

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

Harlem Market Inc.,

Case No. 18-10754-(MEW)

Debtor.
-----X

**DEBTOR'S OMNIBUS MOTION FOR AUTHORITY TO CONDUCT GOING OUT
OF BUSINESS SALE, INCLUDING POTENTIAL BULK SALES, TO SURRENDER
ALL LEASED EQUIPMENT, AND FOR DISMISSAL OF CHAPTER 11 CASE**

**TO THE HONORABLE MICHAEL E. WILES,
UNITED STATES BANKRUPTCY JUDGE:**

The omnibus motion of Harlem Market Inc. (the "Debtor"), by and through its counsel, Goldberg Weprin Finkel Goldstein LLP, for (a) authority pursuant to Section 363(b) of the Bankruptcy Code to conduct a going out of business sale of inventory (including a bulk bid), and to surrender all leased equipment to the secured lender; and (b) dismissal of the Chapter 11 case pursuant to Section 1112(b) of the Bankruptcy Code, respectfully alleges as follows:

BACKGROUND

1. The Debtor filed a voluntary Chapter 11 petition on March 19, 2018.
2. The Debtor operates a supermarket at 2005 Third Avenue, New York, NY pursuant to a certain commercial lease, dated April 13, 2015 (the "Lease") with AK Properties Group LLC as landlord (the "Landlord").
3. The Lease includes a cancellation clause, which permits the Landlord to cancel the Lease on one year's notice subject to certain limited recapture rights. Unfortunately, this cancellation clause has prevented the Debtor from selling the supermarket or attracting new investors. In essence, the cancellation clause makes the Lease unmarketable.

4. Efforts by the Debtor to negotiate with the Landlord for a modification of the Lease have been unsuccessful. The Debtor was able to negotiate an extension of its time to remain in the store beyond the 210 deadline to assume or reject the Lease.

5. Under the terms of the current agreement, which was approved by Order of the Court dated September 25, 2018 [ECF #38] (the “Vacate Order”), the Debtor must turn over the keys to the Landlord by October 31, 2018 and surrender physical possession of the premises no later than November 1, 2018, free of equipment and inventory. A copy of the Vacate Order is annexed hereto as Exhibit “A”.

6. Accordingly, the Debtor is moving to effectively go out of business in an orderly fashion to meet the requirements of the Vacate Order.

7. The Debtor’s assets mainly consist of supermarket equipment and inventory. The equipment was purchased from Resnick Supermarket Equipment Corp. (“Resnick”) pursuant to a conditional sale contract and security agreement, a copy of which is annexed hereto as Exhibit “B”. Resnick filed a proof of secured claim in the amount of \$201,991.99. The equipment will be surrendered to Resnick as secured creditor, and the Debtor will work with Resnick to coordinate the removal of the equipment in the coming weeks.

8. The inventory is secured by a lien held by Associated Supermarket Group LLC, which filed a proof of secured claim in the amount of \$ 2,480,130.20.

9. The Debtor proposes to wind down its operations by selling off inventory as long as it can in the regular course of business. Because of the need to remove the equipment, the Debtor will ultimately accept bulk bids for the remaining inventory as the process draws to a close. Because of the relatively small amount of inventory, and the short time available to complete the process, the Debtor does not intend to retain a liquidator to oversee a sale.

10. The proceeds of the sale of inventory will be used to wind down the supermarket and pay close-out expenses.

LEGAL BASIS FOR RELIEF SOUGHT

A. The Debtor Should be Authorized to Conduct a Going out of Business Sale

11. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, “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); *see also* Fed. R. Bankr. P. 6004(f)(1) (authorizing sales outside of the ordinary course of business to be conducted privately or by public auction). A debtor-in-possession is given these rights by section 1107(a) of the Bankruptcy Code.

12. Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate to authorize the sale or disposition of a debtor’s assets outside of the plan confirmation process. However, it is well settled that a sale of a debtor’s assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business judgment exists for such a sale. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983), considering the following factors:

- Sound business reason for the sale;
- Accurate and reasonable notice;
- Proportionate value of the asset to the estate as a whole (fair and reasonable);
- The amount of elapsed time since the filing;
- The likelihood that a plan of reorganization will be proposed and confirmed in the near future;
- The effect of the proposed disposition on the future plan;
- The amount of proceeds to be obtained from the sale versus the appraised value of the property sold; and
- Whether the asset is decreasing or increasing in value.

Lionel, 722 F.2d at 1071.

13. Courts have made clear that a debtor's showing of a sound business justification does not have to be unduly exhaustive. Rather, a debtor is "simply required to justify the proposed disposition with sound business reason" *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Moreover, the paramount goal in any proposed sale of property of the estate is to maximize the value received by the estate. See *In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (8th Cir. 1997)(stating that in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992)("It is a well-established principle of bankruptcy law that the . . . [debtors'] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate." (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988))).

14. In this case, given the Court Ordered deadline of October 31, 2018 to surrender possession of the store, the Debtor has no option but to seek to sell its inventory and return the equipment in the most expedient manner available. Thus, there is an obvious sound business reason to proceed with the going out of business sale, replete with surrender of equipment.

B. The Chapter 11 Case Should be Dismissed

15. Dismissal of the case appears appropriate under 11 U.S.C. Section 1112(b)(1), which provides:

[O]n request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested...dismissal is not in the best interests of creditors and the estate, the court shall...dismiss a case...if the movant establishes cause.

16. In determining whether to grant a motion to dismiss a Chapter 11 case, the Court should consider a number of factors, including:

- (1) whether some creditors received preferential payments, and whether equality of distribution would be better served by conversion rather than dismissal;
- (2) whether there would be a loss of rights granted in the case if it were dismissed rather than converted;
- (3) whether the debtor would simply file a further case upon dismissal;
- (4) the ability of the trustee in a chapter 7 case to reach assets for the benefit of creditors;
- (5) in assessing the interest of the estate, whether conversion or dismissal of the estate would maximize the estate's value as an economic enterprise;
- (6) whether any remaining issues would be better resolved outside the bankruptcy forum;
- (7) whether the estate consists of a "single asset";
- (8) whether the debtor had engaged in misconduct and whether creditors are in need of a chapter 7 case to protect their interests;
- (9) whether a plan has been confirmed and whether any property remains in the estate to be administered; and
- (10) whether the appointment of a trustee is desirable to supervise the estate and address possible environmental and safety concerns.

In re Just Plumbing & Heating Supply, Inc., 2011 WL 4962993 (Bankr. S.D.N.Y. 2011).

17. Of note, the Court in *Just Plumbing, supra*, denied the dismissal motion, being influenced by the availability of substantial unencumbered valuable assets. In this case, however, there are no assets to be administered in a Chapter 7 case, as all of the physical assets are secured, and the Lease has been terminated.

18. The other *Just Plumbing* factors likewise weigh in favor of dismissal. The Debtor was paying its creditors in the ordinary course prior to bankruptcy, so the existence of preferential or other voidable transfers is not significant. Nor has there been any suggestion of misconduct by the Debtor or any other reason why a Chapter 7 case is needed to protect the interests of creditors.

19. All of the activity in the case centered on the Lease, which has been terminated, so there are no open matters requiring a trustee to administer.

20. In short, there is no benefit to creditors and other parties in interest from converting the case to Chapter 7 or otherwise keeping it open. Accordingly, the Debtor submits that dismissal is in the best interest of creditors and other parties in interest.

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that an order be entered consistent with the foregoing.

Dated: New York, New York
October 5, 2018

GOLDBERG WEPRIN
FINKEL GOLDSTEIN LLP
Attorneys for the Debtor
1501 Broadway, 22nd Floor
New York, New York 10036
(212) 221-5700

By: /s/ Kevin J. Nash, Esq.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

Harlem Market Inc.,

Case No. 18-10754-(MEW)

Debtor.

-----X

**ORDER FOR A FINAL EXTENSION OF TIME TO ASSUME OR REJECT
DEBTOR'S COMMERCIAL LEASE**

WHEREAS, Harlem Market Inc. (the "Debtor") and AK Properties Group LLC (the "Landlord") are parties to a commercial lease, dated April 13, 2005 (the "Lease"), pursuant to which the Debtor operates a supermarket at 2005 Third Avenue, New York, New York (the "Premises"); and

WHEREAS, the Debtor previously moved to extend the time for it to assume or reject the Lease, as supplemented (ECF #s 22, 28 and 34) (the "Motion"), which Motion has been opposed by the Landlord (ECF #24); and

WHEREAS, following a series of hearings held on August 15, 2018, and September 6, 2018, the Debtor's time to assume or reject the Lease was extended until September 28, 2018, pursuant to Order dated September 7, 2018 (ECF No. 37); and

WHEREAS, at the adjourned hearing held on September 25, 2018, the Debtor was granted a final extension of time to assume or reject the Lease until October 15, 2018, with authority to pay the Landlord the balance of post-petition real estate taxes of approximately \$13,000 in order to obtain the Landlord's agreement to allow the Debtor to vacate the Premises on or before October 31, 2018;

NOW, THEREFORE, based on the totality of the record compiled in this case, it is hereby

ORDERED, that the Debtor's time to assume or reject the Lease is extended until October 15, 2018, conditioned upon the Debtor's payment of October 2018 base rent in the sum of \$17,500 on or before October 15, 2018; and it is further

ORDERED, that the Debtor is authorized to pay the balance of post-petition real estate taxes of approximately \$13,000 on or before October 25, 2018, in order to obtain the Landlord's agreement to allow the Debtor to vacate the Premises on or before October 31, 2018, with the Debtor to remove all operating equipment and fixtures, and complete a bulk sale of the Debtor's residual inventory prior to October 31, 2018, on further notice and application to creditors; and it is further

ORDERED, that the Debtor shall deliver the keys for the Premises to the Landlord on or before October 31, 2018, whereupon the Debtor shall have no further interest in the Lease; and it is further

ORDERED, that the Debtor shall surrender physical possession of the Premises to the Landlord on November 1, 2018, and the Landlord is relieved from any obligation to store any residual personal property remaining at the Premises or goods and inventory items left behind after October 31, 2018.

Dated: New York, NY
September 25, 2018

s/Michael E. Wiles
Hon. Michael E. Wiles
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

CORPORATION SERVICE COMPANY

www.cscglobal.com

CSC- New York
Suite 210
1180 Avenue OF the Americas
New York, NY 10036-8401
212-299-5600
212-299-5656 (Fax)

Matter# NOT PROVIDED

Project Id :

Additional Reference : NOT PROVIDED

Order# 651501-1
Order Date 06/01/2015

Entity Name : HARLEM MARKET INC. (Debtor)/ RESNICK SUPERMARKET
EQUIPMENT CORP. (Secured Party)

Jurisdiction : NY-DEPARTMENT OF STATE

Request for : UCC Filing
File Type : ORIGINAL

Result : Filed

File Number : 201506010268421
Filing Date : 06/01/2015

Ordered by ROSIE TALAVERA at RESNICK SUPERMARKET EQUIPMENT CORP.

Thank you for using CSC. For real-time 24 hour access to the status of any order placed with CSC, access our website at
www.cscglobal.com.

If you have any questions concerning this order or CSCGlobal, please feel free to contact us.

Jeannette Guzman
jguzman@cscinfo.com

The responsibility for verification of the files and determination of the information therein lies with the filing officer; we accept no liability for errors or omissions.



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA, 99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

ANDREW M. CUOMO
GOVERNOR

CESAR A. PERALES
SECRETARY OF STATE

FILING ACKNOWLEDGMENT

June 3, 2015

RETURN TO CUSTOMER SERVICE COUNTER

CORPORATION SERVICE COMPANY
80 STATE STREET, 6TH FLOOR
ALBANY NY 12207-0000

Attached is the acknowledgment copy of your recently submitted filing. This filing consists of a total of 2 pages; however, only the first page of the filed document is returned as part of this acknowledgment. This document has been filed with the New York State Department of State, Uniform Commercial Code Division.

The Financing Statement has been assigned Filing Number: 201506010268421, Filing Date: 06/01/2015 and is currently reflected in our automated database as follows:

Debtor's Name & Address

HARLEM MARKET INC.
2005 3RD AVE.
NEW YORK NY 10029

Secured Party's Name & Address

RESNICK SUPERMARKET EQUIPMENT CORP.
PO BOX 368
MOUNTAINDALE NY 12763

This filing will lapse on 06/01/2020, unless continued. We encourage filers to take full advantage of the six-month window of opportunity in which to file a Financing Statement Amendment (Continuation). Submission of your documents at the onset of the six-month window will allow ample time to rectify potential filing errors and help to assure timely recording of your filing.

If you have any concerns regarding the way this document is recorded, please contact one of our Customer Service Representatives at (518) 473-2492, or respond in writing to the UCC Data Processing Unit at the address indicated above.

Sincerely,

Uniform Commercial Code Division
Data Processing Unit

REF #: 210392

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

210392

2015 JUN -1 PM 2:40

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

CSC NEW YORK
SUITE 3100
1133 AVENUE OF THE AMERICAS
NEW YORK, NY 10036CSC 50
DRAW DOWN

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. ORGANIZATION'S NAME

HARLEM MARKET INC.

OR 1b. INDIVIDUAL'S LAST NAME

1c. MAILING ADDRESS

2005 3RD AVE.

FIRST NAME

MIDDLE NAME

SUFFIX

CITY

STATE POSTAL CODE

COUNTRY

NEW YORK

NY

10029

USA

1d. SEE INSTRUCTIONS

ADD'L INFO RE
ORGANIZATION
DEBTOR1e. TYPE OF ORGANIZATION
CORPORATION

1f. JURISDICTION OF ORGANIZATION

NEW YORK

1g. ORGANIZATIONAL ID #, if any

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

NONE

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME

2c. MAILING ADDRESS

FIRST NAME

MIDDLE NAME

SUFFIX

CITY

STATE POSTAL CODE

COUNTRY

2d. SEE INSTRUCTIONS

ADD'L INFO RE
ORGANIZATION
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

NONE

3a. ORGANIZATION'S NAME

RESNICK SUPERMARKET EQUIPMENT CORP.

OR 3b. INDIVIDUAL'S LAST NAME

3c. MAILING ADDRESS

FIRST NAME

MIDDLE NAME

SUFFIX

CITY

STATE POSTAL CODE

COUNTRY

PO BOX 368

MOUNTAINDALE

NY

12763

USA

4. This FINANCING STATEMENT covers the following collateral:

All Equipment, Fixtures, Inventory, but not limited to the attached schedule; All now or hereafter acquired: (1) Equipment; (2) Fixtures; (3) Inventory; (4) Contract rights; including right to lease and (5) Proceeds including those of fire insurance and inventory (debtor has no right to sell any collateral except inventory in ordinary course of business).

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (OPTIONAL FEE) (optional) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

FILING NUMBER: 201506010268421

651501-1KNV

In view of technical local requirements, Resnick Supermarket Equipment Corp. cannot be responsible for the correctness of this form, the method of execution, filing requirements, etc. Local counsel should be consulted.

**CONDITIONAL SALES CONTRACT
For Industrial Equipment**

To: Resnick Supermarket Equipment
510 Wild Turnpike, Mountindale NY 12763

On this 10th day of September, 2015 the undersigned residing at 2005 3rd Ave., New York, NY 10029 hereby purchases from you the following personal property, hereinafter referred to as "chattels", on the following terms:

Description of Property Purchased	(1) CASH SALE PRICE	\$ <u>245,968.75</u>
(Include make, year, model, identification, model and serial numbers or marks):	(2) Down Payment in Cash	\$ _____
	(3) Down Payment in Goods (Trade-in Allowance)	\$ _____
"See Attached List"	(4) Unpaid Balance [(Items (1)- (2)-(3))]	\$ <u>245,968.75</u>
	(5) Insurance and other benefits	\$ _____
	(6) Official or Documentary Fees	\$ _____
	Describe and Itemize	
	(7) Principal Unpaid Balance	
	[(Items (1)-(2)-(3))]	\$ <u>245,968.75</u>
	(8) Finance Charge (Time Price Differential)	\$ <u>75,775.25</u>
	(9) Contract Price (Time Balance)	
	[(Items (7) + (8))]	\$ _____
Description of trade-in: <u>NONE</u>	(10) TIME SALES PRICE	\$ <u>321,744.00</u>

The property purchased shall remain personally and not become part of any realty and shall be located and kept for use at:

2005 3rd Ave., New York, NY 10029

Buyer hereby agrees to pay Seller or any assignee (hereinafter collectively called "Holder") hereof the above-indicated Contract Price (hereinafter called the "time balance") in 48 successive monthly installments commencing on the 10th of December, 2015 in the amount of \$6,703.00 and continuing on the same date (the 10th) of each and every month until paid in full with interest from date on the unpaid amount of said time balance being payable at the maturity of each installment, at the highest lawful contract rate. Said time balance is evidenced by Buyer's promissory note of even date herewith payable to the order of Seller at the offices of Resnick Supermarket Equipment Corp., or at such other place as Resnick Supermarket Equipment Corp. may from time to time appoint, which note is given not as payment but to evidence said time balance due.

Title and ownership to said chattels and any and all replacements thereof and additions thereto shall remain in you and your assigns until all of said indebtedness shall have been fully paid, in cash. The undersigned agrees that you may grant extensions or accept renewals or assign this contract or negotiate the notes without relieving the undersigned of any obligations hereunder or waiving title to the chattels, and this contract when assigned shall be free from any defense, counter-claim or cross-complaint by the undersigned, it being understood that all claims or demands on the part of the undersigned against you shall be independent of any action or claim by assignee against the undersigned. The undersigned agrees to insure said chattels against loss by fire and other hazards against which such chattels are usually insured, in favor of you and your assigns. If the undersigned defaults in payment of any part of the purchase price as provided herein, at any maturity date, or fails to comply with or defaults in any of the provisions of this contract, or in the event that a petition for a Receiver or in Reorganization or in bankruptcy with or defaults in any of the provisions of this contract, or in the event that a petition for a Receiver or in Reorganization or in bankruptcy be filed by or against the undersigned, or if the chattels be misused, or whenever you or your assigns shall deem yourselves insecure, then in any of the aforesaid cases the full amount of the purchase

price then unpaid shall immediately due and payable at the option of the holder hereof, and the undersigned agrees to return said chattels on demand and you or your assigns may without notice or demand and without legal process enter into any premises where said chattels may be and take immediate possession thereof including accessories, and make such disposition as may be deemed by you or your assigns desirable, and all payments made shall be retained as liquidated damages for the use of said chattels and not as a penalty; or said chattels may be sold with or without notice at public or private sale, with the right in you or your assigns to bid in such sale, and the proceeds thereof less expenses credited upon the amount unpaid, and in either event, as liquidated damages for the breach of this contract, the undersigned promises and agrees to pay the balance forthwith.

The undersigned agrees to keep the chattels free of taxes, liens and encumbrances and not to remove the chattels or any part thereof from the above address without receiving the consent in writing of you or your assigns; the undersigned will not transfer or attempt to transfer, encumber or attempt to encumber, sell or attempt to sell the chattels or any interest therein, and the undersigned shall have no right to assign this contract without the consent in writing of you or your assigns, and the undersigned hereby waives any provisions of law requiring the filing or delivery of a certificate of satisfaction or discharge of this contract, and releases any and all rights now or hereafter acquired against seller for failure to file or deliver such certificate upon payment or satisfaction hereof, except for failure to file or deliver such certificate within a reasonable time after written demand delivered by the undersigned by registered mail. The undersigned agrees to take good care of said chattels and be responsible for their loss or damage by reason of fire or for any reason.

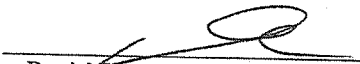
This contract contains the entire agreement between the parties hereto and is not subject to cancellation; any agreements, warranties or guarantees not contained herein shall be of no force and effect whatsoever. All provisions of this contract prohibited by the law of any State shall as to said State be ineffective to the extent of such prohibition without invalidating any provision or condition. The undersigned expressly waives all exemption and homestead laws and acknowledges receipt of a true copy of this agreement.


Buyer acknowledges receipt of a duplicate executed copy of this contract.

ACCEPTED on the date listed above.

Resnick Supermarket Equipment Corp.

Harlem Market Inc.


Daniel Resnick, Vice President


Peter Bivona, President

PROMISSORY NOTE
MOUNTAINDALE, NEW YORK 12763

\$245,968.75
Total Amount of Note

September 10th, 2015
Date

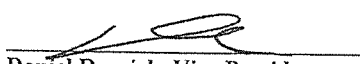
We promise to pay to RESNICK SUPERMARKET EQUIPMENT CORP. or order TWO HUNDRED FOURTY FIVE THOUSAND NINE HUNDRED SIXTY EIGHT AND 75/100 (\$245,968.75) DOLLARS in 48 successive monthly installments commencing on the 10th of September, 2015 each in the amount of \$6,703.00 and continuing on the same date (the 10th) of each and every month until paid in full, the final payment to be the balance then unpaid hereon, together with interest before maturity payable monthly on unpaid balances at the rate of 12% per annum and after maturity at the highest lawful rate and reasonable attorneys' fees (30% if permitted by law) if placed in the hands of an attorney for collection after maturity. Upon non-payment of any installment at its maturity, all remaining installments shall, at the option of the holder hereof, become due and payable forthwith. All exemptions and homestead laws and all rights thereunder are hereby waived. Value received. The makers, endorsers and guarantors of this note hereby waive presentment for payment, demand, notice of non-payment and dishonor, protest, and notice of protest; waive trial by jury in any action or proceeding arising on, out of, under or by reason of this note; consent to any renewals, extensions and partial payments of this note or the indebtedness for which it is given without notice to them, and consent that no such renewals, extensions or partial payments shall discharge any party hereto from liability hereon in whole or in part.

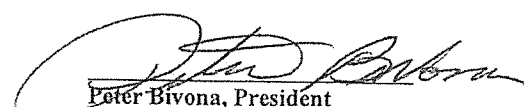
The undersigned hereby authorizes irrevocably, any attorney of any court of record to appear for the undersigned in any court of record in any state or territory of the United States where the same is allowed by law, in term time or vacation, and waive the issuance and service of process, and confess a judgment against the undersigned at any time hereafter, for such amount as may appear to be unpaid or declared due and payable hereunder, together with costs and reasonable attorney's fees to be included in the judgment; further authorizing said attorney to release and waive all right of appeal and consent to immediate execution upon such judgment, hereby agreeing that no writ of error or appeal shall be prosecuted from such judgment, nor any bill in equity filed to restrain the operation of said judgment, or any execution thereon, and hereby ratifying and confirming all that the said attorney may do by virtue hereof. This paragraph shall be of no effect in the State of Indiana, or in any other state in which the inclusion of this paragraph would affect the validity, legality, negotiability, or enforcement of this note, but in such case all the remaining terms and provisions of this note shall subsist and be fully effective according to the tenor of this note, the same as though this paragraph had never been included herein.

NEGOTIABLE AND PAYABLE AT THE OFFICES OF:

Resnick Supermarket Equipment Corp.

Harlem Market Inc.


Daniel Resnick, Vice President


Peter Bivona, President

ENDORSEMENT

The undersigned do each (jointly and severally) unconditionally guarantee the prompt payment of the within note at maturity or any time thereafter, or on default prior thereto, hereby waiving presentment for payment, demand, protest, notice of protest, notice of dishonor and notice of every kind of nature, and accepting all its provisions and authorizing the holder, without notice to us or either of us, to substitute debtors, and/or grant one or more extensions in whole or in part, and/or to receive security or additional security for the payment hereof and/or to surrender, release or substitute any such security.

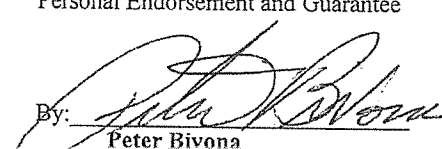
If any installment of this note, or the interest, is not paid when due, then the amount remaining unpaid hereon shall, without notice on demand become immediately due and payable, at the option of the holder, and may be recovered in any suit brought by the holder of this note against any one or more or all of us, at the option of said holder, whether such suit has been commenced against the maker or not, and in any such suit the maker may be joined with one or more or all of us, at the option of the holder.

In the event of the failure to make any payment due under the terms of this contract or any related documents hereunder, the undersigned hereby authorizes Resnick Supermarket Equipment Corp. to apply the charge for the amount due to any credit card of the buyer on file with Resnick Supermarket Equipment Corp. and further hereby waives any protest thereto.

The holder of this note shall not be required to look to any security given or held for the payment of this note, but may proceed against us, or either or all of us, immediately upon a default in payment, or otherwise. Any execution may be immediately levied upon any real or personal property of the undersigned, all right of the undersigned to have personal property last taken and sold under such execution being hereby expressly waived.

Personal Endorsement and Guarantee

By:


Peter Bivona

Harlem Market Inc.

Pg 17 of 18
SECURITY AGREEMENT (CHATTEL MORTGAGE)

THIS AGREEMENT, made the 10th day of September, 2015 under the laws of the state of New York BETWEEN Harlem Market Inc., herein called the Debtor, whose business address is 2005 3rd Ave., New York, NY 10029 and Resnick Supermarket Equipment Corp., herein called the Secured Party, Maintaining offices at: 510 Wild Turnpike, Mountindale NY 12763.

WITNESSETH:

To secure the payment of indebtedness in the amount of \$245,968.75 with interest, payable as follows: To be paid in 48 consecutive monthly payments commencing on the 10th of December, 2015 in the amount of \$6,703.00 and continuing on the same date (the 10th) of each and every month until paid in full.

The equipment shall remain the property of Resnick Supermarket Equipment Corp. until paid in full.

"In the event the debtor herein shall sell, transfer or assign its business or any portion thereof or any stock in the debtor corporation should the debtor be incorporated, or any of the equipment covered by this security agreement, the entire unpaid principal balance together with accrued interest at such time shall be immediately due and payable at the option of the secured party."

"Upon any default or in any event that creditor/seller is required to bring an action to recover possession of the subject equipment and chattels, purchaser/debtor hereby waives any requirement for the posting of any bond or undertaking for the execution of any Order of seizure that may be granted by any Court of competent jurisdiction."

As evidenced by a note or notes of even date herewith, and also to secure any other indebtedness or liability of the Debtor to the Secured Party direct or indirect, absolute or contingent, due or to become due, now existing or hereunder arising, including all future advances or loans which may be made at the option of the Secured Party, (all hereinafter called the "obligations") Debtor hereby grants and conveys to the Secured Party a security interest in, and mortgages to the Secured Party,

- (a) the property described in the schedule herein which the Debtor represents will be used primarily: ___ for personal, family or household purposes; ___ in farming operations; X in the business or other use
- (b) all property, goods and chattels of the same classes as those scheduled, acquired by the Debtor subsequent to the execution of this agreement and prior to its termination. (If the property described in the Schedule is for personal, family or household purposes then no security attached under this section (b) unless the debtor acquired rights in them within 10 days after the Secured Party gives value.)
- (c) all proceeds thereof, if any,
- (d) all substitutions, replacements and accessions thereto (the foregoing (a), (b), (c), and (d) hereinafter called the collateral).

1. DEBTOR WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

- 1a. To pay and perform all of the obligations secured by this agreement according to their terms.
- 1b. To defend the title to the collateral against all persons and against all claims and demands whatsoever, which collateral, except for the security interest granted hereby, is lawfully owned by the Debtor and is now free and clear of any and all liens, security interests, claims, charges, encumbrances, taxes and assessments except as may be set forth in the schedule.
- 1c. On demand of the secured party to do the following; furnish further assurance of title, execute any written instrument, or do any other acts necessary to effectuate the purposes and provisions of this agreement, execute any instrument or statement required by law or otherwise in order to perfect, continue or terminate the security interest of the Secured Party in the collateral and pay all costs of filing in connection therewith.
- 1d. To retain possession of the collateral during the existence of this agreement and not to sell, exchange, assign, loan, deliver, lease, mortgage or otherwise dispose of same without the written consent of the Secured Party.
- 1e. To keep the collateral free and clear of all liens, charges, encumbrances, taxes and assessments.
- 1f. To pay, when due, all taxes, assessments and license fees relating to the collateral.
- 1g. To keep the collateral, at Debtor's own cost and expense, in good repair and condition and available for inspection by the Secured Party at all reasonable times.
- 1h. To keep the collateral fully insured against loss by fire, theft and other casualties, Debtor shall give immediate written notice to the Secured Party and to insurers of loss or damage to the collateral and shall promptly file proofs of loss with insurers.

2. THE PARTIES FURTHER AGREE

- 2a. Waiver of or acquiescence in any default by the Debtor, or failure of the Secured Party to insist upon strict performance by the Debtor of any warranties or agreements in this security agreement, shall not constitute a waiver of any subsequent or other default or failure.
- 2b. Notices to either party shall be in writing and shall be delivered personally or by mail addressed to the party at the address herein set forth or otherwise designated in writing.
- 2c. The Uniform Commercial Code shall govern the rights, duties and remedies of the parties and any provisions herein declared invalid under any law shall not invalidate any other provision or this agreement.
- 2d. the following shall constitute a default by Debtor:

Failure to pay the principal of any provision of this agreement. False or misleading representations or warranties made by debtor to comply with or perform any provision of this agreement. False or misleading representations or warranties made by Debtor to comply with or perform any provision of this agreement. False or misleading representations or warranties made or given by Debtor in connection with this

agreement. Subjection of the collateral to levy of execution or other judicial process. Commencement of any insolvency proceeding by or against the Debtor. Death of the Debtor. Any reduction in the value of the collateral or any act of the Debtor which imperils the prospect of full performance or satisfaction of the Debtor's obligations herein.

2e. Upon any default of the Debtor and at the option of the Secured Party, the obligations secured by this agreement shall immediately become due and payable in full without notice or demand and the Secured Party shall have all the rights, remedies and privileges with respect to repossession, retention and sale of the collateral and disposition of the proceeds as are accorded by the applicable sections of the Uniform Commercial Code respecting "Default".

Upon any default and upon demand, Debtor shall assemble the collateral and make it available to the Secured Party at the place and at the time designated in the demand.

Upon any default, the Secured Party's reasonable attorneys' fees and the legal and other expenses for pursuing, searching for, receiving, taking, keeping, storing, advertising, and selling the collateral shall be chargeable to the Debtor. The Debtor shall remain liable for any deficiency resulting from a sale of the collateral and shall pay any such deficiency forthwith on demand. If the Debtor shall default in the performance of any of the provisions of this agreement on the Debtor's part to be performed, Secured Party may perform same for the Debtor's account and any monies expended in so doing shall be chargeable with interest to the Debtor and added to the indebtedness secured hereby.

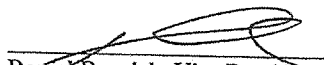
2f. The Secured Party is hereby authorized to file a Financing Statement.

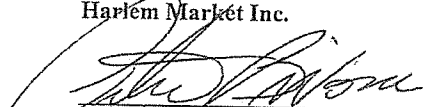
2g. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this agreement nor the intent of any provision thereof. The terms, warranties and agreements herein contained shall bind and inure to the benefit of the respective parties hereto, and their respective legal representatives, successors and assigns. The gender and number used in this agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural. This agreement may not be changed orally.

IN WITNESS WHEREOF, the Parties have respectively signed and sealed these presents the day and year first above written.

Resnick Supermarket Equipment Corp.

Harlem Market Inc.


Daniel Resnick, Vice President


Peter Bivona, President

Schedule

Describe items of collateral, the address where each item will be located and describe any prior liens, etc., and the amounts due thereon. If items are crops or goods affixed to real estate describe the real estate and state the name and address of the owner of record thereof.

Items

Location, etc.

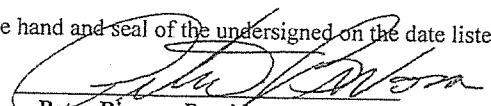
2005 3rd Ave., New York, NY 10029

The chief place of business of the Debtor, if other than stated in the agreement, is:

GUARANTEE

The undersigned guarantees prompt and full performance and payment according to the tenor of the within agreement, to the holder hereof, and, in the event of default, authorizes any holder hereof to proceed against the undersigned, for the full amount due including reasonable attorneys' fees, and hereby waives presentment, demand, protest, notice of protest, notice of dishonor and any and all other notices or demand of whatever character to which the undersigned might otherwise be entitled. The undersigned further consents to any extension granted by any holder and waive notice, thereof. If more than one guarantor, obligation of each shall be joint and several.

WITNESS the hand and seal of the undersigned on the date listed above.


Peter Bivona, President

SECURITY AGREEMENT

CHATTEL MORTGAGE

Harlem Market Inc.
2005 3rd Ave.
NY, NY 10029

TO: Resnick Supermarket
510 Wild Turnpike
Mountandale, NY 12763

DATED: September 10th, 2015

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

Harlem Market Inc.,

Case No. 18-10754-(MEW)

Debtor.

-----X

**DEBTOR'S OMNIBUS MOTION FOR AUTHORITY TO CONDUCT GOING OUT
OF BUSINESS SALE, INCLUDING POTENTIAL BULK SALES, TO SURRENDER
ALL LEASED EQUIPMENT, AND FOR DISMISSAL OF CHAPTER 11 CASE**

**TO THE HONORABLE MICHAEL E. WILES,
UNITED STATES BANKRUPTCY JUDGE:**

The omnibus motion of Harlem Market Inc. (the "Debtor"), by and through its counsel, Goldberg Weprin Finkel Goldstein LLP, for (a) authority pursuant to Section 363(b) of the Bankruptcy Code to conduct a going out of business sale of inventory (including a bulk bid), and to surrender all leased equipment to the secured lender; and (b) dismissal of the Chapter 11 case pursuant to Section 1112(b) of the Bankruptcy Code, respectfully alleges as follows:

BACKGROUND

1. The Debtor filed a voluntary Chapter 11 petition on March 19, 2018.
2. The Debtor operates a supermarket at 2005 Third Avenue, New York, NY pursuant to a certain commercial lease, dated April 13, 2015 (the "Lease") with AK Properties Group LLC as landlord (the "Landlord").
3. The Lease includes a cancellation clause, which permits the Landlord to cancel the Lease on one year's notice subject to certain limited recapture rights. Unfortunately, this cancellation clause has prevented the Debtor from selling the supermarket or attracting new investors. In essence, the cancellation clause makes the Lease unmarketable.

4. Efforts by the Debtor to negotiate with the Landlord for a modification of the Lease have been unsuccessful. The Debtor was able to negotiate an extension of its time to remain in the store beyond the 210 deadline to assume or reject the Lease.

5. Under the terms of the current agreement, which was approved by Order of the Court dated September 25, 2018 [ECF #38] (the “Vacate Order”), the Debtor must turn over the keys to the Landlord by October 31, 2018 and surrender physical possession of the premises no later than November 1, 2018, free of equipment and inventory. A copy of the Vacate Order is annexed hereto as Exhibit “A”.

6. Accordingly, the Debtor is moving to effectively go out of business in an orderly fashion to meet the requirements of the Vacate Order.

7. The Debtor’s assets mainly consist of supermarket equipment and inventory. The equipment was purchased from Resnick Supermarket Equipment Corp. (“Resnick”) pursuant to a conditional sale contract and security agreement, a copy of which is annexed hereto as Exhibit “B”. Resnick filed a proof of secured claim in the amount of \$201,991.99. The equipment will be surrendered to Resnick as secured creditor, and the Debtor will work with Resnick to coordinate the removal of the equipment in the coming weeks.

8. The inventory is secured by a lien held by Associated Supermarket Group LLC, which filed a proof of secured claim in the amount of \$ 2,480,130.20.

9. The Debtor proposes to wind down its operations by selling off inventory as long as it can in the regular course of business. Because of the need to remove the equipment, the Debtor will ultimately accept bulk bids for the remaining inventory as the process draws to a close. Because of the relatively small amount of inventory, and the short time available to complete the process, the Debtor does not intend to retain a liquidator to oversee a sale.

10. The proceeds of the sale of inventory will be used to wind down the supermarket and pay close-out expenses.

LEGAL BASIS FOR RELIEF SOUGHT

A. The Debtor Should be Authorized to Conduct a Going out of Business Sale

11. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, “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); *see also* Fed. R. Bankr. P. 6004(f)(1) (authorizing sales outside of the ordinary course of business to be conducted privately or by public auction). A debtor-in-possession is given these rights by section 1107(a) of the Bankruptcy Code.

12. Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate to authorize the sale or disposition of a debtor’s assets outside of the plan confirmation process. However, it is well settled that a sale of a debtor’s assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business judgment exists for such a sale. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983), considering the following factors:

- Sound business reason for the sale;
- Accurate and reasonable notice;
- Proportionate value of the asset to the estate as a whole (fair and reasonable);
- The amount of elapsed time since the filing;
- The likelihood that a plan of reorganization will be proposed and confirmed in the near future;
- The effect of the proposed disposition on the future plan;
- The amount of proceeds to be obtained from the sale versus the appraised value of the property sold; and
- Whether the asset is decreasing or increasing in value.

Lionel, 722 F.2d at 1071.

13. Courts have made clear that a debtor's showing of a sound business justification does not have to be unduly exhaustive. Rather, a debtor is "simply required to justify the proposed disposition with sound business reason" *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Moreover, the paramount goal in any proposed sale of property of the estate is to maximize the value received by the estate. *See In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (8th Cir. 1997)(stating that in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992)("It is a well-established principle of bankruptcy law that the . . . [debtors'] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate." (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988))).

14. In this case, given the Court Ordered deadline of October 31, 2018 to surrender possession of the store, the Debtor has no option but to seek to sell its inventory and return the equipment in the most expedient manner available. Thus, there is an obvious sound business reason to proceed with the going out of business sale, replete with surrender of equipment.

B. The Chapter 11 Case Should be Dismissed

15. Dismissal of the case appears appropriate under 11 U.S.C. Section 1112(b)(1), which provides:

[O]n request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested...dismissal is not in the best interests of creditors and the estate, the court shall...dismiss a case...if the movant establishes cause.

16. In determining whether to grant a motion to dismiss a Chapter 11 case, the Court should consider a number of factors, including:

- (1) whether some creditors received preferential payments, and whether equality of distribution would be better served by conversion rather than dismissal;
- (2) whether there would be a loss of rights granted in the case if it were dismissed rather than converted;
- (3) whether the debtor would simply file a further case upon dismissal;
- (4) the ability of the trustee in a chapter 7 case to reach assets for the benefit of creditors;
- (5) in assessing the interest of the estate, whether conversion or dismissal of the estate would maximize the estate's value as an economic enterprise;
- (6) whether any remaining issues would be better resolved outside the bankruptcy forum;
- (7) whether the estate consists of a "single asset";
- (8) whether the debtor had engaged in misconduct and whether creditors are in need of a chapter 7 case to protect their interests;
- (9) whether a plan has been confirmed and whether any property remains in the estate to be administered; and
- (10) whether the appointment of a trustee is desirable to supervise the estate and address possible environmental and safety concerns.

In re Just Plumbing & Heating Supply, Inc., 2011 WL 4962993 (Bankr. S.D.N.Y. 2011).

17. Of note, the Court in *Just Plumbing, supra*, denied the dismissal motion, being influenced by the availability of substantial unencumbered valuable assets. In this case, however, there are no assets to be administered in a Chapter 7 case, as all of the physical assets are secured, and the Lease has been terminated.

18. The other *Just Plumbing* factors likewise weigh in favor of dismissal. The Debtor was paying its creditors in the ordinary course prior to bankruptcy, so the existence of preferential or other voidable transfers is not significant. Nor has there been any suggestion of misconduct by the Debtor or any other reason why a Chapter 7 case is needed to protect the interests of creditors.

19. All of the activity in the case centered on the Lease, which has been terminated, so there are no open matters requiring a trustee to administer.

20. In short, there is no benefit to creditors and other parties in interest from converting the case to Chapter 7 or otherwise keeping it open. Accordingly, the Debtor submits that dismissal is in the best interest of creditors and other parties in interest.

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that an order be entered consistent with the foregoing.

Dated: New York, New York
October 5, 2018

GOLDBERG WEPRIN
FINKEL GOLDSTEIN LLP
Attorneys for the Debtor
1501 Broadway, 22nd Floor
New York, New York 10036
(212) 221-5700

By: /s/ Kevin J. Nash, Esq.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

Harlem Market Inc.,

Case No. 18-10754-(MEW)

Debtor.

-----X

**ORDER FOR A FINAL EXTENSION OF TIME TO ASSUME OR REJECT
DEBTOR'S COMMERCIAL LEASE**

WHEREAS, Harlem Market Inc. (the "Debtor") and AK Properties Group LLC (the "Landlord") are parties to a commercial lease, dated April 13, 2005 (the "Lease"), pursuant to which the Debtor operates a supermarket at 2005 Third Avenue, New York, New York (the "Premises"); and

WHEREAS, the Debtor previously moved to extend the time for it to assume or reject the Lease, as supplemented (ECF #s 22, 28 and 34) (the "Motion"), which Motion has been opposed by the Landlord (ECF #24); and

WHEREAS, following a series of hearings held on August 15, 2018, and September 6, 2018, the Debtor's time to assume or reject the Lease was extended until September 28, 2018, pursuant to Order dated September 7, 2018 (ECF No. 37); and

WHEREAS, at the adjourned hearing held on September 25, 2018, the Debtor was granted a final extension of time to assume or reject the Lease until October 15, 2018, with authority to pay the Landlord the balance of post-petition real estate taxes of approximately \$13,000 in order to obtain the Landlord's agreement to allow the Debtor to vacate the Premises on or before October 31, 2018;

NOW, THEREFORE, based on the totality of the record compiled in this case, it is hereby

ORDERED, that the Debtor's time to assume or reject the Lease is extended until October 15, 2018, conditioned upon the Debtor's payment of October 2018 base rent in the sum of \$17,500 on or before October 15, 2018; and it is further

ORDERED, that the Debtor is authorized to pay the balance of post-petition real estate taxes of approximately \$13,000 on or before October 25, 2018, in order to obtain the Landlord's agreement to allow the Debtor to vacate the Premises on or before October 31, 2018, with the Debtor to remove all operating equipment and fixtures, and complete a bulk sale of the Debtor's residual inventory prior to October 31, 2018, on further notice and application to creditors; and it is further

ORDERED, that the Debtor shall deliver the keys for the Premises to the Landlord on or before October 31, 2018, whereupon the Debtor shall have no further interest in the Lease; and it is further

ORDERED, that the Debtor shall surrender physical possession of the Premises to the Landlord on November 1, 2018, and the Landlord is relieved from any obligation to store any residual personal property remaining at the Premises or goods and inventory items left behind after October 31, 2018.

Dated: New York, NY
September 25, 2018

s/Michael E. Wiles
Hon. Michael E. Wiles
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

CORPORATION SERVICE COMPANY

www.cscglobal.com

CSC- New York
Suite 210
1180 Avenue OF the Americas
New York, NY 10036-8401
212-299-5600
212-299-5656 (Fax)

Matter# NOT PROVIDED

Project Id :

Additional Reference : NOT PROVIDED

Order# 651501-1
Order Date 06/01/2015

Entity Name : HARLEM MARKET INC. (Debtor)/ RESNICK SUPERMARKET
EQUIPMENT CORP. (Secured Party)

Jurisdiction : NY-DEPARTMENT OF STATE

Request for : UCC Filing
File Type : ORIGINAL

Result : Filed

File Number : 201506010268421
Filing Date : 06/01/2015

Ordered by ROSIE TALAVERA at RESNICK SUPERMARKET EQUIPMENT CORP.

Thank you for using CSC. For real-time 24 hour access to the status of any order placed with CSC, access our website at
www.cscglobal.com.

If you have any questions concerning this order or CSCGlobal, please feel free to contact us.

Jeannette Guzman
jguzman@cscinfo.com

The responsibility for verification of the files and determination of the information therein lies with the filing officer; we accept no liability for errors or omissions.



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA, 99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

ANDREW M. CUOMO
GOVERNOR

CESAR A. PERALES
SECRETARY OF STATE

FILING ACKNOWLEDGMENT

June 3, 2015

RETURN TO CUSTOMER SERVICE COUNTER

CORPORATION SERVICE COMPANY
80 STATE STREET, 6TH FLOOR
ALBANY NY 12207-0000

Attached is the acknowledgment copy of your recently submitted filing. This filing consists of a total of 2 pages; however, only the first page of the filed document is returned as part of this acknowledgment. This document has been filed with the New York State Department of State, Uniform Commercial Code Division.

The Financing Statement has been assigned Filing Number: 201506010268421, Filing Date: 06/01/2015 and is currently reflected in our automated database as follows:

Debtor's Name & Address

HARLEM MARKET INC.
2005 3RD AVE.
NEW YORK NY 10029

Secured Party's Name & Address

RESNICK SUPERMARKET EQUIPMENT CORP.
PO BOX 368
MOUNTAINDALE NY 12763

This filing will lapse on 06/01/2020, unless continued. We encourage filers to take full advantage of the six-month window of opportunity in which to file a Financing Statement Amendment (Continuation). Submission of your documents at the onset of the six-month window will allow ample time to rectify potential filing errors and help to assure timely recording of your filing.

If you have any concerns regarding the way this document is recorded, please contact one of our Customer Service Representatives at (518) 473-2492, or respond in writing to the UCC Data Processing Unit at the address indicated above.

Sincerely,

Uniform Commercial Code Division
Data Processing Unit

REF #: 210392

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

210392

2015 JUN -1 PM 2:40

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

CSC NEW YORK
SUITE 3100
1133 AVENUE OF THE AMERICAS
NEW YORK, NY 10036CSC 50
DRAW DOWN

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. ORGANIZATION'S NAME

HARLEM MARKET INC.

OR 1b. INDIVIDUAL'S LAST NAME

1c. MAILING ADDRESS

2005 3RD AVE.

FIRST NAME

MIDDLE NAME

SUFFIX

CITY

STATE POSTAL CODE

COUNTRY

NEW YORK

NY

10029

USA

1d. SEE INSTRUCTIONS

ADD'L INFO RE
ORGANIZATION
DEBTOR1e. TYPE OF ORGANIZATION
CORPORATION

1f. JURISDICTION OF ORGANIZATION

NEW YORK

1g. ORGANIZATIONAL ID #, if any

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

NONE

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME

2c. MAILING ADDRESS

FIRST NAME

MIDDLE NAME

SUFFIX

CITY

STATE POSTAL CODE

COUNTRY

2d. SEE INSTRUCTIONS

ADD'L INFO RE
ORGANIZATION
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

NONE

3a. ORGANIZATION'S NAME

RESNICK SUPERMARKET EQUIPMENT CORP.

OR 3b. INDIVIDUAL'S LAST NAME

3c. MAILING ADDRESS

FIRST NAME

MIDDLE NAME

SUFFIX

CITY

STATE POSTAL CODE

COUNTRY

PO BOX 368

MOUNTAINDALE

NY

12763

USA

4. This FINANCING STATEMENT covers the following collateral:

All Equipment, Fixtures, Inventory, but not limited to the attached schedule; All now or hereafter acquired: (1) Equipment; (2) Fixtures; (3) Inventory; (4) Contract rights; including right to lease and (5) Proceeds including those of fire insurance and inventory (debtor has no right to sell any collateral except inventory in ordinary course of business).

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (OPTIONAL FEE) (optional) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

FILING NUMBER: 201506010268421

651501-1KNV

In view of technical local requirements, Resnick Supermarket Equipment Corp. cannot be responsible for the correctness of this form, the method of execution, filing requirements, etc. Local counsel should be consulted.

CONDITIONAL SALES CONTRACT
For Industrial Equipment

To: Resnick Supermarket Equipment
510 Wild Turnpike, Mountindale NY 12763

On this 10th day of September, 2015 the undersigned residing at 2005 3rd Ave., New York, NY 10029 hereby purchases from you the following personal property, hereinafter referred to as "chattels", on the following terms:

Description of Property Purchased	(1) CASH SALE PRICE	\$ <u>245,968.75</u>
(Include make, year, model, identification, model and serial numbers or marks):	(2) Down Payment in Cash	\$ _____
	(3) Down Payment in Goods (Trade-in Allowance)	\$ _____
"See Attached List"	(4) Unpaid Balance [(Items (1)- (2)-(3))]	\$ <u>245,968.75</u>
	(5) Insurance and other benefits	\$ _____
	(6) Official or Documentary Fees	\$ _____
	Describe and Itemize	
	(7) Principal Unpaid Balance	
	[(Items (1)-(2)-(3))]	\$ <u>245,968.75</u>
	(8) Finance Charge (Time Price Differential)	\$ <u>75,775.25</u>
	(9) Contract Price (Time Balance)	
	[(Items (7) + (8))]	\$ _____
Description of trade-in: <u>NONE</u>	(10) TIME SALES PRICE	\$ <u>321,744.00</u>

The property purchased shall remain personally and not become part of any realty and shall be located and kept for use at:

2005 3rd Ave., New York, NY 10029

Buyer hereby agrees to pay Seller or any assignee (hereinafter collectively called "Holder") hereof the above-indicated Contract Price (hereinafter called the "time balance") in 48 successive monthly installments commencing on the 10th of December, 2015 in the amount of \$6,703.00 and continuing on the same date (the 10th) of each and every month until paid in full with interest from date on the unpaid amount of said time balance being payable at the maturity of each installment, at the highest lawful contract rate. Said time balance is evidenced by Buyer's promissory note of even date herewith payable to the order of Seller at the offices of Resnick Supermarket Equipment Corp., or at such other place as Resnick Supermarket Equipment Corp. may from time to time appoint, which note is given not as payment but to evidence said time balance due.

Title and ownership to said chattels and any and all replacements thereof and additions thereto shall remain in you and your assigns until all of said indebtedness shall have been fully paid, in cash. The undersigned agrees that you may grant extensions or accept renewals or assign this contract or negotiate the notes without relieving the undersigned of any obligations hereunder or waiving title to the chattels, and this contract when assigned shall be free from any defense, counter-claim or cross-complaint by the undersigned, it being understood that all claims or demands on the part of the undersigned against you shall be independent of any action or claim by assignee against the undersigned. The undersigned agrees to insure said chattels against loss by fire and other hazards against which such chattels are usually insured, in favor of you and your assigns. If the undersigned defaults in payment of any part of the purchase price as provided herein, at any maturity date, or fails to comply with or defaults in any of the provisions of this contract, or in the event that a petition for a Receiver or in Reorganization or in bankruptcy with or defaults in any of the provisions of this contract, or in the event that a petition for a Receiver or in Reorganization or in bankruptcy be filed by or against the undersigned, or if the chattels be misused, or whenever you or your assigns shall deem yourselves insecure, then in any of the aforesaid cases the full amount of the purchase

price then unpaid shall immediately due and payable at the option of the holder hereof, and the undersigned agrees to return said chattels on demand and you or your assigns may without notice or demand and without legal process enter into any premises where said chattels may be and take immediate possession thereof including accessories, and make such disposition as may be deemed by you or your assigns desirable, and all payments made shall be retained as liquidated damages for the use of said chattels and not as a penalty; or said chattels may be sold with or without notice at public or private sale, with the right in you or your assigns to bid in such sale, and the proceeds thereof less expenses credited upon the amount unpaid, and in either event, as liquidated damages for the breach of this contract, the undersigned promises and agrees to pay the balance forthwith.

The undersigned agrees to keep the chattels free of taxes, liens and encumbrances and not to remove the chattels or any part thereof from the above address without receiving the consent in writing of you or your assigns; the undersigned will not transfer or attempt to transfer, encumber or attempt to encumber, sell or attempt to sell the chattels or any interest therein, and the undersigned shall have no right to assign this contract without the consent in writing of you or your assigns, and the undersigned hereby waives any provisions of law requiring the filing or delivery of a certificate of satisfaction or discharge of this contract, and releases any and all rights now or hereafter acquired against seller for failure to file or deliver such certificate upon payment or satisfaction hereof, except for failure to file or deliver such certificate within a reasonable time after written demand delivered by the undersigned by registered mail. The undersigned agrees to take good care of said chattels and be responsible for their loss or damage by reason of fire or for any reason.

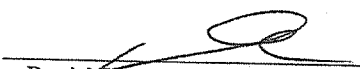
This contract contains the entire agreement between the parties hereto and is not subject to cancellation; any agreements, warranties or guarantees not contained herein shall be of no force and effect whatsoever. All provisions of this contract prohibited by the law of any State shall as to said State be ineffective to the extent of such prohibition without invalidating any provision or condition. The undersigned expressly waives all exemption and homestead laws and acknowledges receipt of a true copy of this agreement.


Buyer acknowledges receipt of a duplicate executed copy of this contract.

ACCEPTED on the date listed above.

Resnick Supermarket Equipment Corp.

Harlem Market Inc.


Daniel Resnick, Vice President


Peter Bivona, President

PROMISSORY NOTE
MOUNTAINDALE, NEW YORK 12763

\$245,968.75
Total Amount of Note

September 10th, 2015
Date

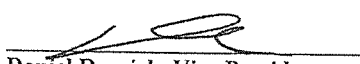
We promise to pay to RESNICK SUPERMARKET EQUIPMENT CORP. or order TWO HUNDRED FOURTY FIVE THOUSAND NINE HUNDRED SIXTY EIGHT AND 75/100 (\$245,968.75) DOLLARS in 48 successive monthly installments commencing on the 10th of September, 2015 each in the amount of \$6,703.00 and continuing on the same date (the 10th) of each and every month until paid in full, the final payment to be the balance then unpaid hereon, together with interest before maturity payable monthly on unpaid balances at the rate of 12% per annum and after maturity at the highest lawful rate and reasonable attorneys' fees (30% if permitted by law) if placed in the hands of an attorney for collection after maturity. Upon non-payment of any installment at its maturity, all remaining installments shall, at the option of the holder hereof, become due and payable forthwith. All exemptions and homestead laws and all rights thereunder are hereby waived. Value received. The makers, endorsers and guarantors of this note hereby waive presentment for payment, demand, notice of non-payment and dishonor, protest, and notice of protest; waive trial by jury in any action or proceeding arising on, out of, under or by reason of this note; consent to any renewals, extensions and partial payments of this note or the indebtedness for which it is given without notice to them, and consent that no such renewals, extensions or partial payments shall discharge any party hereto from liability hereon in whole or in part.

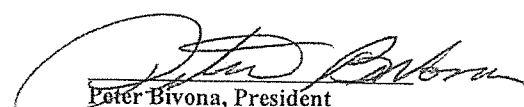
The undersigned hereby authorizes irrevocably, any attorney of any court of record to appear for the undersigned in any court of record in any state or territory of the United States where the same is allowed by law, in term time or vacation, and waive the issuance and service of process, and confess a judgment against the undersigned at any time hereafter, for such amount as may appear to be unpaid or declared due and payable hereunder, together with costs and reasonable attorney's fees to be included in the judgment; further authorizing said attorney to release and waive all right of appeal and consent to immediate execution upon such judgment, hereby agreeing that no writ of error or appeal shall be prosecuted from such judgment, nor any bill in equity filed to restrain the operation of said judgment, or any execution thereon, and hereby ratifying and confirming all that the said attorney may do by virtue hereof. This paragraph shall be of no effect in the State of Indiana, or in any other state in which the inclusion of this paragraph would affect the validity, legality, negotiability, or enforcement of this note, but in such case all the remaining terms and provisions of this note shall subsist and be fully effective according to the tenor of this note, the same as though this paragraph had never been included herein.

NEGOTIABLE AND PAYABLE AT THE OFFICES OF:

Resnick Supermarket Equipment Corp.

Harlem Market Inc.


Daniel Resnick, Vice President


Peter Bivona, President

ENDORSEMENT

The undersigned do each (jointly and severally) unconditionally guarantee the prompt payment of the within note at maturity or any time thereafter, or on default prior thereto, hereby waiving presentment for payment, demand, protest, notice of protest, notice of dishonor and notice of every kind of nature, and accepting all its provisions and authorizing the holder, without notice to us or either of us, to substitute debtors, and/or grant one or more extensions in whole or in part, and/or to receive security or additional security for the payment hereof and/or to surrender, release or substitute any such security.

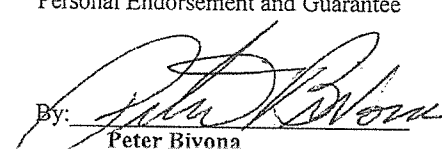
If any installment of this note, or the interest, is not paid when due, then the amount remaining unpaid hereon shall, without notice on demand become immediately due and payable, at the option of the holder, and may be recovered in any suit brought by the holder of this note against any one or more or all of us, at the option of said holder, whether such suit has been commenced against the maker or not, and in any such suit the maker may be joined with one or more or all of us, at the option of the holder.

In the event of the failure to make any payment due under the terms of this contract or any related documents hereunder, the undersigned hereby authorizes Resnick Supermarket Equipment Corp. to apply the charge for the amount due to any credit card of the buyer on file with Resnick Supermarket Equipment Corp. and further hereby waives any protest thereto.

The holder of this note shall not be required to look to any security given or held for the payment of this note, but may proceed against us, or either or all of us, immediately upon a default in payment, or otherwise. Any execution may be immediately levied upon any real or personal property of the undersigned, all right of the undersigned to have personal property last taken and sold under such execution being hereby expressly waived.

Personal Endorsement and Guarantee

By:


Peter Bivona

Harlem Market Inc.

Pg 17 of 18
SECURITY AGREEMENT (CHATTEL MORTGAGE)

THIS AGREEMENT, made the 10th day of September, 2015 under the laws of the state of New York BETWEEN Harlem Market Inc., herein called the Debtor, whose business address is 2005 3rd Ave., New York, NY 10029 and Resnick Supermarket Equipment Corp., herein called the Secured Party, Maintaining offices at: 510 Wild Turnpike, Mountaintale NY 12763.

WITNESSETH:

To secure the payment of indebtedness in the amount of \$245,968.75 with interest, payable as follows: To be paid in 48 consecutive monthly payments commencing on the 10th of December, 2015 in the amount of \$6,703.00 and continuing on the same date (the 10th) of each and every month until paid in full.

The equipment shall remain the property of Resnick Supermarket Equipment Corp. until paid in full.

"In the event the debtor herein shall sell, transfer or assign its business or any portion thereof or any stock in the debtor corporation should the debtor be incorporated, or any of the equipment covered by this security agreement, the entire unpaid principal balance together with accrued interest at such time shall be immediately due and payable at the option of the secured party."

"Upon any default or in any event that creditor/seller is required to bring an action to recover possession of the subject equipment and chattels, purchaser/debtor hereby waives any requirement for the posting of any bond or undertaking for the execution of any Order of seizure that may be granted by any Court of competent jurisdiction."

As evidenced by a note or notes of even date herewith, and also to secure any other indebtedness or liability of the Debtor to the Secured Party direct or indirect, absolute or contingent, due or to become due, now existing or hereunder arising, including all future advances or loans which may be made at the option of the Secured Party, (all hereinafter called the "obligations") Debtor hereby grants and conveys to the Secured Party a security interest in, and mortgages to the Secured Party,

- (a) the property described in the schedule herein which the Debtor represents will be used primarily: ___ for personal, family or household purposes; ___ in farming operations; X in the business or other use
- (b) all property, goods and chattels of the same classes as those scheduled, acquired by the Debtor subsequent to the execution of this agreement and prior to its termination. (If the property described in the Schedule is for personal, family or household purposes then no security attached under this section (b) unless the debtor acquired rights in them within 10 days after the Secured Party gives value.)
- (c) all proceeds thereof, if any,
- (d) all substitutions, replacements and accessions thereto (the foregoing (a), (b), (c), and (d) hereinafter called the collateral).

1. DEBTOR WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

- 1a. To pay and perform all of the obligations secured by this agreement according to their terms.
- 1b. To defend the title to the collateral against all persons and against all claims and demands whatsoever, which collateral, except for the security interest granted hereby, is lawfully owned by the Debtor and is now free and clear of any and all liens, security interests, claims, charges, encumbrances, taxes and assessments except as may be set forth in the schedule.
- 1c. On demand of the secured party to do the following; furnish further assurance of title, execute any written instrument, or do any other acts necessary to effectuate the purposes and provisions of this agreement, execute any instrument or statement required by law or otherwise in order to perfect, continue or terminate the security interest of the Secured Party in the collateral and pay all costs of filing in connection therewith.
- 1d. To retain possession of the collateral during the existence of this agreement and not to sell, exchange, assign, loan, deliver, lease, mortgage or otherwise dispose of same without the written consent of the Secured Party.
- 1e. To keep the collateral free and clear of all liens, charges, encumbrances, taxes and assessments.
- 1f. To pay, when due, all taxes, assessments and license fees relating to the collateral.
- 1g. To keep the collateral, at Debtor's own cost and expense, in good repair and condition and available for inspection by the Secured Party at all reasonable times.
- 1h. To keep the collateral fully insured against loss by fire, theft and other casualties, Debtor shall give immediate written notice to the Secured Party and to insurers of loss or damage to the collateral and shall promptly file proofs of loss with insurers.

2. THE PARTIES FURTHER AGREE

- 2a. Waiver of or acquiescence in any default by the Debtor, or failure of the Secured Party to insist upon strict performance by the Debtor of any warranties or agreements in this security agreement, shall not constitute a waiver of any subsequent or other default or failure.
- 2b. Notices to either party shall be in writing and shall be delivered personally or by mail addressed to the party at the address herein set forth or otherwise designated in writing.
- 2c. The Uniform Commercial Code shall govern the rights, duties and remedies of the parties and any provisions herein declared invalid under any law shall not invalidate any other provision or this agreement.
- 2d. the following shall constitute a default by Debtor:
 Failure to pay the principal of any provision of this agreement. False or misleading representations or warranties made by debtor to comply with or perform any provision of this agreement. False or misleading representations or warranties made by Debtor to comply with or perform any provision of this agreement. False or misleading representations or warranties made or given by Debtor in connection with this

agreement. Subjection of the collateral to levy of execution or other judicial process. Commencement of any insolvency proceeding by or against the Debtor. Death of the Debtor. Any reduction in the value of the collateral or any act of the Debtor which imperils the prospect of full performance or satisfaction of the Debtor's obligations herein.

2e. Upon any default of the Debtor and at the option of the Secured Party, the obligations secured by this agreement shall immediately become due and payable in full without notice or demand and the Secured Party shall have all the rights, remedies and privileges with respect to repossession, retention and sale of the collateral and disposition of the proceeds as are accorded by the applicable sections of the Uniform Commercial Code respecting "Default".

Upon any default and upon demand, Debtor shall assemble the collateral and make it available to the Secured Party at the place and at the time designated in the demand.

Upon any default, the Secured Party's reasonable attorneys' fees and the legal and other expenses for pursuing, searching for, receiving, taking, keeping, storing, advertising, and selling the collateral shall be chargeable to the Debtor. The Debtor shall remain liable for any deficiency resulting from a sale of the collateral and shall pay any such deficiency forthwith on demand. If the Debtor shall default in the performance of any of the provisions of this agreement on the Debtor's part to be performed, Secured Party may perform same for the Debtor's account and any monies expended in so doing shall be chargeable with interest to the Debtor and added to the indebtedness secured hereby.

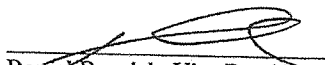
2f. The Secured Party is hereby authorized to file a Financing Statement.

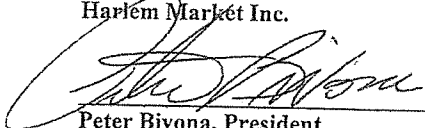
2g. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this agreement nor the intent of any provision thereof. The terms, warranties and agreements herein contained shall bind and inure to the benefit of the respective parties hereto, and their respective legal representatives, successors and assigns. The gender and number used in this agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural. This agreement may not be changed orally.

IN WITNESS WHEREOF, the Parties have respectively signed and sealed these presents the day and year first above written.

Resnick Supermarket Equipment Corp.

Harlem Market Inc.


Daniel Resnick, Vice President


Peter Bivona, President

Schedule

Describe items of collateral, the address where each item will be located and describe any prior liens, etc., and the amounts due thereon. If items are crops or goods affixed to real estate describe the real estate and state the name and address of the owner of record thereof.

Items

Location, etc.

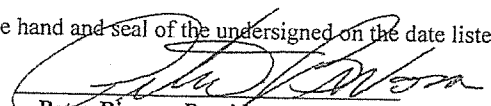
2005 3rd Ave., New York, NY 10029

The chief place of business of the Debtor, if other than stated in the agreement, is:

GUARANTEE

The undersigned guarantees prompt and full performance and payment according to the tenor of the within agreement, to the holder hereof, and, in the event of default, authorizes any holder hereof to proceed against the undersigned, for the full amount due including reasonable attorneys' fees, and hereby waives presentment, demand, protest, notice of protest, notice of dishonor and any and all other notices or demand of whatever character to which the undersigned might otherwise be entitled. The undersigned further consents to any extension granted by any holder and waive notice, thereof. If more than one guarantor, obligation of each shall be joint and several.

WITNESS the hand and seal of the undersigned on the date listed above.


Peter Bivona, President

SECURITY AGREEMENT

CHATTEL MORTGAGE

Harlem Market Inc.
2005 3rd Ave.
NY, NY 10029

TO: Resnick Supermarket
510 Wild Turnpike
Mountindale, NY 12763

DATED: September 10th, 2015

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

Harlem Market Inc.,

Case No. 18-10754-(MEW)

Debtor.

-----X

**DEBTOR'S OMNIBUS MOTION FOR AUTHORITY TO CONDUCT GOING OUT
OF BUSINESS SALE, INCLUDING POTENTIAL BULK SALES, TO SURRENDER
ALL LEASED EQUIPMENT, AND FOR DISMISSAL OF CHAPTER 11 CASE**

**TO THE HONORABLE MICHAEL E. WILES,
UNITED STATES BANKRUPTCY JUDGE:**

The omnibus motion of Harlem Market Inc. (the "Debtor"), by and through its counsel, Goldberg Weprin Finkel Goldstein LLP, for (a) authority pursuant to Section 363(b) of the Bankruptcy Code to conduct a going out of business sale of inventory (including a bulk bid), and to surrender all leased equipment to the secured lender; and (b) dismissal of the Chapter 11 case pursuant to Section 1112(b) of the Bankruptcy Code, respectfully alleges as follows:

BACKGROUND

1. The Debtor filed a voluntary Chapter 11 petition on March 19, 2018.
2. The Debtor operates a supermarket at 2005 Third Avenue, New York, NY pursuant to a certain commercial lease, dated April 13, 2015 (the "Lease") with AK Properties Group LLC as landlord (the "Landlord").
3. The Lease includes a cancellation clause, which permits the Landlord to cancel the Lease on one year's notice subject to certain limited recapture rights. Unfortunately, this cancellation clause has prevented the Debtor from selling the supermarket or attracting new investors. In essence, the cancellation clause makes the Lease unmarketable.

4. Efforts by the Debtor to negotiate with the Landlord for a modification of the Lease have been unsuccessful. The Debtor was able to negotiate an extension of its time to remain in the store beyond the 210 deadline to assume or reject the Lease.

5. Under the terms of the current agreement, which was approved by Order of the Court dated September 25, 2018 [ECF #38] (the “Vacate Order”), the Debtor must turn over the keys to the Landlord by October 31, 2018 and surrender physical possession of the premises no later than November 1, 2018, free of equipment and inventory. A copy of the Vacate Order is annexed hereto as Exhibit “A”.

6. Accordingly, the Debtor is moving to effectively go out of business in an orderly fashion to meet the requirements of the Vacate Order.

7. The Debtor’s assets mainly consist of supermarket equipment and inventory. The equipment was purchased from Resnick Supermarket Equipment Corp. (“Resnick”) pursuant to a conditional sale contract and security agreement, a copy of which is annexed hereto as Exhibit “B”. Resnick filed a proof of secured claim in the amount of \$201,991.99. The equipment will be surrendered to Resnick as secured creditor, and the Debtor will work with Resnick to coordinate the removal of the equipment in the coming weeks.

8. The inventory is secured by a lien held by Associated Supermarket Group LLC, which filed a proof of secured claim in the amount of \$ 2,480,130.20.

9. The Debtor proposes to wind down its operations by selling off inventory as long as it can in the regular course of business. Because of the need to remove the equipment, the Debtor will ultimately accept bulk bids for the remaining inventory as the process draws to a close. Because of the relatively small amount of inventory, and the short time available to complete the process, the Debtor does not intend to retain a liquidator to oversee a sale.

10. The proceeds of the sale of inventory will be used to wind down the supermarket and pay close-out expenses.

LEGAL BASIS FOR RELIEF SOUGHT

A. The Debtor Should be Authorized to Conduct a Going out of Business Sale

11. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, “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); *see also* Fed. R. Bankr. P. 6004(f)(1) (authorizing sales outside of the ordinary course of business to be conducted privately or by public auction). A debtor-in-possession is given these rights by section 1107(a) of the Bankruptcy Code.

12. Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate to authorize the sale or disposition of a debtor’s assets outside of the plan confirmation process. However, it is well settled that a sale of a debtor’s assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business judgment exists for such a sale. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983), considering the following factors:

- Sound business reason for the sale;
- Accurate and reasonable notice;
- Proportionate value of the asset to the estate as a whole (fair and reasonable);
- The amount of elapsed time since the filing;
- The likelihood that a plan of reorganization will be proposed and confirmed in the near future;
- The effect of the proposed disposition on the future plan;
- The amount of proceeds to be obtained from the sale versus the appraised value of the property sold; and
- Whether the asset is decreasing or increasing in value.

Lionel, 722 F.2d at 1071.

13. Courts have made clear that a debtor's showing of a sound business justification does not have to be unduly exhaustive. Rather, a debtor is "simply required to justify the proposed disposition with sound business reason" *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Moreover, the paramount goal in any proposed sale of property of the estate is to maximize the value received by the estate. *See In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (8th Cir. 1997)(stating that in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992)("It is a well-established principle of bankruptcy law that the . . . [debtors'] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate." (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988))).

14. In this case, given the Court Ordered deadline of October 31, 2018 to surrender possession of the store, the Debtor has no option but to seek to sell its inventory and return the equipment in the most expedient manner available. Thus, there is an obvious sound business reason to proceed with the going out of business sale, replete with surrender of equipment.

B. The Chapter 11 Case Should be Dismissed

15. Dismissal of the case appears appropriate under 11 U.S.C. Section 1112(b)(1), which provides:

[O]n request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested...dismissal is not in the best interests of creditors and the estate, the court shall...dismiss a case...if the movant establishes cause.

16. In determining whether to grant a motion to dismiss a Chapter 11 case, the Court should consider a number of factors, including:

- (1) whether some creditors received preferential payments, and whether equality of distribution would be better served by conversion rather than dismissal;
- (2) whether there would be a loss of rights granted in the case if it were dismissed rather than converted;
- (3) whether the debtor would simply file a further case upon dismissal;
- (4) the ability of the trustee in a chapter 7 case to reach assets for the benefit of creditors;
- (5) in assessing the interest of the estate, whether conversion or dismissal of the estate would maximize the estate's value as an economic enterprise;
- (6) whether any remaining issues would be better resolved outside the bankruptcy forum;
- (7) whether the estate consists of a "single asset";
- (8) whether the debtor had engaged in misconduct and whether creditors are in need of a chapter 7 case to protect their interests;
- (9) whether a plan has been confirmed and whether any property remains in the estate to be administered; and
- (10) whether the appointment of a trustee is desirable to supervise the estate and address possible environmental and safety concerns.

In re Just Plumbing & Heating Supply, Inc., 2011 WL 4962993 (Bankr. S.D.N.Y. 2011).

17. Of note, the Court in *Just Plumbing, supra*, denied the dismissal motion, being influenced by the availability of substantial unencumbered valuable assets. In this case, however, there are no assets to be administered in a Chapter 7 case, as all of the physical assets are secured, and the Lease has been terminated.

18. The other *Just Plumbing* factors likewise weigh in favor of dismissal. The Debtor was paying its creditors in the ordinary course prior to bankruptcy, so the existence of preferential or other voidable transfers is not significant. Nor has there been any suggestion of misconduct by the Debtor or any other reason why a Chapter 7 case is needed to protect the interests of creditors.

19. All of the activity in the case centered on the Lease, which has been terminated, so there are no open matters requiring a trustee to administer.

20. In short, there is no benefit to creditors and other parties in interest from converting the case to Chapter 7 or otherwise keeping it open. Accordingly, the Debtor submits that dismissal is in the best interest of creditors and other parties in interest.

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that an order be entered consistent with the foregoing.

Dated: New York, New York
October 5, 2018

GOLDBERG WEPRIN
FINKEL GOLDSTEIN LLP
Attorneys for the Debtor
1501 Broadway, 22nd Floor
New York, New York 10036
(212) 221-5700

By: /s/ Kevin J. Nash, Esq.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

Harlem Market Inc.,

Case No. 18-10754-(MEW)

Debtor.

-----X

**ORDER FOR A FINAL EXTENSION OF TIME TO ASSUME OR REJECT
DEBTOR'S COMMERCIAL LEASE**

WHEREAS, Harlem Market Inc. (the "Debtor") and AK Properties Group LLC (the "Landlord") are parties to a commercial lease, dated April 13, 2005 (the "Lease"), pursuant to which the Debtor operates a supermarket at 2005 Third Avenue, New York, New York (the "Premises"); and

WHEREAS, the Debtor previously moved to extend the time for it to assume or reject the Lease, as supplemented (ECF #s 22, 28 and 34) (the "Motion"), which Motion has been opposed by the Landlord (ECF #24); and

WHEREAS, following a series of hearings held on August 15, 2018, and September 6, 2018, the Debtor's time to assume or reject the Lease was extended until September 28, 2018, pursuant to Order dated September 7, 2018 (ECF No. 37); and

WHEREAS, at the adjourned hearing held on September 25, 2018, the Debtor was granted a final extension of time to assume or reject the Lease until October 15, 2018, with authority to pay the Landlord the balance of post-petition real estate taxes of approximately \$13,000 in order to obtain the Landlord's agreement to allow the Debtor to vacate the Premises on or before October 31, 2018;

NOW, THEREFORE, based on the totality of the record compiled in this case, it is hereby

ORDERED, that the Debtor's time to assume or reject the Lease is extended until October 15, 2018, conditioned upon the Debtor's payment of October 2018 base rent in the sum of \$17,500 on or before October 15, 2018; and it is further

ORDERED, that the Debtor is authorized to pay the balance of post-petition real estate taxes of approximately \$13,000 on or before October 25, 2018, in order to obtain the Landlord's agreement to allow the Debtor to vacate the Premises on or before October 31, 2018, with the Debtor to remove all operating equipment and fixtures, and complete a bulk sale of the Debtor's residual inventory prior to October 31, 2018, on further notice and application to creditors; and it is further

ORDERED, that the Debtor shall deliver the keys for the Premises to the Landlord on or before October 31, 2018, whereupon the Debtor shall have no further interest in the Lease; and it is further

ORDERED, that the Debtor shall surrender physical possession of the Premises to the Landlord on November 1, 2018, and the Landlord is relieved from any obligation to store any residual personal property remaining at the Premises or goods and inventory items left behind after October 31, 2018.

Dated: New York, NY
September 25, 2018

s/Michael E. Wiles
Hon. Michael E. Wiles
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

CORPORATION SERVICE COMPANY

www.cscglobal.com

CSC- New York
Suite 210
1180 Avenue OF the Americas
New York, NY 10036-8401
212-299-5600
212-299-5656 (Fax)

Matter# NOT PROVIDED

Project Id :

Additional Reference : NOT PROVIDED

Order# 651501-1

Order Date 06/01/2015

Entity Name : HARLEM MARKET INC. (Debtor)/ RESNICK SUPERMARKET
EQUIPMENT CORP. (Secured Party)

Jurisdiction : NY-DEPARTMENT OF STATE

Request for : UCC Filing
File Type : ORIGINAL

Result : Filed

File Number : 201506010268421

Filing Date : 06/01/2015

Ordered by ROSIE TALAVERA at RESNICK SUPERMARKET EQUIPMENT CORP.

Thank you for using CSC. For real-time 24 hour access to the status of any order placed with CSC, access our website at
www.cscglobal.com.

If you have any questions concerning this order or CSCGlobal, please feel free to contact us.

Jeannette Guzman
jguzman@cscinfo.com

The responsibility for verification of the files and determination of the information therein lies with the filing officer; we accept no liability for errors or omissions.



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA, 99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

ANDREW M. CUOMO
GOVERNOR

CESAR A. PERALES
SECRETARY OF STATE

FILING ACKNOWLEDGMENT

June 3, 2015

RETURN TO CUSTOMER SERVICE COUNTER

CORPORATION SERVICE COMPANY
80 STATE STREET, 6TH FLOOR
ALBANY NY 12207-0000

Attached is the acknowledgment copy of your recently submitted filing. This filing consists of a total of 2 pages; however, only the first page of the filed document is returned as part of this acknowledgment. This document has been filed with the New York State Department of State, Uniform Commercial Code Division.

The Financing Statement has been assigned Filing Number: 201506010268421, Filing Date: 06/01/2015 and is currently reflected in our automated database as follows:

Debtor's Name & Address

HARLEM MARKET INC.
2005 3RD AVE.
NEW YORK NY 10029

Secured Party's Name & Address

RESNICK SUPERMARKET EQUIPMENT CORP.
PO BOX 368
MOUNTAINDALE NY 12763

This filing will lapse on 06/01/2020, unless continued. We encourage filers to take full advantage of the six-month window of opportunity in which to file a Financing Statement Amendment (Continuation). Submission of your documents at the onset of the six-month window will allow ample time to rectify potential filing errors and help to assure timely recording of your filing.

If you have any concerns regarding the way this document is recorded, please contact one of our Customer Service Representatives at (518) 473-2492, or respond in writing to the UCC Data Processing Unit at the address indicated above.

Sincerely,

Uniform Commercial Code Division
Data Processing Unit

REF #: 210392

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

210392

2015 JUN -1 PM 2:40

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

CSC NEW YORK
SUITE 3100
1133 AVENUE OF THE AMERICAS
NEW YORK, NY 10036CSC 50
DRAW DOWN

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. ORGANIZATION'S NAME

HARLEM MARKET INC.

OR

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

2005 3RD AVE.

CITY

NEW YORK

STATE

POSTAL CODE

NY

10029

COUNTRY

USA

1d. SEE INSTRUCTIONS

ADD'L INFO RE
ORGANIZATION
DEBTOR1e. TYPE OF ORGANIZATION
CORPORATION

1f. JURISDICTION OF ORGANIZATION

NEW YORK

1g. ORGANIZATIONAL ID #, if any

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

NONE

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. SEE INSTRUCTIONS

ADD'L INFO RE
ORGANIZATION
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

NONE

3a. ORGANIZATION'S NAME

RESNICK SUPERMARKET EQUIPMENT CORP.

OR

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

PO BOX 368

CITY

MOUNTAINDALE

STATE

POSTAL CODE

NY

12763

COUNTRY

USA

4. This FINANCING STATEMENT covers the following collateral:

All Equipment, Fixtures, Inventory, but not limited to the attached schedule; All now or hereafter acquired: (1) Equipment; (2) Fixtures; (3) Inventory; (4) Contract rights; including right to lease and (5) Proceeds including those of fire insurance and inventory (debtor has no right to sell any collateral except inventory in ordinary course of business).

5. ALTERNATIVE DESIGNATION (if applicable)		LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)		7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional)		All Debtors		Debtor 1	Debtor 2
8. OPTIONAL FILER REFERENCE DATA							

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

FILING NUMBER: 201506010268421

651501-1KNV

In view of technical local requirements, Resnick Supermarket Equipment Corp. cannot be responsible for the correctness of this form, the method of execution, filing requirements, etc. Local counsel should be consulted.

**CONDITIONAL SALES CONTRACT
For Industrial Equipment**

To: Resnick Supermarket Equipment
510 Wild Turnpike, Mountindale NY 12763

On this 10th day of September, 2015 the undersigned residing at 2005 3rd Ave., New York, NY 10029 hereby purchases from you the following personal property, hereinafter referred to as "chattels", on the following terms:

Description of Property Purchased	(1) CASH SALE PRICE	\$ <u>245,968.75</u>
(Include make, year, model, identification, model and serial numbers or marks):	(2) Down Payment in Cash	\$ _____
	(3) Down Payment in Goods (Trade-in Allowance)	\$ _____
"See Attached List"	(4) Unpaid Balance [(Items (1)- (2)-(3))]	\$ <u>245,968.75</u>
	(5) Insurance and other benefits	\$ _____
	(6) Official or Documentary Fees	\$ _____
	Describe and Itemize	
	(7) Principal Unpaid Balance	
	[(Items (1)-(2)-(3))]	\$ <u>245,968.75</u>
	(8) Finance Charge (Time Price Differential)	\$ <u>75,775.25</u>
	(9) Contract Price (Time Balance)	
	[Items (7) + (8)]	\$ _____
Description of trade-in: <u>NONE</u>	(10) TIME SALES PRICE	\$ <u>321,744.00</u>

The property purchased shall remain personally and not become part of any realty and shall be located and kept for use at:

2005 3rd Ave., New York, NY 10029

Buyer hereby agrees to pay Seller or any assignee (hereinafter collectively called "Holder") hereof the above-indicated Contract Price (hereinafter called the "time balance") in 48 successive monthly installments commencing on the 10th of December, 2015 in the amount of \$6,703.00 and continuing on the same date (the 10th) of each and every month until paid in full with interest from date on the unpaid amount of said time balance being payable at the maturity of each installment, at the highest lawful contract rate. Said time balance is evidenced by Buyer's promissory note of even date herewith payable to the order of Seller at the offices of Resnick Supermarket Equipment Corp., or at such other place as Resnick Supermarket Equipment Corp. may from time to time appoint, which note is given not as payment but to evidence said time balance due.

Title and ownership to said chattels and any and all replacements thereof and additions thereto shall remain in you and your assigns until all of said indebtedness shall have been fully paid, in cash. The undersigned agrees that you may grant extensions or accept renewals or assign this contract or negotiate the notes without relieving the undersigned of any obligations hereunder or waiving title to the chattels, and this contract when assigned shall be free from any defense, counter-claim or cross-complaint by the undersigned, it being understood that all claims or demands on the part of the undersigned against you shall be independent of any action or claim by assignee against the undersigned. The undersigned agrees to insure said chattels against loss by fire and other hazards against which such chattels are usually insured, in favor of you and your assigns. If the undersigned defaults in payment of any part of the purchase price as provided herein, at any maturity date, or fails to comply with or defaults in any of the provisions of this contract, or in the event that a petition for a Receiver or in Reorganization or in bankruptcy with or defaults in any of the provisions of this contract, or in the event that a petition for a Receiver or in Reorganization or in bankruptcy be filed by or against the undersigned, or if the chattels be misused, or whenever you or your assigns shall deem yourselves insecure, then in any of the aforesaid cases the full amount of the purchase

price then unpaid shall immediately due and payable at the option of the holder hereof, and the undersigned agrees to return said chattels on demand and you or your assigns may without notice or demand and without legal process enter into any premises where said chattels may be and take immediate possession thereof including accessories, and make such disposition as may be deemed by you or your assigns desirable, and all payments made shall be retained as liquidated damages for the use of said chattels and not as a penalty; or said chattels may be sold with or without notice at public or private sale, with the right in you or your assigns to bid in such sale, and the proceeds thereof less expenses credited upon the amount unpaid, and in either event, as liquidated damages for the breach of this contract, the undersigned promises and agrees to pay the balance forthwith.

The undersigned agrees to keep the chattels free of taxes, liens and encumbrances and not to remove the chattels or any part thereof from the above address without receiving the consent in writing of you or your assigns; the undersigned will not transfer or attempt to transfer, encumber or attempt to encumber, sell or attempt to sell the chattels or any interest therein, and the undersigned shall have no right to assign this contract without the consent in writing of you or your assigns, and the undersigned hereby waives any provisions of law requiring the filing or delivery of a certificate of satisfaction or discharge of this contract, and releases any and all rights now or hereafter acquired against seller for failure to file or deliver such certificate upon payment or satisfaction hereof, except for failure to file or deliver such certificate within a reasonable time after written demand delivered by the undersigned by registered mail. The undersigned agrees to take good care of said chattels and be responsible for their loss or damage by reason of fire or for any reason.

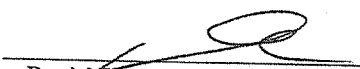
This contract contains the entire agreement between the parties hereto and is not subject to cancellation; any agreements, warranties or guarantees not contained herein shall be of no force and effect whatsoever. All provisions of this contract prohibited by the law of any State shall as to said State be ineffective to the extent of such prohibition without invalidating any provision or condition. The undersigned expressly waives all exemption and homestead laws and acknowledges receipt of a true copy of this agreement.


Buyer acknowledges receipt of a duplicate executed copy of this contract.

ACCEPTED on the date listed above.

Resnick Supermarket Equipment Corp.

Harlem Market Inc.


Daniel Resnick, Vice President


Peter Bivona, President

PROMISSORY NOTE
MOUNTAINDALE, NEW YORK 12763

\$245,968.75
Total Amount of Note

September 10th, 2015
Date

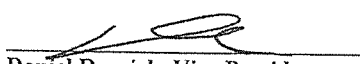
We promise to pay to RESNICK SUPERMARKET EQUIPMENT CORP. or order TWO HUNDRED FOURTY FIVE THOUSAND NINE HUNDRED SIXTY EIGHT AND 75/100 (\$245,968.75) DOLLARS in 48 successive monthly installments commencing on the 10th of September, 2015 each in the amount of \$6,703.00 and continuing on the same date (the 10th) of each and every month until paid in full, the final payment to be the balance then unpaid hereon, together with interest before maturity payable monthly on unpaid balances at the rate of 12% per annum and after maturity at the highest lawful rate and reasonable attorneys' fees (30% if permitted by law) if placed in the hands of an attorney for collection after maturity. Upon non-payment of any installment at its maturity, all remaining installments shall, at the option of the holder hereof, become due and payable forthwith. All exemptions and homestead laws and all rights thereunder are hereby waived. Value received. The makers, endorsers and guarantors of this note hereby waive presentment for payment, demand, notice of non-payment and dishonor, protest, and notice of protest; waive trial by jury in any action or proceeding arising on, out of, under or by reason of this note; consent to any renewals, extensions and partial payments of this note or the indebtedness for which it is given without notice to them, and consent that no such renewals, extensions or partial payments shall discharge any party hereto from liability hereon in whole or in part.

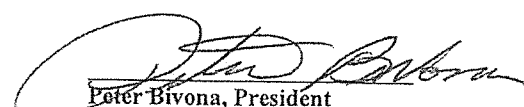
The undersigned hereby authorizes irrevocably, any attorney of any court of record to appear for the undersigned in any court of record in any state or territory of the United States where the same is allowed by law, in term time or vacation, and waive the issuance and service of process, and confess a judgment against the undersigned at any time hereafter, for such amount as may appear to be unpaid or declared due and payable hereunder, together with costs and reasonable attorney's fees to be included in the judgment; further authorizing said attorney to release and waive all right of appeal and consent to immediate execution upon such judgment, hereby agreeing that no writ of error or appeal shall be prosecuted from such judgment, nor any bill in equity filed to restrain the operation of said judgment, or any execution thereon, and hereby ratifying and confirming all that the said attorney may do by virtue hereof. This paragraph shall be of no effect in the State of Indiana, or in any other state in which the inclusion of this paragraph would affect the validity, legality, negotiability, or enforcement of this note, but in such case all the remaining terms and provisions of this note shall subsist and be fully effective according to the tenor of this note, the same as though this paragraph had never been included herein.

NEGOTIABLE AND PAYABLE AT THE OFFICES OF:

Resnick Supermarket Equipment Corp.

Harlem Market Inc.


Daniel Resnick, Vice President


Peter Bivona, President

ENDORSEMENT

The undersigned do each (jointly and severally) unconditionally guarantee the prompt payment of the within note at maturity or any time thereafter, or on default prior thereto, hereby waiving presentment for payment, demand, protest, notice of protest, notice of dishonor and notice of every kind of nature, and accepting all its provisions and authorizing the holder, without notice to us or either of us, to substitute debtors, and/or grant one or more extensions in whole or in part, and/or to receive security or additional security for the payment hereof and/or to surrender, release or substitute any such security.

If any installment of this note, or the interest, is not paid when due, then the amount remaining unpaid hereon shall, without notice on demand become immediately due and payable, at the option of the holder, and may be recovered in any suit brought by the holder of this note against any one or more or all of us, at the option of said holder, whether such suit has been commenced against the maker or not, and in any such suit the maker may be joined with one or more or all of us, at the option of the holder.

In the event of the failure to make any payment due under the terms of this contract or any related documents hereunder, the undersigned hereby authorizes Resnick Supermarket Equipment Corp. to apply the charge for the amount due to any credit card of the buyer on file with Resnick Supermarket Equipment Corp. and further hereby waives any protest thereto.

The holder of this note shall not be required to look to any security given or held for the payment of this note, but may proceed against us, or either or all of us, immediately upon a default in payment, or otherwise. Any execution may be immediately levied upon any real or personal property of the undersigned, all right of the undersigned to have personal property last taken and sold under such execution being hereby expressly waived.

Personal Endorsement and Guarantee

By: 

Peter Bivona
Harlem Market Inc.

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SECURITY AGREEMENT (CHATTEL MORTGAGE)

THIS AGREEMENT, made the 10th day of September, 2015 under the laws of the state of New York BETWEEN Harlem Market Inc., herein called the Debtor, whose business address is 2005 3rd Ave., New York, NY 10029 and Resnick Supermarket Equipment Corp., herein called the Secured Party, Maintaining offices at: 510 Wild Turnpike, Mountindale NY 12763.

WITNESSETH:

To secure the payment of indebtedness in the amount of \$245,968.75 with interest, payable as follows: To be paid in 48 consecutive monthly payments commencing on the 10th of December, 2015 in the amount of \$6,703.00 and continuing on the same date (the 10th) of each and every month until paid in full.

The equipment shall remain the property of Resnick Supermarket Equipment Corp. until paid in full.

"In the event the debtor herein shall sell, transfer or assign its business or any portion thereof or any stock in the debtor corporation should the debtor be incorporated, or any of the equipment covered by this security agreement, the entire unpaid principal balance together with accrued interest at such time shall be immediately due and payable at the option of the secured party."

"Upon any default or in any event that creditor/seller is required to bring an action to recover possession of the subject equipment and chattels, purchaser/debtor hereby waives any requirement for the posting of any bond or undertaking for the execution of any Order of seizure that may be granted by any Court of competent jurisdiction."

As evidenced by a note or notes of even date herewith, and also to secure any other indebtedness or liability of the Debtor to the Secured Party direct or indirect, absolute or contingent, due or to become due, now existing or hereunder arising, including all future advances or loans which may be made at the option of the Secured Party, (all hereinafter called the "obligations") Debtor hereby grants and conveys to the Secured Party a security interest in, and mortgages to the Secured Party,

- (a) the property described in the schedule herein which the Debtor represents will be used primarily: ___ for personal, family or household purposes; ___ in farming operations; X in the business or other use
- (b) all property, goods and chattels of the same classes as those scheduled, acquired by the Debtor subsequent to the execution of this agreement and prior to its termination. (If the property described in the Schedule is for personal, family or household purposes then no security attached under this section (b) unless the debtor acquired rights in them within 10 days after the Secured Party gives value.)
- (c) all proceeds thereof, if any,
- (d) all substitutions, replacements and accessions thereto (the foregoing (a), (b), (c), and (d) hereinafter called the collateral).

1. DEBTOR WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

- 1a. To pay and perform all of the obligations secured by this agreement according to their terms.
- 1b. To defend the title to the collateral against all persons and against all claims and demands whatsoever, which collateral, except for the security interest granted hereby, is lawfully owned by the Debtor and is now free and clear of any and all liens, security interests, claims, charges, encumbrances, taxes and assessments except as may be set forth in the schedule.
- 1c. On demand of the secured party to do the following; furnish further assurance of title, execute any written instrument, or do any other acts necessary to effectuate the purposes and provisions of this agreement, execute any instrument or statement required by law or otherwise in order to perfect, continue or terminate the security interest of the Secured Party in the collateral and pay all costs of filing in connection therewith.
- 1d. To retain possession of the collateral during the existence of this agreement and not to sell, exchange, assign, loan, deliver, lease, mortgage or otherwise dispose of same without the written consent of the Secured Party.
- 1e. To keep the collateral free and clear of all liens, charges, encumbrances, taxes and assessments.
- 1f. To pay, when due, all taxes, assessments and license fees relating to the collateral.
- 1g. To keep the collateral, at Debtor's own cost and expense, in good repair and condition and available for inspection by the Secured Party at all reasonable times.
- 1h. To keep the collateral fully insured against loss by fire, theft and other casualties, Debtor shall give immediate written notice to the Secured Party and to insurers of loss or damage to the collateral and shall promptly file proofs of loss with insurers.

2. THE PARTIES FURTHER AGREE

- 2a. Waiver of or acquiescence in any default by the Debtor, or failure of the Secured Party to insist upon strict performance by the Debtor of any warranties or agreements in this security agreement, shall not constitute a waiver of any subsequent or other default or failure.
- 2b. Notices to either party shall be in writing and shall be delivered personally or by mail addressed to the party at the address herein set forth or otherwise designated in writing.
- 2c. The Uniform Commercial Code shall govern the rights, duties and remedies of the parties and any provisions herein declared invalid under any law shall not invalidate any other provision or this agreement.
- 2d. the following shall constitute a default by Debtor:

Failure to pay the principal of any provision of this agreement. False or misleading representations or warranties made by debtor to comply with or perform any provision of this agreement. False or misleading representations or warranties made by Debtor to comply with or perform any provision of this agreement. False or misleading representations or warranties made or given by Debtor in connection with this

agreement. Subjection of the collateral to levy of execution or other judicial process. Commencement of any insolvency proceeding by or against the Debtor. Death of the Debtor. Any reduction in the value of the collateral or any act of the Debtor which imperils the prospect of full performance or satisfaction of the Debtor's obligations herein.

2e. Upon any default of the Debtor and at the option of the Secured Party, the obligations secured by this agreement shall immediately become due and payable in full without notice or demand and the Secured Party shall have all the rights, remedies and privileges with respect to repossession, retention and sale of the collateral and disposition of the proceeds as are accorded by the applicable sections of the Uniform Commercial Code respecting "Default".

Upon any default and upon demand, Debtor shall assemble the collateral and make it available to the Secured Party at the place and at the time designated in the demand.

Upon any default, the Secured Party's reasonable attorneys' fees and the legal and other expenses for pursuing, searching for, receiving, taking, keeping, storing, advertising, and selling the collateral shall be chargeable to the Debtor. The Debtor shall remain liable for any deficiency resulting from a sale of the collateral and shall pay any such deficiency forthwith on demand. If the Debtor shall default in the performance of any of the provisions of this agreement on the Debtor's part to be performed, Secured Party may perform same for the Debtor's account and any monies expended in so doing shall be chargeable with interest to the Debtor and added to the indebtedness secured hereby.

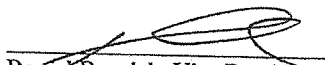
2f. The Secured Party is hereby authorized to file a Financing Statement.

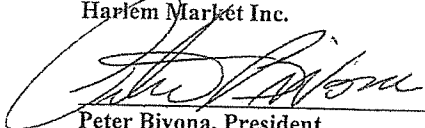
2g. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this agreement nor the intent of any provision thereof. The terms, warranties and agreements herein contained shall bind and inure to the benefit of the respective parties hereto, and their respective legal representatives, successors and assigns. The gender and number used in this agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural. This agreement may not be changed orally.

IN WITNESS WHEREOF, the Parties have respectively signed and sealed these presents the day and year first above written.

Resnick Supermarket Equipment Corp.

Harlem Market Inc.


Daniel Resnick, Vice President


Peter Bivona, President

Schedule

Describe items of collateral, the address where each item will be located and describe any prior liens, etc., and the amounts due thereon. If items are crops or goods affixed to real estate describe the real estate and state the name and address of the owner of record thereof.

Items

Location, etc.

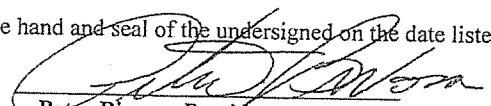
2005 3rd Ave., New York, NY 10029

The chief place of business of the Debtor, if other than stated in the agreement, is:

GUARANTEE

The undersigned guarantees prompt and full performance and payment according to the tenor of the within agreement, to the holder hereof, and, in the event of default, authorizes any holder hereof to proceed against the undersigned, for the full amount due including reasonable attorneys' fees, and hereby waives presentment, demand, protest, notice of protest, notice of dishonor and any and all other notices or demand of whatever character to which the undersigned might otherwise be entitled. The undersigned further consents to any extension granted by any holder and waive notice, thereof. If more than one guarantor, obligation of each shall be joint and several.

WITNESS the hand and seal of the undersigned on the date listed above.


Peter Bivona, President

SECURITY AGREEMENT

CHattel Mortgage

Harlem Market Inc.
2005 3rd Ave.
NY, NY 10029

TO: Resnick Supermarket
510 Wild Turnpike
Mountandale, NY 12763

DATED: September 10th, 2015