

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II. L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES, L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL
AND CONFERENCE CENTER, L.P.
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants¹

RECEIVER'S MOTION FOR AUTHORIZATION TO SELL
400 FIFTH AVENUE, UNIT 39F (F/K/A THE SETAI CONDOMINIUM)

¹See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No. 60].

AND SUPPORTING MEMORANDUM OF LAW

Michael I. Goldberg (the “Receiver”), the Court-appointed Receiver, through undersigned counsel, hereby files this Motion for Authorization to Sell 400 Fifth Avenue, Unit 39F (f/k/a the Setai Condominium) (the “Motion”). In support of this motion, the Receiver states as follows:

Preliminary Statement

The Receiver seeks authorization to enter into a contract to sell the condominium unit located at 400 Fifth Avenue, Unit 39F,² New York, New York (the “Condominium”).³ The Condominium was previously owned by Defendant Ariel Quiros (“Quiros”) and his spouse (individually and later as trustees) and was deeded to the Receiver as part of the disgorgement of certain of Quiros’ assets and real property in satisfaction of the Final Judgment entered by this Court against Ariel Quiros. The Receiver seeks to sell the Condominium by private sale for \$3,995,000 to individuals who have no relationship to the receivership case. The Receiver believes the sale is consistent with the market rate for condominiums of similar size and location and is in the best interest of the receivership estate. The sale will relieve the Receiver of the carrying costs needed to maintain the property and the proceeds of the sale will benefit the investors and other creditors.

Background

1. On April 12, 2016, the Securities and Exchange Commission (the “SEC”) filed a complaint in the United States District Court for the Southern District of Florida (the “Court”)

² Unit 39F is also referred to as Unit 39FGH because Units F, G and H were combined into one large unit. The sale also includes Storage Bins Nos. 28 and 51.

³ In prior court filings, the Condominium has been referred to as the Setai. However, the building is no longer part of the Setai brand. The hotel is currently branded as the Langham Place Fifth Avenue and the condominiums, as the Residences at 400 Fifth Avenue.)

against the Receivership Defendants,⁴ the Relief Defendants,⁵ William Stenger (“Stenger”) and Quiros. The Complaint alleged that Quiros and Stenger, in violation of federal securities laws, controlled and utilized the various Receivership Entities in furtherance of a fraud on the investors who participated in limited partnerships offered under the federally created EB-5 visa program.

2. On April 13, 2016, upon the SEC’s Motion for Appointment of Receiver [ECF No. 7], the Court entered an Order [ECF No. 13] appointing Michael I. Goldberg as the Receiver over the Receivership Defendants and the Relief Defendants (the “Receivership Order”).

3. On the same day of the Receiver’s appointment, the Court entered an Order on the SEC’s Emergency Motion and Memorandum of Law for Temporary Restraining Order [ECF No. 11]. The Court subsequently entered a Preliminary Injunction against Ariel Quiros [ECF No. 238] and a Judgment of Permanent Injunction against Ariel Quiros [ECF No. 398], pursuant to which Ariel Quiros was ordered to pay disgorgement and prejudgment interest on disgorgement and a civil penalty in amounts to be determined at a future date.

4. On February 2, 2018, the Court entered a Final Judgment against Quiros [ECF No. 450, as amended by ECF No. 474] which in relevant part, provides that Quiros shall satisfy his obligations by disgorging certain assets to the Receiver, including the Condominium.

⁴ The “Receivership Defendants” are Jay Peak, Inc., Q Resorts, Inc., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouse L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC.

⁵ The “Relief Defendants” are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC. Later, Q Burke Mountain Resort, Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services, LLC were added as “Additional Receivership Defendants”. The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants are collectively referred to as the “Receivership Entities.”

The Condominium

5. Quiros and his wife originally purchased the Condominium in on or about December 6, 2011 for \$4,149,368. The Condominium remained in their names until on or about December 10, 2014, when they transferred the Condominium to a trust in which they are co-trustees.

6. On May 27, 2016, the Court entered an Order [ECF No 148] authorizing Quiros to sell or mortgage the Condominium in order for Quiros to obtain money to pay his reasonable attorney's fees and to fund his living expenses in the sum of \$15,000 each month. Thereafter, Quiros borrowed \$1.5 million, secured by first mortgage ("Mortgage") on the Condominium. The Mortgage was due to be repaid within one year, *e.g.* by August 2017.

7. Quiros listed the Condominium for sale for \$7.2 million. However, sometime around September 1, 2016, Quiros terminated the listing agreement. Concerned about the approaching maturity date of the Mortgage, on January 17, 2017, the Receiver filed a motion for authorization to re-list the Condominium for sale [ECF No. 269]. On January 23, 2017, the Court entered an Order [ECF No. 271] authorizing and directing Quiros to list the Condominium for sale at its highest possible value, subject to the participation of the Receiver in the sale process.

8. As the deadline to pay the Mortgage approached without a buyer, Quiros agreed to turn over the Condominium to the Receiver. The Court entered an Order, dated June 14, 2017 [ECF No. 346] granting the SEC's unopposed motion to modify the asset freeze [ECF No. 345] to, among other things, effect a complete turnover of the Condominium to the Receiver. The Order further authorized the Receiver to pay any property taxes or other liens or encumbrances on the Condominium and undertake his best efforts to market and sell the Condominium,

provided that the Court must approve the sale or other disposition of the Condominium upon motion of the Receiver and opportunity for other parties to the case to agree or object.

9. The Receiver subsequently received approval from the Court by Order dated January 25, 2018 [ECF No. 444] to retain a broker to market the Condominium for sale. The Court authorized the Receiver to enter into a listing agreement with Halstead Property, LLC (the “Broker”) and further, to return to the Court for approval of the sale of the Condominium.

10. The Receiver originally listed the Condominium for \$4,950,000. During the initial six months on the market, the Condominium garnered no interest. The Receiver analyzed a Comparable Market Analysis Report prepared by the Broker and decided it was advisable to lower the listing price. Soon thereafter, the Receiver received an offer and entered into a Purchase and Sale Contract, as amended (the “Contract”) with King Ting Leung and King Ho (Eric) Leung (the “Buyers”) for the sale of the Condominium for \$3,995,000, subject to Court approval. A copy of the Contract is attached as **Exhibit “A”**.

11. The sale price is \$1 million lower than the original listing price due, in part, to the difficulty to obtain conventional financing to fund the purchase. Most banks do not provide financing to purchase condominiums located in a condominium hotel. This restriction limits buyers to cash purchasers. Also, the Condominium was originally three separate units. Combining the units results in a less than ideal layout and wasted space due to the overabundance of hallways. Additionally, real estate in Manhattan is presently a buyer’s market. As of July 2018, the absorption rate⁶ for three bedroom or larger condominiums in Manhattan is 14 ½ months, compared to July 2017, where the absorption rate was 9.8 months. More

⁶ The absorption rate represents the number of months it would take to sell the entire inventory of units on the market. An absorption rate of 6 – 7 months is a balanced market.

specifically, the absorption rate for three bedrooms or larger condominiums in Midtown West (where the Condominium is located) is 28.4 months.

12. Finally, the sale price is generally within the range of similar multi-bedroom, luxury condominiums in Manhattan. The chart below provides a summary of sales that took place within the past 180 days and units of similar size and location currently under contract.

Address	Unit	Price	Carrying Costs	Rooms, Bedrooms, Baths	Square Foot	Price Square Foot	Outdoor Space
This Unit							
Residences – Langham 400 Fifth Avenue	39F	\$3,995,000	\$3,905	6/4/3.5	2,588	\$1,543	None
Sales Within 180 Days							
100 United Nations Plaza	19AB	\$3,900,000	\$6,722	6/3/3	2700	\$1,444	2 Terraces
100 United Nations Plaza	11AB	\$4,100,000	\$6,522	6/4/4.5	2582	\$1,588	2 Terraces
Metropolitan Tower 146 West 57 th Street	66A	\$4,200,000	\$6,066	7/3/3.5	2124	\$1,977	None
Under Contract							
Mondrian 250 East 54 th Street	PH2	\$3,995,000	\$7,612	6/3/3	2283	\$1,599	430 SF Terrace
240 Park Avenue	8B	\$4,000,000	\$5,441	5/3/3.5	2139	\$1,870	None

13. Based on recent sales and market trends, the Receiver believes the sale price is fair and reasonable. Moreover, the sale bring to a close the costs to the receivership estate for maintaining the Condominium and provides funds to the receivership estate above the amounts paid by the Receiver, including the Mortgage and taxes.

Memorandum of Law

The district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). These powers include the authority to approve the sale of property of the Receivership Entities. Clark on Receivers § 482 (3rd ed. 1992) citing *First National Bank v. Shedd*, 121 U.S. 74, 87, 7 S.Ct. 807, 814, 30 L.Ed. 877 (1887) (noting that a court of equity having custody and control of property has power to

order a sale of the property in its discretion). The Court should exercise its power and authorize the Receiver to sell the Condominium.

Federal statutes provide procedures for the sale of realty under any order or decree of any court of the United States. *See* 28 U.S.C. § 2001. Generally, realty shall be sold at public sale within the district where the receiver was first appointed. 28 U.S.C. § 2001(a). However, after notice and hearing, a court may order the sale of realty at a private sale upon terms and conditions approved by the court, if the court finds that the best interests of the estate will be conserved thereby. 28 U.S.C. § 2001(b). *See also Tanzer v. Huffiness*, 412 F.2d 221, 222 (3rd Cir. 1969). Here, the Receiver seeks to sell the Condominium by private sale.

Typically, before confirmation of a private sale, the court shall appoint three disinterested persons to appraise the property to ensure that no private sale shall be confirmed at a price less than two-thirds of the appraised value. 28 U.S.C. § 2001(b). The Receiver does not believe it is necessary for the Court to appoint multiple disinterested persons to appraise the Condominium. The Comparable Market Analysis provides a description of the recent sales of comparable condominiums. The sale price falls with the range of other similarly-sized luxury, high-rise condominiums located in Manhattan. Moreover, the property has been exposed to the marketplace, providing evidence of the actual value of the property based on the response of real-world buyers. *See Bank of America Nat. Trust and Sav. Ass'n v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 457 (1999) (recognizing that “the best way to determine value is exposure to a market”).

The Buyer is an independent party, the Contract was entered into as an arm's length transaction, and the Buyer has already partially performed the Contract by paying the required deposit. The Court should exercise its authority to dispense with such procedural requirements

and authorize the private sale. *See, e.g., SEC v. Utsick, et al.*, 1:06-cv-20975-PCH, ECF 616 (S.D. Fla. Jan. 4, 2010); *SEC v. Estate of Kenneth Wayne McLeod, et al.*, 1:10-cv-22078-FAM, ECF 62 (S.D. Fla. Feb. 4, 2011) (allowing waiver of formal appraisals for sale of condominiums); *see generally Tanzer v. Huffines*, 412 F.2d 221, 222-23 (3rd Cir. 1969) (upholding sale of property by receiver approved by District Court even though all procedures under 28 U.S.C. 2001 and 2004 were not strictly followed).

The primary goal of a receivership is to provide a conduit through which assets can be held, liquidated and distributed to the particular beneficiaries of the receivership, in this case the investors. *SEC v. Wencke (Wencke II)*, 783 F.2d 829, 837 n. 9 (9th Cir. 1986). Allowing the Receiver to liquidate the property through the proposed private sale will most expeditiously further the goals of the receivership. The sale will result in additional cash being deposited into the Receiver's account, which is maintained for the purpose of ultimately satisfying claims filed by the investors and creditors. Moreover, the sale will reduce any additional costs to the receivership associated with maintaining the Condominium. Based on the foregoing, the Receiver respectfully requests the authority to sell the Condominium under the terms set forth herein.

WHEREFORE, the Receiver respectfully requests the Court to enter an Order in the form attached as **Exhibit "B"**, approving the relief requested in this motion and to grant such further relief as is just and proper.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1(a)(3), undersigned counsel hereby certifies that counsel for the Receiver has conferred with counsel for the Securities and Exchange Commission, who has no objection to the Motion and counsel for Stenger who takes no position on the Motion. The

Receiver's counsel has made a good faith effort to confer with Counsel for Quiros prior to filing the Motion, by contacting counsel by email on August 13, 2018, August 16, 2018 and August 20, 2018, but has not received a response to her requests for comments on the Motion. Since Quiros executed a Deed transferring ownership of the Condominium to the Receiver as part of Quiros' settlement with the SEC, reaching out to counsel is more of a courtesy than a necessity as Quiros no longer has an interest in the Condominium and is not directly affected by the relief sought in the Motion. Moreover, because the closing on the sale is scheduled for next week, and the Receiver needs a certified copy of the Order approving the sale prior to the closing, the Receiver cannot further delay filing the Motion.

Respectfully submitted,

By: /s/ Michael I. Goldberg
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Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this August 20, 2018 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Michael I. Goldberg
Michael I. Goldberg, Esq.

SERVICE LIST

1:16-cv-21301-DPG Notice will be electronically mailed via CM/ECF to the following:

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EXHIBIT A

Contract of Sale—Condominium Unit

Note: This form is intended to deal with matters common to most transactions involving the sale of a condominium unit. Provisions should be added, altered or deleted to suit the circumstances of a particular transaction. No representation is made that this form of contract complies with Section 5-702 of the General Obligations Law ("Plain Language Law").

In the event of any alteration to this form which is not clearly indicated as such, the provisions of the original unaltered form as approved by the Cooperative & Condominium Law Committee of the Association of the Bar of the City of New York and the Committee of Condominiums & Cooperatives of the Real Property Law Section of the New York State Bar Association shall be deemed controlling, regardless of such change.

CONSULT YOUR LAWYER BEFORE SIGNING THIS AGREEMENT

This Contract (the "Contract") for the sale of the Unit as defined below is made as of July 20, 2018 between "Seller" and "Purchaser" identified below.

1. Certain Definitions and Information

1.1 The "Parties" (each a "Party") are:

1.1.1 "Seller": Michael I. Goldberg, Receiver

~~Prior names used by Seller:~~

Address: c/o Akerman LLP, 350 East Las Olas Boulevard, Suite 1600, Ft. Lauderdale, FL 33301

1.1.2 "Purchaser": King Ting Leung and King Ho Eric Leung

~~Prior names used by Purchaser:~~

Address: H11, BeiSiHuan, East Road, NO. 89, Chaoyang district, Beijing, China

(For security, social security numbers are not included on this form but shall be provided to the attorneys for the Parties upon request.)

1.2 "Attorneys" (each an "Attorney") are (name, address telephone and email):

1.2.1 "Seller's Attorney": Akerman LLP, 666 Fifth Avenue, 20th Floor, New York, New York 10103; with copy to Andrew Wamsley, Esq., c/o Akerman LLP, 350 East Las Olas Boulevard, Suite 1600, Ft. Lauderdale, FL 33301; tel. (954) 759-8978; email: andrew.wamsley@akerman.com.

1.2.2 "Purchaser's Attorney": Michael X. Tang, Esq., TANG & ASSOCIATES, P.C., 136-68 Roosevelt Avenue, Suite 821, Flushing, NY 11354; tel. (718) 762-5300; email: mtang@lawtang.com.

1.3 "Escrowee" is the Seller's Attorney ~~(as defined in 1.2.1 below):~~

1.4 The "Managing Agent" is: Irene Booker, Halstead Management Company, LLC, 770 Lexington Avenue, New York, NY 10065; tel. (646) 485-6120; e-mail: ibooker@halstead.com.

1.5 The real estate "Broker(s)" (see ¶18) is/are: Seller's Broker: Barak Dunayer, Halstead Property, LLC, 408 Columbus Avenue, New York, NY 10024; tel. (212) 381-2248; e-mail: barak@halstead.com; Purchaser's Broker: Yiran (Kelly) Wang, Compass, 90 5th Avenue, New York, NY 10011; tel. (508) 851-0385; e-mail: kelly@compass.com.

1.6 The name of the "Condominium" is: The Residences at 400 Fifth Avenue

1.7 The unit number is: 39F (the "Unit") located at: 400 Fifth Avenue, New York, NY 10018 (the "Building");

1.8 The Unit's percentage of the undivided interest in the Condominium common elements ("Common Elements") is: 0.5722%

1.9 The tax lot number of the Unit as set forth in the Condominium declaration (the "Declaration") is: Block 838 Lot 1066.

1.10 The real estate taxes for the Unit for the fiscal year of are \$39,567.96. The amount of real estate taxes is provided for information only and is not a representation of Seller;

1.11 Seller agrees to sell and Purchaser agrees to purchase the Unit and the Unit's percentage interest in the Common Elements in accordance with the terms and provisions of this Contract;

1.12 The sale includes all of Seller's right, title and interest in and to the following personal property ("Personal Property") to the extent existing in the Unit on the date hereof (strike out inapplicable items): refrigerators, freezers, ranges, ovens, built-in microwave ovens, dishwashers, washing machines, clothes dryers, attached cabinets and counters, built-in bookshelves, lighting and plumbing fixtures, HVAC central air conditioning systems, shades (in the master bedroom only), plumbing and heating fixtures, switch plates, door hardware, attached mirrors, and articles of property and fixtures attached to or appurtenant to the Unit, not excluded in ¶1.13, all of which included property and fixtures are represented to be owned by Seller, free and clear of all liens and encumbrances other than those encumbrances ("Permitted Exceptions") set forth on Schedule A and made a part hereof; and

1.13 Specifically excluded from this sale are furniture and furnishings and all other personal property (unless specifically included in ¶1.12) and the items listed on Exhibit A hereto.

1.14 The sale does include Seller's interest in Storage Bins #28 and #51 ("Included Interests") (a Rider is required if any of the Included Interests is/are (a) separate and distinct Condominium Unit(s) or subject to a transferrable license agreement);

1.15 The "Closing" is the delivery of the Closing Documents referred to in ¶3 and the payment of the Balance referred to in ¶1.17.2;

1.16 The date on which Closing is scheduled is August 25, 2018 ("Scheduled Closing Date") at 11:00 AM at the offices of Seller's Attorney or at the office of Purchaser's lending institution or its counsel, provided, however, that such office is located in either the City or County in which either (a) Seller's Attorney maintains an office or (b) the Unit is located;

1.17 The "Purchase Price" is: \$3,995,000 payable as follows:

1.17.1 The "Contract Deposit" is: \$399,500 payable on the signing of this Contract by good check subject to collection, the receipt of which is hereby acknowledged, payable to the order of Escrowee and held in escrow pursuant to ¶13;

1.17.2 The "Balance" of the Purchase Price due at Closing is: \$3,595,500 payable by certified check of Purchaser or official bank check (except as otherwise agreed to in writing by the Parties) to the order of Seller (or as Seller otherwise directs);

1.17.3 All checks in payment of the Purchase Price shall represent United States currency and be drawn on or issued by a bank or trust company either chartered in or having a branch and doing business in New York State;

1.17.4 All checks for closing adjustments aggregating in excess of \$2,500.00 shall be certified checks of Purchaser or official bank checks payable to Seller or as Seller otherwise directs.

1.18 The monthly common charges (excluding separately billed utility charges) are \$3,904.80 (See ¶2.2) (the "Common Charges");

1.19 The assessment, if any, payable to the Condominium, at the date of this Contract is \$-0- (the "Assessment"), payable as follows:

1.20 ~~The Condominium's flip tax or transfer fee (apart from the Managing Agent, Condominium or closing attorney fee), if any (the "Flip Tax") shall be paid by the Party upon whom the Flip Tax is imposed by the Condominium, or, if not so imposed, the Flip Tax shall be paid by~~ ;

1.21 Purchaser shall not apply for financing in connection with this sale.

1.22 ~~If ¶1.21.1 or 1.21.2 applies, the "Financing Terms" for ¶19 are: A loan of \$ secured by a mortgage for a term of at least years or such lesser amount or shorter term as applied for or as acceptable to Purchaser, and the "Loan Commitment Date" for ¶19 is calendar days after the Delivery Date (as defined in ¶1.23 below);~~

1.23 The "Delivery Date" of this Contract is the date on which a fully executed counterpart of this Contract is deemed given to and received by Purchaser or Purchaser's Attorney;

1.24 The Contract Deposit shall be held in a segregated (not commingled with Escrowee's business accounts) [IOLA] ~~non-IOLA~~ escrow account. If the account is a non-IOLA account then interest shall be paid to the Party entitled to the Contract Deposit. Interest shall be payable to the party entitled to the Contract Deposit, except as otherwise required by law. The Party receiving the interest shall pay any income taxes thereon. A W-9 or W-8 form shall be submitted, as appropriate. The escrow account shall be at:

Address: CITIBANK, N.A., 153 East 53rd Street, New York, New York 10022

("Depository") (See ¶13)

1.25 All "Proposed Occupants" of the Unit are:

1.25.1 Persons and relationship to Purchaser:

1.25.2 Pets:

2. **Representations, Warranties and Covenants:** Seller represents, warrants and covenants that:

2.1 Seller is the sole owner of the Unit and the Personal Property together with the Included Interests and Seller has the full right, power and authority to sell, convey and transfer the same. ~~If Seller is a corporation, partnership, limited liability company, trust or other entity, the Sale has been duly authorized by such entity and the person signing this Contract is fully authorized by the entity to do so, and Seller shall deliver evidence of the same at Closing;~~

2.2 The Common Charges (excluding separately billed utility charges) for the Unit on the date hereof are as stated above. If the Common Charges as of the date of this Contract have been understated in this Contract, Seller shall give to Purchaser at Closing a lump sum credit equal to twelve times the amount of such understatement as Purchaser's sole and exclusive remedy for such understatement (Example: an understatement of \$50.00 per month generates Purchaser a one-time credit of \$600.00). ~~Seller has not received any written notice of any intended assessment or increase in Common Charges not reflected above.~~ Purchaser acknowledges that it will not have the right to cancel this Contract in the event of the imposition of any assessment or increase in Common Charges after the date hereof of which Seller has not heretofore received written notice. ~~Seller also represents that Seller has no~~

~~actual knowledge of an increase in Common Charges or an assessment which has been adopted by the Condominium board of managers (the "Board");~~

2.3 Seller is not a "sponsor" or a nominee of a "sponsor," or a successor sponsor or nominee or designee of sponsor, under any plan of condominium organization affecting the Unit;

2.4 ~~At the time of Closing, all refrigerators, freezers, ranges, dishwashers, washing machines, clothes dryers, air conditioning equipment and other appliances, fixtures and equipment included in this sale, and all plumbing, heating and electrical systems will be in working order, to the extent maintenance and repair of same is the responsibility of Seller (as opposed to the Condominium);~~

2.5 ~~If a copy is attached to this Contract, the copy of the certificate of occupancy covering the Unit is a true and correct copy. However, any certificate of occupancy is provided for information only, and the contents thereof do not constitute a representation of Seller;~~

2.6 Seller is not a "foreign person" as defined in ¶14. (If applicable, delete and provide for compliance with Code Withholding Section, as defined in ¶14);

2.7 ~~Seller has made no material alterations to the Unit, except as enumerated in Schedule A-1;~~

2.8 ~~Seller has never signed an alteration agreement with the Managing Agent or Board, except as enumerated in Schedule A-2. Seller has no actual knowledge of any material alteration by a prior owner affecting the Unit or alteration agreement affecting the Unit signed by a prior owner of the Unit, except as enumerated in Schedule A-3;~~

2.9 ~~To the best of Seller's knowledge, there have been no leaks into or emanating from the Unit during the twenty-four (24) months prior to the date of this Contract, and the Unit shall be delivered free from leaks which are the responsibility of Seller to repair at the time of Closing;~~

2.10 ~~During the twenty-four (24) months prior to the date of this Contract, neither Seller nor to Seller's knowledge any occupants of the Unit have/has made any written complaints to the Board, Managing Agent or any other unit owner regarding the Unit, the Building or any other unit owner, except as set forth in Schedule A-4;~~

2.11 Seller has received no written notice that the use and/or occupancy of the Unit is in violation of the Declaration, the Condominium's by-laws (the "By-Laws") or house rules (the "House Rules"), or any applicable provision of law;

2.12 ~~Seller has no knowledge of the presence of bedbugs in the Unit or an adjacent or contiguous unit in the Building within the past twenty-four (24) months;~~

2.13 At Closing, Seller shall have sufficient funds, either from the proceeds of the sale of the Unit or otherwise, to pay all existing liens, judgments, mortgages and other encumbrances;

2.14 ~~Seller has made no insurance claims with respect to the Unit within the past twenty-four (24) months;~~

2.15 Seller covenants that its representations and covenants contained in this ¶2 shall be true and complete at Closing and shall survive Closing, but any action based thereon must be instituted within twelve (12) months after Closing.

3. **Closing Documents:** At Closing, the Parties shall deliver the following (collectively hereinafter referred to as the "Closing Documents"):

3.1 At Closing, Seller shall deliver the following:

3.1.1 Bargain and sale deed with no covenant against grantor's acts ("Deed"), complying with RPL §339-o and ~~containing the covenant required by Lien Law §13(5)~~; conveying to Purchaser title to the Unit, together with its undivided interest in the Common Elements appurtenant thereto (which shall be deemed to include Seller's rights and obligations with respect to any limited Common Elements attributable to or used in connection

with the Unit), free and clear of all liens and encumbrances other than Permitted Exceptions. The Deed shall be executed and acknowledged by Seller and, if requested or required by the Condominium, executed and acknowledged by Purchaser, in proper statutory form for recording;

3.1.2 Provided Seller is a legal entity, and not just one or more natural persons, Seller shall deliver such resolutions and/or affidavits or other evidence as may be reasonably acceptable to Purchaser to the effect that the entity was, at the time of execution of this Contract, authorized to execute and deliver this Contract, and is, at the time of Closing, authorized to execute and deliver the Deed, and any and all other Closing Documents necessary or appropriate to effectuate Closing, and that each of the person(s) actually executing those documents on behalf of that entity is an authorized signatory for that entity for the purposes of effectuating the subject transaction. In the event Seller is a corporation, the Deed shall contain a recital sufficient to establish compliance with the requirements of BCL §909. Evidence of such authorization that would be acceptable to the title company (the "Title Company") from which Purchaser has ordered a title insurance report and which is authorized and licensed to do business in New York State (but not an agent or abstract company unless confirmed by its underwriter in writing) will be deemed to be reasonably acceptable to Purchaser;

3.1.3 A waiver of right of first refusal (the "Waiver") of the Board, evidenced in writing (the "Waiver Confirmation") if required in accordance with ¶5;

3.1.4 A written statement by the Condominium or its Managing Agent stating the date through which the Common Charges and any Assessments due and payable to the Condominium have been paid;

3.1.5 All keys to the doors of, and mailbox for, the Unit; and the keys, key codes or combinations to open or lock any cabinets, interior doors, storage spaces, alarms or other included Personal Property;

3.1.6 Such affidavits and/or other evidence as the Title Company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against Seller and persons or entities whose names are the same as or are similar to Seller's name;

3.1.7 New York City Real Property Transfer Tax Return, if applicable, and New York State Real Estate Transfer Tax Return (including Real Property Transfer Report/Equalization Return, as appropriate), and if required by the Tax Law an IT-2663 form, prepared and duly executed by Seller in proper form for submission;

3.1.8 Checks as may be acceptable to the Title Company in payment of all applicable real property transfer taxes due in connection with the sale, including any tax due in connection with the filing of an IT-2663 form, if applicable, except a transfer tax (such as the so-called New York State "Mansion Tax") which by law is primarily imposed on the purchaser ("Purchaser Transfer Tax"). In lieu of delivery of such checks, Seller shall have the right, upon reasonable prior notice to Purchaser, to cause Purchaser to deliver said checks at Closing and to credit the amount thereof against the balance of the Purchase Price;

3.1.9 Certification pursuant to ¶14 below that Seller is not a foreign person or a withholding certificate from the Internal Revenue Service. (If inapplicable, delete and provide for compliance with the Internal Revenue Code sections described in ¶14);

3.1.10 Affidavit that an operable single station smoke detecting alarm device and an operable carbon monoxide detector are installed pursuant to New York Executive Law §378(5), and, if the Building and the Unit are located within New York City, an affidavit that a single station carbon monoxide detecting alarm device is installed pursuant to N.Y.C. Admin. Code §§28-312.1 and 28-312.2 and NYCRR tit. 19, §1220.1;

3.1.11 ~~Any alteration agreement enumerated in Schedule A-2 or A-3;~~

3.1.12 Any assignment necessary or appropriate to transfer any Included Interest; and

3.1.13 ~~Any currently effective written warranties and/or operating manuals in Seller's possession for any items of Personal Property that are included in the subject sale;~~

3.2 At Closing, Purchaser shall deliver the following:

3.2.1 Checks in payment of (y) the Balance; and (z) any Purchaser Transfer Tax (all checks in payment of any Purchaser Transfer Tax shall be in a form acceptable to the Title Company);

3.2.2 If and to the extent required by the Declaration or By-Laws, power of attorney to the Board, prepared by Seller or the Condominium, in the form required by the Condominium, which shall be executed, acknowledged and recorded by Purchaser and, after being recorded, shall be sent to the Condominium;

3.2.3 New York City Real Property Transfer Tax Return, if applicable, and New York State Real Estate Transfer Tax Return, each duly executed by Purchaser and an Affidavit in Lieu of Registration pursuant to New York Multiple Dwelling Law, each in proper form for submission, if applicable; and

3.2.4 If required, New York State Real Property Transfer Report/Equalization Return executed and acknowledged by Purchaser in proper form for submission;

3.3 It is a condition of Purchaser's obligation to close title hereunder that:

~~3.3.1 All notes or notices of violations of law or government orders, ordinances or requirements affecting the Unit and noted or issued by any governmental department, agency or bureau having jurisdiction which were noted or issued on or prior to the date hereof shall have been cured by Seller, but this shall not include notices of violation, the curing and removal of which are the obligation of the Condominium;~~

3.3.2 Any written notice to Seller from the Condominium (or its duly authorized representative) that the Unit is in violation of the Declaration, By-Laws or House Rules shall have been cured and;

3.3.3 The Condominium is a valid condominium created pursuant to RPL Art. 9-B and the Title Company will so insure;

3.4 The Parties shall provide such other documents as may be reasonably required or requested by the Title Company or the other Party to effectuate the transfer of title in accordance with this Contract and applicable law;

3.5 The Party having primary responsibility for payment of a particular tax is also responsible for paying any and all interest and penalties in connection with such tax, including any additional amount claimed to be due by the taxing authorities by reason of re-calculation of such tax, which obligation shall survive Closing.

4. Closing Adjustments:

4.1 The following adjustments shall be made as of 11:59 P.M. of the day before Closing:

4.1.1 Real estate taxes and water charges and sewer rents, if separately assessed, on the basis of the fiscal period for which assessed, except that if there is a water meter with respect to the Unit, apportionment shall be based on the last available reading, subject to adjustment after Closing, promptly after the next reading is available; provided, however, that in the event real estate taxes have not, as of the date of Closing, been separately assessed to the Unit, real estate taxes shall be apportioned based upon the Unit's percentage interest in the Common Elements;

4.1.2 Common Charges; and

4.1.3 If fuel is separately stored with respect to the Unit only, the value of fuel stored with respect to the Unit at the price then charged by Seller's supplier (as determined by a letter or certificate to be obtained by Seller from such supplier), including any sales taxes;

4.2 If at the time of Closing the Unit is 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 past due or required to be paid are to be paid by Seller at Closing. All installments which the Condominium does not require to have been paid by the time of Closing shall be the obligation of Purchaser;

4.3 Any errors or omissions in computing closing adjustments shall be corrected. The provisions of this Article 4 shall survive Closing for six (6) months;

4.4 If the Unit is located in the City of New York, the "customs in respect to title closings" recommended by The Real Estate Board of New York, Inc., as amended and in effect on the date of Closing, shall apply to the adjustments and other matters therein mentioned, except as otherwise set forth in a rider attached hereto;

5. Right of First Refusal:

5.1 If so provided in the Declaration or By-Laws, this sale is subject to and conditioned upon the Waiver. Purchaser shall in good faith submit to the Board or the Managing Agent an application on the form required by the Board, containing such data and together with such documents as the Board requires, and pay the applicable fees and charges that the Board imposes upon Purchaser. All of the foregoing shall be submitted within 10 business days after the Delivery Date, ~~or, if ¶1.21.1 or 1.21.2 applies and the Loan Commitment Letter is required by the Board, within 3 business days after the earlier of (i) the Loan Commitment Date or (ii) the date of receipt of the Loan Commitment Letter.~~ Unless the Board requires a separate submission by Seller, Purchaser's submission of an application shall be deemed to satisfy the notice requirement set forth in the Declaration and/or By-Laws;

5.2 If the Board shall exercise such right of first refusal, Seller shall promptly refund to Purchaser the Contract Deposit and upon the making of such refund this Contract shall be deemed cancelled and of no further force or effect and neither Party shall have any further rights against, or obligations or liabilities to, the other by reason of this Contract. If the Board shall issue a Waiver Confirmation (a copy of which shall be delivered by the recipient to the Parties promptly following receipt thereof), the Parties shall proceed with this sale in accordance with the provisions of this Contract;

5.3 Closing shall be adjourned for up to 30 business days if the Board neither exercises its right of first refusal nor issues a Waiver Confirmation on or before the Scheduled Closing Date. If neither Seller nor Purchaser nor their respective Attorneys shall have received either of such notices by such adjourned Closing Date, then Seller and Purchaser each will have the right to cancel this Contract by giving Notice (as defined in Paragraph 11) to the other, provided that, prior to the giving of such notice of cancellation, neither Seller nor Purchaser nor their respective Attorneys shall have received a Waiver Confirmation. In the event this Contract is cancelled pursuant to the foregoing provisions of this ¶5.3, then the Escrowee shall refund the Contract Deposit to Purchaser;

5.4 Notwithstanding the provisions of the preceding ¶5.3 that otherwise give Seller the right to cancel by reason of not having received a Waiver Confirmation, Purchaser will have the right to reject Seller's notice of cancellation for such reason, thereby obligating Seller to fulfill its obligations and close hereunder, in the event the Title Company agrees to insure title without exception for failure to obtain a Waiver Confirmation, and if applicable Purchaser's Lender advises that it is prepared to close without issuance by the Board of a Waiver Confirmation, or if Purchaser notifies Seller that Purchaser wishes to close notwithstanding the failure of the Board to issue a Waiver Confirmation, provided that if, prior to Closing, one or both of the parties hereto receives notice from the Board of the Board's exercise of its right of first refusal, Purchaser's right to close under the provisions of this ¶5.4 shall terminate;

5.5 If the Board's failure to either exercise such right of first refusal or issue a Waiver Confirmation is attributable to either Party's bad faith conduct, that Party shall then be in default hereunder and the provisions of Article 10 shall apply.

6. Certain Transaction Fees:

6.1 Any fee imposed by the Condominium for the application to the Board for its issuance of a Waiver Confirmation shall be payable by Purchaser;

6.2 Any move-out fee (including deposits) imposed by the Condominium shall be payable by Seller;

6.3 Any move-in fee (including deposits) imposed by the Condominium shall be payable by Purchaser; and

6.4 Any fees for contributions to the working capital fund or reserve fund ~~except for a Flip Tax specifically payable by Seller pursuant to ¶1.20~~ imposed by the Condominium shall be payable by Purchaser;

6.5 All fees other than those listed in the preceding subparagraphs of this ¶6 in connection with processing the transaction contemplated by this Contract (including but not limited to the legal fees, if any, of the Condominium's attorney in connection with this sale, all "flip taxes," transfer or entrance or exit fees or similar charges however denominated and whether known or unknown) which are imposed by the Condominium shall be paid by the Party upon whom they were expressly imposed. However, if there is ambiguity as to the Party responsible for a particular fee (~~other than the Flip Tax~~) then such fee shall be paid in equal portions by Seller and Purchaser. In the event any increase in any aforementioned fee is imposed between the date hereof and the date of Closing, the Party obliged to pay the fee, cost or expense or contribution shall also be obliged to pay the increase.

7. No Other Representations:

7.1 Purchaser has examined or has waived the examination of:

7.1.1 the offering plan, all amendments to the offering plan, the Declaration, the By-Laws and the House Rules;

7.1.2 the minutes of the meetings of the Board and the unit owners;

7.1.3 the alteration policy including any mandatory upgrade policy for windows, plumbing or other unit features;

7.1.4 the form of alteration agreement;

7.1.5 the form of application to purchase, application instructions and related written requirements, and the enumeration and allocation of applicable fees, if any;

7.1.6 the last financial statement of the Condominium; and

7.1.7 all other matters pertaining to this Contract and to the purchase to be made hereunder;

7.2 Purchaser has inspected or waived inspection of the Unit, its fixtures, appliances and equipment and the Personal Property, if any, included in this sale, as well as the Common Elements (except those Common Elements limited in use to other units of the Condominium), and knows the condition thereof and, subject to ¶2.5, agrees to accept the same "as is," i.e., in the condition they are in on the date hereof, subject to normal use, wear and tear between the date hereof and Closing. Purchaser does not rely on any representations made by any broker or by Seller or anyone acting or purporting to act on behalf of Seller as to any matters (including but not limited to square footage or room count) which might influence or affect the decision to execute this Contract or to buy the Unit, or said Personal Property, except those representations and warranties which are specifically set forth in this Contract.

8. Possession: Seller shall, prior to Closing, remove from the Unit all furniture, furnishings and other personal property not included in this sale, shall repair any material damage caused by such removal, and shall deliver exclusive possession of the Unit at Closing, vacant, broom-clean and free of tenancies or other rights of use or possession. Seller shall not be responsible for immaterial damage such as small holes that can be repaired with touch-up plaster, spackle or similar material or touch-up paint. Purchaser cannot take possession prior to Closing except pursuant to a separate written agreement signed by Seller and Purchaser.

9. Access: Seller shall permit Purchaser and its architect, decorator or other authorized persons to have the right of access to the Unit between the date hereof and Closing for the purpose of inspecting the same and taking measurements, at reasonable times and upon reasonable prior notice to Seller (by telephone or otherwise). Further, Purchaser shall have the right to inspect the Unit at a reasonable time after Seller vacates immediately preceding Closing.

10. Defaults and Remedies:

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

10.2 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.

11. Notices: Any notice, demand, request or other communication ("Notice") given or made hereunder, except for a request for an inspection, which shall not be deemed a Notice, shall be in writing and sent by either Party or that Party's Attorney and delivered by hand or sent by next business day delivery or certified or registered mail, return receipt requested to the other Party at the address set forth in 1.1 hereof and that Party's Attorney, at the address set forth in 1.2 hereof, unless prior Notice has been given that an address of a Party or an Attorney has been changed. A communication by email, fax, telephone or other electronic means shall not qualify as a Notice. Each Notice shall be deemed given on the same day if delivered by hand or the following business day if sent by next business day delivery or the third business day following the date of mailing. Failure to accept a Notice does not invalidate the Notice.

12. Purchaser's Lien: The Contract Deposit and all other sums paid on account of this Contract and the reasonable expenses of the Title Report (as defined in ¶15.1 hercof) are hereby made a lien upon the Unit, but such lien shall not continue after default by Purchaser hereunder. This Contract shall not be recorded by either Party.

13. Contract Deposit in Escrow:

13.1 Escrowee shall hold the Contract Deposit (together with any interest thereon) in escrow as set forth in ¶1.17.1 at the Depository insured by the FDIC or equivalent in amounts up to the maximum amount for which insurance is provided by the FDIC, until Closing or sooner termination of this Contract, and shall pay over or apply the Contract Deposit in accordance with the terms of this Contract. The Social Security or Federal Identification numbers of the Parties shall be furnished to Escrowee upon request. At Closing, the Contract Deposit shall be paid by Escrowee to Seller or as Seller otherwise directs. If for any reason Closing does not occur and either of the Parties gives a Notice to Escrowee demanding payment of the Contract Deposit, 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 business 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 or a final, nonappealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Contract Deposit with the clerk of a court in the county in which the Unit is located and shall give Notice of such deposit to the Parties. Upon such deposit or other disbursement in accordance with the terms of this ¶13, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

13.2 The Parties acknowledge that, with regard to the Contract Deposit, Escrowee is acting solely as a stakeholder without compensation 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. The Parties jointly and severally (with right of contribution) agree to defend (by attorneys selected by Escrowee), indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees either paid to retain attorneys or representing the fair value of legal services rendered by Escrowee to itself and disbursements, court costs and litigation expenses) 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.

13.3 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 Escrowee (including any member of Escrowee's firm) and shall be fully protected in so acting or refraining from action upon the advice of such counsel.

13.4 Escrowee acknowledges receipt of the Contract Deposit by check subject to collection or by wire transfer and Escrowee's agreement to the provisions of this ¶13 by signing in the place indicated in this Contract.

13.5 In the event the Contract Deposit exceeds the maximum amount for which insurance is provided by the FDIC, the Parties understand the amount in excess of the maximum amount insured by the FDIC may be uninsured unless appropriate provisions are made, such as having more than one Depository.

13.6 Escrowee or any member of its firm shall be permitted to act as counsel for Seller (assuming Seller's counsel is acting as Escrowee) in any dispute as to the disbursement of the Contract Deposit or any other dispute between the Parties whether or not Escrowee is in possession of the Contract Deposit and continues to act as Escrowee.

13.7 If the Escrowee is the attorney for one of the parties hereto, that party shall be liable for any loss of the Contract Deposit. If the Escrowee is Seller's Attorney, then Purchaser shall be credited with the amount of the Contract Deposit at Closing. If Escrowee is a title company, the Party who designates the Escrowee shall be liable for any loss of the Contract Deposit.

14. **FIRPTA:** The Parties shall comply with IRC §§897 and 1445 and the regulations thereunder as same may be amended ("FIRPTA"). If applicable, Seller shall execute and deliver to Purchaser at Closing a Certification of Non-Foreign Status ("CNS") or deliver a Withholding Certificate from the IRS. If Seller fails to deliver a CNS or a Withholding Certificate, Purchaser shall withhold from the Balance, and remit to the IRS, such sum as may be required by law, up to and including 10% of the Purchase Price. Seller hereby waives any right of action against Purchaser on account of such withholding and/or remittance. Any cost or expense that may be incurred as a result of such actions, including without limitation Purchaser's Attorneys fees and/or accounting fees, shall be paid by Seller. This paragraph shall survive Closing.

15. **Title Report; Acceptable Title:**

15.1 Purchaser shall, within 10 business days after the date hereof, ~~or if ¶1.21.1 applies, within 3 business days after receipt of the Loan Commitment Letter,~~ order a title insurance report (the "Title Report") from the Title Company. Promptly after receipt of the Title Report and thereafter of any continuations thereof and supplements thereto, Purchaser shall forward (or cause the Title Company to forward) a copy of each such Title Report, continuation or supplement to the Seller's Attorney. Purchaser shall further promptly notify Seller's Attorney of any other objections to title not reflected in the Title Report reasonably promptly after becoming aware of such objections.

15.2 Any unpaid taxes, assessments, water charges and sewer rents payable by the Seller, together with the interest and penalties thereon to a date not less than two days following the date of Closing, and any other liens and encumbrances which Seller is obligated to pay and discharge or which are against corporations, estates or other persons in the chain of title, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds of the monies payable at Closing. Upon request made a reasonable time before Closing, Purchaser shall provide at Closing separate checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance and otherwise complying with ¶1.17. If the Title Company is willing to insure Purchaser that such charges, liens and encumbrances will not be collected out of or enforced against the Unit and is willing to insure the lien of Purchaser's lender, if any, free and clear of any such charges, liens and encumbrances, then Seller shall have the right in lieu of payment and discharge to deposit with the Title Company such funds or to give such assurance or to pay such special or additional premiums as the Title Company may require in order to so insure. In such case, the charges, liens and encumbrances with respect to which the Title Company has agreed so to insure shall not be considered objections to title. Any fees, costs or expenses incurred in connection with the payment of such charges, liens and/or encumbrances shall be paid by Seller. The provisions of this subparagraph shall survive Closing.

15.3 Seller shall convey and Purchaser shall accept fee simple title to the Unit in accordance with the terms of the Contract, subject only to: (1) the Permitted Exceptions and (2) such other matters as (i) the Title Company or any other title insurer licensed by the State of New York (but not an agent or abstract company) shall be willing, without special or additional premium, to omit as exceptions to coverage or to insure against collection out of or enforcement against the Unit. Notwithstanding the foregoing, if ¶1.21.1 applies and the Loan Commitment Letter (as defined in ¶19.1.2) is issued pursuant to ¶19, then Purchaser shall not be required to accept any defect in title which the Institutional Lender (as defined in ¶19.1.2) will not accept.

15.4 Notwithstanding any contrary provisions in this Contract, express or implied, or any contrary rule of law or custom, if Seller shall be unable to convey the Unit in accordance with this Contract (provided that Seller shall release, discharge or otherwise cure at or prior to Closing any matter created by Seller and any existing mortgage, unless this sale is subject to it) and if Purchaser elects not to complete this transaction without abatement of the Purchase Price, the sole obligation and liability of Seller shall be to refund the Contract Deposit to Purchaser, together with the reasonable cost of the Title Report, and upon the making of such refund and payment, this Contract

shall be deemed cancelled and of no further force or effect and neither of the Parties shall have any further rights against, or obligations or liabilities to, the other by reason of this Contract. However, nothing contained in this ¶15.4 shall be construed to relieve Seller from liability due to willful default.

16. Risk of Loss; Casualty:

16.1 The risk of loss or damage to the Unit or the Personal Property, by fire or other casualty, until the earlier of Closing or possession of the Unit by Purchaser, is assumed by Seller, but without any obligation of Seller to repair or replace any such loss or damage unless Seller elects to do so as hereinafter provided. For purposes of this ¶16 only, the term "Unit" shall be deemed to include a terrace, balcony, private yard, parking space and/or storage space appurtenant to the Unit. Seller shall notify Purchaser of the occurrence of any such loss or damage to the Unit or the Personal Property within 10 days after such occurrence or by the date of Closing, whichever first occurs, and by such Notice shall state whether or not Seller elects to repair or restore the Unit and/or Personal Property, as the case may be. If Seller elects to make such repairs and restorations, Seller's Notice shall set forth an adjourned date for Closing, which shall be not more than 60 days after the date of the giving of Seller's Notice. If Seller either does not elect to do so or, having elected to make such repairs and restorations, fails to complete the same on or before said adjourned date for Closing, or if the Board fails to fulfill its obligations to repair or restore any Common Element that materially affects the Unit, Purchaser shall have the following options:

16.1.1 To declare this Contract cancelled and of no further force or effect and receive a refund of the Contract Deposit in which event neither of the Parties shall thereafter have any further rights against, or obligations or liabilities to, the other by reason of the Contract, or

16.1.2 To complete the purchase in accordance with this Contract without reduction in the Purchase Price, except as provided in the next sentence. If Seller carries hazard insurance covering such loss or damage, Seller shall turn over to Purchaser at Closing the net proceeds actually collected by Seller under the provisions of such hazard insurance policies to the extent that they are attributable to loss of or damage to any property included in this sale, less any sums theretofore expended by Seller in repairing or replacing such loss or damage or in collecting such proceeds; and Seller shall assign (without recourse to Seller) Seller's right to receive any additional insurance proceeds which are attributable to the loss of or damage to the Unit or Personal Property.

16.2 If Seller does not elect to make such repairs and restorations, Purchaser may exercise the resulting option under ¶16.1.1 or 16.1.2 above only by Notice given to Seller within 10 days after receipt of Seller's Notice. If Seller elects to make such repairs and restorations and fails to complete the same on or before the adjourned closing date, Purchaser may exercise either of the resulting options within 10 days after the adjourned closing date.

16.3 In the event of any loss of or damage to the Common Elements which materially and adversely affects access to or use of the Unit, arising after the date of this Contract but prior to Closing, Seller shall notify Purchaser of the occurrence thereof within 10 days after such occurrence or by the date of Closing, whichever occurs first, in which event Purchaser shall have the following options:

16.3.1 To complete the purchase in accordance with this Contract without reduction in the Purchase Price; or

16.3.2 To adjourn Closing until the first to occur of (1) completion of the repair and restoration of the loss or damage to the point that there is no longer a materially adverse effect on the access to or use of the Unit or (2) the 60th day after the date of the giving of Seller's aforesaid Notice. In the event Purchaser elects to adjourn Closing as aforesaid, and such loss or damage is not so repaired and restored within 60 days after the date of the giving of Seller's aforesaid notice, then Purchaser shall have the right either to (x) complete the purchase in accordance with this Contract without reduction in the Purchase Price or (y) declare this Contract cancelled and of no further force or effect and receive a refund of the Contract Deposit, in which latter event neither of the Parties shall thereafter have any further rights against, or obligations or liabilities to, the other by reason of this Contract.

16.4 In the event of any loss of or damage to the Common Elements which does not materially and adversely affect access to or use of the Unit, Purchaser shall accept title to the Unit in accordance with this Contract without abatement of the Purchase Price.

17. Internal Revenue Service Reporting Requirement: Each of the Parties shall execute, acknowledge and deliver to the other Party such instruments, and take such other actions, as such other Party may reasonably request

in order to comply with IRC §6045(e), as amended, or any successor provision or any regulations promulgated pursuant thereto, insofar as the same requires reporting of information in respect of real estate transactions. The provisions of this ¶17 shall survive Closing. The Parties designate Purchaser's lending institution, if applicable, or Purchaser's attorney or such other Party as shall be jointly designated by Seller and Purchaser as the person responsible for reporting this information as required by law.

18. **Broker:** Seller and Purchaser represent and warrant to each other that the only real estate broker(s) with whom they have dealt in connection with this Contract and the transaction set forth herein is/are Broker(s) and that they know of no other real estate broker who has claimed or may have the right to claim a commission in connection with this transaction. The Broker(s) shall be paid a commission by Seller pursuant to separate agreement. If no Broker is specified in ¶1.5 above, the Parties acknowledge that this Contract was brought about by direct negotiation between Seller and Purchaser and each represents to the other that it knows of no real estate broker entitled to a commission in connection with this transaction. The Parties shall indemnify and defend each other against any costs, claims or expenses (including reasonable attorneys' fees) arising out of the breach on their respective parts of any representation, warranty or agreement contained in this ¶18. The provisions of this ¶18 shall survive Closing or, if Closing does not occur, the termination of this Contract.

19. ~~**Mortgage Commitment Contingency:** The provisions of this paragraph are applicable only if ¶1.21.1 applies:~~

~~19.1 Definitions:~~

~~19.1.1 an "Institutional Lender" is any of the following that is authorized under Federal or New York State law to make mortgage loans and is currently extending mortgages in the county in which the Unit is located: a bank, savings bank, private banker, trust company, savings and loan association, insurance company, governmental entity, credit union or similar banking institution whether organized under the laws of this State, the United States or any other state;~~

~~19.1.2 a "Loan Commitment Letter" is a written offer from an Institutional Lender to make a loan on the Financing Terms (see ¶1.22) at prevailing fixed or adjustable interest rates and on other customary terms generally being offered by Institutional Lenders. An offer to make a loan conditional upon obtaining an appraisal satisfactory to the Institutional Lender shall not become a Loan Commitment Letter unless and until such condition is met. An offer conditional upon any factor concerning Purchaser (e.g., sale of home, payment of debt, no material adverse change in Purchaser's financial condition, etc.) is a Loan Commitment Letter whether or not such condition is met. Purchaser accepts the risk that, and cannot cancel this Contract if, any condition concerning Purchaser is not met.~~

~~19.2 Purchaser, directly or through a mortgage broker registered pursuant to Article 12-D of the Banking Law, shall diligently and in good faith:~~

~~19.2.1 apply only to an Institutional Lender for a loan on the Financing Terms (see ¶1.22) on the form required by the Institutional Lender containing truthful and complete information, and submit such application together with such documents as the Institutional Lender requires, and pay the applicable fees and charges of the Institutional Lender, all of which shall be performed within five (5) business days after the Delivery Date;~~

~~19.2.2 promptly submit to the Institutional Lender such further references, data and documents requested by the Institutional Lender;~~

~~19.2.3 accept a Loan Commitment Letter meeting the Financing Terms and comply with all requirements of such Loan Commitment Letter (or any other loan commitment letter accepted by Purchaser) and of the Institutional Lender in order to close the loan;~~

~~19.2.4 furnish Seller with a copy of the Loan Commitment Letter promptly after Purchaser's receipt thereof;~~

~~19.2.5 Purchaser is not required to apply to more than one Institutional Lender.~~

19.3 Provided Purchaser has complied with all applicable provisions of this Article 19 and Article 20, Purchaser may cancel this Contract as set forth below, unless Purchaser has received a Loan Commitment Letter from another Institutional Lender prior to the Loan Commitment Date, if:

19.3.1 the Institutional Lender denies Purchaser's application in writing prior to the Loan Commitment Date (see ¶1.22); or

19.3.2 a Loan Commitment Letter is not issued by the Institutional Lender on or before the Loan Commitment Date; or

19.3.3 any requirement of the Loan Commitment Letter other than one concerning Purchaser is not met (e.g., financial condition of the Condominium, failure of the Board to provide a written comment change letter or Waiver Confirmation); or

19.3.4 (a) Closing is adjourned by Seller for more than 30 business days from the Scheduled Closing Date; and (b) the Loan Commitment Letter expires on a date more than 30 business days after the Scheduled Closing Date and before the new date set for Closing pursuant to this Paragraph; and (c) Purchaser is unable in good faith to obtain from the Institutional Lender an extension of the Loan Commitment Letter or a new Loan Commitment Letter on the Financing Terms without paying additional fees to the Institutional Lender; unless Seller agrees, by Notice to Purchaser within 5 business days after receipt of Purchaser's Notice of cancellation on such ground, that Seller will pay such additional fees and Seller pays such fees when due. Purchaser may not object to an adjournment by Seller for up to 30 business days solely because the Loan Commitment Letter would expire before such adjourned Closing date.

19.4 Purchaser shall deliver Notice of cancellation to Seller within 5 business days after the Loan Commitment Date if cancellation is pursuant to ¶19.3.1 or 19.3.2 and on or prior to the Scheduled Closing Date (as same may be adjourned) if cancellation is pursuant to ¶19.3.3 or 19.3.4.

19.5 If cancellation is pursuant to ¶19.3.1, then Purchaser shall deliver to Seller, together with Purchaser's Notice, a copy of the Institutional Lender's written denial of Purchaser's loan application. If cancellation is pursuant to ¶19.3.2, then Purchaser shall deliver to Seller together with Purchaser's Notice evidence that a requirement of the Institutional Lender or Title Company was not met.

19.6 Seller may cancel this Contract by Notice to Purchaser, sent within 5 days after the Loan Commitment Date, if Purchaser shall not have sent by then either (a) Purchaser's Notice of cancellation or (b) a copy of the Loan Commitment Letter to Seller, which cancellation shall become effective if Purchaser does not deliver a copy of such Loan Commitment Letter or Purchaser's written waiver of the Mortgage Commitment Contingency to Seller within 15 business days after the Loan Commitment Date.

19.7 Failure by either of the Parties to deliver Notice of cancellation as required by this ¶19 shall constitute a waiver of the right to cancel under this ¶19.

19.8 If this Contract is canceled by Purchaser pursuant to this ¶19, then thereafter neither Party shall have any further rights against, or obligations or liabilities to, the other by reason of this Contract, except that the Contract Deposit shall be promptly refunded to Purchaser and except for provisions of this Contract which by their terms survive termination. In addition, if this Contract is canceled by Purchaser pursuant to ¶19.3.4, then Seller shall reimburse Purchaser for any non-refundable financing, title and inspection expenses actually incurred by Purchaser.

19.9 Purchaser cannot cancel this Contract pursuant to ¶19.3.4 and cannot obtain a refund of the Contract Deposit if the Institutional Lender fails to fund the loan.

19.9.1 because a requirement of the Loan Commitment Letter concerning Purchaser is not met (e.g., Purchaser's financial condition or employment status suffers an adverse change; Purchaser fails to satisfy a condition relating to the sale of home, etc.); or

19.9.2 due to the expiration of a Loan Commitment Letter issued with an expiration date that is not more than 30 business days after the Scheduled Closing Date;

20. ~~**Requests By Purchaser's Lender:** In the event Purchaser's lender makes written requests(s) for financial, insurance or other business information about the Condominium, Purchaser may supply a copy of each such written request to Seller and upon receiving such a copy, Seller shall make a good faith effort to encourage the Condominium or its managing agent to supply such information. Purchaser shall prepay any fees required by the Condominium or its managing agent for this service. In no event shall the failure to obtain such information affect Purchaser's obligations hereunder.~~

21. **Gender, etc.:** As used in this Contract, the neuter includes the masculine and feminine, the masculine includes the feminine, the feminine includes the masculine, the singular includes the plural and the plural includes the singular, as the context may require.

22. **Entire Contract:** All prior understandings and agreements between the Parties are merged in this Contract and this Contract supersedes any and all understandings and agreements between the Parties and constitutes the entire agreement between them with respect to the subject matter hereof.

23. **Captions:** The captions in this Contract are for convenience and 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 thereof.

24. **No Assignment by Purchaser/Death of Purchaser:** Purchaser may not assign this Contract or any of Purchaser's rights hereunder. This Contract shall terminate upon the death of all persons comprising Purchaser and the Contract Deposit shall be refunded to Purchaser's Attorney in escrow. Upon making such refund and reimbursement, neither Party shall have any further liability or claim against the other Party hereunder.

25. **Successors and/or Assigns:** Subject to the provisions of ¶23, the provisions of this Contract shall bind and inure to the benefit of the Parties and their respective distributees, executors, administrators, heirs, legal representatives, successors and permitted assigns.

26. **No Oral Changes:** This Contract cannot be changed or terminated orally. The Attorneys may extend in writing any of the time limitations stated in this Contract. Any other provision of this Contract may be changed or waived only in writing signed by the Party or Escrowee to be charged.

27. **Contract Not Binding Until Signed:**

27.1 This Contract shall not be binding or effective until fully executed by both Parties and delivered by Seller to Purchaser or Purchaser's Attorney.

27.2 Digital, electronic or scanned copies of original handwritten signatures shall be considered valid.

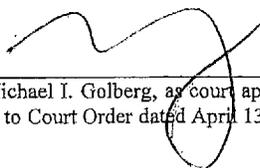
27.3 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

27.4 Escrowee shall be deemed to have accepted the escrow provisions of this Contract even in the absence of its signature on the Contract by depositing the Contract Deposit in its designated bank account.

28. **Lead-Based Paint:** If applicable, the complete and fully executed disclosure of information on lead-based paint and/or lead-based paint hazards is attached hereto and made a part hereof.

This Contract is continued on attached rider(s).

IN WITNESS WHEREOF, the parties hereto have duly executed this Contract on the day and year first above written.



Seller Michael I. Golberg, as court appointed receiver
pursuant to Court Order dated April 13, 2016

Purchaser King Ting Leung

Seller

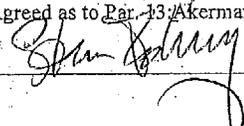
Purchaser King Hao (Eric) Leung

Seller

Purchaser

Seller

Purchaser

Agreed as to Par. 13 Akerman LLP


Escrow Depository:
CITIBANK, N.A.

Address: 153 East 53rd Street, New York, New York
10022

IN WITNESS WHEREOF, the parties hereto have duly executed this Contract on the day and year first above written.

Seller Michael I. Golberg, as court appointed receiver
pursuant to Court Order dated April 13, 2016



Purchaser King Ting Leung

Seller



Purchaser King Ho Eric Leung

Seller

Purchaser

Seller

Purchaser

Agreed as to Par. 13: Akerman LLP

Escrow Depository:
CITIBANK, N.A.

Address: 153 East 53rd Street, New York, New York
10022

- SCHEDULE A-1 — ~~Material Alterations to the Unit made by Seller;~~
- SCHEDULE A-2 — ~~Alteration agreement(s) with the managing agent or Board of Managers signed by Seller and affecting the Unit;~~
- SCHEDULE A-3 — ~~Alteration agreement(s) with the managing agent or Board of Manager signed by a prior owner of the Unit and affecting the Unit;~~
- SCHEDULE A-4 — ~~Written complaint(s) made by Seller or occupants of the Unit regarding the Unit, the Building or any other unit owner(s);~~

SCHEDULE A - Permitted Exceptions

1. Zoning laws and regulations and landmark, historic or wetlands designation which are not violated by the Unit and which are not violated by the Common Elements to the extent that access to or use of the Unit would be materially and adversely affected.

2. Consents for the erection of any structure or structures on, under or above any street or streets on which the Building may abut.

3. The terms, burdens, covenants, restrictions, conditions, easements and rules and regulations set forth in the Declaration, By-Laws and rules and regulations of the Condominium, the Power of Attorney from Purchaser to the board of managers of the Condominium and the floor plans of the Condominium, all as may be amended from time to time.

4. Rights of utility companies to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Building and Common Elements, provided that none of such rights imposes any monetary obligation on the owner of the Unit or materially interferes with the use of or access to the Unit.

5. Encroachments of stoops, areas, cellar steps, trim, cornices, lintels, window sills, awnings, canopies, ledges, fences, hedges, coping and retaining walls projecting from the Building over any street or highway or over any adjoining property and encroachments of similar elements projecting from adjoining property over the Common Elements.

6. Any state of facts which an accurate survey or personal inspection of the Building, Common Elements or Unit would disclose, provided that such facts do not prevent the use of the Unit for dwelling purposes. ~~For the purposes of this Contract, none of the facts shown on the survey, if any, identified below, shall be deemed to prevent the use of the Unit for dwelling purposes, and Purchaser shall accept title subject thereto.~~

The survey referred to in No. 6 above was prepared by _____ dated _____ and last revised _____

7. The lien of any unpaid common charge, real estate tax, water charge, sewer rent or vault charge, provided the same are paid or apportioned at the Closing as herein provided.

8. The lien of any unpaid assessments to the extent of installments thereof payable after the Closing.

9. Liens, encumbrances and title conditions affecting the Common Elements which do not materially and adversely affect the right of the Unit owner to use and enjoy the Common Elements.

10. Notes or notices of violations of law or governmental orders, ordinances or requirements (a) affecting the Unit and noted or issued subsequent to the date of this Contract by any governmental department, agency or bureau having jurisdiction and (b) any such notes or notices affecting only the Common Elements which were noted or issued prior to or on the date of this Contract or at any time hereafter.

11. Any other matters or encumbrances subject to which Purchaser is required to accept title to the Unit pursuant to this Contract.

RIDER TO CONTRACT OF SALE – CONDOMINIUM UNIT

**MICHAEL I. GOLDBERG, AS COURT APPOINTED RECEIVER PURSUANT
TO COURT ORDER DATED APRIL 13, 2016**

AND

KING TING LEUNG AND KING HO ERIC LEUNG, AS PURCHASER

If and to the extent that any of the provisions of this rider conflict or are otherwise inconsistent with any of the printed provisions of this Contract, whether or not such inconsistency is expressly noted in this rider, the provisions of this rider shall prevail. The defined term “Contract” shall include all provisions of this rider.

29. Permitted Exceptions. Supplementing the provisions of Schedule A hereof, the following shall be added to the matters subject to which the Unit is to be sold and conveyed:

12. All present and future laws, ordinances, codes, orders, restrictions and regulations (including, without limitation, zoning, building and environmental laws, ordinances, codes, restrictions and regulations) of all federal, state, municipal or other governmental departments, authorities or other entities having or asserting jurisdiction over the Unit and the use thereof.

13. Covenants, restrictions, rights of way, easements and agreements or reservations of record provided same does not prohibit the use and occupancy of the Unit for dwelling purposes, nor render title unmarketable.

30. Purchaser Deliveries.

Supplementing Paragraph 6.4 of the Contract, Purchaser hereby agrees that at Closing, Purchaser shall deliver check(s) in the amount of \$7,809.60 made payable to the Condominium, which shall constitute Puchaser’s contribution to the working capital fund.

31. Condition of the Property.

Supplementing Paragraph 7.2 of the Contract, Purchaser has investigated, and is satisfied with, the Unit and the physical condition, including expenses and operations and environmental matters, and all other matter or things affecting or relating to the Unit. Except as expressly set forth in this Contract (i) neither Seller nor the employees, agents, representatives, brokers, counsel, accountants or attorneys of Seller have made any verbal or written representations or warranties whatsoever with respect to the physical condition or operation of the Unit or the Building or personal property therein, the revenues, and

expenses generated by and associated with the Unit, the zoning and other laws, regulations and rules applicable thereto or the compliance by the Unit therewith, (ii) neither Seller nor Purchaser has relied or will rely on any such representations made or to be made by the other except as herein specifically set forth, and (iii) Purchaser and Seller acknowledge that no such representations or warranties have been made by the other except as herein specifically set forth.

32. Deed.

Notwithstanding Paragraph 3.1.1 of the Contract, the Deed Seller shall deliver to Purchaser at Closing will be a Receiver's Deed substantially in the form attached hereto as Exhibit B.

33. Contract Subject to Court Approval.

The Contract is subject to the approval of the United States District Court for the Southern District of Florida in Case No: 16-CV-21301-Gayles.

34. Partial Invalidity.

If any provision of this Contract is held to be invalid or unenforceable as against any person or under certain circumstances, the remainder of this Contract and the applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

35. Counterparts.

This Contract may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute but one and the same instrument. Seller and Purchaser may deliver executed signature pages to this Contract by .pdf file to the other Party, which .pdf file shall be deemed to be an original executed signature page.

36. No Third Party Beneficiaries.

The warranties, representations, agreements and undertakings contained herein shall not be deemed to have been made for the benefit of any person or entity other than the parties hereto.

37. Seller Representations.

Paragraph 2.4 of the Contract is hereby deleted and replaced with the following:

“Seller is the Receiver appointed by the United States District Court for the Southern District of Florida in Case No: 16-CV-21301-Gayles, pursuant to the Order Granting Plaintiff Securities and Exchange Commission’s Motion for Appointment of Receiver, dated April 13, 2016.”

Paragraph 2.5 of the Contract is hereby deleted and replaced with the following:

“Seller has never occupied the Unit.”

38. Collectability of Checks.

If the payment made on account of the Purchase Price at the time of the execution of this Contract is by check, and if said check fails of collection in due course, Seller, at its option, may declare this Contract null, void and of no force and effect, and may pursue its remedies against Purchaser upon said check or any other manner permitted by law, such remedies being cumulative.

39. Waiver of Property Condition Disclosure Statement

Purchaser acknowledges that Seller is exempt from the obligation under the New York State Property Condition Disclosure Act of 2001 to disclose the conditions of the property prior to the signing of this contract because the sale of the Unit is made pursuant to a court order.

40. Violations.

Paragraph 3.3.1 is hereby deleted in the entirety, and replaced with the following:

(a) If there are violations of law or municipal ordinances, orders or requirements noted in or issued on or prior to the date hereof by department of housing, buildings, fire, labor, health or other state, governmental or municipal departments having jurisdiction over the Unit (“Existing Violations”), Seller shall not be required to bring any action or proceeding in any court to correct such Existing Violations or to obtain such certificates, nor shall Seller have any obligation to expend any sums to discharge, correct or cure such Existing Violations. Notwithstanding the foregoing, Purchaser shall not be obligated to Purchase the Unit subject to any Existing Violations as of the Closing Date. If at the date of Closing Seller elects not to expend any sums to discharge, correct or cure such Existing Violations and if Purchaser shall be unwilling to waive the same, Purchaser may terminate this Contract and Purchaser’s sole remedy shall be to receive and retain the Contract Deposit, upon which Seller shall be released from any further liability to Purchaser hereunder and for any other damages of any kind whatsoever and this Contract shall terminate and be of no further force or effect. If Seller elects to take action to discharge,

correct or cure such Existing Violations, Seller shall be entitled from time to time, upon notice to Purchaser, to adjourn the Schedule Closing Date hereunder for a period or periods not exceeding sixty (60) days in the aggregate, 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 Existing Violations at the expiration of such adjournment(s), and if Purchaser shall still be unwilling to waive the same and to close title, then Purchaser may cancel this contract by written notice to the Seller given within ten (10) days after such adjourned date. Notwithstanding anything in the preceding sentence to the contrary, Seller shall cause to be paid all fines and penalties in connection with the Existing Violations that are (i) in liquidated amounts, (ii) noted as of the Scheduled Closing Date, and (iii) do not exceed, in the aggregate, Five Thousand Dollars (\$5,000.00). Purchaser shall order municipal and violation searches simultaneously with the examination of title and shall cause a copy such searches and any additions, updates and continuations thereto to be delivered to the attorneys for Seller promptly after receipt thereof.

(b) Purchaser acknowledges and agrees that Seller shall not be obligated to cure any notes or notices of violations affecting the Unit that may arise after the date hereof.

41. Pronouns, Joint and Several Liability.

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the parties may require. If Purchaser consists of two or more parties, the liability of such parties shall be joint and several.

42. Governing Law.

The provisions of this Contract shall be governed by the laws of the State of New York.

43. Appliances, Plumbing, Heating or Electrical Systems.

No representation whatsoever is made as to the condition or operating order of any appliances, plumbing, heating or electrical systems servicing the dwelling located on the Unit. Seller is not obligated to replace any appliances or otherwise make any repairs or improvements to the Unit or any equipment servicing any of them. Purchaser acknowledges and agrees that they have had adequate opportunity to inspect the Unit and all improvements thereon and have in fact done so and have satisfied themselves as to the condition of the Unit and all improvements thereon.

44. Lead-Based Paint Hazards.

Purchaser has waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

45. Payment of Purchase Price.

Notwithstanding the provisions set forth in paragraph 1.17 of the printed portion of this Contract, any payment on account of the purchase price for the Unit required to be made hereunder at the Closing shall be made by unendorsed official bank check, drawn on or by a member bank of the New York Clearing House, and shall be drawn or transmitted to the order of Seller or to the order of Seller's designee.

46. Indemnification.

Purchaser agrees to indemnify and hold Seller and its successors, legal representatives, heirs and assigns harmless against any and all loss, liability or expense, including attorneys' fees arising out of the acts of Purchaser with respect to this transaction with any broker, consultant, finder or like agent claiming to have dealt with Purchaser other than those persons named in the Preamble hereof, if any. The representations, warranties and covenants of Purchaser contained in this Paragraph shall survive the closing or other termination of this Agreement.

47. Confidentiality.

Purchaser and Seller each covenant and agree not to disclose the identity of the other to any third party without the prior express written consent of the other party; provided, however, that either party may, without consent of the other party, disclose the foregoing: (a) to its advisors, consultants, attorneys, accountants, members and prospective lenders (collectively, the "Transaction Parties") without the express written consent of the other party, so long as any such Transaction Parties to whom disclosure is made shall also agree to keep all such information confidential in accordance with the terms hereof; and (b) for legal process or if disclosure is required by law or governmental agency. If this Contract is terminated, such confidentiality shall be maintained. The provisions of this paragraph 47 shall survive the termination of this Contract.

48. Legal Fees.

Notwithstanding anything set forth in paragraph 10.1 to the contrary, in the event either of the Parties seeks to enforce the provisions of this Contract or to obtain redress for the breach or violation of any of its provisions, whether by litigation or other proceedings, the prevailing Party shall be entitled to recover from the other Party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

49. Abatements.

Supplementing and modifying the provisions of paragraph 7 of the Contract, Seller shall be entitled to receive any abatements or rebates not offset by a corresponding assessment, including, without limitation, any real estate tax abatements given by the City and/or State of New York, which may be allocated to the Unit or received by Purchaser after the Closing, for time periods during which Seller was the record owner of the Unit. If the parties are unable to make adjustment at the Closing for any such abatement or rebate, Purchaser shall notify Seller within fifteen (15) days of receipt of any applicable abatement or rebate and Purchaser shall make payment to Seller, within thirty (30) days after receipt of such abatement or rebate, of Seller's portion of the abatement or rebate. The provisions of this paragraph 49 shall survive the Closing.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Rider to Contract of Sale -- Condominium Unit has been duly executed by the parties hereto.

SELLER:



Michael I. Goldberg, as court appointed receiver pursuant to Court Order dated April 13, 2016

PURCHASER:

King Ting Leung

King Hao (Eric) Leung

IN WITNESS WHEREOF, this Rider to Contract of Sale -- Condominium Unit has been duly executed by the parties hereto.

SELLER:

Michael I. Golberg, as court appointed receiver pursuant to Court Order dated April 13, 2016

PURCHASER:



King Ting Leung



King Ho Eric Leung

Exhibit A

Excluded Personal Property

All furniture is excluded unless it is built in or attached to the walls.

Exhibit B

Form of Receiver's Deed

This Instrument was Prepared By,
Record and Return To:

Parcel ID No: _____

**RECEIVER'S DEED
(Deed Without Covenant, Representation, or Warranty)**

This Receiver's Deed is entered into as of _____, 2018 between **Michael I. Goldberg, Receiver** (the "Grantor"), whose mailing address is c/o Akerman LLP, 350 East Las Olas Boulevard, Suite 1600, Fort Lauderdale, Florida 33301 and **King Ting Leung and King Hao (Eric) Leung** (collectively, the "Grantee"), whose address is H11, BeiSiHuan, East Road, NO. 89, Chaoyang district, Beijing, China.

WITNESSETH, that the Grantor, pursuant to that certain Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver dated April 13, 2016, in the United States District Court for the Southern District of Florida, Case No. 16-CV-21301-Gayles, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, remises, releases, conveys and confirms unto the Grantee, without covenant, representation, or warranty of any kind or nature, express or implied, all of Grantor's right, title, and interest in that certain land situate in New York County, New York, to wit:

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the County of New York, State of New York, located at 400 Fifth Avenue, Unit 39FGH, Lot 1066, and more particularly described on Exhibit A attached hereto,

Together with all of Grantor's right, title and interest in any and all improvements and fixtures thereon and thereto (hereinafter collectively referred to as the "Subject Property"), and all and singular the rights and appurtenances pertaining thereto, including, but not limited to, any right, title and interest of Grantor in and to adjacent streets, alleys or rights-of-way, subject however to all liens, exceptions, easements, rights-of-way, covenants, conditions, restrictions, reservations, encroachments, protrusions, shortages in area, boundary disputes and discrepancies, matters which could be discovered or would be revealed by, respectively, an inspection or current survey of the Subject Property, encumbrances, impositions (monetary and otherwise), access limitations, licenses, leases, prescriptive rights, rights of parties in possession, rights of tenants, co-tenants, or other co-owners, and any and all other matters or conditions affecting the Subject Property, as well as standby fees, real estate taxes, and assessments on the Subject Property for the current year and prior and subsequent years, and subsequent taxes and assessments for prior years due to change in land usage or ownership, and any and all zoning laws, regulations, and ordinances of municipal and other governmental authorities affecting the Subject Property (all of the foregoing being collectively referred to as the "Permitted Encumbrances").

FURTHER, GRANTEE, BY ITS ACCEPTANCE OF DELIVERY OF THIS RECEIVER'S DEED, ACKNOWLEDGES AND AGREES THAT (i) GRANTOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE SUBJECT PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE SUBJECT PROPERTY, (C) THE SUITABILITY OF THE SUBJECT PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE SUBJECT PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE OWNERSHIP, TITLE, POSSESSION, HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SUBJECT PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE SUBJECT PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF THE SUBJECT PROPERTY OR ANY PORTION THEREOF OR ANY IMPROVEMENTS THERETO, (H) THE EXISTENCE, QUALITY, NATURE, ADEQUACY, OR PHYSICAL CONDITION OF ANY UTILITIES SERVING THE SUBJECT PROPERTY, OR (I) ANY OTHER MATTER WITH RESPECT TO THE SUBJECT PROPERTY, AND SPECIFICALLY, THAT GRANTOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL

PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, THE DISPOSAL OR EXISTENCE, IN OR ON THE SUBJECT PROPERTY, OF ANY HAZARDOUS MATERIALS; (ii) GRANTEE HAS FULLY INSPECTED THE SUBJECT PROPERTY AND THAT THE CONVEYANCE AND DELIVERY HEREUNDER OF THE SUBJECT PROPERTY IS "AS IS" AND "WITH ALL FAULTS", AND GRANTOR HAS NO OBLIGATION TO ALTER, REPAIR, OR IMPROVE THE SUBJECT PROPERTY OR ANY PORTION THEREOF OR ANY IMPROVEMENTS THERETO; AND (iii) NO WARRANTY HAS ARISEN THROUGH TRADE, CUSTOM, OR COURSE OF DEALING WITH GRANTOR, AND ALL STATUTORY, COMMON LAW, AND CUSTOMARY COVENANTS AND WARRANTIES, IF ANY, OF WHATEVER KIND, CHARACTER, NATURE, PURPOSE, OR EFFECT, WHETHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, ARE HEREBY EXPRESSLY, UNCONDITIONALLY, AND IRREVOCABLY WAIVED, DISCLAIMED, AND EXCLUDED FROM THIS RECEIVER'S DEED, NOTWITHSTANDING ANY CUSTOM OR PRACTICE TO THE CONTRARY, OR ANY STATUTORY, COMMON LAW, DECISIONAL, HISTORICAL, OR CUSTOMARY MEANING, IMPLICATION, SIGNIFICANCE, EFFECT, OR USE OF CONTRARY IMPORT OF ANY WORD, TERM, PHRASE OR PROVISION HEREIN.

Grantee or anyone claiming by, through, or under Grantee, hereby fully releases Grantor, its employees, officers, directors, representatives, and agents from any and all claims, costs, losses, liabilities, damages, expenses, demands, actions, or causes of action that it may now have or hereafter acquire, whether direct or indirect, known or unknown, suspected or unsuspected, liquidated or contingent, arising from or related to the Subject Property in any manner whatsoever. This covenant releasing Grantor shall be a covenant running with the Subject Property and shall be binding upon Grantee, its successors and assigns.

TO HAVE AND TO HOLD the Subject Property together with all and singular the rights and appurtenances thereto in any wise belonging, unto Grantee, its successors and assigns forever, without covenant, representation, or warranty whatsoever, subject, however, to the Permitted Encumbrances.

The fact that certain encumbrances, limitations, or other matters or conditions may be mentioned, disclaimed, or excepted in any way herein, whether specifically or generally, and whether in the body hereof or any exhibit hereto, shall not be a covenant, representation, or warranty of Grantor as to any encumbrances, limitations, or any other matters or conditions not mentioned, disclaimed, or excepted. Notwithstanding anything herein to the contrary, however, nothing herein shall be construed or deemed as an admission by Grantor or Grantee to any third party of the existence, validity, enforceability, scope, or location of any encumbrances, limitations, or other matters or conditions mentioned, disclaimed, or excepted in any way herein, and nothing shall be construed or

deemed as a waiver by Grantor or Grantee of its respective rights, if any, but without obligation, to challenge or enforce the existence, validity, enforceability, scope, or location of same against third parties.

(Signature on following page)

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT A
DESCRIPTION

The land referred to in this Certificate of Title is described as follows:

The Condominium Unit (hereinafter called the "Unit") in the condominium known as The Satal Fifth Avenue Hotel and Residences, a Condominium (the "Condominium") in the building (hereinafter called the "Building") known as The Satal Fifth Avenue Hotel and Residences, a Condominium and by the street address 400 Fifth Avenue, New York, New York 10018, Borough of Manhattan, City, County and State of New York, said Unit being designated and described as Unit 39F in that certain declaration, dated as of November 10, 2010, made by Grantor pursuant to Article 8-B of the Real Property Law of the State of New York (hereinafter called the "Condominium Act") establishing condominium ownership of the Building and the land (hereinafter called the "Land") upon which the Building is situate (which Land is more particularly described in Schedule A annexed hereto and by this reference made a part hereof), which declaration was recorded in the New York County Office of the Register of the City of New York (the "City Register's Office") on November 25, 2010, as CRFN 2010000397894, as amended by First Amendment to the Declaration of The Satal Fifth Avenue Hotel and Residences dated October 27, 2011 and recorded November 17, 2011 in CRFN 2011000401804 as amended by the Eighth Amendment to the Declaration dated 02/20/2013 and recorded 7/29/2013 as CRFN 201300295480 (which declaration, and any amendments thereto, are hereinafter collectively called the "Declaration"). The Unit is also designated as Tax Lot 1056 (formerly 1056, 1067 and 1068, respectively) in Block 838 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Bureau of The City of New York and on the Floor Plans of the Building certified by Robert Lautenschlager, Registered Architect on November 18, 2010, and filed with the Real Property Assessment Bureau of The City of New York on November 18, 2010 as Condominium Plan No. 2219 and also filed in the City Register's Office on November 23, 2010, as CRFN 2010000307858; and Amended Map No. 2219-A and also filed in the City Register's Office on November 17, 2011 as CRFN 201100001605 and Amended Map No. 2219-A and also filed in the City Register's Office on November 17, 2011 as CRFN 201100001605 (formerly Units 39F, 39G and 39H; Block 838, Lots 1056, 1067 and 1068- See Schedule A2 attached).

Together with an undivided 0.8722% interest in the Common Elements (as such term is defined in the Declaration) of The Satal Fifth Avenue Hotel and Residences, a Condominium;

Parcel A (For Information Only; Block 838, Lot 42)

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Fifth Avenue with the northerly side of 36th Street;

RUNNING THENCE westerly along the northerly side of 36th Street, 125 feet;

THENCE northerly, parallel with Fifth Avenue, 78 feet 11 inches;

THENCE easterly, parallel with 36th Street, 25 feet;

THENCE southerly, parallel with Fifth Avenue, 27 feet 7 inches;

THENCE easterly, parallel with 36th Street, 100 feet to the westerly side of Fifth Avenue;

THENCE southerly along the westerly side of Fifth Avenue, 48 feet 4 inches to the point or place of BEGINNING.

L-350MP11C/W
(Continued)

Parcel B (For Information Only: Block 838, Lot 46)

ALL that certain plot, place or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Fifth Avenue, distant 49 feet 4 inches northerly from the corner formed by the intersection of the westerly side of Fifth Avenue with the northerly side of 38th Street;

RUNNING THENCE westerly parallel with 38th Street, 100 feet;

THENCE northerly parallel with Fifth Avenue, 27 feet 7 inches;

THENCE westerly parallel with 38th Street, 100 feet to the westerly side of Fifth Avenue;

THENCE southerly along the westerly side of Fifth Avenue, 27 feet 7 inches to the point or place of BEGINNING.

Parcel C (For Information Only: Block 838, Lot 46)

ALL that certain plot, place or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Fifth Avenue distant 76 feet 11 inches northerly from the corner formed by the intersection of the westerly side of Fifth Avenue and the northerly side of 38th Street;

RUNNING THENCE northerly along the westerly side of Fifth Avenue, 27 feet 7-1/2 inches;

THENCE westerly parallel with 38th Street, 120 feet;

THENCE southerly parallel with Fifth Avenue, 5 feet 0-1/2 inches to the center line of the block;

THENCE westerly parallel with 36th Street and along the center line of the block, 6 feet;

THENCE southerly parallel with Fifth Avenue, 21 feet 10 inches;

THENCE easterly parallel with 38th Street, 125 to the westerly side of Fifth Avenue, at the point or place of BEGINNING.

Parcel P (For Information Only: Block 838, Lot 47)

ALL that certain plot, place or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Fifth Avenue distant 85 feet 4-1/4 inches southerly from the corner formed by the intersection of the said westerly side of Fifth Avenue with the southerly side of 37th Street;

RUNNING THENCE westerly parallel to the southerly side of 37th Street, 120 feet;

THENCE southerly parallel with the westerly side of Fifth Avenue, 27 feet 7-1/4 inches;

DESCRIPTION
(Continued)

THENCE easterly again parallel with the southerly side of 37th Street, 120 feet to the westerly side of Fifth Avenue;

THENCE northerly along said westerly side of Fifth Avenue, 27 feet 7-1/2 inches to the point of place of BEGINNING;

Blanket Description of Parcels A, B, C and D above:

ALL that certain plot, place or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Fifth Avenue with the northerly side of West 38th Street;

RUNNING THENCE northerly along said westerly side of Fifth Avenue, 132 feet 1-3/4 inches;

THENCE westerly parallel with the northerly side of West 38th Street, 120 feet;

THENCE southerly parallel with the westerly side of Fifth Avenue, 33 feet 4-3/4 inches;

THENCE westerly parallel with the northerly side of West 38th Street, 6 feet;

THENCE southerly parallel with the westerly side of Fifth Avenue, 88 feet 0 inches;

THENCE easterly along the northerly side of West 38th Street, 125 feet to the point of place of BEGINNING;

Parcel E (For Information Only; Air Rights - Block 838, Lot 4B)

TOGETHER WITH the benefits of the easements for light and air created by that certain Zoning Lot Agreement and Grant of Easements dated as of May 5, 1988 by and between Manhattan Realty Acquisition Fund and Tower Fifth Avenue Limited and recorded in the Office of the New York City Register, New York County, on May 16, 1988 in File# 1402 page 1999; as amended by Collective Amendment to Zoning Lot Agreement and Grant of Easements and Zoning Lot Description and Ownership Statement by Building Department Applicant dated July 28, 1988 and recorded in the Office of the New York City Register, New York County, on August 11, 1988 in File# 1446 page 1084, as amended by Second Amendment to Zoning Lot Agreement and Grant of Easements dated as of November 1, 2005 between 404 Fifth LLC and 409 Fifth Avenue Holdings LLC and recorded in the Office of the New York City Register, New York County, on December 23, 2005 under ORFN 2005000707120.

Parcel F (For Information Only; Air Rights - Block 838 Lot 3):

ALL that certain plot, place or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Fifth Avenue, distant 38 feet 9 inches northerly from the corner formed by the intersection of the northerly side of 38th Street and the easterly side of 37th Street;

RUNNING THENCE easterly parallel with the northerly side of 38th Street, 111 feet 8 inches;

THENCE northerly parallel with the easterly side of Fifth Avenue, 41 feet 8 inches;

DESCRIPTION
(Continued)

THENCE westerly parallel with the northerly side of 38th Street, 111 feet 8 inches to the easterly side of Fifth Avenue;

THENCE southerly along the easterly side of Fifth Avenue, 41 feet 8 inches to the point or place of BEGINNING.

Parcel G (For Information Only; Air Rights - Block 866 Lot 76):

ALL that certain volume of air situate, lying and being in the Borough of Manhattan, City, County and State of New York, at and below a horizontal plane drawn at an elevation of 278.75 feet above the Manhattan Datum, bounded and described as follows:

BEGINNING at a corner formed by the intersection of the southerly side of East 37th Street with the easterly side of Fifth Avenue;

RUNNING THENCE easterly along the southerly side of 37th Street, 162 feet;

THENCE southerly and parallel with Fifth Avenue and part of the distance through a party wall, 98 feet 9 inches to the center line of the block;

THENCE westerly along said center line of the block and parallel with East 37th Street, 40 feet 4 inches;

THENCE southerly and parallel with Fifth Avenue, 18 feet 4 inches;

THENCE westerly again parallel with the southerly side of East 37th Street, 111 feet 8 inches to the easterly side of Fifth Avenue;

THENCE northerly along the easterly side of Fifth Avenue, 117 feet 1 inch to the point or place of BEGINNING.

Parcel H (For Information Only; Fee and Air Rights - Block 866 Lot 9070):

ALL that certain volume of air situate, lying and being in the Borough of Manhattan, City, County and State of New York, at and above a horizontal plane drawn at an elevation of 278.75 feet above the Manhattan Datum, bounded and described as follows:

BEGINNING at a corner formed by the intersection of the southerly side of East 37th Street with the easterly side of Fifth Avenue;

RUNNING THENCE easterly along the southerly side of 37th Street, 162 feet;

THENCE southerly and parallel with Fifth Avenue and part of the distance through a party wall, 98 feet 9 inches to the center line of the block;

THENCE westerly along said center line of the block and parallel with East 37th Street, 40 feet 4 inches;

THENCE southerly and parallel with Fifth Avenue, 18 feet 4 inches;

THENCE westerly again parallel with the southerly side of East 37th Street, 111 feet 8 inches to the easterly side of Fifth Avenue; and

THENCE northerly along the easterly side of Fifth Avenue 117 feet 1 inch to the point or place of BEGINNING.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II. L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES, L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL
AND CONFERENCE CENTER, L.P.
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants¹

**ORDER GRANTING RECEIVER'S MOTION FOR AUTHORIZATION TO
SELL 400 FIFTH AVENUE, UNIT 39F (F/K/A THE SETAI CONDOMINIUM)**

¹ See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No. 60].

THIS MATTER comes before the Court without hearing upon the Motion for Authorization to Sell 400 Fifth Avenue, Unit 39F (f/k/a the Setai Condominium) (the “Motion”) [ECF No. ____] filed by the Court-appointed receiver, Michael I. Goldberg (the “Receiver”). The Court, having reviewed the Motion, being advised that counsel for the Securities and Exchange Commission has no objection to the relief requested in the Motion, and finding that the Receiver has made a sufficient and proper showing in support of the relief requested,

IT IS ORDERED, ADJUDGED AND DECREED, as follows:

1. The Motion is **GRANTED**.
2. The Receiver is authorized to sell 400 Fifth Avenue, Unit 39F,² New York, New York (the “Condominium”) to King Ting Leung and King Ho (Eric) Leung (the “Buyers”) pursuant to the Purchase and Sale Contract (the “Contract”), “As Is”. A copy of the Contract is attached to the Motion as Composite Exhibit “A”. The legal description of the Condominium is attached hereto as Exhibit “1”.
3. The Receiver is further authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.
4. Upon receipt of the consideration set forth in the Contract, and delivery of the deed and other documents called for in the Contract by the Receiver, the sale shall stand as confirmed, without further Order of the Court.

DONE AND ORDERED in Chambers at Miami, Florida this ____ day of August, 2018.

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

² Unit 39F is also referred to as Unit 39FGH because Units F, G and H were combined into one large unit. The sale also includes Storage Bins Nos. 28 and 51.

EXHIBIT 1

First American Title Insurance Company

Title Number: 478-013672NY

Page 1

SCHEDULE A DESCRIPTION

The land referred to in this Certificate of Title is described as follows:

The Condominium Unit (hereinafter called the "Unit") in the condominium known as The Setal Fifth Avenue Hotel and Residences, a Condominium (the "Condominium") in the building (hereinafter called the "Building") known as The Setal Fifth Avenue Hotel and Residences and by the street address 400 Fifth Avenue, New York, New York 10018, Borough of Manhattan, City, County and State of New York, said Unit being designated and described as Unit 39F in that certain declaration dated as of November 10, 2010, made pursuant to Article 9-B of the Real property Law of the State of New York establishing condominium ownership of the Building and the land (hereinafter called the "Land") upon which the Building is situate (which Land is more particularly described below, which declaration was recorded in the New York County Office of the Register of The City of New York (the "City Register's Office") on November 26, 2010, as CRFN 2010000397594, as amended by First Amendment to the Declaration of The Setal Fifth Avenue Hotel and Residences dated October 27, 2011 and recorded November 17, 2011 in CRFN 2011000401604, as amended by the Eighth Amendment to the Declaration dated 06/28/2013 and recorded 07/26/2013 as CRFN 2013000295480 (which declaration, and any amendments thereto, are hereinafter collectively called the "Declaration"). The Unit is also designated as Tax Lot 1066 (formerly 1066, 1067 and 1068, respectively) in Block 838 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Bureau of The City of New York and on the Floor Plans of the Building certified by Robert Laudenslager, Registered Architect on November 18, 2010, and filed with the Real Property Assessment Bureau of The City of New York on November 18, 2010 as Condominium Plan No. 2219 and also filed in the City Register's Office on November 23, 2010, as CRFN 2010000397595 and Amended Map No. 2219-A and also filed in the City Register's Office on November 17, 2011 as CRFN 201100001605 and Amended Map No. 2219-A and also filed in the City Register's Office on November 17, 2011 as CRFN 201100001605 (formerly Units 39F, 39G and 39H, Block 838, Lots 1066, 1067 and 1068;

TOGETHER with an undivided 1.2491% interest in the Common Elements (as such terms is defined in the Declaration) of The Setal Fifth Avenue Hotel and Residences;

The land is described as follows:

Parcel A (For Information Only: Block 838, Lot 42):

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Fifth Avenue with the northerly side of 36th Street;

RUNNING THENCE westerly along the northerly side of 36th Street, 125 feet;

THENCE northerly, parallel with Fifth Avenue, 76 feet 11 inches;

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Title Number: 478-013672NY

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THENCE easterly, parallel with 38th Street, 25 feet;

THENCE southerly, parallel with Fifth Avenue, 27 feet 7 inches;

THENCE easterly, parallel with 38th Street, 100 feet to the westerly side of Fifth Avenue;

THENCE southerly along the westerly side of Fifth Avenue, 49 feet 4 inches to the point or place of BEGINNING.

Parcel B (For Information Only: Block 838, Lot 45):

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Fifth Avenue, distant 49 feet 4 inches northerly from the corner formed by the intersection of the westerly side of Fifth Avenue with the northerly side of 36th Street;

RUNNING THENCE westerly parallel with 36th Street, 100 feet;

THENCE northerly parallel with Fifth Avenue, 27 feet 7 inches;

THENCE easterly parallel with 36th Street, 100 feet to the westerly side of Fifth Avenue;

THENCE southerly along the westerly side of Fifth Avenue, 27 feet 7 inches to the point or place of BEGINNING.

Parcel C (For Information Only: Block 838, Lot 46):

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Fifth Avenue distant 76 feet 11 inches northerly from the corner formed by the intersection of the westerly side of Fifth Avenue and the northerly side of 36th Street;

RUNNING THENCE northerly along the westerly side of Fifth Avenue, 27 feet 7 – ½ inches;

THENCE westerly parallel with 36th Street, 120 feet;

THENCE southerly parallel with Fifth Avenue, 5 feet 9 – ½ inches to the center line of the block;

THENCE westerly parallel with 36th Street and along the center line of the block, 5 feet;

THENCE southerly parallel with Fifth Avenue, 21 feet 10 inches;

First American Title Insurance Company

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THENCE easterly parallel with 36th Street, 125 feet to the westerly side of Fifth Avenue, at the point or place of BEGINNING.

Parcel D (For Information Only: Block 838, Lot 47):

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Fifth Avenue distant 65 feet 4 – ¼ inches southerly from the corner formed by the intersection of the said westerly side of Fifth Avenue with the southerly side of 37th Street;

RUNNING THENCE westerly parallel to the southerly side of 37th Street, 120 feet;

THENCE southerly parallel with the westerly side of Fifth Avenue, 27 feet 7 – ¼ inches;

THENCE easterly again parallel with the southerly side of 37th Street, 120 feet to the westerly side of Fifth Avenue;

THENCE northerly along said westerly side of Fifth Avenue, 27 feet 7 – ½ inches to other point or place of BEGINNING.

Blanket Description of Parcels A, B, C and D above:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Fifth Avenue with the northerly side of West 36th Street;

RUNNING THENCE northerly along said westerly side of Fifth Avenue, 132 feet 1 – ¾ inches;

THENCE westerly parallel with the northerly side of West 36th Street, 120 feet;

THENCE southerly parallel with the westerly side of Fifth Avenue, 33 feet 4 – ¾ inches;

THENCE westerly parallel with the northerly side of West 36th Street, 5 feet;

THENCE southerly parallel with the westerly side of Fifth Avenue, 98 feet 9 inches;

THENCE easterly along the northerly side of West 36th Street, 125 feet to the point or place of BEGINNING.

Parcel E (For Information Only: Air Rights – Block 838, Lot 48):

TOGETHER with the benefits of the easements for light and air created by that certain Zoning Lot Agreement and Grant of Easements dated as of May 5, 1988 by and between Manhattan Realty Acquisition Fund and Tower Fifth Avenue Limited and recorded in the

First American Title Insurance Company

Title Number: 478-013672NY

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Office of the New York City Register, New York County, on May 16, 1988 in Reel 1402 Page 1999, as amended by Corrective Amendment to Zoning Lot Agreement and Grant of Easements and Zoning Lot Description and Ownership Statement by Building Department Applicant dated July 26, 1988 and recorded in the Office of the New York City Register, New York County, on August 11, 1988 in Reel 1446 Page 1884, as amended by Second Amendment to Zoning Lot Agreement and Grant of Easements dated as of November 1, 2005 between 404 Fifth LLC and 400 Fifth Avenue Holdings LLC and recorded in the Office of the New York City Register, New York County, on December 23, 2005 under CRFN 2005000707128;

Parcel F (For Information Only: Air Rights – Block 866 Lot 3):

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Fifth Avenue, distant 38 feet 9 inches northerly from the corner formed by the intersection of the northerly side of 38th Street and the easterly side of 37th Street;

RUNNING THENCE easterly parallel with the northerly side of 38th Street, 111 feet 8 inches;

THENCE northerly parallel with the easterly side of Fifth Avenue, 41 feet 8 inches;

THENCE westerly parallel with the northerly side of 36th Street, 111 feet 8 inches to the easterly side of Fifth Avenue;

THENCE southerly along the easterly side of Fifth Avenue, 41 feet 8 inches to the point or place of BEGINNING.

Parcel G (For Information Only: Air Rights – Block 868 Lot 75):

ALL that certain volume of air situate, lying and being in the Borough of Manhattan, City, County and State of New York, at and below a horizontal plane drawn at an elevation of 276.75 feet above the Manhattan Datum, bounded and described as follows:

BEGINNING at a corner formed by the intersection of the southerly side of East 37th Street with the easterly side of Fifth Avenue;

RUNNING THENCE easterly along the southerly side of 37th Street, 152 feet;

THENCE southerly and parallel with Fifth Avenue and part of the distance through a party wall, 98 feet 9 inches to the center line of the block;

THENCE westerly along said center line of the block and parallel with East 37th Street, 40 feet 4 inches;

THENCE southerly and parallel with Fifth Avenue, 18 feet 4 inches;

First American Title Insurance Company

Title Number: **478-013672NY**

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THENCE westerly again parallel with the southerly side of East 37th Street, 111 feet 8 inches to the easterly side of Fifth Avenue;

THENCE northerly along the easterly side of Fifth Avenue, 117 feet 1 inch to the point or place of BEGINNING;

Parcel H (For Information Only: Fee and Air Rights – Block 866 Lot 9076):

ALL that certain volume of air situate, lying and being in the Borough of Manhattan, City, County and State of New York, at and above a horizontal plane drawn at an elevation of 276.75 feet above the Manhattan Datum, bounded and described as follows:

BEGINNING at a corner formed by the intersection of the southerly side of East 37th Street with the easterly side of Fifth Avenue;

RUNNING THENCE easterly along the southerly side of 37th Street, 152 feet;

THENCE southerly and parallel with Fifth Avenue and part of the distance through a party wall, 98 feet 9 inches to the center line of the block;

THENCE westerly along said center line of the block and parallel with East 37th Street, 40 feet 4 inches;

THENCE southerly and parallel with Fifth Avenue, 18 feet 4 inches;

THENCE westerly again parallel with the southerly side of East 37th Street, 111 feet 8 inches to the easterly side of Fifth Avenue; and

THENCE northerly along the easterly side of Fifth Avenue 117 feet 1 inch to the point or place of BEGINNING

FOR INFORMATION ONLY: Premises known as 400 Fifth Avenue, Unit 39F, New York, NY 10018.