

Hayward, Parker, O’Leary & Pinsky
Attorneys for Debtor
225 Dolson Ave., Ste. 303
Post Office Box 929
Middletown, NY 10940
Tel: 845-343-6227
Fax: 845-343-1927
Email: mike.pinsky@hpoplaw.com
Mike Pinsky, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

MFB PROPERTIES LLC,

Debtor.

EIN 81-1266188
-----x

Chapter 11

Case No. 17-36876 (cgm)

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Motion for Order Pursuant to §§ U.S.C. 363(b)(1) and 363(f)(3) Authorizing Sale (the “Motion”) of debtor in possession MFB Properties LLC (the “Debtor”) has been filed, seeking the entry of an Order authorizing the Debtor to sell property located at 7 Lucy Lane, Monroe, Orange County, New York (the “Property”), free and clear of liens and encumbrances, with liens and encumbrances to attach to proceeds and (absent dispute) to be paid at closing.

A hearing on the Motion will be held before the Hon. Cecelia G. Morris, Chief United States Bankruptcy Judge, at the U.S. Bankruptcy Court for the Southern District of New York, 355 Main Street, Poughkeepsie, New York 12601, on the January 30, 2018 at 9:30 a.m., or as soon thereafter as counsel can be heard.

Objections to the relief requested in the motion must be filed with the Court and served so as to be received not later than seven (7) days before the above-listed hearing date upon Hayward, Parker, O'Leary & Pinsky, Attn: Mike Pinsky, Esq., 225 Dolson Avenue, Suite 303, PO Box 929, Middletown, New York 10940

Dated: Middletown, New York
January 5, 2018

Hayward Parker O'Leary & Pinsky

By: /s/ Mike Pinsky
Attorneys for Debtor
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Middletown, NY 10940
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Chapter 11

Case No. 17-36876 (cgm)

**MOTION FOR ORDER PURSUANT TO
11 U.S.C. §§ 363(B)(1) & 363(f)(3) AUTHORIZING SALE**

**TO: THE HONORABLE CECELIA G. MORRIS
CHIEF UNITED STATES BANKRUPTCY JUDGE**

Debtor MFB Properties LLC (the “Debtor”) moves for the entry of an order pursuant to Bankruptcy Code §§1303, 363(b)(1) and 363(f)(3) and Rules 2002(a)(2), 2002(c)(1) and 6004 of the Federal Rules of Bankruptcy Procedure, approving the proposed private sale of certain residential real estate, and respectfully shows as follows:

1. The Debtor filed its voluntary Chapter 11 petition on November 3, 2017, and remains in possession of its property and operating its business as a debtor in possession. This is a single-asset real estate case, and the Debtor’s sole asset is the subject of this sale motion: improved residential real estate located at 7 Lucy Lane, Monroe, Orange County, New York 10950 (the “Property”).

2. The Debtor had engaged a real estate broker prepetition, the approval of whose employment by the Court has been sought [Doc. 11, filed 11/15/17]. The broker, Prime Partner Realty, Inc., has actively marketed the Debtor's property, and produced the offer set forth immediately below.

3. Saul Brandel and Arna Brandel have offered to purchase the Property for 750,000.00. The Debtor and the Brandels have entered into a contract for sale, which contract is subject to Bankruptcy Court approval. A copy of the contract is annexed as Exhibit "A".

4. The Brandel purchase is for cash and not subject to a financing contingency.

5. The Debtor believes that the Brandel offer is fair and reasonable, and is in the best interest of the bankruptcy estate.

6. The Debtor seeks authority to satisfy existing liens and encumbrances on the Property, and all reasonable and customary costs associated with the sale at closing, provided, however, that Bankruptcy Court approval will be separately sought for the professional fees and expenses of the broker and Debtor's real estate attorney.

7. Upon information and belief, to complete the transfer of title at a closing during the first half of February 2018, the following liens, claims and encumbrances must be satisfied from the proposed sale price of \$750,000.00:

Mortgage	\$206,903.45
Claim of Orange County Commissioner of Finance	39,659.50
Claim of Monroe Woodbury School District	13,823.64
Claim of Town of Monroe (2018 prorated)	5,906.61
Claim of Jan Fence Inc.	5,966.00
Broker's commission (gross amount, subject to co-broker split)	37,500.00
Debtor's real estate attorney fee (subject to application)	1,200.00
Ancillary closing costs (estimated)	2,000.00
Estimated total costs	\$312,959.20

8. Bankruptcy Code § 363(f)(3) permits a sale of the Property free and clear of liens as the sales price exceeds the total of all liens and encumbrances on the Property by \$437,040.80

9. A sale of substantially all of the assets of a chapter 11 debtor out of the ordinary course of business and outside of a plan may be approved in the exercise of a debtor in possession's sound business judgment, and for good business reason(s).

Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate" 11 U.S.C. § 363(b)(1). In approving a transaction conducted pursuant to section 363(b)(1), courts consider whether the trustee exercised sound business judgment. *See In re Chateaugay Corp.*, 973 F.2d 141, 144-45 (2d Cir. 1992) (affirming bankruptcy court's approval of asset sale under section 363(b) because good business reason supported the sale); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1072 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application."); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) (holding that the standard for approval of a motion under section 363 is whether there is a "good business reason" to support the motion).

The business judgment of a trustee is entitled to great deference. *See In re Borders Grp., Inc.*, 453 B.R. 477, 483 (Bankr. S.D.N.Y. 2011). A trustee generally satisfies the business judgment standard if he "acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). "Courts should not generally interfere with business decisions absent a showing of 'bad faith, self-interest, or gross negligence.'" *Borders*, 453 B.R. at 482 (quoting *Integrated Res.*, 147 B.R. at 656).

In re MF Glob. Ltd., 535 B.R. 596, 605 (Bankr. S.D.N.Y. 2015).

10. The proposed sale of the Property under Bankruptcy Code §§363(b) and (f), independent of a chapter 11 plan of reorganization, represents the exercise of sound business judgment by the Debtor. The sales price is favorable to all creditors and parties in interest, and failure to promptly consummate the sale could result in the loss of the buyer and the near-term sales opportunity.

11. All claims of creditors in this case are secured, and all secured claims will be satisfied in full at the closing of the proposed sale (except to the extent that an unresolved objection to the amount of a given claim exists, in which case the relevant proceeds will be escrowed then and there, and the dispute brought before this Court for prompt determination).

12. Following payment of all claims from the sale proceeds (and the prompt resolution of any disputes concerning the amount of claim(s)), the Debtor intends to seek dismissal.

13. The Debtor submits that these factors establish a reasonable business justification for authorizing the sale pursuant to Bankruptcy Code §363.

14. No prior request has been made for the relief sought by this motion in this Court or before any other court.

15. This motion does not raise complex issues of law or fact, and the authority for the relief requested is adequately presented above. The Debtor therefore requests that a separate memorandum of law pursuant to LBR 9013-1 not be required.

WHEREFORE, Debtor MFB Properties LLC seeks the entry of an order approving the proposed sale to Saul Brandel & Arna Brandel, free and clear of liens, liens to attach to proceeds and be paid at closing except to the extent subject to objection, and for such other and further relief to which Debtor is justly entitled.

Dated: Middletown, New York
January 5, 2018

Hayward Parker O'Leary & Pinsky

By: /s/ Mike Pinsky
Attorneys for Debtor
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WARNING: NO REPRESENTATION IS MADE THAT THIS FORM OF CONTRACT FOR THE SALE AND PURCHASE OF REAL ESTATE COMPLIES WITH SECTION 5-702 OF THE GENERAL OBLIGATIONS LAW ("PLAIN LANGUAGE").

RESIDENTIAL CONTRACT OF SALE
THIS IS A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD,
WE RECOMMEND ALL PARTIES TO THE CONTRACT CONSULT AN ATTORNEY BEFORE
SIGNING.

NOTE: FIRE AND CASUALTY LOSSES AND CONDEMNATION

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

Contract of Sale made as of 12/21, 2017

BETWEEN MFB PROPERTIES LLC

Address: 3 Fernwood Drive, Greenwood Lake, New York 10925

Social Security Number/Fed. I. D. No(s):

hereinafter called "Seller" and

SAUL BRANDEL and ARNA BRANDEL

Address: 197 Caribe Isle, Novato, CA 94949

Social Security Number/Fed. I. D. No(s):

hereinafter called "Purchaser."

The parties hereby agree as follows:

1. **Premises.** Seller shall sell and convey and Purchaser shall purchase the property, together with all buildings and improvements thereon (collectively the "Premises"), more fully described on a separate page marked "Schedule A," annexed hereto and made a part hereof and also known as:

Street Address: 7 Lucy Lane, Town of Monroe, New York

Tax Map Designation: Section 6, Block 1, Lot 5.2

Together with Seller's ownership and rights, if any, to land lying in the bed of any street or highway, opened or proposed, adjoining the Premises to the center line thereof, including any right of Seller to any unpaid award by reason of any taking by condemnation and/or for any damage to the Premises by reason of change of grade of any street or highway. Seller shall deliver at no additional cost to Purchaser, at Closing (as hereinafter defined), or thereafter, on demand, any documents that Purchaser may reasonably require for the conveyance of such title and the assignment and collection of such award or damages.

2. **Personal Property.** This sale also includes all fixtures and articles of personal property now attached or appurtenant to the Premises, unless specifically excluded below. Seller represents and warrants that at Closing they will be paid for and owned by Seller, free and clear of all liens and encumbrances, except any existing mortgage to which this sale may be subject. They include, but are not limited to:

Air Conditioning Equipment and Installations
Awnings
Bathroom and Kitchen Cabinets
Clothes Dryer
Dishwasher
~~Door Mirrors~~
Fencing
Flagpole
Freezer
Garbage Disposal Unit
Heating/Lighting/Cooking Fixtures
Mail Box
Mantels
~~Outdoor Statuary~~
Oven
Plumbing

Pumps
Range
Refrigerator
Screens
Shades
Shrubbery
Storm Doors
Storm Windows
Switch Plates and Door Hardware
Television Aerials
Tool Shed
Venetian Blinds
Wall to Wall Carpeting
Washing Machine
Weather Vane
Window Boxes
Window Treatments

if same are presently located on premises,

and built-ins not excluded below (*strike out inapplicable items*),

Excluded from this sale are furniture and household furnishings and

3. Purchase Price. The purchase price is **\$ 750,000.00**
payable as follows:

(a) on the signing of this contract, by Purchaser's check payable to the Escrowee (as hereinafter defined), subject to collection, the receipt of which is hereby acknowledged, to be held in escrow pursuant to paragraph 6 of this contract (the "Downpayment"); **\$ 10,000.00**

(b) by allowance for the principal amount unpaid on the existing mortgage on the date hereof, payment of which Purchaser shall assume by joinder in the deed:

(c) by a purchase money note and mortgage from Purchaser to Seller:

(d) balance at Closing in accordance with paragraph 7: **\$ 740,000.00**

4. Existing Mortgage. Intentionally Omitted.

5. Purchase Money Mortgage. Intentionally Omitted.

6. Downpayment in Escrow. (a) Seller's attorney ("Escrowee") shall hold the Downpayment for Seller's account in escrow in a segregated bank account at Sterling National Bank, Stage & Nathans, I.O.L.A. account #931741 until Closing or sooner termination of this contract and shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall (*not*) (*Delete if inapplicable*) hold the Downpayment in an interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason

Closing does not occur and either party gives Notice (as defined in paragraph 25) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within 10 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this contract or a final, nonappealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the interest thereon with the clerk of a court in the county in which the Premises are located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

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

(c) Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from acting upon the advice of such counsel.

(d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this contract.

(e) Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of the Downpayment or any other dispute between the parties whether or not Escrowee is in possession of the Downpayment and continues to act as Escrowee.

7. Acceptable Funds. All money payable under this contract, unless otherwise specified, shall be paid by:

(a) Cash, but not over \$1,000.00;

(b) Good certified check of Purchaser drawn on or official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York, unendorsed and payable to the order of Seller; or as Seller may otherwise direct upon not less than 3 business days notice (by telephone or otherwise) to Purchaser;

(c) As to money other than the purchase price payable to Seller at Closing, uncertified check of Purchaser up to the amount of \$1,000.00; and

(d) As otherwise agreed to in writing by Seller or Seller's attorney.

8. Mortgage Contingency. Intentionally Omitted.

9. Permitted Exceptions. The Premises are sold and shall be conveyed subject to:

(a) Zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the property or their use;

(b) Consents for the erection of any structures on, under or above any streets on which the Premises abut;

(c) Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway;

(d) Real estate taxes that are a lien, but are not yet due and payable; and

(e) The other matters, if any, including a survey exception, set forth in a Rider attached.

10. Governmental Violations and Orders. (a) Seller shall comply with all notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued as of the date of closing by any governmental

department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Premises. The Premises shall be conveyed free of them at Closing. Seller shall furnish Purchaser with any authorizations necessary to make the searches that could disclose these matters.

~~(b) (Delete if inapplicable) All obligations affecting the Premises pursuant to the Administrative Code of the City of New York incurred prior to Closing and payable in money shall be discharged by Seller at or prior to Closing.~~

11. Seller's Representations. (a) Seller represents and warrants to Purchaser that:

- (i) The Premises abut or have a right of access to a public road;
- (ii) Seller is the sole owner of the Premises and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this contract;
- (iii) Seller is not a "foreign person," as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code ("IRC") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA");
- (iv) The Premises are not affected by any exemptions or abatements of taxes **except STAR exemption**; and
- (v) Seller has been known by no other name for the past ten years, except

(b) Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at Closing.

(c) Except as otherwise expressly set forth in this contract, none of Seller's covenants, representations, warranties or other obligations contained in this contract shall survive Closing.

12. Condition of Property. Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Premises and of all other property included in this sale, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, state of repair, use, cost of operation or any other matter related to the Premises or the other property included in the sale, given or made by Seller or its representatives, and shall accept the same "as is" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of closing (except as otherwise set forth in paragraph 16(f)), without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract. Purchaser and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises before Closing.

13. Insurable Title. Seller shall give and Purchaser shall accept such title as any reputable title company shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the matters provided for in this contract.

14. Closing, Deed and Title. (a) "Closing" means the settlement of the obligations of Seller and Purchaser to each other under this contract, including the payment of the purchase price to Seller, and the delivery to Purchaser of a Bargain & Sale With Covenant Against Grantor's Acts deed in proper statutory short form for record, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Premises, free of all encumbrances, except as otherwise herein stated. The deed shall contain a covenant by Seller as required by subd. 5 of Section 13 of the Lien Law.

(b) If Seller is a corporation, it shall deliver to Purchaser at the time of Closing (i) a resolution of its Board of Directors authorizing the sale and delivery of the deed, and (ii) a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and setting forth facts showing that the transfer is in conformity with the requirements of Section 909 of the Business Corporation Law. The deed in such case shall contain a recital sufficient to establish compliance with that Section.

15. Closing Date and Place. Closing shall take place at the office of Stage & Nathans, L.L.P., on or about January 15, 2018 or, upon reasonable notice (by telephone or otherwise) by Purchaser, at the office of Purchaser's lender.

16. Conditions to Closing. This contract and Purchaser's obligation to purchase the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent:

(a) The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this contract.

(b) The delivery by Seller to Purchaser of a valid and subsisting Certificate of Occupancy or other required certificate of compliance, or evidence that none was required, covering the building(s) and all of the other improvements located on the property authorizing their use as a one family dwelling at the date of Closing.

(c) The delivery by Seller to Purchaser of a duly executed and sworn affidavit (in form prescribed by law) claiming exemption of the sale contemplated hereby, if such be the case, under Article 31-B of the Tax Law of the State of New York and the Regulations promulgated thereunder, as the same may be amended from time to time (collectively the "Gains Tax Law"); or if such sale shall not be exempt under the Gains Tax Law, Seller and Purchaser agree to comply in a timely manner with the requirements of the Gains Tax Law and, at Closing, Seller shall deliver to Purchaser (i) an official return showing no tax due, or (ii) an official return accompanied by a certified or official bank check drawn on a New York State banking institution payable to the order of the New York State Department of Taxation and Finance in the amount of the tax shown to be due thereon. Seller shall (x) pay promptly any additional tax that may become due under the Gains Tax Law, together with interest and penalties thereon, if any, which may be assessed or become due after Closing, and/or execute any other documents that may be required in respect thereof, and (y) indemnify, defend and save Purchaser harmless from and against any of the foregoing and any damage, liability, cost or expense (including reasonable attorneys' fees) which may be suffered or incurred by Purchaser by reason of the nonpayment thereof. The provisions of this subparagraph (c) shall survive Closing.

(d) The delivery by Seller to Purchaser of a certification stating that Seller is not a foreign person, which certification shall be in the form then required by FIRPTA. If Seller fails to deliver the aforesaid certification or if Purchaser is not entitled under FIRPTA to rely on such certification, Purchaser shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

(e) The delivery of the Premises and all buildings(s) and improvements comprising a part thereof in broom clean condition, vacant and free of leases or tenancies, together with keys to the Premises.

(f) All plumbing (including water supply and septic systems, if any), heating and air conditioning, if any, electrical and mechanical systems, equipment and machinery in the buildings(s) located on the property and all appliances which are included in this sale being in working order as of the date of Closing.

(g) If the Premises are a one or two family house, delivery by the parties at Closing of affidavits in compliance with state and local law requirements to the effect that there is installed in the Premises a smoke detecting alarm device or devices.

(h) The delivery by the parties of any other affidavits required as a condition of recording the deed.

17. Deed Transfer and Recording Taxes. At Closing, certified or official bank checks payable to the order of the appropriate State, City or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the deed or mortgage, if any, shall be delivered by the party required by law or by this contract to pay such transfer and/or recording tax, together with any required tax returns duly executed and sworn to, and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties thereon shall survive Closing.

Seller to pay New York State transfer tax.

18. Apportionments and Other Adjustments; Water Meter and Installment Assessments. (a) To the extent

applicable, the following shall be apportioned as of midnight of the day before the day of Closing:

(i) taxes, water charges and sewer rents, on the basis of the fiscal period for which assessed; (ii) fuel; (iii) interest on the existing mortgage; (iv) premiums on existing transferable insurance policies and renewals of those expiring prior to Closing; (v) vault charges; (vi) rents as and when collected.

(b) If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation.

(c) If there is a water meter on the Premises, Seller shall furnish a reading to a date not more than 30 days before Closing and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading.

(d) **If at the time of closing the premises are affected by an assessment which is or may become payable in installments, then, for the purposes of this contract, only the unpaid installments which are then due shall be considered due and are to be paid by seller at the closing. All subsequent installments at the time of closing shall be the obligation of purchaser.**

(e) Any errors or omissions in computing apportionments or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.

19. Allowance for Unpaid Taxes, etc. Seller has the option to credit Purchaser as an adjustment to the purchase price with the amount of any unpaid taxes, assessments, water charges and sewer rents, together with any interest and penalties thereon to a date not less than five business days after Closing, provided that official bills therefor computed to said date are produced at Closing.

20. Use of Purchase Price to Remove Encumbrances. If at Closing there are other liens or encumbrances that Seller is obligated to pay or discharge, Seller may use any portion of the cash balance of the purchase price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient moneys with the title insurance company employed by Purchaser acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Purchaser's title clear of the matters or insure against their enforcement out of the Premises and will insure Purchaser's Institutional Lender clear of such matters. Upon notice (by telephone or otherwise), given not less than 3 business days before Closing, Purchaser shall provide separate certified or official bank checks as requested to assist in clearing up these matters.

21. Title Examination; Seller's Inability to Convey; Limitations of Liability. (a) Purchaser shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this contract or, if this contract is subject to the mortgage contingency set forth in paragraph 8, after a mortgage commitment has been accepted by Purchaser. Purchaser shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof.

(b)(i) If at the date of Closing Seller is unable to transfer title to Purchaser in accordance with this contract, or Purchaser has other valid grounds for refusing to close, whether by reason of liens, encumbrances or other objections to title or otherwise (herein collectively called "Defects"), other than those subject to which Purchaser is obligated to accept title hereunder or which Purchaser may have waived and other than those which Seller has herein expressly agreed to remove, remedy or discharge and if Purchaser shall be unwilling to waive the same and to close title without abatement of the purchase price, then, except as hereinafter set forth, Seller shall have the right, at Seller's sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge or comply with such Defects or to cancel this contract; (ii) if Seller elects to take action to remove, remedy or comply with such Defects, Seller shall be entitled from time to time, upon Notice to Purchaser, to adjourn the date for Closing hereunder for a period or periods not exceeding 60 days in the aggregate (but not extending beyond the date upon which Purchaser's mortgage commitment, if any, shall expire), and the date for Closing shall be adjourned to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded

in removing, remedying or complying with such Defects at the expiration of such adjournment(s), and if Purchaser shall still be unwilling to waive the same and to close title without abatement of the purchase price, then either party may cancel this contract by Notice to the other given within 10 days after such adjourned date; (iii) notwithstanding the foregoing, the existing mortgage (unless this sale is subject to the same) and any matter created by Seller after the date hereof shall be released, discharged or otherwise cured by Seller at or prior to Closing.

(c) If this contract is cancelled pursuant to its terms, other than as a result of Purchaser's default, this contract shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise, except that: (i) Seller shall promptly refund or cause the Escrowee to refund the Downpayment to Purchaser and, unless cancelled as a result of Purchaser's default or pursuant to paragraph 8, to reimburse Purchaser for the net cost of examination of title, including any appropriate additional charges related thereto, and the net cost, if actually paid or incurred by Purchaser, for updating the existing survey of the Premises or of a new survey, and (ii) the obligations under paragraph 27 shall survive the termination of this contract.

22. Affidavit as to Judgments, Bankruptcies, etc. If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of Seller, Seller shall deliver an affidavit at Closing showing that they are not against Seller.

23. Defaults and Remedies. (a) If Purchaser defaults hereunder, Seller's sole remedy shall be to receive and retain the Downpayment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and that the Downpayment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty.

(b) If Seller defaults hereunder, Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including, but not limited to, specific performance.

24. Purchaser's Lien. All money paid on account of this contract, and the reasonable expenses of examination of title to the Premises and of any survey and survey inspection charges, are hereby made liens on the Premises, but such liens shall not continue after default by Purchaser under this contract.

25. Notices. Any notice or other communication ("Notice") shall be in writing and either (a) sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by registered or certified mail, postage prepaid, or

(b) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this contract for the attorney for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant to this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any notice to Escrowee shall be deemed given only upon receipt by Escrowee and each Notice delivered in person or by overnight courier shall be deemed given when delivered.

26. No Assignment. This contract may not be assigned by Purchaser without the prior written consent of Seller in each instance and any purported assignment(s) made without such consent shall be void.

27. Broker. Seller and Purchaser each represents and warrants to the other that it has not dealt with any real estate broker in connection with this sale other than **Prime Partner Realty, Inc. and Werner Realty** ("Broker") and Seller shall pay Broker any commission earned pursuant to a separate agreement between Seller and Broker. Seller and Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorneys' fees, arising out of the breach on their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur, the termination of this contract.

28. Miscellaneous. (a) All prior understandings, agreements, representations and warranties, oral or written,

between Seller and Purchaser are merged in this contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract.

(b) Neither this contract nor any provision thereof may be waived, changed or cancelled except in writing. This contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this contract.

(c) Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this contract may require it.

(d) The captions in this contract are for convenience of reference only and in no way define, limit or describe the scope of this contract and shall not be considered in the interpretation of this contract or any provision hereof.

(e) This contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.

(f) Seller and Purchaser shall comply with IRC reporting requirements, if applicable. This subparagraph shall survive Closing.

(g) Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this contract. This subparagraph shall survive Closing.

(h) This contract is intended for the exclusive benefit of the parties hereto and, except as otherwise expressly provided herein, shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

IN WITNESS WHEREOF, this contract has been duly executed by the parties hereto.


Matthew Busby
MFB Properties LLC, Seller


Saul Brandel, Purchaser


Arna Brandel, Purchaser

Attorney for Seller:

William Nathans, Esq.
Stage & Nathans, LLP
Address: 23 West Street
Warwick, NY 10990

Attorney for Purchaser:

John M. Barbarula, Esq.
Address: 1242 Route 23 North
Butler, New Jersey 07405

Tel.: (845) 986-1136 Fax: (845) 986-8478 Tel.: (973) 492-1190

Receipt of the Downpayment is acknowledged and the undersigned agrees to act in accordance with the provisions of paragraph 6 above.

Escrowee

Contract of Sale

PREMISES

Title No.

MFB Properties LLC

TO

Brandel

Section 6

Block 1

Lot 5.2

County or Town of **Monroe**

Street Number Address **7 Lucy Lane**

EPA AND HUD Lead Paint Regulations: Owners of pre-1978 housing must disclose known lead-based paint hazards to purchasers.

**RIDER TO CONTRACT OF SALE BETWEEN MFB PROPERTIES LLC, SELLER and SAUL
BRANDEL and ARNA BRANDEL, PURCHASERS**

THE TERMS OF THIS RIDER SHALL CONTROL IF INCONSISTENT WITH THE MAIN
AGREEMENT.

LEAD PAINT DISCLOSURE

29. (A) This contract is contingent upon a risk assessment or inspection of the property for the presence of lead based paint and/or lead based paint hazards at the Purchaser's expense until 9:00 P.M. on the tenth calendar day after the date of this contract (intact lead based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Purchaser (or Purchaser's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option within ten (10) days after delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter offer, the Purchaser shall have five (5) days to respond to the counter offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.

(B) Seller has no knowledge; records or reports of lead based paint or lead based paint hazards in the dwelling.

CONDITION OF PREMISES

30. The premises are sold in an "as is" physical condition except for the representations made by Seller in paragraph 16(f) and the following representations, which shall not survive delivery of the deed hereunder:

(a) that the roof is and at the time of closing of title will be free of leaks.

(b) that the premises are serviced by municipal water and sewer.

(c) that the basement (if any) is and at the time of closing of title will be free of leaks, excluding condensation.

(d) that the premises front and access onto a public road or in the alternative that there exists a recorded use and maintenance agreement for a private road benefiting such premises.

FLOOD ZONE

31. Purchaser shall have fifteen (15) days from the date hereof to cancel this agreement if it is determined that any part of the premises lie in a designated flood area. Upon such cancellation Purchaser shall be entitled to a refund of the down payment and neither party shall have any further rights against the other. This contingency shall be deemed waived unless Purchaser notifies Seller in writing by the aforesaid date of such cancellation.

PRE-CLOSING INSPECTION

32. Seller shall provide the Purchaser with access to the subject premises at any time within forty-eight (48) hours prior to closing of title in order to ascertain the condition of the premises, at which time electricity and gas (if applicable) will be available and water service and heating systems will be operative.

ADDITIONAL "SUBJECT TO" PROVISIONS

33. In addition to the "Subject To" provisions contained in paragraph 9 of the main agreement, the premises herein are to be conveyed subject to:

- (a) Any specific encumbrances referred to in Schedule "A".
- (b) That state of facts an accurate survey would reveal provided same does not render title unmarketable.
- (c) That state of facts a personal inspection of the premises would reveal.
- (d) Covenants, easements, restrictions and agreements of record, provided same do not interfere with the present use of the premises and are not violated by existing improvements.

CONTRACT SIGNING DATE

34. This contract and the offer to sell contained herein are contingent upon its being signed by the Purchaser and received in the office of Seller's attorney no later than December 18, 2017.

In the event the contract has not been executed and received by said date, then this contract and the offer to sell shall be voidable at sellers' option, and Seller shall be free to relist its property for sale.

This instrument shall not be considered binding upon the Seller until signed by him and delivered to Purchaser.

OBJECTIONS TO TITLE

35. The Purchaser shall deliver to the Seller's attorney at least ten (10) days prior to closing a

list of such objections or violations as may appear on any title examination the Purchaser may obtain.

Any unpaid franchise taxes of any corporation in the chain of title or unpaid estate taxes of any person in the chain of title shall not constitute an objection to title, provided Purchaser's title company agrees to issue to Purchaser a policy of title insurance insuring against the collection thereof out of the premises.

PLACE OF CLOSING

36. In the event closing of title occurs at a location outside of Orange or Rockland Counties then the Purchaser shall pay Seller to offset Seller's additional attorney's fees, the additional sum of \$250.00 per hour in excess of two hours driving time. Closings in the five boroughs of New York City or Long Island shall not be scheduled without express written consent of seller's attorney.

PICK UP FEE

37. In the event the purchaser's title company charges the Seller a "pick up fee" for the satisfaction of any existing lien, or in excess of the charge of the County Clerk in which the property is located for the recording of the satisfaction of mortgage, the Seller shall not be responsible to pay more than the \$150.00 for a pick up fee, nor more than the County Clerk's fee for recording. Purchaser agrees to pay any portion of the pick up fee in excess of \$150.00 and recording charges in excess of the County Clerk's charges.

PERSONAL PROPERTY

38. Notwithstanding anything to the contrary contained in the Contract of Sale it is agreed that no part of the purchase price or consideration to be paid is for the personal property set forth in the contract of sale.

PROPERTY CONDITION DISCLOSURE STATEMENT

39. The parties hereto acknowledge that the Property Condition Disclosure Act (New York Real Property Law Article 14, hereinafter "PCDA") may be applicable to this transaction. The PCDA provides for potential post-closing damages. Due its recent enactment, the PCDA has not been interpreted by the courts. Seller has concluded, based upon the foregoing, that the economic risks created by the statute would be minimized by seller not providing purchaser with a Property Condition Disclosure Statement (hereinafter "PCDS"), but in lieu thereof, to grant a \$500.00 credit to purchaser at closing of title, as provided in the PCDA.

After consultation with an attorney of purchaser's choice, purchaser acknowledges that purchaser is accepting the \$500.00 credit in lieu of seller providing the PCDS and purchaser hereby affirmatively waives the requirement for seller to produce a PCDS. In the event seller has provided purchaser or the real estate agent with the PCDS, purchaser acknowledges purchaser will not rely upon the PCDA and the PCDS will not be the basis for a claim by purchaser. This provision shall survive delivery of the deed.

NOTICE OF VIOLATIONS

40. Supplementing the provisions of Paragraph 10 of this Contract, if the reasonable cost of compliance with or the removal of any notes or notices of violation of law or municipal ordinances, orders, or requirements, noted in or issued by the Departments of Buildings, fire, Labor, Health, or other State of Municipal Department having jurisdiction, against or affecting the Premises at the date hereof shall exceed \$1,500.00 as estimated by Seller's contractor (which estimate shall be conclusive on the parties) or if such compliance shall be affected by limitation orders of any federal agency, any law, regulation, or requirement of any public authority, in such manner that the opinion of Seller, the same cannot be complied with within a reasonable time and with reasonable certainty, Seller shall have the right and option to cancel this Contract, and in such case Seller shall cause the Down payment to be paid to Purchaser, and upon such payment, all further claims and obligations between the parties hereto, by reason of this contract, shall be released and discharged, and this Contract shall terminate and be of no further force or effect. If Seller elects to or is obligated to remove, remedy, discharge or comply with any such Notices, Seller shall be entitled, from time to time to adjourn the Closing hereunder for a period or periods not exceeding 60 days in the aggregate. Seller, if it elects to cancel this Contract, shall do so by giving Notice of such election to Purchaser not later than ten (10) days after Seller's receipt of the aforesaid Notice by Purchaser.

RISK OF LOSS

41. Notwithstanding the liability for the risk of loss or damage of premises due to fire, the Seller agrees that should the premises be materially damaged in any way by fire or elements or vandalism, either party shall have the option of proceeding with this contract or declaring same null and void and the sole liability of the Seller in the latter case will be the return of the sums paid on account hereof to the Purchasers. Materially damages to mean in excess of \$20,000.00. Said restoration not to extend beyond mortgage or rate lock.

DEATH OF PURCHASER OR SELLER

42. In the event of the death, disability or catastrophic illness of either purchaser or seller prior to the consummation of this contract and the delivery of the deed hereunder, the legal representatives of the purchaser or seller hereby have the option of proceeding with this contract or declaring the same null and void, and the sole liability of the seller in the latter case will be the return of all money paid in furtherance of this contract to the legal representatives of the purchaser.

CLOSING DATE

43. Both Seller and Purchaser agree that the closing date indicated herein is an "on or about" closing dated. Both parties understand this is a target date and neither party is responsible for the other's cost(s) incurred for not closing on that date. This Contract does not expire unless by mutual agreement or a law date is established. A declaration of "Time is of the Essence" by either party must give reasonable notice and the law date declared must be at least thirty (30) days after the on or about closing date.

COUNTERPARTS AND ELECTRONIC SIGNATURES

44. This Agreement and any Ancillary Agreements may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Agreement or any Ancillary Agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such Ancillary Agreement for all purposes.

BANKRUPTCY COURT APPROVAL

45. This contract is subject to the approval of the Bankruptcy Court prior to closing. If not approved by the Court the contract shall be cancelled and the down payment refunded to the Purchaser and neither party shall have any further rights against the other.

MFB PROPERTIES LLC

BY:

Martin Buckley
Saul Brandel

Saul Brandel

Arna Brandel

~~Arna~~ Brandel

Arna

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

MFB PROPERTIES LLC,

Debtor.

EIN 81-1266188
-----x

Chapter 11

Case No. 17-36876 (cgm)

ORDER AUTHORIZING SALE
PURSUANT TO 11 U.S.C. §§ 363(b)(1) & 363(f)(3)

The motion of debtor MFB Properties LLC (the “Debtor”) for the entry of an order authorizing the sale of certain real property having come on for a hearing before this Court on January 30, 2018, notice of the Motion being sufficient, and counsel for the Debtor having appeared at the hearing and been heard in support of the Motion, and upon the record of the hearing, after due deliberation and sufficient cause appearing therefor, it is, pursuant to Bankruptcy Code §§ 1303, 363(b)(1), 363(f)(3) and Rules 2002(a)(2), 2002(c)(1) and 6004 of the Federal Rules of Bankruptcy Procedure,

ORDERED, that the Debtor be and hereby is authorized to sell all of its right, title and interest in and to the real property located at 7 Lucy Lane, Town of Monroe, County of Orange, State of New York, designated on the Town tax map as Section 6, Block 1, Lot 5.2 (the “Property), and it is further

ORDERED, that the Debtor shall convey all right, title and interest in the Property free and clear of liens, liens to attach to proceeds, and is authorized to pay at closing the liens, encumbrances, mortgages, property taxes and miscellaneous closing costs as may be necessary and appropriate to transfer title, payment at closing being subject only to any objection(s), which shall be determined on application to the Court.