

VERIFIED PETITION FOR APPROVAL OF MORTGAGE OF REAL PROPERTY UNDER SECTIONS 510 AND 511 of the NOT-FOR-PROFIT CORPORATION LAW And SECTION 12 of the RELIGIOUS CORPORATIONS LAW

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In the Matter of the Application of : CONGREGATION SHEARITH ISRAEL :

VERIFIED PETITION

For Order Approving Mortgage of Real Property : pursuant to Section 511 of the Not-for-Profit : Corporation Law and Section 12 of the : Religious Corporations Law.

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To: THE SUPREME COURT, 1st Judicial District, NEW YORK COUNTY New York, New York

Petitioner, CONGREGATION SHEARITH ISRAEL, by LOUIS SOLOMON, its President A/K/A Parnas, for his Verified Petition, alleges:

1. Congregation Shearith Israel ("CSI"), the principal address of which is 2 West 70th Street, New York, NY 10023, was incorporated on July 1, 1805 under an act of the New York State Legislature entitled "An Act to Provide for the Incorporation of Religious Societies" passed on March 27, 1801. A copy of the original Certificate of Incorporation, plus copies of the Constitution and By-laws, are attached as Exhibit A.

2. The names, titles and place of residence of each of CSI's Trustees and Officers are as follows:

Table with 3 columns: Name, Title, Residence. Lists trustees and officers of Congregation Shearith Israel including Harriet Ainetchi, Victoria Bengualid, Norman S. Benzaquen, Esme E. Berg, Karen Daar, Seth Haberman, and Michael I. Katz.

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Michael Lustig	Trustee, Vice-President	171 West 17 th St., #6A, New York, NY 10023
David J. Nathan	Trustee Honorary Pres.	215 West 92 nd St., #13G, New York, NY 10025
Avery E. Neumark	Trustee	15 West 72 nd St., New York, NY 10023
Peter Neustadter	Trustee Honorary Pres.	180 West End Avenue, New York, NY 10023
L. Giles Sion	Trustee	501 East 79 th St., #20A, New York, NY 10075
Louis M. Solomon	Trustee, Pres.	25 Central Park West, #30J, New York, NY 10023
Oliver Stanton	Trustee	1016 Fifth Avenue, #3A, New York, NY 10028
Ralph J. Sutton	Trustee, Treas.	10 West 66 th St., #16J, New York, NY 10023
Mark Tsesarsky	Trustee, Clerk	115 Central Park West, #2C, New York, NY 10023
Isaac Corre	Trustee, Clerk	163 East 80 th St., New York, NY 10175

3. CSI is the oldest Jewish congregation in the country, having been established in 1654 by Spanish and Portuguese settlers. CSI exists to provide worship and related religious services to its members, as well as services to the neighboring community. In addition to regular worship services, CSI has adult and youth outreach programs, educational classes about Jewish law, and community activities of various sorts. It is a charitable corporation for purposes of Section 201 of the New York Not-for-Profit Corporation Law.

4. CSI proposes to issue a mortgage (the "Mortgage") on its unimproved real property located at 8 West 70th Street, New York, NY 10023 in order to secure a bridge loan to it of \$10,000,000 (the "Loan"). The block number of the property is 1122 and the lot number is 37 (the "Property"). The deed, which contains the legal description of the Property, is attached hereto as Exhibit B. The appraised fair market value of the Property as of July 17, 2015, is Thirty-Six Million Dollars (\$36,000,000). The appraisal substantiating this value is attached as Exhibit C. While CSI may not be disposing of substantially all of its assets, it is required by Section 12 of the Religious Corporations Law to submit this petition under Section 511 of the Not-for-Profit Corporation Law in order to mortgage the Property.

In addition to the Property, CSI owns the adjoining lot 36, on which is located CSI's primary synagogue building. The value of this improved land is not included in the \$36 million appraised value of the vacant lot 37. CSI also owns the personal property located inside its synagogue, which is of a nature expected of a house of worship, including religious books and paraphernalia, classroom materials, and office furniture.

The amount of CSI's debts and liabilities is approximately \$1,228,664, consisting of i) a loan from Apple bank in the amount of \$28,664 that is secured by a personal guarantee of one of CSIS's Trustees; and ii) a \$1.1 million loan arrived at through an arm's-length negotiation with WFI Investments, LLC, which loan is guaranteed by four of CSI's Trustees. Other than the guarantees, no familial or business relationship exists between any member of CSI and anyone related to WFI Investments, LLC. See CSI's Financial Statements for its fiscal year ending April, 2014 (last one available) at Exhibit D. The latter loan was taken out to demolish a building on the Property and begin land preparation prior to commencement of construction of the Building. As background, in early August of 2015 CSI incurred substantial costs in connection

with preserving entitlements under the New York City Landmarks Law. The WFI Investments loan was entered into to cover such costs. It will be satisfied with proceeds from the Mortgage. A copy of the two WFI Investments loan documents is attached as Exhibit E.

5. As consideration for the Mortgage, CSI will receive the Loan from an unrelated lender, 8 West 70th Funding LLC (the "Lender"), which is wholly owned by the Hakim Organization, located at 3 West 57th Street, New York, NY 10019, which latter entity primarily negotiated the Loan Documents referred to in paragraph 6 below, on an arm's-length basis. No familial or business relationship exists between any Trustee of CSI and anyone related to the Hakim Organization. The borrowed funds will be used to pay initial construction costs of a new building on lot 37, including construction of the foundation. The Building will have two stories below ground level and nine stories above ground level (the "Building"). CSI will not be dissolved following attachment of the Mortgage to the Property, nor following completion of the Building, nor following any refinancing of the Mortgage. CSI is not insolvent and the effectuation of the Mortgage proposed herein will not cause CSI to become insolvent.

6. The terms of the proposed Loan are described in detail in Exhibit F, consisting of three separate documents, a proposed Loan Agreement, a Mortgage and Security Agreement, and a Promissory Note, all approved by CSI and Lender (the "Loan Documents"); the three documents have not been executed and are contingent upon approval by the Supreme Court of the First Judicial District of the County of New York. The terms of the final loan documents will be identical or substantially the same as the Loan Documents at Exhibit F. Briefly stated, the terms call for \$10,000,000 to be disbursed as follows: \$5,000,000 at inception of the Loan, followed by two subsequent disbursements of \$2,500,000, each upon the request of CSI, subject to the conditions of the Loan Documents. The Loan will be due 24 months following the date of the issuance of the initial \$5,000,000 installment of the Loan. Interest will be paid on the Loan at a rate of 12 percent per annum. At closing of the Loan, CSI will supply to Lender an interest reserve of \$2.4 million from which the Lender will take the monthly interest payments due. The reserve is designed to ensure the Lender that interest payments will be timely made; any amount of the reserve not used before the Loan terminates will be returned to CSI. No amortization of the Loan will occur over the term. Loan proceeds are being received by CSI in tranches to avoid payment of full interest until funds are needed. The budget attached at Exhibit G and referred to in Paragraph 8 below illustrates the plan to fully utilize the full \$8.9 million Loan commitment above the WFI Investments loan. The budget shows by category what the funds will be used for.

The Loan includes the right of the Lender to issue a replacement loan if and when the Loan is refinanced, and a 10-year right of first refusal on any bona fide offer received by CSI for i) the sale, development, or sponsorship of a condominium plan offering the sale, of the four residential apartments, or ii) the financing of any type secured by the Property. Under the right of first refusal, CSI shall provide notice of any such bona fide offer to Lender and Lender will have ten (10) business days in which to match the bona fide offer received by CSI. Lender shall not command or receive any better deal for it than that offered by the maker of the bona fide offer. Further details and limitations are provided in the Loan Documents.

The Loan is fair and reasonable to CSI. The purposes of CSI and the interests of its members will be promoted by utilizing the proceeds of the Mortgage. The Building will provide

six floors of space for CSI's use to benefit the congregation and community. It will also provide five floors that are likely to be developed as four luxury residential condominiums that will be sold or leased to provide funds for CSI to use for the benefit of its congregation and surrounding community. It is possible that CSI will decide to keep the condos for rental or for use by the synagogue.

A 12% interest rate is a fair and reasonable one, for a number of reasons. First, the Loan is a bridge loan designed to enable CSI to begin construction of the Building before all of its plans are in place and before any cash flow is produced by the real property. Second, and in particular, the Lender is not requiring CSI to put cash equity into the Building. In earlier discussions with developers and construction lenders, one requirement was that CSI put considerable equity into the Building as a prerequisite to the loan transaction. Additionally, the bridge loan is all coming from one source rather than having a primary lender plus mezzanine loans at higher rates. It is important that the Lender is providing funds at a point in time before the entire building project has been finalized, as no institutional lender will provide the entire construction financing because the budget and architectural plans are not final and CSI has not yet made a decision on how to proceed with the residential apartments. Lender is a private money mortgage lender rather than an institution. An online survey of bridge loan rates available from private lenders turned up interest rates as high as 14%, depending on the specific circumstances. CSI received an alternate bid from Emerald Creek Capital at a 10% interest rate, but the loan was for only \$8 million and for a term of 12 months, which was not long enough for the circumstances. The origination fee of 1% and the loan prepayment fee of 0.5% Lender is charging are lower than the 2% to 6% and 2% rates typically charged. Lender is not requiring any personal guarantees of the Loan, and will look only to the Property to secure the Mortgage.

If at the end of the 24-month loan period, no construction loan has been secured, CSI believes that Lender would work with it to refinance the Loan. The Loan documents already contain a right by Lender to refinance the Loan, as noted above. If this failed, CSI would seek an alternate, larger loan, secured by the enhanced value of the Property from the foundation and superstructure. CSI could fund-raise from among its members to repay the Loan, and in fact has already gathered pledges of \$3.25 million from its trustees. If all else failed, the Property could be sold to repay the Loan, with considerable proceeds to be expected above the amount of the Loan, given the much higher appraised value of the Property.

7. The Mortgage was approved and a decision made to recommend it to the Electors by vote of the Trustees of CSI in accordance with law at a meeting duly called and held on August 4, 2015, as ratified on October 14, 2015. The full complement of nine Trustees was present, and the vote was eight in favor and one against. The Mortgage was then consented to by the Electors of CSI. Electors are members who have voting rights concerning major decisions, such as electing Trustees and in certain cases determining the long-term future of CSI. Regular members who are not Electors have no such voting rights. CSI has approximately 450 total members, of whom Electors comprise approximately 200. The resolutions approved by the Electors at a meeting, duly called and held, on August 19, 2015, are presented in Exhibit H. The vote of the electors was nearly unanimous, with two abstentions and the rest of the roughly 98 Electors present in person or by proxy voting in favor of the issuance of the mortgage. Pursuant to CSI's by-laws, the quorum for a meeting of Electors is 20; in this vote, 100 Electors were present in

person or by proxy. At the meeting, although no term sheet outlining the proposed loan at that time was provided to the Electors, the terms were presented and discussed orally, including the duration and amount of, and interest rate on, the Loan. The term sheet then under discussion was with a different affiliate of the Hakim Organization, and the salient terms of the Loan are nearly identical to what was included on and discussed from that term sheet.

8. CSI first considered razing one building and erecting a new one many years ago. The financial statements for 2014 in Exhibit D include a note 10 on page 16 that states that CSI then had a plan to build a 9-story building for its use and the sale of residential units. It further indicated that CSI at that time planned to enter into an agreement with a real estate developer to construct the building, which plan has since been abandoned (see next paragraph). Through 2015, CSI has spent roughly \$3,220,000 from its operating funds toward the new building project, mainly to cover entitlement to landmark status and feasibility and other predevelopment costs. The financial statements also show an operating deficit at April 30, 2014; the new building project costs account for roughly 98% of the deficit. The deficit grew in 2015 and the new building project still accounts for nearly all of the deficit. The project budget attached as Exhibit G reflects this \$3,320,000 of sunk costs at the bottom of the "prior costs" column. That column also reflects the \$1.1 million loan from WFI Investments. By spring of 2015, the development deal then under consideration was projected to leave CSI with a net cost of the building estimated at \$8 to \$10 million, plus the \$3,220,000.

During the spring and summer of 2015, the Electors and other members of CSI through discussion decided to keep the timing and destiny of the Building under CSI's control, i.e., the design and construction of the Building, and the ability to decide whether to sell space, rent space, or keep the use of space for its own needs, including for parsonage, and the timing of any sale of condo units. Attached at Exhibit I is a written risk/reward analysis distributed to the CSI Board of Trustees in early August, 2015. During the meeting of Electors, estimates of costs under the two scenarios were suggested in broad numbers. Although developing the Property itself poses risk to CSI, the economic outcome was estimated to be far better than would result from an outside development deal, such that rather than being out-of-pocket by \$11 to \$14 million, CSI might net as much as \$10,000,000, i.e., roughly a \$20 million difference. This potential benefit largely drove the decision among the Electors to have CSI construct the Building.

The Electors and other members feel that CSI has among its congregation persons with expertise that will be helpful in planning and overseeing its own development of the Property. CSI may form a committee of such persons to play a role in monitoring the project. In addition, CSI's seasoned team leading the project is comprised of Seth Haberman and Ari Sherizen who are members of CSI; Seth is an Elector as well. Seth has many years of real estate experience participating in the management of his family's real estate business. Ari is trained as an architect and has been managing real estate development projects for local real estate development firms, such as the Moinian Group, Time Equities, Inc., and AFC Development, and for his own account, Edge Property Group, for the past decade.

Once the foundation and some superstructure have been constructed, CSI will seek construction lending. A budget for CSI's development of the Property is attached as Exhibit G.

It indicates a break-down of hard and soft costs during the drawdown of the \$10 million loan from February through September of 2016. The WFI loan is included in the cumulative costs through September of 2016 of \$10,090,802. Loan closing costs are estimated at \$420,000. The budget plan projects an additional \$30 million to be supplied from a \$40 million construction loan that will include funds to repay the Loan. Even if the construction loan is not in place by October of 2016, the loan reserve will continue to service the \$10 million loan, and that loan will not be due until February of 2018, providing a great deal of time cushion to obtain the construction loan.

9. CSI is considering, and would like to keep as an option, transferring Lot 37 into a limited liability company, either prior to closing on the Loan or shortly thereafter. The Board of Electors and membership of CSI in late 2012 approved a plan to create a limited liability company, and in early 2013 the necessary related documents were prepared and filed to create the LLC. At the time CSI had nine electors and roughly 450 members; a strong majority of the electors and members voted to approve the plan. Attached as Exhibit J are certified resolutions approved by the board of trustees and electors of CSI authorizing creation of the LLC and the transfer of Lot 37 into it, the Articles of Organization of 8W70 LLC, its certificate of publication, and the operating agreement of 8W70 LLC. The 2012 LLC transfer authorization stands on its own and upon information and belief; no supplementary materials provided the governing bodies, or other written records regarding the LLC transfer by such bodies at the time of the vote, indicate otherwise. When the 2012 plan was approved, CSI was considering taking a loan from an unrelated lender to develop the Property, but ultimately that loan was not entered into. The operating agreement contains a provision at subparagraph (l) of paragraph 15 requiring CSI as the sole member of 8W70 LLC to be the party to seek, in the event of a transfer, a mortgage, or a lease of the Property for more than five years, approval of such action from the Supreme Court, with prior notice to the Attorney General, as required by Section 12 of the New York Religious Corporation Law.

10. No application seeking similar approvals has been made previously to the Attorney General or the Supreme Court.

11. With this Petition, CSI asks the Court to approve the issuance of the Mortgage pursuant to New York Religious Corporations Law Section 12 and the optional transfer of the real property securing the Mortgage into a limited liability company either before or after closing on the Mortgage, in accordance with New York Not-for-Profit Corporation Law Sections 510 and 511-a.

WHEREFORE, CSI requests that the Supreme Court provide the relief sought herein as supplemented by the Exhibits hereto.

IN WITNESS WHEREFORE, CSI has caused this Petition to be executed this *7th* day of March, 2016, by its President (A/K/A Parnas), Louis M. Solomon.



LOUIS M. SOLOMON, President (A/K/A/ Parnas)

