard in by stating:

The rule we adopt requires that a judge determining a §363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such application.

Lionel, 722 F. 2d at 1070-71 (emphasis added).

13. Section 363(b) does not require that the Court substitute its business judgement for that of a trustee or a debtor in possession. See, e.g. Ionosphere Clubs, 100 B.R. at 676, that a court will not substitute a hostile witness’s business judgment for a debtor’s unless testimony “established that the [debtor] had failed to articulate a sound business justification for its chosen course”). Rather, the Court should ascertain whether the Debtor has articulated a valid business justification for the proposed transaction. This is consistent with “the broad authority to operate the business of the debtor ... [which] indicates congressional intent to limit court involvement in business decision made in good faith by a Debtor”. In re Airlift Int’l Inc., 18 B.R. 787, 789 (Bankr. S.D. Fla. 1982).

14. Pursuant to section 363(f) of the Bankruptcy Code, the Debtor may sell the Property free and clear of any and all liens, claims encumbrances and interests if (i) permitted under applicable non-bankruptcy law, (ii) the party asserting such interest consents, (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property, (iv) the interest is the subject of a bona fide dispute, or (v) the party asserting the interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. Pursuant to section 363(f) and the Contract of Sale, the sale of the Property is free and clear of any and all liens, claims, encumbrances and interests, other than with a few limited exceptions set forth in the Contract of Sale involving non-monetary encumbrances. The \$2,525,000.00 purchase price is greater than the aggregate amount of all liens on the Property. The Debtor owed D.A.M. Nevada \$1,465,984.71, as of November 30, 2016, and the amount that will be owed in June 2017 will be no more than \$1.55 million. Atlantic Northeast District, Church of the Brethren holds the second mortgage on the Property with a current balance of approximately \$100,000. The Debtor owes real estate taxes and water charges of approximately \$70,000. The sales price is far in excess of the liens on the Property. The only filed unsecured claim is Con Ed for \$82.49. Therefore, the sale of the Property free and clear of any liens, claims and encumbrances is authorized by section 363(f) of the Bankruptcy Code.

15. The Debtor believes that an immediate sale of the Property is in the best interests of the estate for numerous reasons. This Court granted D.A.M. Nevada LLC relief from the automatic stay by order dated July 20, 2015. Although as of the date of this application, no foreclosure sale has been scheduled, D.A.M. Nevada LLC holds a judgment of foreclosure and is ready to schedule a sale if the Debtor does not sell the Property. Interest continues to accrue on the judgment. Interest also continues to accrue on the second mortgage and on the real estate taxes. The Debtor does not have



the money to pay the judgment, so sale of the Property is in the best interests of the Debtor's estate and its creditors. The Debtor believes that the sale to Purchaser or to any other entity that makes a higher and better offer at the Sale Hearing represents the highest and best value that can reasonably be obtained for the estate from the Property.

#### **HIGHER OFFERS**

16. The sale is subject to the approval of the Bankruptcy Court and to higher and better offers to be made in the Bankruptcy Court. The Debtor believes that unless a higher offer is submitted completion of the contract of sale will be in the best interest of the estate. Nevertheless, the Debtor will welcome any higher and better offers at the Sale Hearing, with the first offer to be not less than \$2,575,000. The Debtor requests that the Court require any offerors tendering a higher offer to sign at the Sale Hearing a contract of sale similar to the contract dated April 19, 2017, as well as any other terms and conditions that shall be announced at the Sale Hearing.

#### **BROKER**

17. Purchaser came to the Trustee through the efforts of Geo which has been marketing the Property for several months. The Debtor's agreement with Geo provides that it will receive \$100,000.00 as a commission and the Debtor requests that this Court approve the commission of \$100,000.00.

#### **SPECIAL REAL ESTATE COUNSEL**

18. By order dated November 16, 2015, this Court authorized the Debtor to retain Kurt L. Roth of Dickler & Roth LLP as Special Real Estate Counsel. A copy of the retention order is annexed as Exhibit C. Mr. Roth drafted the first contract that was subsequently cancelled, and drafted the Contract annexed as Exhibit A and negotiated its terms with

Purchaser's counsel. Mr. Roth has made several appearances before this Court and will take all necessary steps to insure that this sale will close. Because of the extra work in negotiating and preparing two contracts, in dealing with the Debtor on contract issues, and in making several court appearances, as well as representing the Debtor at the closing on the sale of the Property, the Debtor requests that Special Real Estate Counsel receive a fee of \$10,000 instead of the \$6500.00 previously approved by this Court, and that such fee is reasonable.

**NOTICE OF RELIEF REQUESTED**

19. The Debtor intends to serve a copy of the Notice of Motion and Application together with Exhibits thereto on the U.S. Trustee, counsel to the Purchaser, counsel to D.A.M. Nevada LLC, counsel to Atlantic Northeast District, Church of the Brethren, all creditors and parties in interest, all parties asserting a lien on the Property, and any person who has filed a Notice of Appearance. The Debtor submits that the foregoing notice complies with the Bankruptcy Code and Rules and is good and sufficient notice of the sale and relief requested in this Application. A proposed order approving the sale and granting related relief is annexed as Exhibit C.

**WHEREFORE**, the Debtor requests entry of an Order for the relief requested in the Application and for such other and different relief that may be just and proper.

Dated: Brooklyn, New York  
April 24, 2017

ROSENBERG, MUSSO & WEINER, LLP  
Attorneys for Debtor

By: 

Bruce Weiner  
26 Court Street, Suite 2211  
Brooklyn, New York 11242  
(718) 855-6840

EXHIBIT A

Contract of Sale for New York office, commercial and multi-family residential premises

**Contract of Sale---Office, Commercial and Multi-Family Residential Premises**

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CONTRACT dated the 19<sup>th</sup>, day of April, 2017,

Between

**Haitian First Church of the Brethren, Inc.**

Address:

1781-1787 Flatbush Avenue, Brooklyn, NY 11210  
("Seller") and

**David Israel with the right to assign to an entity to be formed.**

Address:

2774 Coney Island Avenue, Brooklyn, New York 11235  
("Purchaser").

Seller and Purchaser hereby covenant and agree as follows:

**Schedule A  
DESCRIPTION OF PREMISES**

The Premises are located at or known as:  
Street Address:1781-1787 Flatbush Avenue

City:Brooklyn State:New York Zip:11210  
Tax Map Designation: Section: Block:7618 Lot:34

metes and bounds description attached hereto)

**Schedule B  
PERMITTED EXCEPTIONS**

1. Zoning regulations and ordinances which are not violated by the existing structures or present use thereof and which do not render title uninsurable.
  2. Consents by the Seller or any former owner of the Premises for the erection of any structure or structures on, under or above any street or streets on which the Premises may abut.
  3. The Existing Mortgage(s) and financing statements, assignments of leases and other collateral assignments ancillary thereto.
  4. Leases and Tenancies specified in the Rent Schedule and any new leases or tenancies not prohibited by this contract.
  5. Unpaid installments of assessments not due and payable on or before the Closing Date.
  6. Financing statements, chattel mortgages and liens on personalty filed more than 5 years prior to the Closing Date and not renewed, or filed against property or equipment no longer located on the Premises or owned by Tenants.
  7. (a) Rights of utility companies to lay, maintain install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Premises, provided that none of such rights imposes any monetary obligation on the owner of the Premises.  
(b) Encroachments of stoops, areas, cellar steps, trim cornices, lintels, window sills, awnings, canopies, ledges, fences, hedges, coping and retaining walls projecting from the Premises over any street or highway or over any adjoining property and encroachments of similar elements projecting from adjoining property over the Premises.  
(c) Revocability or lack of right to maintain vaults, coal chutes, excavations or sub-surface equipment beyond the line of the Premises.  
(d) Any state of facts that an accurate survey would disclose, provided that such facts do not render title unmarketable.
- For the purposes of this contract, none of the facts shown on the survey, if any, identified below shall be deemed to render title unmarketable, and Purchaser shall accept title subject thereto:

**Schedule C  
PURCHASE PRICE**

The Purchase Price shall be paid as follows:

- (a) By check subject to collection, the receipt of which is hereby acknowledged by Seller:

**\$100,000.00**

- (b) By check or checks delivered to Seller at the Closing in accordance with the provisions of §2.02: **\$2,425,000.00**
- (c) By acceptance of title subject to the following Existing Mortgage(s): **\$N/A**
- (d) By execution and delivery to Seller by Purchaser or its assignee of a note secured by a Purchase Money Mortgage on the Premises, in the sum of \$N/A payable as follows:

Interest Rate: Term: Monthly payment: Prep. Fee: Other provisions: **\$**  
 Making for a total Purchase Price of: **\$2,525,000.00**

**Schedule D  
 MISCELLANEOUS**

- 1. Title insurer designated by the parties (§1.02):N/A
- 2. Last date for consent by Existing Mortgagee(s) (§2.03(b)):N/A
- 3. Maximum Interest Rate of any Refinanced Mortgage (§2.04(b)):N/A
- 4. Prepayment Date on or after which Purchase Money Mortgage may be prepaid (§2.04(c)):N/A
- 5. Seller's tax ID Nos (§2.05) #1: #2: #3: #4:
- 6. Buyer's tax ID Nos (§2.05) #1: #2: #3: #4:
- 7. Scheduled time and date of Closing (§3.01): Date: on or about 60 from receipt of certified copy of bankruptcy court order approving this Sale and canceling all prior Contracts and dispensing with requirement of approval of New York State attorney General. , Time: 2 pm o'clock.

8. Place of Closing (§3.01): SELLER ATTORNEY'S OFFICE

9. Assessed valuation of Premises (§4.10): \$246,796.00 ( APPROX. 2015)

10. Fiscal year and annual real estate taxes on Premises (§4.10): Fiscal Year: 2015 Annual Taxes: \$27,309.82

11. Tax abatements or exemptions affecting Premises (§4.10): \$0

12. Assessments on Premises (§4.13):

13. Maximum Amount which Seller must spend to cure violations, etc. (§7.02): 50,000.00

14. Maximum Expense of Seller to cure title defects, etc. (§13.02): 100,000.00

15. Broker, if any (§14.01): Gene Burshtein-Geo Real Estate Group, Inc.

16. Party to pay broker's commission (§14.01): Seller

17. Address for notices (§15.01):

If to Seller: Haitian First Church of the Brethren, Inc.  
 1781-1787 Flatbush Avenue, Brooklyn, NY 11210

with a copy to: KURT L. ROTH, ESQ.  
 19 FULTON STREET, SUITE 306, NEW YORK, NEW YORK 10038

If to Purchaser: David Israel  
 2774 Coney Island Avenue, Brooklyn, New York 11235

with a copy to: JACK ISRAEL, ESQ.  
 2774 CONEY ISLAND AVENUE, BROOKLYN, NY 11235

18. Limitation Date for actions based on Seller's surviving representations and other obligations (§16.01): One year

19. Additional Schedules or Riders (§17.08): SEE ANNEXED SELLER'S RIDER AND LEAD PAINT RIDER

**Schedule E  
 RENT SCHEDULE**

if more than four tenants, check, and annex a rent schedule rider hereto; otherwise, enter information below)

<i>Name</i>	<i>Apt. No.</i>	<i>Rent</i>	<i>Due</i>	<i>Security</i>
	1	Vacant		
	2	\$6,170.42	March 31, 2020	

Seller to provide estoppel reflecting terms signed by tenant.

**Section 1. Sale of Premises and Acceptable Title**

§1.01. Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, at the price and upon the terms and conditions set forth in this contract:

(a) the parcel of land more particularly described in Schedule A attached hereto ("Land"); (b) all buildings and improvement situated on the Land (collectively, "Building");

(c) all right, title and interest of Seller, if any, in and to the land lying in the bed of any street or highway in front of or adjoining the Land to the center line thereof and to any unpaid award for any taking by condemnation or any damage to the Land by reason of a change of grade of any street or highway;

(d) the appurtenances and all the estate and rights of Seller in and to the Land and Building; and

(e) all right, title and interest of Seller, if any, in and to the fixtures, equipment and other personal property attached or appurtenant to the Building (collectively, "Premises"). The Premises are located at or known as Street Address: 1781-1787 Flatbush Avenue City: Brooklyn State: New York Zip: 11210 Tax Map Designation: Section: Block: 7618 Lot: 34

§1.02. Seller shall convey and Purchaser shall accept fee simple title to the Premises in accordance with the terms of this contract, subject only to:

(a) the matters set forth in Schedule B attached hereto (collectively, "Permitted Exceptions"); and

(b) such other matters as (i) the title insurer specified in Schedule D attached hereto (or if none is so specified, then any member of the New York Board of Title Underwriters) shall be willing, without special premium, to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the Premises and (ii) shall be accepted by any lender described in Section 274-a of the Real Property Law ("Institutional Lender") which has committed in writing to provide mortgage financing to Purchaser for the purchase of the Premises ("Purchaser's Institutional Lender"), except that if such acceptance by Purchaser's Institutional Lender is unreasonably withheld or delayed, such acceptance shall be deemed to have been given.

**Section 2. Purchase Price, Acceptable Funds, Existing Mortgages, Purchase Money Mortgage and Escrow of Down payment**

§2.01. The purchase price ("Purchase Price") to be paid by Purchaser to Seller for the Premises as provided in Schedule C attached hereto is \$2,525,000.00

§2.02. All monies payable under this contract, unless otherwise specified in this contract, shall be paid by:

(a) certified checks of Purchaser or any person making a purchase money loan to Purchaser drawn on any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York or

(b) official bank checks drawn by any such banking institution, payable to the order of Seller, except that uncertified checks of Purchaser payable to the order of Seller up to the amount of one-half of one percent of the Purchase Price shall be acceptable for sums payable to Seller at the Closing.

§2.03. (a) If Schedule C provides for the acceptance of title by Purchaser subject to one or more existing mortgages (collectively, "Existing Mortgage(s)"), the amounts specified in Schedule C with reference thereto may be approximate. If at the Closing the aggregate principal amount of the Existing Mortgage(s), as reduced by payments required there under prior to the Closing, is less than the aggregate amount of the Existing Mortgage(s) as specified in Schedule C, the difference shall be added to the monies payable at the Closing, unless otherwise expressly provided herein.

(b) If any of the documents constituting the Existing Mortgage(s) or the note(s) secured thereby prohibits or restricts

~~the conveyance of the Premises or any part thereof without the prior consent of the holder or holders thereof ("Mortgagee(s)") or confers upon the Mortgagee(s) the right to accelerate payment of the indebtedness or to change the terms of the Existing Mortgage(s) in the event that a conveyance is made without consent of the Mortgagee(s), Seller shall notify such Mortgagee(s) of the proposed conveyance to Purchaser within 10 days after execution and delivery of this contract, requesting the consent of such Mortgagee(s) thereto. Seller and Purchaser shall furnish the Mortgagee(s) with such information as may reasonably be required in connection with such request and shall otherwise cooperate with such Mortgagee(s) and with each other in an effort expeditiously to procure such consent, but neither shall be obligated to make any payment to obtain such consent. If such Mortgagee(s) shall fail or refuse to grant such consent in writing on or before the date set forth in Schedule D or shall require as a condition of the granting of such consent~~

~~(i) that additional consideration be paid to the Mortgagee(s) and neither Seller nor Purchaser is willing to pay such additional consideration or~~

~~(ii) that the terms of the Existing Mortgage(s) be changed and Purchaser is unwilling to accept such change, then unless Seller and Purchaser mutually agree to extend such date or otherwise modify the terms of this contract, Purchaser may terminate this contract in the manner provided in §13.02.~~

If Schedule C provides for a Purchase Money Mortgage (as defined in §2.04), Seller may also terminate this contract in the manner provided in §13.02 if any of the foregoing circumstances occur or if Seller is unwilling to accept any such change in the terms of the Existing Mortgage(s).

§2.04. (a) If Schedule C provides for payment of a portion of the Purchase Price by execution and delivery to Seller of a note secured by a purchase money mortgage ("Purchase Money Mortgage"), such note and Purchase Money Mortgage shall be drawn by the attorney for the Seller on the standard forms of the New York Board of Title Underwriters then in effect for notes and for mortgages of like lien, as modified by this contract. At the Closing, Purchaser shall pay the mortgage recording tax and recording fees therefor and the filing fees for any financing statements delivered in connection therewith.

(b) If Schedule C provides for the acceptance of title by Purchaser subject to Existing Mortgage(s) prior in lien to the Purchase Money Mortgage, the Purchase Money Mortgage shall provide that it is subject and subordinate to the lien(s) of the Existing Mortgage(s) and shall be subject and subordinate to any extensions, modifications, renewals, consolidations, substitutions or replacements thereof (collectively, "Refinancing" or "Refinanced Mortgage"), provided that (i) the rate of interest payable under a Refinanced Mortgage shall not be greater than that specified in Schedule D as the Maximum Interest Rate or, if no Maximum Interest Rate is specified in Schedule D, shall not be greater than the rate of interest that was payable on the refinanced indebtedness immediately prior to such Refinancing, and (ii) if the principal amount of the Refinanced Mortgage plus the principal amount of other Existing Mortgage(s), if any, remaining after placement of a Refinanced Mortgage exceeds the amount of principal owing and unpaid on all mortgages on the Premises superior to the Purchase Money Mortgage immediately prior to the Refinancing, an amount equal to the excess shall be paid at the closing of the Refinancing to the holder of the Purchase Money Mortgage in reduction of principal payments due there under in inverse order of maturity. The Purchase Money Mortgage shall further provide that the holder thereof shall, on demand and without charge therefore, execute, acknowledge and deliver any agreement or agreements reasonably required by the mortgagee to confirm such subordination.

(c) The Purchase Money Mortgage shall contain the following additional provisions:

(i) "The mortgagor or any owner of the mortgaged premises shall have the right to prepay the entire unpaid indebtedness together with accrued interest, but without penalty, at any time on or after [insert the day following the last

~~day of the fiscal year of the mortgagee in which the Closing occurs or, if a Prepayment Date is specified in Schedule D, the specified Prepayment Date], or not less than 10 days' written notice to the holder hereof."~~

(ii) "Notwithstanding anything to the contrary contained herein, the obligation of the mortgagor for the payment of the indebtedness and for the performance of the terms, covenants and conditions contained herein and in the note secured hereby is limited solely to recourse against the property secured by this mortgage, and in no event shall the mortgagor or any principal of the mortgagor, disclosed or undisclosed, be personally liable for any breach of or default under the note or this mortgage or for any deficiency resulting from or through any proceedings to foreclose this mortgage, nor shall any deficiency judgment, money judgment or other personal judgment be sought or entered against the mortgagor or any principal of the mortgagor, disclosed or undisclosed, but the foregoing shall not adversely affect the lien of this mortgage or the mortgagee's right of foreclosure."

(iii) "In addition to performing its obligations under Section 274-a of the Real Property Law, the mortgagee, if other than one of the institutions listed in Section 274-a agrees that, within 10 days after written request by the mortgagor, but not more than twice during any period of 12 consecutive months, it will execute, acknowledge and deliver without charge a certificate of reduction in recordable form (a) certifying as to (1) the then unpaid principal balance of the indebtedness secured hereby, (2) the maturity date thereof, (3) the rate of interest, (4) the last date to which interest has been paid and (5) the amount of any escrow deposits then held by the mortgagee, and (b) stating, to the knowledge of the mortgagee, whether there are any alleged defaults hereunder and, if so, specifying the nature thereof."

~~(iv) "All notices required or desired to be given under this mortgage shall be in writing and shall be delivered personally or shall be sent by prepaid registered or certified mail, addressed to the mortgagor and mortgagee at the addresses specified in this mortgage or to such other parties or at such other addresses, not exceeding two, as may be designated in a notice given to the other party or parties in accordance with the provisions hereof."~~

~~(v) The additional provisions, if any, specified in a rider hereto.~~

§2.05. (a) If the sum paid under paragraph (a) of Schedule C or any other sums paid on account of the Purchase Price prior to the Closing (collectively, "Downpayment") are paid by check or checks drawn to the order of and delivered to Seller's attorney or another escrow agent ("Escrowee"), the Escrowee shall hold the proceeds thereof in escrow in a special bank account (or as otherwise agreed in writing by Seller, Purchaser and Escrowee) until the Closing or sooner termination of this contract and shall pay over or apply such proceeds in accordance with the terms of this section. Escrowee need not hold such proceeds in an interest-bearing account, but if any interest is earned thereon, such interest shall be paid to the same party entitled to the escrowed proceeds, and the party receiving such interest shall pay any income taxes thereon. The tax identification numbers of the parties are either set forth in Schedule D or shall be furnished to Escrowee upon request. At the Closing, such proceeds and the interest thereon, if any, shall be paid by Escrowee to Seller. If for any reason the Closing does not occur and either party makes a written demand upon Escrowee for payment of such amount, Escrowee shall give written notice to the other party of such demand. If Escrowee does not receive a written objection from the other party to the proposed payment within 10 business days after the giving of such notice, Escrowee is hereby authorized to make such payment. If Escrowee does receive such written objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by written instructions from the parties to this contract or a final judgment of a court. However, Escrowee shall have the right at any time to deposit the escrowed proceeds and interest thereon, if any, with the clerk of the Supreme Court of the county in which the Land is located. Escrowee shall give written notice of such deposit to Seller and Purchaser. Upon such deposit Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience, that Escrowee shall not be deemed to be the agent of either of the parties, and that Escrowee shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith, in willful disregard of this contract or involving gross negligence. Seller and Purchaser shall jointly and severally indemnify and hold Escrowee harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith, in willful disregard of this contract or involving gross negligence on the part of Escrowee.

(c) Escrowee has acknowledged agreement to these provisions by signing in the place indicated on the signature page of this contract.

### Section 3. The Closing

§3.01. Except as otherwise provided in this contract, the closing of title pursuant to this contract ("Closing") shall take place on the scheduled date and time of closing specified in Schedule D (the actual date of the Closing being herein referred to as "Closing Date") at the place specified in Schedule D.

### Section 4. Representations and Warranties of Seller

Seller represents and warrants to Purchaser as follows:

§4.01. Unless otherwise provided in this contract, Seller is the sole owner of the Premises.

§4.02. If the Premises are encumbered by an Existing Mortgage(s), no written notice has been received from the Mortgagee(s) asserting that a default or breach exists thereunder which remains uncured and no such notice shall have been received and remain uncured on the Closing Date. If copies of documents constituting the Existing Mortgage(s) and note(s) secured thereby have been exhibited to and initialed by Purchaser or its representative, such copies are true copies of the originals and the Existing Mortgage(s) and note(s) secured thereby have not been modified or amended except as shown in such documents. Premises shall be delivered free and clean of all mortgage liens and encumbrance.

§4.03. The information concerning written leases (which together with all amendments and modifications thereof are collectively referred to as "Leases") and any tenancies in the Premises not arising out of the Leases (collectively, "Tenancies") set forth in Schedule E attached hereto ("Rent Schedule") is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof, and there are no Leases or Tenancies of any space in the Premises other than those set forth therein and any subleases or subtenancies. Except as otherwise set forth in the Rent Schedule or elsewhere in this contract:

- (a) all of the Leases are in full force and effect and none of them has been modified, amended or extended;
- (b) no renewal or extension options have been granted to tenants;
- (c) no tenant has an option to purchase the Premises;
- (d) the rents set forth are being collected on a current basis and there are no arrearages in excess of one month;
- (e) no tenant is entitled to rental concessions or abatements for any period subsequent to the scheduled date of closing;
- (f) Seller has not sent written notice to any tenant claiming that such tenant is in default, which default remains uncured;

(g) no action or proceeding instituted against Seller by any tenant of the Premises is presently pending in any court, except with respect to claims involving personal injury or property damage which are covered by insurance; and

(h) there are no security deposits other than those set forth in the Rent Schedule.

(i) no prepaid rent.

If any Leases which have been exhibited to and initialed by Purchaser or its representative contain provisions that are inconsistent with the foregoing representations and warranties, such representations and warranties shall be deemed modified to the extent necessary to eliminate such inconsistency and to conform such representations and warranties to the provisions of the Leases.

§4.04. If the Premises or any part thereof are subject to the New York City Rent Stabilization Law, Seller is and on the Closing Date will be a member in good standing of the Real Estate Industry Stabilization Association, and, except as otherwise set forth in the Rent Schedule, there are no proceedings with any tenant presently pending before the Conciliation and Appeals Board in which a tenant has alleged an overcharge of rent or diminution of services or similar grievance, and there are no outstanding orders of the Conciliation and Appeals Board that have not been complied with by Seller.

§4.05. If the Premises or any part thereof are subject to the New York City Emergency Rent and Rehabilitation Law, the rents shown are not in excess of the maximum collectible rents, and, except as otherwise set forth in the Rent Schedule, no tenants are entitled to abatements as senior citizens, there are no proceedings presently pending before the rent commission in which a tenant has alleged an overcharge of rent or diminution of services or similar grievance, and there are no outstanding orders of the rent commission that have not been complied with by Seller.

§4.06. If an insurance schedule is attached hereto, such schedule lists all insurance policies presently affording coverage with respect to the Premises, and the information contained therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof.

§4.07. If a payroll schedule is attached hereto, such schedule lists all employees presently employed at the Premises, and the information contained therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof, and, except as otherwise set forth in such schedule, none of such employees is covered by a union contract and there are no retroactive increases or other accrued and unpaid sums owed to any employee.

§4.08. If a schedule of service, maintenance, supply and management contracts ("Service Contracts") is attached hereto, such schedule lists all such contracts affecting the Premises, and the information set forth therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof.

§4.09. If a copy of a certificate of occupancy for the Premises has been exhibited to and initialed by Purchaser or its representative, such copy is a true copy of the original and such certificate has not been amended, ~~but Seller makes no representation as to compliance with any such certificate.~~

§4.10. The assessed valuation and real estate taxes set forth in Schedule D, if any, are the assessed valuation of the Premises and the taxes paid or payable with respect thereto for the fiscal year indicated in such schedule. Except as otherwise set forth in Schedule D, there are no tax abatements or exemptions affecting the Premises.

§4.11. Except as otherwise set forth in a schedule attached hereto, if any, if the Premises are used for residential purposes, each apartment contains a range and a refrigerator, and all of the ranges and refrigerators and all of the items of personal property (or replacements thereof) listed in such schedule, if any, are and on the Closing Date will be owned by

Seller free of liens and encumbrances other than the lien(s) of the Existing Mortgage(s), if any.

§4.12. Seller has no actual knowledge that any incinerator, boiler or other burning equipment on the Premises is being operated in violation of applicable law. If copies of a certificate or certificates of operation therefor have been

exhibited to and initialed by Purchaser or its representative, such copies are true copies of the originals.

§4.13. Except as otherwise set forth in Schedule D, Seller has no actual knowledge of any assessment payable in annual installments, or any part thereof, which has become a lien on the Premises.

#### Section 5. Acknowledgments of Purchaser Purchaser acknowledges that:

§5.01. Purchaser has inspected the Premises, is fully familiar with the physical condition and state of repair thereof, and, subject to the provisions of §7.01, §8.01, and §9.04, shall accept the Premises "as is" and in their present condition, subject to reasonable use, wear, tear and natural deterioration between now and the Closing Date, without any reduction in the Purchase Price for any change in such condition by reason thereof subsequent to the date of this contract.

§5.02. Before entering into this contract, Purchaser has made such examination of the Premises, the operation, income and expenses thereof and all other matters affecting or relating to this transaction as Purchaser deemed necessary. In entering into this contract, Purchaser has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller or any agent, employee or other representative of Seller or by any broker or any other person representing or purporting to represent Seller, which are not expressly set forth in this contract, whether or not any such representations, warranties or statements were made in writing or orally.

#### Section 6. Seller's Obligations as to Leases

§6.01. Unless otherwise provided in a schedule attached to this contract, between the date of this contract and the Closing, Seller shall not, without Purchaser's prior written consent, ~~which consent shall not be unreasonably withheld,~~

- (a) amend, renew or extend any Lease in any respect, unless required by law;
- (b) grant a written lease to any tenant occupying space pursuant to a Tenancy; or
- (c) terminate any Lease or Tenancy except by reason of a default by the tenant thereunder.

§6.02. Unless otherwise provided in a schedule attached to this contract, between the date of this contract and the Closing, Seller shall not permit occupancy of, or enter into any new lease for, space in the Building which is presently vacant or which may hereafter become vacant ~~without first giving Purchaser written notice of the identity of the proposed tenant, together with~~

~~(a) either a copy of the proposed lease or a summary of the terms thereof in reasonable detail and~~

- (b) a statement of the amount of the brokerage commission, if any, payable in connection therewith and the terms of payment thereof. If Purchaser objects to such proposed lease, Purchaser shall so notify Seller within 4 business days after receipt of Seller's notice if such notice was personally delivered to Purchaser or within 7 business days after the mailing of such notice by Seller to Purchaser, in which case Seller shall not enter into the proposed lease. Unless otherwise provided in a schedule attached to this contract, Purchaser shall pay to Seller at the Closing, in the manner specified in §2.02, the rent and additional rent that would have been payable under the proposed lease from the date on which the tenant's obligation to pay rent would have commenced if Purchaser had not so objected until the Closing Date, less the amount of the brokerage commission specified in Seller's notice and the reasonable cost of decoration or other work required to be performed by the landlord under the terms of the proposed lease to suit the premises to the tenant's occupancy ("Reletting Expenses"), prorated in each case over the term of the proposed lease and apportioned as of the Closing Date. If Purchaser does not so notify Seller of its objection, Seller shall have the right to enter into the proposed lease with the tenant identified in Seller's notice and Purchaser shall pay to Seller, in the manner specified in §2.02, the Reletting Expenses, prorated in each case over the term of the lease and apportioned as of the later of the Closing Date or the rent



~~commencement date. Such payment shall be made by Purchaser to Seller at the Closing. In no event shall the amount so payable to Seller exceed the sums actually paid by Seller on account thereof.~~

§6.03. If any space is vacant on the Closing Date, Purchaser shall accept the Premises subject to such vacancy, provided that the vacancy was not permitted or created by Seller in violation of any restrictions contained in this contract. Seller shall not grant any concessions or rent abatements for any period following the Closing without Purchaser's prior written consent. Seller shall not apply all or any part of the security deposit of any tenant unless such tenant has vacated the Premises.

§6.04. Seller does not warrant that any particular Lease of Tenancy will be in force or effect at the Closing or that the tenants will have performed their obligations thereunder. The termination of any Lease or Tenancy prior to the Closing by reason of the tenant's default shall not affect the obligations of Purchaser under this contract in any manner or entitle Purchaser to an abatement of or credit against the Purchase Price or give rise to any other claim on the part of Purchaser.

**Section 7. Responsibility for Violations**

§7.01. Except as provided in §7.02 and §7.03, all notes or notices of violations of law or governmental ordinances, orders or requirements which were noted or issued prior to the date of this contract by any governmental department, agency or bureau having jurisdiction as to conditions affecting the Premises and all liens which have attached to the Premises prior to the Closing pursuant to the Administrative Code of the City of New York, if applicable, shall be removed or complied with by Seller. If such removal or compliance has not been completed prior to the Closing, Seller shall pay to Purchaser at the Closing the reasonably estimated unpaid cost to effect or complete such removal or compliance, and Purchaser shall be required to accept title to the Premises subject thereto, except that Purchaser shall not be required to accept such title and may terminate this contract as provided in §13.02 if

(a) Purchaser's Institutional Lender reasonably refuses to provide financing by reason thereof or

(b) the Building is a multiple dwelling and either

(i) such violation is rent impairing and causes rent to be unrecoverable under Section 302-a of the Multiple Dwelling Law or

(ii) a proceeding has been validly commenced by tenants and is pending with respect to such violation for a judgment directing deposit and use of rents under Article 7-A of the Real Property Actions and Proceedings Law. All such notes or notices of violations noted or issued on or after the date of this contract shall be the sole responsibility of Purchaser.

§7.02. If the reasonably estimated aggregate cost to remove or comply with any violations or liens which Seller is required to remove or comply with pursuant to the provisions of §7.01 shall exceed the Maximum Amount specified in Schedule D (or if none is so specified, the Maximum Amount shall be one-half of one percent of the Purchase Price), Seller shall have the right to cancel this contract, in which event the sole liability of Seller shall be as set forth in §13.02, unless Purchaser elects to accept title to the Premises subject to all such violations or liens, in which event Purchaser shall be entitled to a credit of an amount equal to the Maximum Amount against the monies payable at the Closing. Seller shall be responsible to pay off all penalties on the building.

§7.03. Regardless of whether a violation has been noted or issued prior to the date of this contract, Seller's failure to remove or fully comply with the following violations shall not be an objection to title:

~~(a) any violations of New York City Local Law 5 of 1973, as amended (relating to fire safety in office buildings), if applicable, or~~

~~(b) any violations which a tenant is required to remove or comply with pursuant to the terms of its lease by reason of such tenant's use or occupancy. Purchaser shall accept the Premises subject to all such violations without any liability of Seller with respect thereto or any abatement of or credit against the Purchase Price, except that if Purchaser's~~

~~Institutional Lender reasonably refuses to provide financing by reason of the violations described in (b) above, Purchaser shall not be required to accept the Premises subject thereto and Purchaser shall have the right to terminate this contract in the manner provided in §13.02.~~

§7.04. If required, Seller, upon written request by Purchaser, shall promptly furnish to Purchaser written authorizations to make any necessary searches for the purposes of determining whether notes or notices of violations have been noted or issued with respect to the Premises or liens have attached thereto.

**Section 8. Destruction, Damage or Condemnation**

§8.01. The provisions of Section 5-1311 of the General Obligations Law shall apply to the sale and purchase provided for in this contract.

**Section 9. Covenants of Seller**

Seller covenants that between the date of this contract and the Closing:

§9.01. The Existing Mortgage(s) shall not be amended or supplemented or prepaid in whole or in part. Seller shall pay or make, as and when due and payable, all payments of principal and interest and all deposits required to be paid or made under the Existing Mortgage(s).

§9.02. Seller shall not modify or amend any Service Contract or enter into any new service contract unless same is terminable without penalty by the then owner of the Premises upon not more than 30 days notice.

§9.03. If an insurance schedule is attached hereto, Seller shall maintain in full force and effect until the Closing the insurance policies described in such schedule or renewals thereof for no more than one year of those expiring before the Closing.

§9.04. No fixtures, equipment or personal property included in this sale shall be removed from the Premises unless the same are replaced with similar items of at least equal quality prior to the Closing.

§9.05. Seller shall not withdraw, settle or otherwise compromise any protest or reduction proceeding affecting real estate taxes assessed against the Premises for any fiscal period in which the Closing is to occur or any subsequent fiscal period without the prior written consent of Purchaser, which consent shall not be unreasonably withheld. Real estate tax refunds and credits received after the Closing Date which are attributable to the fiscal tax year during which the Closing Date occurs shall be apportioned between Seller and Purchaser, after deducting the expenses of collection thereof, which obligation shall survive the Closing.

§9.06. Seller shall allow Purchaser or Purchaser's representatives access to the Premises, the Leases and other documents required to be delivered under this contract upon reasonable prior notice at reasonable times.

**Section 10. Seller's Closing Obligations**

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

§10.01. A statutory form of bargain and sale deed without covenant against grantor's acts, containing the covenant required by Section 13 of the Lien Law, and properly executed in proper form for recording so as to convey the title required by this contract.

§10.02. All Leases initiated by Purchaser and all others in Seller's possession.

§10.03. A schedule of all cash security deposits and a check or credit to Purchaser in the amount of such security deposits, including any interest thereon, held by Seller on the Closing Date under the Leases or, if held by an Institutional Lender, an assignment to Purchaser and written instructions to the holder of such deposits to transfer the same to Purchaser,

and appropriate instruments of transfer or assignment with respect to any lease securities which are other than cash.

§10.04. A schedule updating the Rent Schedule and setting forth all arrears in rents and all prepayments of rents.

§10.05. All Service Contracts initialed by Purchaser and all others in Seller's possession which are in effect on the Closing Date and which are assignable by Seller.

§10.06. An assignment to Purchaser, without recourse or warranty, of all of the interest of Seller in those Service Contracts, insurance policies, certificates, permits and other documents to be delivered to Purchaser at the Closing which are then in effect and are assignable by Seller.

§10.07. (a) Written consent(s) of the Mortgagee(s), if required under §2.03(b), and (b) certificate(s) executed by the Mortgagee(s) in proper form for recording and certifying (i) the amount of the unpaid principal balance thereof, (ii) the maturity date thereof, (iii) the interest rate, (iv) the last date to which interest has been paid thereon and (v) the amount of any escrow deposits held by the Mortgagee(s).

Seller shall pay the fees for recording such certificate(s). Any Mortgagee which is an Institutional Lender may furnish a letter complying with Section 274-a of the Real Property Law in lieu of such certificate.

§10.08. An assignment of all Seller's right, title and interest in escrow deposits for real estate taxes, insurance premiums and other amounts, if any, then held by the Mortgagee(s).

§10.09. All original insurance policies with respect to which premiums are to be apportioned or, if unobtainable, true copies or certificates thereof.

§10.10. To the extent they are then in Seller's possession and not posted at the Premises, certificates, licenses, permits, authorizations and approvals issued for or with respect to the Premises by governmental and quasigovernmental authorities having jurisdiction.

§10.11. Such affidavits as Purchaser's title company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to Seller's name.

§10.12. Checks to the order of the appropriate officers in payment of all applicable real property transfer taxes and copies of any required tax returns therefor executed by Seller, which checks shall be certified or official bank checks if required by the taxing authority, unless Seller elects to have Purchaser pay any of such taxes and credit Purchaser with the amount thereof.

§10.13. To the extent they are then in Seller's possession, copies of current painting and payroll records. Seller shall make all other Building and tenant files and records available to Purchaser for copying, which obligation shall survive the Closing.

§10.14. An original letter, executed by Seller or by its agent, advising the tenants of the sale of the Premises to Purchaser and directing that rents and other payments thereafter be sent to Purchaser or as Purchaser may direct.

§10.15. Notice(s) to the Mortgagee(s), executed by Seller or by its agent, advising of the sale of the Premises to Purchaser and directing that future bills and other correspondence should thereafter be sent to Purchaser or as Purchaser may direct.

§10.16. If Seller is a corporation and if required by Section 909 of the Business Corporation Law, a resolution of Seller's board of directors authorizing the sale and delivery of the deed and a certificate executed by the secretary or assistant secretary of Seller certifying as to the adoption of such resolution and setting forth facts showing that the transfer complies with the requirements of such law. The deed referred

to in §10.01 shall also contain a recital sufficient to establish compliance with such law.

§10.17. Possession of the Premises in the condition required by this contract, subject to the Leases and Tenancies, and keys therefor.

§10.18. Any other documents required by this contract to be delivered by Seller.

#### Section 11. Purchaser's Closing Obligations

At the Closing, Purchaser shall:

§11.01. Deliver to Seller checks in payment of the portion of the Purchase Price payable at the Closing, as adjusted for apportionments under Section 12, plus the amount of escrow deposits, if any, assigned pursuant to §10.08.

§11.02. Deliver to Seller the Purchase Money Mortgage, if any, in proper form for recording, the note secured thereby, financing statements covering personal property, fixtures and equipment included in this sale and replacements thereof, all properly executed, and Purchaser shall pay the mortgage recording tax and recording fees for any Purchase Money Mortgage.

§11.03. Deliver to Seller an agreement indemnifying and agreeing to defend Seller against any claims made by tenants with respect to tenants' security deposits to the extent paid, credited or assigned to Purchaser under §10.03.

§11.04. Cause the deed to be recorded, duly complete all required real property transfer tax returns and cause all such returns and checks in payment of such taxes to be delivered to the appropriate officers promptly after the Closing.

§11.05. Deliver any other documents required by this contract to be delivered by Purchaser.

#### Section 12. Apportionments

§12.01. The following apportionments shall be made between the parties at the Closing as of the close of business on the day prior to the Closing Date:

(a) prepaid rents and Additional Rents (as defined in §12.03);

(b) interest on the Existing Mortgage(s);

(c) real estate taxes, water charges, sewer rents and vault charges, if any, on the basis of the fiscal period for which assessed, except that if there is a water meter on the Premises, apportionment at the Closing shall be based on the last available reading, subject to adjustment after the Closing when the next reading is available; \*

(d) wages, vacation pay, pension and welfare benefits and other fringe benefits of all persons employed at the Premises whose employment was not terminated at or prior to the Closing;

~~(e) value of fuel stored on the Premises, at the price then charged by Seller's supplier, including any taxes;~~

(f) charges under transferable Service Contracts or permitted renewals or replacements thereof;

~~(g) permitted administrative charges, if any, on tenants' security deposits;~~

(h) dues to rent stabilization associations, if any;

(i) insurance premiums on transferable insurance policies listed on a schedule hereto or permitted renewals thereof;

(j) Reletting Expenses under §6.02, if any; and

(k) any other items listed in Schedule D.

If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes at the Closing shall be upon the basis of the old tax rate for the preceding period applied to latest assessed valuation. Promptly after the new tax rate is fixed, the apportionment of taxes shall be recomputed. Any discrepancy resulting from such recomputation and any errors or omissions in computing apportionments at Closing shall be promptly corrected, which obligations shall survive the Closing.

\*Seller shall order and obtain a final water reading within 10 days of Closing, prior to Closing.

§12.02. If any tenant is in arrears in the payment of rent on the Closing Date, rents received from such tenant after the Closing shall be applied in the following order of priority:

- (a) first to the month preceding the month in which the Closing occurred;
- (b) then to the month in which the Closing occurred;
- (c) then to any month or months following the month in which the Closing occurred; and
- (d) then to the period prior to the month preceding the month in which the Closing occurred.

If rents or any portion thereof received by Seller or Purchaser after the Closing are payable to the other party by reason of this allocation, the appropriate sum, less a proportionate share of any reasonable attorneys' fees, costs and expenses of collection thereof, shall be promptly paid to the other party, which obligation shall survive the Closing.

~~§12.03. If any tenants are required to pay percentage rent, escalation charges for real estate taxes, operating expenses, cost-of-living adjustments or other charges of a similar nature ("Additional Rents") and any Additional Rents are collected by Purchaser after the Closing which are attributable in whole or in part to any period prior to the Closing, then Purchaser shall promptly pay to Seller Seller's proportionate share thereof, less a proportionate share of any reasonable attorneys' fees, costs and expenses of collection thereof, if and when the tenant paying the same has made all payments of rent and Additional Rent then due to Purchaser pursuant to the tenant's Lease, which obligation shall survive the Closing.~~

#### **Section 13. Objections to Title, Failure of Seller or Purchaser to Perform and Vendee's Lien**

§13.01. Purchaser shall promptly order an examination of title and shall cause a copy of the title report to be forwarded to Seller's attorney upon receipt. Seller shall be entitled to a reasonable adjournment or adjournments of the Closing for up to 60 days or until the expiration date of any written commitment of Purchaser's Institutional Lender delivered to Purchaser prior to the scheduled date of Closing, whichever occurs first, to remove any defects in or objections to title noted in such title report and any other defects or objections which may be disclosed on or prior to the Closing Date.

§13.02. If Seller shall be unable to convey title to the Premises at the Closing in accordance with the provisions of this contract or if Purchaser shall have any other grounds under this contract for refusing to consummate the purchase provided for herein, Purchaser, nevertheless, may elect to accept such title as Seller may be able to convey with a credit against the monies payable at the Closing equal to the reasonably estimated cost to cure the same (up to the Maximum Expense described below), but without any other credit or liability on the part of Seller. If Purchaser shall not so elect, Purchaser may terminate this contract and the sole liability of Seller shall be to refund the Down payment to Purchaser and to reimburse Purchaser for the net cost of title examination, but not to exceed the net amount charged by Purchaser's title company therefor without issuance of a policy, and the net cost of updating the existing survey of the Premises or the net cost of a new survey of the Premises if there was no existing survey or the existing survey was not capable of being updated and a new survey was required by Purchaser's Institutional Lender. Upon such refund and reimbursement, this contract shall be null and void and the parties hereto shall be relieved of all further obligations and liability other than any arising under Section 14. Seller shall not be required to bring any action or proceeding or to incur any expense in excess of the Maximum Expense specified in Schedule D (or if none is so specified, the Maximum Expense shall be one-half of one percent of the Purchase Price) to cure any title defect or to enable Seller otherwise to comply with the provisions of this contract, but the foregoing shall not permit Seller to refuse to pay off at the Closing, to the extent of the monies payable at the Closing, mortgages on the Premises, other than Existing Mortgages, of which Seller has actual knowledge.

§13.03 Any unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon

to a date not less than two days following the Closing Date, and any other liens and encumbrances which Seller is obligated to pay and discharge or which are against corporations, estates or other persons in the chain of title, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds of the monies payable at the Closing if Seller delivers to Purchaser on the Closing Date official bills for such taxes, assessments, water charges, sewer rents, interest and penalties and instruments in recordable form sufficient to discharge any other liens and encumbrances of record. Upon request made a reasonable time before the Closing, Purchaser shall provide at the Closing separate checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance and otherwise complying with §2.02. If Purchaser's title insurance company is willing to insure both Purchaser and Purchaser's Institutional Lender, if any, that such charges, liens and encumbrances will not be collected out of or enforced against the Premises, then, unless Purchaser's Institutional Lender reasonably refuses to accept such insurance in lieu of actual payment and discharge, Seller shall have the right in lieu of payment and discharge to deposit with the title insurance company such funds or assurances or to pay such special or additional premiums as the title insurance company may require in order to so insure. In such case the charges, liens and encumbrances with respect to which the title insurance company has agreed so to insure shall not be considered objections to title.

§13.04. If Purchaser shall default in the performance of its obligation under this contract to purchase the Premises, the sole remedy of Seller shall be to retain the Downpayment as liquidated damages for all loss, damage and expense suffered by Seller, including without limitation the loss of its bargain.

§13.05. Purchaser shall have a vendee's lien against the Premises for the amount of the Downpayment, but such lien shall not continue after default by Purchaser under this contract.

#### **Section 14. Broker**

§14.01. If a broker is specified in Schedule D, Seller and Purchaser mutually represent and warrant that such broker is the only broker with whom they have dealt in connection with this contract and that neither Seller nor Purchaser knows of any other broker who has claimed or may have the right to claim a commission in connection with this transaction, unless otherwise indicated in Schedule D. The commission of such broker shall be paid pursuant to separate agreement by the party specified in Schedule D. If no broker is specified in Schedule D, the parties acknowledge that this contract was brought about by direct negotiation between Seller and Purchaser and that neither Seller nor Purchaser knows of any broker entitled to a commission in connection with this transaction. Unless otherwise provided in Schedule D, Seller and Purchaser shall indemnify and defend each other against any costs, claims or expenses, including attorneys' fees, arising out of the breach on their respective parts of any representations, warranties or agreements contained in this paragraph. The representations and obligations under this paragraph shall survive the Closing or, if the Closing does not occur, the termination of this contract.

#### **Section 15. Notices**

§15.01. All notices under this contract shall be in writing and shall be delivered personally or shall be sent by prepaid registered or certified mail, addressed as set forth in Schedule D, or as Seller or Purchaser shall otherwise have given notice as herein provided.

#### **Section 16. Limitations on Survival of Representations, Warranties, Covenants and other Obligations**

§16.01. Except as otherwise provided in this contract, no representations, warranties, covenants or other obligations of Seller set forth in this contract shall survive the Closing, and no action base thereon shall be commenced after the Closing. The representations, warranties, covenants and other obligations of Seller set forth in §4.03, §6.01 and §6.02 shall

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survive until the Limitation Date specified in Scheduled D (or if none is so specified, the Limitation Date shall be the date which is six months after the Closing Date), and no action based thereon shall be commenced after the Limitation Date.

§16.02 The delivery of the deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations of Seller which are expressly stated in this contract to survive the Closing.

Section 17. Miscellaneous Provisions

§17.01. If consent of the Existing Mortgagee(s) is required under §2.03(b), Purchaser shall not assign this contract or its rights hereunder without the prior written consent of Seller. No permitted assignment of Purchaser's rights under this contract shall be effective against Seller unless and until an executed counterpart of the instrument of assignment shall have been delivered to Seller and Seller shall have been furnished with the name and address of the assignee. The term "Purchaser" shall be deemed to include the assignee under any such effective assignment.

§17.02. This contract embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein and all prior agreements, understandings, representations and statements, oral or written, are merged into this contract. Neither this contract nor any provision hereof may be waived, modified, amended,

discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

§17.03. This contract shall be governed by, and construed in accordance with, the law of the State of New York.

§17.04. The captions in this contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this contract or any of the provisions hereof.

§17.05. This contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns.

§17.06. This contract shall not be binding or effective until properly executed and delivered by Seller and Purchaser.

§17.07. As used in this contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.


§17.08. If the provisions of any schedule or rider to this contract are inconsistent with the provisions of this contract, the provisions of such schedule or rider shall prevail. Set forth in Schedule D is a list of any and all schedules and riders which are attached hereto but which are not listed in the Table of Contents.

~~IN WITNESS WHEREOF~~, the Parties hereto have duly executed this Contract as of the date first above written.

SELLER(S):

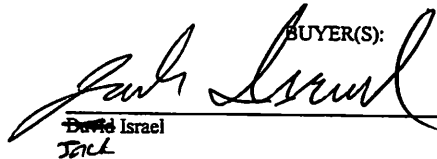
BUYER(S):

Haitian First Church of the Brethren, Inc.  
By: Clarelle Montauban, President



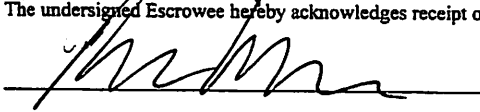
By: Marilyn Here, Member of Board

4/19/17

 4/19/17  
~~David~~ Israel  
JACK

Receipt by Escrowee:

The undersigned Escrowee hereby acknowledges receipt of, by check subject to collection, to be held in escrow pursuant to §2.05.



C 2

# RIDER TO CONTRACT

**PREMISES ADDRESS: 1781-1787 Flatbush Avenue, Brooklyn, NY 11210**

Seller: Haitian First Church of the Brethren, Inc.

Purchaser: David Israel

Purchase Price: \$2,525,000.00

18. This transaction is subject to the approval of the Attorney General, Supreme Court- Kings County and the United States Bankruptcy Court, Eastern District of New York, (Case No. 14-43609-608).
19. In the event the sale of 1781-1787 Flatbush Avenue, Brooklyn, NY does not close, the deposit of \$100,000.00 shall be refunded to, the Buyer, as long as Buyer is not material default of the Contract.
20. In the event of any inconsistency between the provisions of this Rider and those contained in the Contract of Sale to which this Rider is annexed, the provisions of this Rider shall govern and be binding. In the event that any provision of this Rider conflicts with the applicable law of the jurisdiction in which the Property is located, such conflict shall not affect other provisions of this Rider which can be given effect without the conflicting provision. All capitalized terms not defined herein shall have the same meaning as in the printed portion of the Contract. The representations made in the Contract are made as of the date of the execution of the Contract.
21. The Contract and this Rider may be executed in more than one counterpart, each of which, when taken together, shall be deemed to be one (1) instrument. The Contract and this Rider may be executed and delivered by facsimile transmission or by email via .pdf format, in each case, with the same force and effect as if they were original documents.
22. Intentionally deleted.
23. In the event that the Bankruptcy Court approves any offer by any third party for the Premises according to the term of Rider #2, then Seller shall promptly return the Down payment to Purchaser and Purchaser shall have no further claim against Seller.
24. The Order approving this Contract shall provide for sale of the Premises free and clear of all liens, claims, interests, and encumbrances, except for the alleged tenancy of Apt. 2, with such liens, claims, interests, and encumbrances to attach to the proceeds of the sale and that Purchaser is a person that purchased the Premises in good faith which all shall be extinguished and disposed of prior to or at Closing.

MM JL

\_\_\_\_\_  
Clarelle Montauban, President, Seller

Marilyn Fiere  
Marilyn Fiere, Member of the Board, Seller

David Israel  
David Israel, Purchaser  
Jack  
4/19/17

## **Rider #2 to Contract of Sale**

**Premises Address: 1781-1787 Flatbush Avenue, Brooklyn NY 11210**

**Seller: Haitian First Church of the Brethren, Inc.**

**Purchaser: David Israel**

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This Rider #2 shall form a part of the contract for 1781-1787 Flatbush Avenue, Brooklyn NY. In the event any terms are inconsistent with the Contract of Sale or the Rider to Contract, the terms of this Rider #2 Shall govern.


Prior to closing seller shall comply with the following:

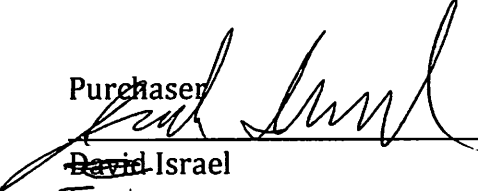
- 1) In the event that either the Bankruptcy court or the Attorney General does not approve the sale of this property according to the terms of this contract within 10 days of execution, Purchaser shall receive a full refund of its contract deposit. The contract deposit shall not become part of the bankruptcy estate.
- 2) Seller shall furnish a copy of the second floor lease for review within 15 days after signing of this contract.
- 3) If closing does not occur within 210 days after contract signing, Purchaser shall have the right to terminate this contract and receive the full return of the contract deposit.
- 4) If Purchaser shall default in the performance of its obligation under this contract to purchase the Premises, the sole remedy of Seller shall be to retain the Downpayment as liquidated damages for all loss, damage and expense suffered by Seller, including without limitation the loss of its bargain.
- 5) Purchaser acknowledges and agrees that this Contract is subject to higher and better offers, if any, to be made prior to Court approval of this contract, however subject to the following terms:
  - a. Any higher offer must be by an increment of at least \$50,000.
  - b. The new offer shall be accompanied by a signed contract, substantially in similar form to this contract, a deposit by bank check made payable to Seller's attorney escrow in the amount of 10% of the new offer price, and proof of funds for the entire purchase price.
  - c. The contract from the new offer shall not be subject to any contingencies or financing,
  - d. Seller agrees that the existing Purchaser (David Israel) shall have the right to match the new offer.
  - e. The new offeror shall not have the right to resubmit a higher offer if the existing Purchaser has matched the new offer.
  - f. Seller agrees that all prior contract purchasers and related entities with respect to this Property shall be precluded from submitting an offer.

- 6) Prior to closing, the Bankruptcy Court, Supreme Court, and Attorney General shall issue orders of no objection for the sale of this Property to Purchaser and all pending litigation shall be disposed of by way of closing.
- 7) Any unpaid real esate taxes and water and sewer charges shall be paid by Seller through the date of closing.
- 8) Purchaser shall be permitted to file and withdraw applications and plans to the City as may be necessary during the time after contract execution and closing. Seller shall cooperate and sign all necessary paperwork and applications within 24 hours after notice to Seller's attorney.
- 9) Purchaser shall be permitted to market the property for Lease.
- 10) Purchaser shall be permitted to do necessary work with respect to the Certificate of Occupancy.
- 11) Seller shall give Purchaser access to Premises within 24 hours after notice to Seller's Attorney.

Seller

\_\_\_\_\_ Date \_\_\_\_\_  
 Clarelle Montauban, President, Seller

 \_\_\_\_\_ Date 4/19/17  
 Marilyn Piere, Member of the Board, Seller

Purchaser  \_\_\_\_\_ Date 4/19/17  
~~David~~ Israel  
 Jack