

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>IN RE:</b>	) <b>Case No.</b> 16-70153 JAD
Steven E. Leydig, Sr. and	)
Betty D. Leydig,	) <b>Chapter</b> 11
<b>Debtors,</b>	)
Steven E. Leydig, Sr. and	) <b>Hearing Date:</b> 11/17/17 @ 10:00 a.m.
Betty D. Leydig,	)
<b>Movants,</b>	) <b>Response Due:</b> 10/20/17
<b>vs.</b>	)
First United Bank and Trust; U.S. Bank,	)
N.A., On Deck Capital, Inc.; Butler Capital	)
Corporation; Chessie Federal Credit	)
Union, CT Corporation System and	)
Madison Funding, and	)
Avirett Trust,	)
<b>Respondents.</b>	) <b>Document No.</b>

<b>IN RE:</b>	) <b>Case No.</b> 16-70154 JAD
Diamond Shine, Inc.,	)
<b>Debtor,</b>	) <b>Chapter</b> 11
Diamond Shine, Inc.,	)
<b>Movant,</b>	) <b>Hearing Date:</b> 11/17/17 @ 10:00 a.m.
<b>vs.</b>	)
First United Bank and Trust; U.S. Bank,	) <b>Response Due:</b> 10/20/17
N.A., On Deck Capital, Inc.; Butler Capital	)
Corporation; Chessie Federal Credit	)
Union, CT Corporation System and	)
Madison Funding and	)
Avirett Trust,	)
<b>Respondents.</b>	) <b>Document No.</b>

**MOTION TO ASSUME AND ASSIGN REAL PROPERTY LEASE AND TO SELL  
PERSONAL PROPERTY FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES  
AND CLAIMS (INDUSTRIAL BOULEVARD)**

**AND NOW**, come the Debtors, Steven E. Leydig, Sr. and Betty D. Leydig and Diamond Shine, Inc., by and through their attorneys, Donald R. Calaiaro and Calaiaro Valencik, and presents the following:

1. Steven E. Leydig, Sr. and Betty D. Leydig filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on March 3, 2016.

2. Diamond Shine, Inc. filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on March 3, 2016.

3. Jurisdiction of the Court is based on 28 U.S.C. §1334 and 11 U.S.C. §1107.

4. Venue is proper in this District.

5. This is a core proceeding as defined by 28 U.S.C. §157(b) (N).

6. The Movants are Steven E. Leydig, Sr. and Betty D. Leydig, and Diamond Shine, Inc., and they are the respective Debtors-in-Possession in the above Chapter 11 bankruptcy cases. The Debtors have standing and the right to bring this motion pursuant to 11 U.S.C. §363.

7. Among the assets of the estate is the Debtors' interest as the lessee of a leasehold interest (the "Leasehold Interest") in real estate located at Industrial Boulevard, Cumberland, Allegany County, Maryland. Said real estate is improved by a commercial building currently used as a car wash.

8. The Debtor, Diamond Shine, Inc. also owns personal property and equipment used to operate the car wash.

9. The Debtors have agreed, with the consent of the Lessor of the Leasehold Interest, the Avirett Trust, to assume and assign the Debtors' interest in the Leasehold Interest, and to sell all the personal property located at Industrial Boulevard, which is used as a car wash, to the Buyer, L.C. Nixon Development Company, LLC, 18209 Oldtown Road, SE, Oldtown, Maryland 21555 for \$210,000.00. The executed agreement for assumption and assignment of the Leasehold Interest and the sale of the personalty (the "Sales Agreement") is attached hereto and marked as **Exhibit "A"**. The

sale is subject to a financing contingency. The Buyer paid a good faith hand money deposit of \$21,000.00. The hand money was deposited in the IOLTA account of Donald R. Calaiaro, Esquire.

10. This sale is subject to the approval of the Bankruptcy Court.

11. The sale is in the best interest of all parties since it will help the Debtors to fund their Chapter 11 Plan.

12. The lien creditors, named as Respondents herein, in the order of their recorded priority, are as follows:

(A) First United Bank and Trust ("First United") holds two allowed claims against the Debtors in the allowed amounts of \$1,601,734.86 and \$388,079.76, respectively; which said claims are secured by the lien of a Deed of Trust dated August 9, 2004 against the property proposed to be sold as recorded among the Land Records of Allegany County, Maryland at Book 1079, Page 001; and are further secured by the liens of two Financing Statements filed among the Financing Records of the Maryland State Department of Assessments and Taxation ("SDAT") on August 17, 2004 (and duly continued in effect thereafter), as well as a third Financing Statement recorded among said records on April 24, 2009 (and duly continued in effect thereafter);

(B) U.S. Bank, N.A. (U.S. Bank") claims a security interest in personal property of the Debtor by virtue of a Financing Statement filed among the said Financing Records of SDAT on November 5, 2015;

- (C) Butler Capital Corporation claims a security interest in personal property of the Debtor by virtue of two Financing Statements recorded among the SDAT Financing Records on November 2, 2007 and November 6, 2008, respectively;
- (D) Chessie Federal Credit Union claims a security interest in personal property of the Debtor by virtue of a Financing Statement recorded among the SDAT Financing Records on November 5, 2012;
- (E) On Deck Capital, Inc. claims a security interest in personal property of the Debtor by virtue of a Financing Statement recorded among the SDAT Financing Records on October 9, 2015 in the name of ASSN Company; and
- (F) CT Corporation System, as Representative claims a security interest in personal property of the Debtor by virtue of a Financing Statement recorded among the SDAT Financing Records on December 17, 2015.
- (G) Avirett Trust is the lessor of the land lease. The Buyer will assume the land lease and cure it at time of closing.

13. In addition to the above-claimed recorded liens, the Respondent Madison Funding claims a security interest in personal property of the Debtor pursuant to a 36-month term commercial lease/purchase agreement.

14. Under the proposed sale, the Debtor will assume the Avirett Trust lease and cure the arrears at closing. The Lease will be assigned to the Buyer.

15. The sale is an "As-Is" and "Where-Is" sale.

16. This sale must be a judicial sale, free and clear of all liens and encumbrances and claims against the Debtors.

17. In order to convey good title, it will be necessary that all these interests, mortgages, claims, and encumbrances be divested as liens against the real property and shifted to the funds to be realized from the sale.

18. The Debtors reserve the right to challenge the validity of any lien or claim at the time of distribution if there are net proceeds of sale in excess of that aggregate sum required to pay in full the first and prior secured claims of First United; which said secured lien claims are acknowledged by the Debtor to be valid and enforceable.

19. This sale is to “bona fide” purchasers in accordance with the holding of **In re: Abbots Dairies of Pennsylvania, Inc., 788 F.2d 143 C.A.3 (Pa) 1986. The purchaser is the daughter of the Debtors.**

20. The Debtors will serve all Respondents with a copy of this motion prior to a hearing on the sale. The Debtors will serve all creditors in each respective case with a copy of this motion prior to a hearing on the sale.

21. The Debtors will have complied with all rules regarding notice and advertising prior to a hearing on the sale.

22. The Estate will accept higher and better offers at the time of sale upon terms and conditions not less advantageous to the Debtors and the Estates than those included in the Sales Agreement. Any bidder must pre-qualify prior to the hearing on the sale<sup>1</sup> by: (a) submission of an executed agreement of sale in substantially that same form as the Sales Agreement; (b) demonstrating to Debtors’ counsel the ability of said

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<sup>1</sup> All information regarding pre-qualification of prospective bidders will be shared with counsel for First United Bank and Trust but will not be made public.

bidder to close within ninety (90) days following Court approval of the proposed sale; and (c) delivering to Debtors' counsel a non-refundable deposit of \$21,000.00 in immediately available funds. The Debtors request that the Court allow higher bids in \$5,000.00 increments.

23. First United Bank and Trust shall be permitted to credit bid upon the proposed sale provided that if such credit bid is the highest and best bid approved by the Court, said First United shall be required to pay all costs associated with closing including adjusted real estate taxes.

**WHEREFORE**, the Movants respectfully request an Order of Court as follows:

(A) The liens and encumbrances and or claims of all the Respondents are divested. The Buyer shall take pursuant to this sale free and clear of all liens and encumbrances.

(B) The Court authorizes the assumption and assignment of the Leasehold Interest and the settlement and transfer of the personal property under a sale.

(C) The Court otherwise approves the settlement and transfer in accordance with the motion and agreement.

(D) The settlement officer is authorized to pay the following:

1. All normal and ordinary settlement charges;
2. Pay Calaiaro Valencik the fee of \$ 3,000.00 for legal fees related to this sale;
3. Pay Calaiaro Valencik for reimbursement for all for all costs of mailing and copying \$\_\_\_\_\_ and advertising expense

\$\_\_\_\_\_ or at total of \$\_\_\_\_\_ related to this sale;

4. Pay any unpaid real estate or other taxes constituting a lien against the property to be sold;
5. Pay the amount necessary to pay all unpaid U.S. Trustee fees;
6. Pay any arrears to the land lease to Avirett Trust; and
7. Pay the balance to First United;

**WHEREFORE**, the Debtors request this Court approve the assumption and assignment of the Leasehold Interest and the sale of all the car wash equipment located thereat, to the Buyer, L.C. Nixon Development Company, LLC, for \$210,000.00, or any higher bidder.

**Respectfully submitted,**

**DATE:** October 3, 2017

**BY:** /s/ Donald R. Calaiaro  
**Donald R. Calaiaro, Esquire, PA I.D. #27538**  
[dcalaiaro@c-vlaw.com](mailto:dcalaiaro@c-vlaw.com)

**BY:** /s/ David Z. Valencik  
**David Z. Valencik, Esquire, PA I.D. #308361**  
[dvalencik@c-vlaw.com](mailto:dvalencik@c-vlaw.com)  
**CALAIARO VALENCIK**  
**428 Forbes Avenue, Suite 900**  
**Pittsburgh, PA 15219-1621**  
**(412) 232-0930**

**Agreement for Assumption and Assignment of Lease  
and Sale of Personalty**

**(Industrial Boulevard Carwash)**

This Agreement for Assumption and Assignment of Lease and Sale of Personalty (this "Agreement") is made by and between Diamond Shine, Inc., Debtor-in-Possession ("Debtor") in Case No. 16-70154-JAD (Chapter 11) ("Bankruptcy Proceeding") in the United States Bankruptcy Court for the Western District of Pennsylvania (the "Court") and the undersigned buyer ("Buyer").

WHEREAS, Debtor is authorized pursuant to 11 U.S.C. § 365 to assume and sell and assign the leasehold interest (the "Leasehold Interest") held by it in all of that real property and improvements described in the property description (the "Realty Description") attached as Exhibit A (the "Realty") and further is authorized pursuant to 11 U.S.C. § 363 to sell all personal property (the "Personalty") used in the operation of the car wash facilities located on the Realty (the Leasehold Interest and the Personalty being hereinafter collectively referred to as the "Property"); all subject to approval of the Court pursuant to the above cited and related provisions of the Bankruptcy Code (the "Code") and the Bankruptcy Rules of Procedure (the "Rules"); and

WHEREAS, the Debtor desires to sell and assign the Leasehold Interest and to sell the Personalty for that valuable consideration herein provided, and Buyer desires to pay that valuable consideration herein provided to purchase the assignment of the Lease and to purchase the Personalty, all subject to approval by the Court.

NOW, THEREFORE, in consideration of the premises and promises herein contained, the parties agree as follows:

I. Purchase and Sale.

a. Assignment and Sale of Property; Purchase Price. Debtor agrees to assume, sell and assign the Leasehold Interest with respect to the Realty, and further agrees to sell and convey the Personalty, and Buyer agrees to purchase and accept the assignment of the Leasehold Interest with respect to the Realty and to purchase the Personalty, subject to the terms and conditions set forth herein. The aggregate purchase price ("Purchase Price") for the assignment of the Leasehold Interest and the purchase of the Personalty is

\$ 210,000.00.

b. Deposit. A deposit of not less than ten percent (10%) of the Purchase Price (the "Deposit") is due when Buyer signs and submits this Agreement and is payable in immediately available funds payable to "Calaiaro Valencik" and shall be delivered to the law offices of Calaiaro Valencik, 428 Forbes Ave., Suite 900, Pittsburgh, PA 15219. The Deposit shall be held in escrow at said law firm in a non-interest bearing attorneys' escrow account.

c. Balance of Purchase Price. The balance of the Purchase Price, exclusive of closing adjustments and costs (the "Balance"), is due upon the closing of the transaction contemplated hereunder (the "Closing") and is payable in immediately available funds and shall be delivered to Debtor.



d. Default in Payment. If payment of the Purchase Price is not made as herein required, time expressly being of the essence thereto, Buyer shall be in default, any Deposit paid will be forfeited by Buyer to Debtor, and the Property may in Debtor's sole discretion be resold at the risk and expense of the defaulting Buyer. If Debtor resells the Property, but does not resell the Property at the defaulting Buyer's risk, the Deposit shall constitute liquidated damages and Buyer shall be deemed to have agreed that the Deposit is a fair and reasonable amount to be retained by Debtor as agreed and liquidated damages in light of Debtor's removal of the Property from the market and the costs incurred by Debtor, and shall not constitute a penalty or forfeiture. Debtor is not required to accept any back-up bid nor is it obligated to negotiate with any back-up party. If Debtor shall default under this Agreement prior to Closing or refuse or fail to convey the Property, the successful bidder's sole remedy therefor shall be either: (i) to terminate this Agreement and have the Deposit returned; or (ii) seek specific performance of this Agreement.

2. Closing. Payment of the Purchase Price and the consummation of the transaction contemplated by this Agreement are called the "Closing." The Closing shall take place within ninety (90) days from the execution of this Agreement or sooner (the "Closing Date") at the offices of the Buyer's attorney, Jayci Shaw Duncan, Esq., 2 W. Main Street, Frostburg, MD 21532. Time is of the essence with respect to Closing.

3. Financing Contingency. The sale of the Property is contingent upon Buyer obtaining financing. If the Buyer is unable to obtain a written commitment for financing within sixty (60) days from the execution of this Agreement, then unless the Buyer has given written notice that the contingency has been waived, this Agreement shall automatically become null and void and the Deposit shall be returned to the Buyer.

4. Special Terms and Conditions. **BUYER ACKNOWLEDGES THAT IT HAS HERETOFORE CONDUCTED ANY AND ALL DUE DILIGENCE AND THAT IT IS PURCHASING THE PROPERTY "AS IS" "WHERE-IS", SUBJECT TO ANY AND ALL VIOLATION NOTICES OR REQUIREMENTS NOTED OR ISSUED BY ANY GOVERNMENTAL ENTITY AND ANY HOLDOVER OR OTHER TENANTS; THIS AGREEMENT IS NOT CONTINGENT UPON ANY INSPECTIONS OF THE PROPERTY, OF ANY LEASES PERTAINING TO THE PROPERTY, ANY LEASES BEING REJECTED OR TERMINATED UNDER APPLICABLE LAW OR OTHERWISE.**

5. Title to be Conveyed by Debtor. At Closing, the Debtor agrees to execute and deliver to the Buyer an Assignment of the Leasehold Interest owned by the Debtor under that Lease Agreement dated August 7, 1998 recorded among the Land Records of Allegany County, Maryland at Liber 734 Page 015 together with a Debtor's Bill of Sale for the Personalty; which said Assignment and Debtor's Bill of Sale shall not include either special or general warranties of title. Notwithstanding the foregoing, the Debtor agrees that the title to be conveyed to the Buyer shall be good and marketable, free and clear of liens and encumbrances, subject however, to covenants, conditions and restrictions of record or generally applicable to the Realty in that form and of that quality described and offered to be insured by Westcor Land Title Insurance Company as evidenced by its Title Insurance Commitment No. 17-121-023 dated February 28, 2017 (the "Commitment"); a copy of which is attached hereto and incorporated by reference herein as Exhibit B. Buyer hereby acknowledges receipt of a copy of the Commitment and agrees that the tender by the Debtor at Closing of title to the Leasehold Interest in the form and quality described in the Commitment shall satisfy in all respects the obligations of the Debtor to convey good and marketable title to the Leasehold Interest as contemplated herein ("Acceptable Title"). If the Debtor is unable to convey Acceptable Title to the Leasehold Interest at Closing, the Debtor shall have the sole option to: (a) adjourn closing for a period of thirty (30) days to permit the Debtor to take such action as is necessary

to permit Debtor to convey Acceptable Title; or (b) forthwith declare this Agreement null and void and of no further legal effect with any earnest monies paid hereunder to be returned to Buyer without interest, penalties or costs. If, despite the Debtor's adjournment of the Closing for thirty (30) days as above permitted, the Debtor is unable to convey Acceptable Title to the Leasehold Interest, this Agreement thereupon, by operation of law, shall be null and void and of no further legal effect with any earnest monies paid hereunder to be returned to Buyer without interest, penalties or costs.

6. Closing Costs and Prorations.

a. The cost of all recordation taxes, transfer taxes, and all other taxes, fees or charges imposed or incurred in connection with the conveyance of the Property (including any Agricultural Land Transfer Tax imposed by Maryland Tax-Property Code § 13-302; which said tax may be applicable to the conveyance of the Property) shall be paid by Buyer. Any and all other costs of settlement, including, but not limited to, fees or costs for title examination, title insurance, recording fees, notary fees and lien and judgment reports shall be paid by Buyer. Except as otherwise specifically provided in this Agreement, each party shall bear its own costs in performing its obligations under this Agreement, including, without limitation, its own attorneys' fees. The Debtor shall not be liable for the payment of any settlement or closing agent's fees including, without limitation, handling fees, notary fees, postage charges, document preparation charges, overnight or other delivery charges, and any other fees or charges (collectively, "Fees") except such Fees as are: (i) expressly disclosed to the Debtor in writing not less than 72 hours prior to Closing; and (ii) expressly agreed in writing by the Debtor prior to Closing: (A) to be paid by the Debtor; or (B) to be paid from the proceeds of Closing otherwise payable to the Debtor or for the benefit of the Debtor.

b. The following items pertaining to the Property are to be prorated and thereafter assumed by Buyer: any rent, ground rent, special assessment liens, sewer charges, and operating or utility charges actually collected, billed, or paid as of the date of Closing; real and personal property taxes; utilities; casualty and liability insurance premiums; rental, additional rental and any other charges under all leases. All pro-rations and Closing adjustments shall be made on the basis of a 365-day calendar year. All such pro-rations and adjustments shall be subject to post-Closing adjustments as necessary to reflect later relevant information not available at Closing and to correct any errors made at Closing with respect to such apportionments; the party receiving at Closing more than it was entitled to receive hereunder shall reimburse the other party hereto in the amount of such overpayment within thirty (30) days after receiving written demand therefor. The foregoing provisions of this sub-paragraph (b) expressly shall survive Closing.

7. Closing Documents and Matters.

a. Buyer's Deliveries. At the Closing: (i) Buyer shall cause the Balance to be paid to the Debtor and (ii) shall deliver or cause to be delivered the following original documents, each acknowledged and executed (as appropriate): (A) any evidence of the authority of any permitted assignee of Buyer to consummate the transaction contemplated hereby that is reasonably requested by the person conducting the Closing (the "Closing Agent"); (B) a Settlement Statement; and (C) such other documents as may reasonably be requested by the Closing Agent and which are both consistent with this Agreement and customarily executed in the State of Maryland by a Buyer to effectuate the conveyance of real property.

b. Debtor's Deliveries. At the Closing, Debtor shall deliver the following original documents, each acknowledged and executed (as appropriate): (i) a Debtor's Assignment of the Leasehold Interest and Debtor's Bill of Sale as to the Personalty so as to transfer all of the right, title and interest in and to the Property; (b) a Settlement Statement; and (c) such other documents as may

be reasonably requested by the title company and which are both consistent with this Agreement and customarily executed in the State of Maryland by an assignor of a leasehold interest to effectuate the assignment of a such leasehold interest in real property.

c. Possession. Buyer shall be entitled to possession of the Property at the conclusion of Closing subject only to the matters expressly permitted by or pursuant to this Agreement.

d. Utility Deposits and Service Agreements. Effective upon Closing, Debtor may notify the utility companies serving the Property of the assignment and sale hereunder and direct such companies to direct to Buyer all bills for services provided to the Property on and after the date of Closing. Any service contracts relating to the Property into which Debtor may have entered shall be terminated by Debtor.

8. Risk of Loss. The Property is to be held at the risk of Debtor until legal title has passed to Buyer. If, prior to the time legal title has passed to Buyer, all or a substantial part of the Property is destroyed or damaged, without fault of Buyer, then this Contract, at the option of Buyer, shall be null and void and of no further effect, and the Deposit shall be returned promptly to Buyer; or, if Debtor and Buyer so agree, the parties shall proceed to settlement and all insurance proceeds payable with respect to such destruction or damage (if any) shall be assigned by Debtor to Buyer.

9. Use of Purchase Price to Pay Encumbrances. If there is any monetary encumbrance which is capable of being reduced to a sum certain affecting the sale which Debtor is obligated to pay and discharge at Closing pursuant to this Agreement, Debtor may use any portion of the balance of the Purchase Price to discharge it. As an alternative, Debtor may deposit money with the title company in such amount as reasonably required by the title company to assure its discharge.

10. Personal Property. Except as herein expressly provided, the sale contemplated under this Contract does not include personal property, inventory, or other furnishings or equipment located on the Property, whether or not owned by Debtor. In the event that any such personal property herein is provided to be sold, Buyer agrees to accept such property in its "as-is" condition, without warranty or representation as to quantity, quality, or any other matter.

11. No Representation; Buyer's Duty to Review. IT IS UNDERSTOOD AND AGREED THAT THE DEBTOR IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS (INCLUDING, WITHOUT LIMITATION, ACCESSIBILITY FOR HANDICAPPED PERSONS), THE TRUTH, ACCURACY OR COMPLETENESS OF ANY PROPERTY DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF DEBTOR TO BUYER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, DEBTOR SHALL SELL AND TRANSFER TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, AND WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT. BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND DEBTOR IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESSED OR IMPLIED WARRANTIES, GUARANTIES,

STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, PROPERTY INFORMATION PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY THE DEBTOR OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT DEBTOR, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. BUYER REPRESENTS TO DEBTOR THAT BUYER HAS CONDUCTED SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE, OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO, ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF DEBTOR OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEBTOR AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING.

12. Broker's Commission. Any commission or fee of any type due and payable to a broker on behalf of Buyer as a result of this Agreement or related to the sale of the Property shall be paid solely by Buyer. Debtor shall have no obligation to fund or cause the funding of any commission or fee due to any broker acting on behalf of Buyer. This paragraph shall survive the Closing.

13. Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) legible facsimile transmission sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile transmission, as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended addressee by means described in clauses (a), (b) or (c) above. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Debtor: Diamond Shine, Inc.  
c/o Donald Calaiaro, Esquire  
Calaiaro Valencik  
428 Forbes Ave., Suite 900  
Pittsburgh, PA 15219

With copy to: Roger Schlossberg, Esquire  
Schlossberg Mastro & Scanlan  
18421 Henson Boulevard, Suite 201  
Hagerstown, MD 21742

If to Buyer: L.C. Nixon Development Company, LLC  
18209 Oldtown Road SE

Oldtown, MD 21555

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with a copy to:

Jayci Shaw Duncan, Esq.  
2 W. Main Street  
Frostburg, MD 21532

14. Additional Provisions.

a. This Agreement shall be governed and construed in accordance with the laws of the State of Maryland without regard to conflicts of laws principles.

b. The parties agree that neither this contract nor any memorandum thereof shall be recorded or filed in the land records of any Maryland county, and such office is instructed to refuse to accept same for recordation or filing.

15. Waiver of Jury Trial. EXCEPT AS PROHIBITED BY LAW, THE PARTIES SHALL, AND THEY HEREBY DO, EXPRESSLY WAIVE TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT, OR THE RELATIONSHIP CREATED HEREBY. With respect to any matter for which a jury trial cannot be waived, the parties agree not to assert any such claim as a counterclaim in, nor move to consolidate such claim with, any action or proceeding in which a jury trial is waived. The parties submit to the exclusive jurisdiction and venue of the Court with respect to any dispute, claim or issue arising out of this Agreement.

16. Entire Agreement. All prior understandings and agreements between Debtor and Buyer are merged in this Agreement. It completely expresses their full agreement; neither party is relying upon any statements made by anyone else that are not set forth in this Agreement.

17. Singular also means Plural. Any singular word or term herein shall also be read as in the plural whenever the sense of this Agreement may require it.

18. Gender. A reference in this Agreement to any one gender, masculine, feminine or neuter, includes the other two, unless the context requires otherwise.

19. Certain References. The term "herein", "hereof" or "hereunder" or similar terms used in this Agreement shall refer to this entire Agreement and not to the particular provision in which the term is used. Unless otherwise stated, all references herein to Paragraphs, subparagraphs or other provisions are references to Paragraphs, subparagraphs or other provisions of this Agreement.

20. No Oral Changes. This Agreement cannot be changed or any provision waived orally. ANY CHANGES OR ADDITIONAL PROVISIONS OR WAIVERS MUST BE SET FORTH IN A RIDER ATTACHED HERETO OR IN A SEPARATE WRITTEN AGREEMENT SIGNED BY THE PARTIES.

21. Date of Performance. If any date for performance hereunder falls on a Saturday, Sunday or other day which is a federal holiday or holiday under the laws of the state where the Property is located, the date for such performance shall be the next succeeding business day.

22. Severability. If any clause or provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction as against any person or under any circumstances, the remainder of this Agreement and the applicability of any such clause or provision shall not be affected thereby. All other clauses or provisions of this Agreement, not found invalid or unenforceable, shall be and remain valid and enforceable.

23. Counterparts. This Agreement may be executed in multiple counterparts all of which when taken together shall constitute an Agreement for the sale of real estate under the laws of the State of Maryland. It is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be cancelled, modified or amended only by a written instrument executed by both the Debtor and the Buyer.

24. Facsimile Execution. For the purposes of executing this Agreement, a document signed and transmitted by facsimile machine or a digital copy thereof delivered by electronic mail ("email") mail shall be treated as an original document. The signature of any party thereon shall be considered as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature or an original document. At the request of either party, any facsimile or email document shall be re-executed by both parties in original form. No party hereto may raise the use of a facsimile or email or the fact that any signature was transmitted through the use of a facsimile machine or email as a defense to the enforcement of this Agreement or any amendment executed in compliance with this paragraph. This paragraph does not supersede the requirements of ¶ 13 hereof.

25. Limitation on Liability. The Debtor shall not be responsible for any indirect, incidental, consequential, exemplary, punitive, or other special damages (including, but not limited to, loss of profits, damage to reputation or business) arising under or by reason of this Agreement or any act or omission hereunder. The Debtor shall not be liable to the Buyer if he is unable to perform its responsibilities hereunder as a result of events beyond its control.

26. Assignment. Buyer shall not assign this Agreement without the prior written consent of Debtor, such consent to be given in Debtor's sole discretion. Any purported assignment by Buyer in violation of this Agreement shall be voidable at the option of Debtor and Debtor's refusal to consent to an assignment shall not entitle Buyer to cancel this Agreement nor give rise to any claim for damages against Debtor. Any assignment by Buyer, even if consented to by Debtor, shall not act to limit, reduce or impact in any way any of Buyer's obligations to perform all of its obligations under this Agreement including, without limitation, its obligations to pay the Purchase Price.

27. Bankruptcy Court Approval and Sale Order. The parties' obligations set forth in this Agreement are expressly subject to approval by the Court ("Court Approval") pursuant to an Order (the "Sale Order") approving the sale to the Buyer. The Sale Order shall include factual findings and decretal provisions ordering and directing that: (a) the Leasehold Interest shall be sold and assigned to the Buyer free and clear of all liens, claims and encumbrances pursuant to Sections 365 and 363(f) of the Code, with all such liens, claims and encumbrances to attach to the proceeds of the sale; (b) the Buyer is purchasing the Property in "good faith" within the meaning of Section 363(m) of the Code and, as such, is entitled to the protections offered thereby; and (c) the stays provided under Rules 6004(g) and 6006(d) shall be waived to the extent necessary to permit a Closing to occur as soon as possible after entry of the Sale Order.

IN WITNESS WHEREOF, Buyer and Debtor have executed and delivered this Auction Purchase and Sale Agreement on the date below.

**BUYER:**  
**L.C. Nixon Development Company, LLC**

Leroy C. Nixon (SEAL)

Name: Leroy C. Nixon, Member

Date: \_\_\_\_\_

Address: 18209 Oldtown Road SE

Oldtown, MD 21555

Telephone: 301-722-1212

**DEBTOR:**

\_\_\_\_\_  
(SEAL)

Steven E. Leydig

Date: \_\_\_\_\_

The attached Exhibits are hereby incorporated herein by reference:

- Exhibit A - Property Description
- Exhibit B - Title Commitment

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Buyer-Sale-Contract-Industrial-Blvd-First-united-leydig-diamond-shine-industrial-blvd-contract-rs.033117-clean.062717.docx


in violation of this Agreement shall be voidable at the option of Debtor and Debtor's refusal to consent to an assignment shall not entitle Buyer to cancel this Agreement nor give rise to any claim for damages against Debtor. Any assignment by Buyer, even if consented to by Debtor, shall not act to limit, reduce or impact in any way any of Buyer's obligations to perform all of its obligations under this Agreement including, without limitation, its obligations to pay the Purchase Price.

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**BUYER:**

L.C. Nixon Development Company, LLC

 (SEAL)  
Name: \_\_\_\_\_

Leroy C. Nixon, Member

Date: \_\_\_\_\_

Address: 18209 Oldtown Road SE

Oldtown, MD 21555

Telephone: 301-722-1212

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**DEBTOR:**

 (SEAL)

Steven E. Leydig

Date: Aug 4th 2017