

At a ^{LAS}Special Term, Part 72 of the Supreme Court
of the State of New York, held in and for the
County of Kings at 360 Adams Street, Brooklyn,
New York 11201 on the 25 day of April, 2008.

P R E S E N T:

HON. HON. JAMES G. STARKEY
JSC

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IN THE MATTER OF THE APPLICATION

OF

ORDER

Index No. 12634/08

YESHIVAS NOVOMINSK

FOR LEAVE TO MORTGAGE CERTAIN REAL
REAL PROPERTY PURSUANT TO SECTION 12
OF THE RELIGIOUS CORPORATION LAW AND
§511 OF THE NOT-FOR-PROFIT CORPORATION LAW
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Petitioner, Yeshivas Novominsk, incorporated pursuant to Article 10 of the Religious Corporation Law of the State of New York by the filing of its Certificate of Incorporation with the Kings County Clerk on April 30, 1981 ("Petitioner"), by its attorneys, Ruskin Moscou Faltischek, PC, having moved this Court pursuant to § 511 of the Not-For-Profit Corporations Law of New York State and §12 of the Religious Corporations Law of New York State for an order granting leave of this Court (i) to enter into a \$1,000,000 loan transaction with the Avi Chai Foundation ; (ii) to issue bonds in the principal amount of \$8,000,000; (iii) to execute a letter of credit to secure the loan with the Avi Chai Foundation ; (iv) to execute a letter of credit to secure the Bonds in the principal amount of \$8,000,000; (v) to mortgage and otherwise encumber Real Property owned and operated by Petitioner located at 1680-1694 60th Street,

Brooklyn NY 11204; (vi) to do all things reasonably required and proper to effectuate the aforementioned transactions as contemplated by Petitioner; (vii) to authorize either the President, Vice-President, Secretary or Trustee of Petitioner to execute and deliver in the name and on behalf of the Petitioner any and all documents required in connection therewith, and (viii) that for such other and further relief as the Court may deem just and proper.

Upon reading and filing the Verified Petition of Rabbi Lipa Brennan, Secretary and Trustee of Petitioner, verified on the 20th day of March, 2007, and the Exhibits annexed thereto, from which it appears that the Members of the Petitioner and the Board of Trustees of the Petitioner duly adopted resolutions recommending and authorizing Petitioner to enter into the following transaction (the "Bond Transaction"):

a. The Petitioner will issue taxable bonds in the amount of eight million dollars (\$8,000,000) (the "Bonds").

b. The Bonds shall bear interest at a variable rate, to be determined in accordance with market conditions prevalent as of the date of issuance of the Bonds.

c. The Petitioner shall borrow the sum of \$1,000,000 from the Avi Chai Foundation, the essential terms of which are as follows:

i. Principal \$1,000,000

ii. Interest Rate: Loan does not bear interest

iii. Amortization: Quarterly Payments of Principal in \$50,000 installments commencing 4/1/2008

iv. Prepayment of Principal: Yes

d. The proceeds received from the sale of the Bonds and the loan from the Avi Chai Foundation will be used by Petitioner to provide for (i) the refinancing of an existing

Mortgage, (ii) repay various loans from various of its Trustees, (iii) fund a debt service reserve fund and (iv) fund costs of issuance.

e. Concurrently with, and as a condition to, the issuance of the Bonds, and the loan from the Avi Chai Foundation the Petitioner will cause to be delivered an irrevocable, direct pay letter of credit of Commerce Bank (the "Bonds L/C") and a standby letter of credit of Commerce Bank (the "Avi Chai L/C")(collectively, the "Letters of Credit").

f. The essential terms of the Bonds L/C are:

- i. Drawings. Drawings under the Letter of Credit shall be made only by the Trustee, and shall be honored by the Bank, all pursuant to the provisions, on the terms and subject to the conditions set forth in the Letter of Credit and in this Agreement. No Drawings shall be made to pay any Bonds owned by the Account Party, or pledged by the Account Party under the Pledge and Security Agreement.
- ii. Reduction of the Commitment. To the extent that the principal of any Bonds is paid pursuant to the terms of the Indenture, or any Bonds are defeased or redeemed, the Account Party may reduce the Commitment to the extent of such payment of principal, defeasance or redemption. The Bank hereby agrees to any such reduction in the Commitment, provided that it receives notice from the Trustee as to such reduction, which notice shall specify the date upon which such reduction shall become effective.
- iii. Reinstatement. Upon receipt by the Bank of any payment of all or any part of the purchase price amount outstanding, the Amount Available shall be immediately reinstated in an amount equal to the principal component of such purchase price payment effective as of the date of such receipt, notice of which shall be given by the Bank to the Tender Agent, the Trustee and the Account Party. The Amount Available shall be immediately reinstated by an amount equal to the amount of a Drawing for the purpose of paying interest on the Bonds effective as of the date of such Drawing. The Amount Available shall not be reinstated upon the reimbursement of a Drawing for the purpose of paying the principal amount of any Bond on its maturity date, redemption date or acceleration.
- iv. Extension of Term. The Account Party may, at least ninety (90) but not more than one hundred eighty (180) days prior to the then applicable Expiration Date, request the Bank in writing to extend the Expiration Date for an additional one (1) year period. As a condition to a decision by the Bank of such extension request, the Account Party shall provide to the

Bank such documents and information as the Bank may reasonable request. The determination by the Bank to extend or not to extend the then applicable Expiration Date shall be in the sole and absolute discretion of the Bank. In the event the Bank does not extend the Expiration Date, the Term shall be automatically extended until the earlier of (i) the Account Party securing a substitute Letter of Credit or (ii) 90 days past the Expiration Date prior ort said extension.

v. Fees. The Account Party agrees to pay to the Bank

1. on the Date of Issuance, one-half percent (0.50%) of the original amount of the Letter of Credit; and
2. annually thereafter, in each year that a Commitment is in effect, in advance, on the first day of each Fiscal Quarter commencing July 1, 2008, a fee at the annual rate of eighty basis points (0.80%) of the Amount Available, provided, however, that on the Date of Issuance there shall be paid to the Bank a rata portion of such fee for the Letter of Credit Fee for the period commencing on the Date of Issuance through June 30, 2008; and
3. the reasonable costs and expenses of the Bank, its agents and its counsel, if any, in analyzing, negotiating, preparing, executing, administering, delivering and terminating this transaction and matters related to this transaction.

vi. Termination of Letter of Credit. The Letter of Credit shall terminate at (i) 5:00 P.M. (New York time) on the Expiration Date, or if not a Business Day, the next following Business Day, (ii) the date on which there has been a Drawing upon the maturity, redemption in full or acceleration of all of the Bonds, or (iii) the day following receipt by the Bank of a certificate of the Trustee stating that the Trustee is in receipt of a currently effective Substitute Letter of Credit or other Substitute Credit Facility in accordance with the Indenture.

g. The essential proposed terms of the Avi Chai L/C are:

- i. Term: Five (5) years
- ii. Fee: 100 basis points
- iii. Purpose: support the Avi Chai Loan
- iv. Collateral: Assets of Petitioner; pledge of Revenue; springing mortgage second lien on Property and Building

- v. Covenants: Usual and customary affirmative and negative covenants
- vi. Financial reporting Requirements: Usual and Customary Requirements
- h. The proceeds of the Bonds and the Avi Chai Loan shall be used by Petitioner to
 - (i) refinance a mortgage, (ii) repay various loans from various of its Trustees, (iii) fund a debt service reserve fund and (iv) fund costs of issuance.
- i. In connection with the issuance of the Letter of Credit, the Petitioner and the Bank will enter into a (i) Reimbursement and Security Agreement (the "Reimbursement Agreement"), pursuant to which the Petitioner is obligated to reimburse Commerce Bank for drawings made under the Letters of Credit and a Pledge and Security Agreement (the "Pledge and Security Agreement") pursuant to which the Petitioner agrees to provide collateral to the Bank to secure its obligations to Commerce Bank under the Letters of Credit.
- j. The Petitioner's reimbursement obligations to the Bank under the Reimbursement Agreement will be further secured by a mortgage lien on and security interests in Real Property owned and operated by Petitioner located at 1680-1694 60th Street, Brooklyn NY 11204 pursuant to mortgages from the Petitioner to the Bank.
- k. To assuage upward interest rate shifts, Petitioner is also undertaking an interest rate swap transaction ("Swap Transaction"). The essential terms of the Swap Transaction are as follows:
 - i. Swap Advisor George K. Baum & Company ("GKB").
 - i. Fixed Rate Payer: Petitioner
 - ii. Floating Rate Payer: Commerce Bank (the "Bank")

iii. Floating Rate Index: One-Month LIBOR

iv. Currency for Payments: U.S. Dollars

v. Structure: Petitioner will enter into one swap agreement with an initial notional amount of \$8,000,000* that will amortize as follows:

Settlement Date		
	6/1/2008	8,000,000.00
6/1/2008	6/1/2009	8,000,000.00
6/1/2009	6/1/2010	7,895,000.00
6/1/2010	6/1/2011	7,780,000.00
6/1/2011	6/1/2012	7,660,000.00
6/1/2012	6/1/2013	7,535,000.00
6/1/2013	6/1/2014	7,400,000.00
6/1/2014	6/1/2015	7,260,000.00
6/1/2015	6/1/2016	7,110,000.00
6/1/2016	6/1/2017	6,950,000.00
6/1/2017	6/1/2018	6,785,000.00
6/1/2018	6/1/2019	6,610,000.00
6/1/2019	6/1/2020	6,425,000.00
6/1/2020	6/1/2021	6,230,000.00
6/1/2021	6/1/2022	6,020,000.00
6/1/2022	5/1/2023	5,800,000.00

vi. Pricing Date and Time: April 30, 2008

vii. Swap Effective Date: May 1, 2008

viii. Swap Maturity Date: May 1, 2023

ix. Floating Rate Option: USD One-Month LIBOR

x. Reset Dates: Weekly each Wednesday, rate effective Thursday.

- xi. Period End Dates: Monthly, on the first business day of each month, commencing the first business day of the month succeeding the effective date of the swap.
- xii. Payment Dates: Monthly, on the first business day of each month, commencing the first business day of the month succeeding the effective date of the swap.
- xiii. Method of Averaging: Weighted Average
- xiv. Day Count Method: Actual/Actual
- xv. Period End Dates: Monthly, on the first business day of each month, commencing the first business day of the month succeeding the effective date of the swap.
- xvi. Payment Dates: Monthly, on the first business day of each month, commencing the first business day of the month succeeding the effective date of the swap.
- xvii. Day Count Method: 30/360
- xviii. Calculation: Fixed Amounts and Floating Amounts for each applicable Payment Date hereunder will be calculated in accordance with the customary definitions. The Petitioner shall pay the positive difference, if any, between the Fixed Amount and Commerce Bank shall pay the positive difference, if any, between the Floating Amount and the Fixed Amount.
- xix. Optional Termination: Petitioner may terminate the swap in whole or in part, at any time, with at least two (2) business days' prior notice. The Settlement Amount with respect to an Optional Termination shall be determined by the Calculation Agent using its commercially reasonable judgment. If the Petitioner disputes such Settlement Amount, the Calculation Agent shall determine such Settlement Amount in accordance with Section 6 of the Master Agreement assuming Market Quotation and Second Method apply. If the Bank disagrees with this amount, the swap shall be assigned to a Reference Market-maker who provided an

acceptable and actionable quote for the Settlement Amount, and with whom the Bank has active trading lines. The Petitioner will be the Affected Party.

- xx. Governing Law: New York
- xxi. Documentation: This transaction is subject to the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, LLC ("ISDA Definitions. The swap agreement will be documented using the 1992 ISDA Master Agreement. The Swap Provider will provide a confirmation and all other documentation necessary promptly after the Pricing Date and Time.
- xxii. Swap Advisor Fee: The present value of seven (7) basis points on the outstanding notional amount of the swap, payable by the Swap Provider to GKB.

It appears to the satisfaction of the Court that the interest of Petitioner will be promoted by the transactions contemplated hereunder.

NOW, on the motion of Ruskin Moscou Faltischek, P.C., attorneys for the Petitioner, it is

ORDERED, that the Petitioner is hereby authorized to encumber, place a mortgage lien upon and security interest in Real Property owned and operated by Petitioner located at 1680-1694 60th Street, Brooklyn NY 11204, for the benefit of Commerce Bank or any successor bank to secure the Petitioner's obligations to Commerce Bank (or successor bank) under a letters of credit, Pledge Agreements, Security Agreements and a Reimbursement Agreement executed by Petitioner; and it is

ORDERED, that the President or Vice President and Secretary of Petitioner are hereby authorized to execute, acknowledge and deliver all documents to such other parties as may have an interest, as and for the act of and in the name of the Petitioner, and it is

ORDERED, that the proceeds of the Bonds shall be used and applied for the purposes set forth herein, and it is

ORDERED, that further application pursuant to New York Not-For-Profit Corporations Law §511 and Religious Corporations Law §12 shall not be required to commence a foreclosure action to foreclose any liens duly and validly filed as part of the Bond Transaction and it is

ORDERED, that a copy of this Order shall be served on the Office of the Attorney General of the State of New York, and the Office of the Attorney General shall receive written notice that the transaction has been completed, if the transaction is abandoned, or if it is still pending 90 days after the Date of this Order.

ENTER:

James G. Starkey
JUSTICE, SUPREME COURT, KINGS COUNTY

HON. JAMES G. STARKEY
J.S.C.

THE ATTORNEY GENERAL HEREBY APPEARS HEREIN,
HAS NO OBJECTION TO THE GRANTING OF
JUDICIAL APPROVAL HEREON, ACKNOWLEDGES
RECEIPT OF STATUTORY NOTICE, AND DEMANDS
SERVICE OF ALL PAPERS SUBMITTED HEREIN
INCLUDING ALL ORDER, JUDGMENTS AND
ENDORSEMENTS OF THE COURT. SAID NO OBJECTION
IS CONDITIONED ON SUBMISSION OF THE MATTER
TO THE COURT WITHIN 30 DAYS HEREAFTER.

André Davis
ASSISTANT ATTORNEY GENERAL

4/23/08
DATE