

**Hearing Date: November 16, 2016**  
**Hearing Time: 3:30 p.m.**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

RICHARD SCHRAGGER,

Chapter 11  
Case No. 16-44532 (CEC)

Debtor.

-----X

**NOTICE OF DEBTOR’S MOTION SEEKING ENTRY OF SALE APPROVAL ORDER  
(A) AUTHORIZING THE SALE OF CERTAIN REAL PROPERTY LOCATED AT 100  
WEST 39<sup>TH</sup> STREET, NEW YORK, NEW YORK 10018, FREE AND CLEAR OF ALL  
LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (B) WAIVING THE 14-DAY  
STAY OF SALE ORDER, AND (C) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE**, that upon the annexed application dated October 27, 2016, Richard Schragger, the above-captioned debtor (the “Debtor”, by and through his undersigned counsel, will move this court before the Honorable Carla E. Craig, Chief United States Bankruptcy Judge, 271 Cadman Plaza East, Courtroom 3529, Brooklyn, New York 11201 on the 16<sup>th</sup> day of November, 2016 at 3:30 p.m. (prevailing Eastern Time) (the “Hearing Date”), or as soon thereafter as counsel may be heard, for entry of an Order, pursuant to §§ 105(a), 363(b), (f) and (m), 503 and 507 of title 13 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (g), 9006, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (A) authorizing the sale of certain real property located at 100 West 39<sup>th</sup> Street, New York, New York 10018, free and clear of all liens, claims, interests and encumbrances, (B) waiving the 14-day stay of sale order and (C) granting related relief (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that all response or objections, if any, to the Motion shall (i) be made in writing, (ii) conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Eastern District of New York, (iii) set forth the basis for the objection and the specific

ground therefor, (iv) be filed with the Court with a copy delivered directly to the Chambers of the Honorable Carla E. Craig, together with proof of service thereof and (v) shall be served in a manner so as to be received not later than 5:00 p.m. on November 9, 2016 by Morrison Tenenbaum PLLC, 87 Walker Street, Floor 2, New York, NY 10013 (Attn: Lawrence F. Morrison, Esq.).

Dated: New York, New York  
October 27, 2016

Respectfully submitted,

MORRISON TENENBAUM PLLC

By: Lawrence Morrison  
Lawrence Morrison, Esq.  
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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

RICHARD SCHRAGGER,

Chapter 11

Case No. 16-44532 (CEC)

Debtor.

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**DEBTOR’S MOTION SEEKING ENTRY OF SALE APPROVAL ORDER (A)  
AUTHORIZING THE SALE OF CERTAIN REAL PROPERTY LOCATED AT 100  
WEST 39<sup>TH</sup> STREET, NEW YORK, NEW YORK 11018, FREE AND CLEAR OF ALL  
LIENS, CLAIMS INTERESTS AND ENCUMBERANCES, (B) WAIVING THE 14-DAY  
STAY OF SALE ORDER, AND (C) GRANTING RELATED RELIEF**

**TO: THE HONORABLE CARLA E. CRAIG,  
UNITED STATES BANKRUPTCY JUDGE:**

Richard Schragger, the above captioned debtor (“Debtor”), by his counsel, Morrison Tenenbaum PLLC, hereby files this motion (“Motion”) pursuant to §§105(a), 363(b), (f) and (m), 503 and 507 of title 13 of the United States Code, 11 U.S.C. §§ 101, et seq. (“Bankruptcy Code”), Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (g), 9006, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), for entry of Sale Approval Order (A) approving the sale (“Sale”) of the Debtor’s real property located at 100 West 39<sup>th</sup> Street, #37A, New York, New York 10018 (“Real Property”); (B) waiving the 14-day stay of the Sale Approval Order; and (C) granting related relief.

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).
2. The venue is proper in this District pursuant to 28 U.S.C. §§1408 and 1409.

3. This proceeding has been initiated pursuant to §§105(a), 363(b), (f) and (m), and 503 and 507 of the Bankruptcy Code and Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (g), 9006, 9013 and 9014 of the Bankruptcy Rules.

### **BACKGROUND**

4. On October 6, 2016 (“Filing Date”), the Debtor filed a voluntary petition for reorganization pursuant to Chapter 11 of the Bankruptcy Code.

5. Thereafter the Debtor’s proceeding was referred to your Honor for administration under the Bankruptcy Code.

6. The Debtor is an individual who owns the Real Property. Ocwen holds the duly perfected, first priority secured loan in the amount of \$390,611.17.

7. In or about July 6, 2016, the Debtor signed a sales contract with a buyer, Zova Liu (“Purchaser”).

8. The Purchaser has been approved by the co-op board of the Real Property, pending the closing of the sales contract, described more in detail below.

### **The Contract of Sale**

9. On or about July 6, 2016, after arms-length negotiations, the Debtor and the Purchaser executed the Contract of Sale – Condominium Apartment (“Contract of Sale”). A copy of the Contract of Sale is attached hereto as **Exhibit “A”**. Subject to this Court’s approval, the Debtor seeks approval to sell the Real Property to the Purchaser on the following terms and conditions:

- a) Seller: Richard Schragger
- b) Purchaser: Zova Liu
- c) Purchase Price: \$775,000.00

- d) Down payment: \$77,500.00
- e) Balance to be paid at closing: \$697,500.00
- f) The Monthly Common Charge: \$831
- g) Purchased Property: 100 West 39<sup>th</sup> Street, #37A, New York, New York 10018
- h) Closing Date: The closing date shall take place at a time and place mutually agreeable to the Seller and the Purchaser.

**RELIEF REQUESTED AND BASIS FOR RELIEF**

10. By this Motion, the Debtor is seeking entry of the Sale Approval Order, substantially in the form annexed hereto as **Exhibit "B"**.

**A. This Court Should Approve the Sale of the Debtor's Real Property to the Purchaser**

11. On or about November 6, 2016, the Debtor entered into the Contract of Sale with the Purchaser which provides for a sale of the Debtor's Real Property. The total consideration payable in cash at closing is \$775,000.00.

12. At this time, the Debtor seeks this Court's approval of the sale of the Debtor's Real Property free and clear of all liens, claims and encumbrances to the Purchaser.

13. All of the sale proceeds will be received by the Debtor, with all liens, claims and encumbrances to attach to the proceeds in accordance with §363(f) of the Bankruptcy Code.

14. Pursuant to Section 363 (b) and (f) of the Bankruptcy Code, the Debtor seeks entry of an order authorizing the sale, assignment and transfer of the Real Property. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." Section 363(f) of the Bankruptcy Code states as follows:

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

15. Only one of the conditions set forth in 11 U.S.C. §363(f) must be met, as section 363(f) is in the disjunctive. The Debtor believes that the Purchase Price for the sale of the Real Property in this manner is in the best interests of the estate and her creditors, for a variety of reasons. The Debtor has diligently marketed the Real Property to find a purchaser. Based on marketing and research, the Purchaser's price was the highest that the Debtor received. The Debtor strongly believes that an immediate sale of the Real Property is in the best interests of creditors and the estate at large. Moreover, the Purchase Price is adequate and represents fair market value of the Real Property to be sold, and the sale proceeds will be used to fund the Debtor's Chapter 11 plan. A copy of an appraisal is annexed hereto as "**Exhibit C**".

16. It is therefore submitted that Section 363(f) of the Bankruptcy Code is satisfied and an immediate sale of the Real Property is in the best interests of creditors and the estate and will prevent unnecessary, irreparable harm to the creditors and the estate. In connection with this Motion, the Debtor proposes the Sale free and clear of all liens, claims and encumbrances, with all such liens, claims and encumbrances to attach to the Sale proceeds.

17. The Debtor seeks authority to conduct the Sale free and clear of all liens with the liens to attach to the proceeds of sale (*i.e.*, gross proceeds, less expenses) pursuant to Section 363(f) of the Bankruptcy Code.

18. The Purchaser's offer of \$775,000.00 for the Debtor's Real Property after payment of the first mortgage will leave approximately \$384,388.33 upon which will be held in escrow subject to further Court order.

**C. The 14-Day Stay of the Order Should be Waived**

19. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

20. The Debtor hereby requests that the Court, in its discretion, waive the 14-day stay imposed by Rule 6004(h).

21. The Debtor suggests that good cause exists for such a waiver. A 14-day stay of the Sale would cause the Debtor to incur an additional half month's mortgage and maintenance arrearages. This arrearage would need to be cured by the proceeds of the Sale which would hence diminish the distribution to the Debtor's creditors.

22. For the foregoing reasons, the Debtor therefore requests that the Court waive the 14-day stay consistent with the provisions of Bankruptcy Rule 6004(h).

**NOTICE**

23. Notice of this Motion has been provided to (i) the Office of the U.S. Trustee, (ii) counsel to Chase, (iii) counsel to Purchaser, (iv) all taxing authorities, (v) all creditors and (vi) parties who have filed notices of appearance. The Debtor submits that said notice is adequate and proper.

**NO PRIOR REQUEST**

24. No prior Motion for the relief requested herein has been made to this or any other Court.

**CONCLUSION**

25. For all of the foregoing reasons, the Debtor respectfully requests the Court to enter the Sale Approval Order.

**WHEREFORE**, the Debtor respectfully request that the Court grant the relief requested herein, together with such other and further relief as is just and proper under the circumstances.

Dated: New York, New York  
October 27, 2016

Respectfully submitted,

MORRISON TENENBAUM PLLC

By: Lawrence Morrison  
Lawrence Morrison, Esq.  
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*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").*

**CONSULT YOUR LAWYER BEFORE SIGNING THIS AGREEMENT**  
**Condominium Unit – Contract of Sale**

**This Contract** made as of July 6, 2016 between

Richard Schragger hereinafter called "Seller", having a residence or principal place of business at 100 West 39<sup>th</sup> Street, 37A New York, NY 10018

AND

Zova Liu hereinafter called "Purchaser", having a residence or principal place of business at

**1. Unit:** The Seller agrees to sell and convey, and the Purchaser agrees to purchase the unit known as Unit No. 37A

("Unit") in the building ("Building") known as Bryant Park Towers Condominium ("Condominium") and located at 100 West 39<sup>th</sup> Street, New York, together with an undivided 0.2173 percent interest in the Common elements (as defined in para. 6) appurtenant thereto, subject to the terms and conditions set forth. The Unit shall be as designated in the Declaration of Condominium Ownership and By-Laws (as the same may be amended from time to time, the "By-Laws") of the Condominium.

**2. Personal Property:** Included in this sale: (a) The sale includes all of Seller's right, title and interest, if any, in and to:

(i) the refrigerators including ice makers, freezers, ranges, ovens and built in microwave ovens, dishwashers, clothes washing machines, clothes dryers, cabinets and counters, lighting and plumbing fixtures, air conditioning equipment, venetian blinds, shades, screens, storm windows and other window treatments, wall-to-wall carpeting, bookshelves, switch plates, door hardware, built-ins, fireplace equipment, built in wine racks, mantels, stained glass, built in mirrors and articles of property included in this sale: will be in working order at the time of Closing;

(b) Excluded from this sale are:

(i) furniture and furnishings (other than as specifically provided in this Contract); and

(ii) The property referred to in subpara. 2(a)(i) and (ii) may not be purchased if title to the Unit is not conveyed pursuant to this contract.

**3. Purchase Price:** (a) The purchase price ("Purchase Price") is \$775,000, payable as follows:

(i) \$77,500.00 ("Downpayment") on the signing of this Contract by check subject to collection, the receipt of which is hereby recognized, to be held in escrow pursuant to para. 16; and

(ii) \$697,500.00 representing the balance of the Purchase Price, by certified check of Purchaser or official bank check (except as otherwise provided in this Contract) on the delivery of the deed.

(b) All instruments in payment of the Purchase Price shall represent United States currency and be drawn on or issued by a bank or trust company authorized to accept deposits in New York State. All checks in payment of the Downpayment shall be payable to the order of Escrowee (as hereinafter defined). All checks in payment of the balance of the Purchase Price shall be payable to the order of the Seller (or as Seller otherwise directs pursuant to subparas. 6(a)(ix) or 18(b)).

(c) Aside from the Downpayment and checks aggregating not more than one-half of one percent of the Purchase Price, including closing adjustments, all checks delivered by Purchaser shall be certified or official bank checks as herein provided.

**4. Closing of Title:** The closing documents referred to in para. 6 shall be delivered, and payment of the balance of the Purchase Price shall be made, at The Closing, to be held on or about 60 days from date hereof at 10AM, at the offices of Seller's counsel 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.

**5. Representations, Warranties and Covenants:** The Seller unconditionally represents, warrants and covenants that:

(a) The Seller is the sole rightful owner of the Unit and the personal property described in subpara. 2(a), and Seller has the full right, power and authority to sell, convey and transfer the same,

(b) The common charges imposed by the Condominium (excluding separately billed utility charges) for the Unit on the date hereof are \$831.00 per month;

(c) Seller has not received any notice, written or oral, of any intended assessment or increase in common charges not reflected in subpara. 5(b). 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 or oral notice;

(d) The real estate taxes for the Unit for the fiscal year of 7/1/2015 through 6/30/2016 are \$10,257.00

(e) Seller is not a "sponsor" or a nominee of a "sponsor" under any plan of condominium organization affecting the Unit;

(f) All refrigerators including ice makers, freezers, ranges, ovens and built in microwave ovens, dishwashers, clothes washing machines, clothes dryers, cabinets and counters, lighting and plumbing fixtures, air conditioning equipment, Venetian blinds, shades, screens, storm windows and other window treatments, wall-to-wall carpeting, bookshelves, switch plates, door hardware, built-ins, fireplace equipment, built in wine racks, mantels, stained glass, built in mirrors and articles of property included in this sale: will be in working order at the time of Closing;

(g) If a copy is attached to this Contract, the copy of the Certificate of Occupancy covering the Unit is a true and correct copy, and

(h) Seller is not a "foreign person" as defined in IRC #1445 as amended, and the regulations thereunder (Code Withholding Section). (If applicable, delete and provide for compliance with Code Withholding Section, as defined in para. 17).

**6. Closing Documents:** (a) At the Closing, Seller shall deliver to Purchaser the following:

(i) Bargain and sale deed with covenant against grantor's acts ("Deed"), complying with RPL § 339-0 and containing the covenant required by LL § 13 (5), conveying to Purchaser title to the Unit, and any garage or storage units appurtenant to the Unit, together with its undivided interest in the Common Elements (as such term is defined in the Declaration and which term shall be deemed to include Seller's right, title and interest in any limited common elements attributable to or used in connection with the Unit) appurtenant thereto, free and clear of all liens and encumbrances other than Permitted Exceptions. The Deed shall be executed and acknowledged by Seller and, if requested by the Condominium, executed and acknowledged by Purchaser, in proper statutory form for recording;

(ii) If a corporation and if required pursuant to BCL § 909, Seller shall deliver to Purchaser (1) a resolution of its board of directors authorizing the delivery of the Deed or a statement included in the Deed as follows: "This conveyance is made in the ordinary course of business actually conducted by the Grantor", and (2) a certificate executed by an officer of such corporation certifying as to the adoption of such resolution and setting forth facts demonstrating that the delivery of the Deed is in conformity with the requirements of BCL § 909. The Deed shall also contain a recital sufficient to establish compliance with such law;

(iii) A waiver of right of first refusal of the board of managers of the Condominium ("Board") if required in accordance with para. 8;

(iv) A statement by the Condominium or its managing agent on behalf of and authorized by the Condominium that the common charges and any assessments then due and payable to the Condominium have been paid to the date of the Closing;

(v) All keys to the doors of, and mailbox and for, the Unit; and storage units.

(vi) Such affidavits and/or other evidence as the title company ("Title Company") from which Purchaser has ordered a title insurance report and which is authorized to do business in New York State 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;

(vii) New York City Real Property Transfer Tax Return, if applicable, prepared, executed and acknowledged by Seller in proper form for submission;

(ix) Checks in payment of all applicable real property transfer taxes except a transfer tax which by law is primarily imposed on the purchaser ("Purchaser Transfer Tax") in connection with the sale. In lieu of delivery of such checks, Seller shall have the right, upon not less than 3 business days notice to Purchaser, to cause Purchaser to deliver checks at the Closing and to credit the amount against the balance of the Purchase Price. Seller shall pay the additional transfer taxes, if any, payable after the Closing by reason of the conveyance of the Unit, which obligation shall survive the Closing;

(ix) Certification that Seller is not a foreign person pursuant to para. 18. *(If inapplicable, delete and provide for compliance with Code Section, as defined in para. 17.), and*

(x) Affidavit that a single station smoke detecting alarm device is installed pursuant to New York Executive Law § 378(5).

(b) At the Closing, Purchaser shall deliver to Seller the following:

(i) Checks in payment of (y) the balance of the Purchase Price in accordance with subpara. 3(b) and (z) any Purchaser Transfer Tax;

(ii) If required by the Declaration or By-Laws, power of attorney to the Board, prepared by Seller, in the form required by the Condominium. The Power of attorney shall be executed and acknowledged by Purchaser and, after being recorded, shall be sent to the Condominium;

(iii) New York City Real Property Transfer Tax Return executed and acknowledged 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

(iv) If required, New York State Equalization Return executed and acknowledged by Purchaser in proper form for submission.

(c) It is a condition of Purchaser's obligation to close title hereunder that:

(i) All notes or notices of violations of law or governmental 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;

(ii) 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 rules and regulations of the Condominium shall have been cured; and

(iii) The Condominium is a valid condominium created pursuant to RPL Art. 9-B and the Title Company will insure the same.

7. **Closing Adjustments:** (a) The following adjustments shall be made as of 11:59 P.M. of the day before the Closing:

(i) Real estate taxes and water charges and sewer rents, unless same are part of common charges, 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 actual reading, subject to adjustment after the 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 on the same basis as provided in the Declaration or By-Laws or, in the absence of such provision, based upon the Unit's percentage interest in the Common Elements;

(ii) Common charges of the Condominium; and

(iii) 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.

(b) 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 due shall be considered due and are to be paid by Seller at the Closing. All subsequent installments at the time of Closing shall be the obligation of Purchaser.

(c) Any errors or omissions in computing closing adjustments shall be corrected. This subpara. 7c shall survive the Closing.

(d) 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 provided herein.

8. **Right of First Refusal:** If so provided in the Declaration or By-Laws, this sale is subject to and conditioned upon the waiver of a right of first refusal to purchase the Unit held by the Condominium and exercisable by the Board. Seller agrees to give notice promptly to the Board of the contemplated sale of the Unit to Purchaser, which notice shall be given in accordance with the terms of the Declaration and By-Laws, and Purchaser agrees to provide promptly all applications, information and references reasonably requested by the Board. If the Board shall exercise such right of first refusal, Seller shall promptly refund to Purchaser the Downpayment (which term, for all purposes of this contract, shall be deemed to include interest, if any, earned thereon, and title charges including but not limited to examination of title and departmental charges) 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 obligation or liabilities to, the other by reason of this contract. If the Board shall fail to exercise such right of first refusal within the time and in the manner provided for in the Declaration or By-Laws or shall declare in writing its intention not to exercise such right of first refusal (a copy of which writing shall be delivered to Purchaser promptly following receipt thereof), the parties hereto shall proceed with this sale in accordance with the provisions of this contract.

9. **Processing Fee:** Seller shall, at the Closing, pay all fees and charges payable to the Condominium (and/or its managing agent) in connection with this sale, including, but not limited to, any processing fee, the legal fees, if any, of the condominium's attorney in connection with this sale and, unless otherwise agreed to by Seller and Purchaser in writing, all "flip taxes," transfer or entrance fees or similar charges, if any, payable to or for the Condominium or otherwise for the benefit of

the Condominium unit owners, which arise by reason of this sale. Said fees, as directed by the Declaration, are as follows:

10. **No Other Representations:** Purchaser has examined and is satisfied with the Declaration, By-Laws and rules and regulations of the Condominium as amended, or has waived the examination thereof. Purchaser has inspected the Unit, its fixtures, appliances and equipment and the personal property, if any, included in this sale, as well as the Common Elements of the Condominium, and knows the condition thereof and, subject to subpara. 5(f), 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 the Closing. Purchaser has examined or waived examination of the last audited financial statements of the Condominium, and has considered or waived consideration of all other matters pertaining to this Contract and to the purchase to be made hereunder, and 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 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.

11. **Possession:** Seller shall, at or prior to the Closing, remove from the Unit all furniture, furnishings and other personal property not included in this sale, shall repair any damage caused by such removal, and shall deliver exclusive possession of the Unit at the Closing, vacant, broom-clean and free of tenancies or other rights of use or possession.

12. **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 the 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 during the 24-hour period immediately preceding the Closing.

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

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

14. **Notices:** Any notice, request or other communication ("Notice") given or made hereunder (except for the notice required by para. 12), shall be in writing and either (a) sent by any of the parties hereto or their respective attorneys, by registered or certified mail, return receipt requested, postage prepaid, or (b) delivered in person or by overnight courier, with receipt acknowledged, to the address given at the beginning of this Contract for the party to whom the Notice is to be given, or to such other address for such party as said party shall hereafter designate by Notice given to the other party pursuant to this para. 14. Each Notice mailed shall be deemed given on the fourth business day following the date of mailing and each Notice delivered in person or by overnight courier shall be deemed given when delivered.

15. **Purchaser's Lien:** The Downpayment and all other sums paid on account of this Contract and the reasonable expenses of the examination of title, and departmental violation searches in respect of, the Unit are hereby made a lien upon the Unit, but such lien shall not continue after default by Purchaser.

16. **Downpayment in Escrow:** (a) Seller's attorney ("Escrowee") shall hold the Downpayment for Seller's account in escrow in a segregated bank account at the depository identified at the end of this Contract until Closing or sooner termination of this Contract and shall pay over or apply the Downpayment in accordance with the terms of this para. 16. Escrowee shall (not) (Delete if inapplicable) hold the Downpayment in an interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee at the end of this contract. At closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (as defined in para. 14) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive such Notice of objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this Contract or a final, nonappealable judgment, order or decree of a court of competent jurisdiction. However, Escrowee shall have the right at any time to deposit the Downpayment with the clerk of a court in the county in which the Unit is located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this para. 16, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that, although Escrowee is holding the Downpayment for Seller's account, for all other purposes Escrowee is acting solely as a stakeholder at the request of the parties and for their convenience and that Escrowee shall not be liable to either party for any

net or omission on its part unless taken or suffered in bad faith or in willful disregard of this Contract or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally agree to defend, indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this Contract or involving gross negligence on the part of Escrowee.

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

(d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this para. 16 by signing in the place indicated in this Contract.

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

**17. FIRPTA:** Seller represents and warrants to Purchaser that Seller is not a "foreign person" as defined in IRC § 1445, as amended, and the regulations issued thereunder ("Code Withholding Section"). At the Closing Seller shall deliver to Purchaser a certification stating that Seller is not a foreign person in the form then required by the Code Withholding Section. In the event Seller fails to deliver the aforesaid certification or in the event that Purchaser is not entitled under the Code Withholding Section to rely on such certification, Purchaser shall deduct and withhold from the Purchase Price a sum equal to 10% thereof and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

**18. Title Report; Acceptable Title:** (a) Purchaser shall promptly after the date hereof, or after receipt of the mortgage commitment letter, if applicable, order a title insurance report from the Title Company. Promptly after receipt of the title report and thereafter of any continuation thereof and supplements thereto, Purchaser shall forward a copy of each such report, continuation or supplement to the attorney for Seller. Purchaser shall further notify Seller's attorney of any other objections to title not reflected in such title report of which Purchaser becomes aware following the delivery of such report, reasonably promptly after becoming aware of such objections.

(b) Any unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon to a date not less than two business 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 the Closing if Seller delivers to Purchaser at the Closing official bills for such taxes, assessments, water charges, sewer rents, interest and penalties and instruments in recordable form sufficient to discharge any other liens and encumbrances of record. Upon request made not less than 3 business days before the Closing, Purchaser shall provide at the Closing separate checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance and other-wise complying with subpara. 3(b).

(c) 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 Institutional Lender (as hereinafter defined) free and clear of any such charges, liens and encumbrances, the Seller shall have the right in lieu of payment and discharge to deposit with the Title Company such funds or give such assurances or to pay such special or additional premiums as the Title Company may require in order to so insure. In such cases the charges, liens and encumbrances with respect to which the Title Company has agreed to insure shall not be considered objections to title.

(d) Seller shall convey and Purchaser shall accept fee simple title to the Unit in accordance with the terms of this Contract, subject only to: (a) the Permitted Exceptions and (b) such other matters as (i) the Title Company or any other title insurer licensed to do business by the State of New York shall be willing, without special or additional premium, to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the Unit (ii) shall be accepted by any lender which has committed in writing to provide mortgage financing to Purchaser for the purchase of the Unit ("Purchaser's Institutional Lender"), except that if such acceptance by Purchaser's Institutional Lender is unreasonably withheld or delayed, such acceptance shall be deemed to have been given.

(e) Notwithstanding any contrary provisions in the 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 after the date hereof 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 Downpayment to Purchaser, together with the reasonable cost of the examination of title and departmental violation searches in respect of the Unit, and upon the making of such refund and payment, 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. However, nothing contained in the subpara. 18(d) shall be construed to relieve Seller from liability due to a willful default.

**19. Risk of Loss; Casualty:** (a) The risk of loss or damage to the Unit or the personal property included in this sale, by fire or other casualty, until the earlier of the 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. Seller shall notify Purchaser of the occurrence of any such loss or damage to the Unit or the personal property included in this sale 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 the 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 the 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 the Closing, Purchaser shall have the following options:

(i) To declare this Contract cancelled and of no further force or effect and receive a refund of the Downpayment in which event neither party shall thereafter have any further rights against, or obligations or liabilities to, the other by reason of this Contract; or

(ii) 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 the 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 any property included in this sale.

(b) If seller does not elect to make such repairs and restorations, Purchaser may exercise the resulting option under (i) or (ii) of (a) 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.

(c) 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 the 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:

(i) To complete the purchase in accordance with this Contract without reduction in the Purchase Price; or

(ii) To adjourn the 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 60<sup>th</sup> day after the date of the giving of Seller's aforesaid notice. In the event Purchaser elects to adjourn the 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 Downpayment, in which latter event neither party shall thereafter have any further rights against, or obligations or liabilities to, the other by reason of this Contract.

(d) 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.

**20. Internal Revenue Service Reporting Requirement:** Each party 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 para. 20 shall survive the Closing. The parties designate Purchaser's Counsel as the attorney responsible for reporting this information as required by the Internal Revenue Code.

**21. Brokers:** Seller and Purchaser represent and warrant to each other that the only real estate broker with whom they have dealt in connection with this Contract and the transaction set forth herein is Evan Shaffer & Tatiana Moss Douglas Elliman 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 commission of such real estate shall be paid by Seller pursuant to separate agreement. If no real estate broker is specified 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. Seller and Purchaser shall indemnify and defend each other against any costs, claims or expenses (including reasonable attorneys' fees) arising out of the breach of any representation, warranty or agreement contained in this para. 21. The provisions of this para. 21 shall survive the Closing or, if the Closing does not occur, the termination of this Contract.

~~22. Mortgage Contingency: (Delete if inapplicable) (a) The obligations of Purchaser hereunder are conditioned upon issuance on or before (the "Commitment Date") of a written commitment from any Institutional Lender pursuant to which such Institutional Lender agrees to make a loan, other than a VA, FHA or other governmentally insured loan to Purchaser, at Purchaser's sole cost and expense of \$ or such lesser sum as Purchaser shall be willing to accept at the prevailing fixed rate of interest not to exceed prevailing rates or initial adjustment rate of interest not to exceed prevailing rates for a term of at least 30 years and on other customary commitment terms, whether or not conditioned upon any factors other than an appraisal satisfactory to the Institutional Lender, secured by a first mortgage on the Unit together with its undivided interest in the Common Elements. Purchaser shall (i) make prompt application to an Institutional Lender for such mortgage loan, (ii) furnish accurate and complete information on Purchaser and members of Purchaser's family, as required, (iii) pay all fees, points and charges required in connection with such application and loan, (iv) pursue such application with diligence, (v) cooperate in good faith with such Institutional Lender to the end of securing such first mortgage loan and (vi) promptly give Notice to Seller of the name and address of each Institutional Lender to which Purchaser has made such application. Purchaser shall comply with all requirements of such commitment (or of any commitment accepted by Purchaser) and shall furnish Seller with a copy thereof promptly after receipt thereof. If such commitment is not issued on or before the Commitment Date, then, unless Purchaser has accepted a commitment that does not comply with the requirements set forth above, Purchaser may cancel this Contract by giving Notice to Seller within 5 business days after the Commitment Date, in which case this Contract shall be deemed cancelled and thereafter neither party shall have any further rights against, or obligation or liabilities to, the other by reason of this Contract, except that the Downpayment shall be promptly refunded to Purchaser and except as set forth in para. 21. If Purchaser fails to give Notice of cancellation or if Purchaser shall accept a commitment that does not comply with the terms set forth above, the Purchaser shall be deemed to have waived Purchaser's right to cancel this Contract and to receive a refund of the Downpayment by reason of the contingency contained in this para. 22.~~

~~(b) For purposes of this Contract, an "Institutional Lender" is any bank, savings bank, private banker, trust company, savings and loan association and credit union or similar banking institution whether~~

~~located under the laws of the United States or any other state, foreign banking corporation licensed by the Superintendent of Banks of New York or the Comptroller of the Currency to transact business in New York State; insurance company duly organized or licensed to do business in New York State; insurance company duly organized or licensed to do business in New York State; mortgage banker licensed pursuant to Article 12-D of the Banking Law, and any instrumentality created by the United States or any state with the power to make mortgage loans.~~

~~(Delete if inapplicable) (c) Purchaser and Seller agree that the submission of an application to a mortgage broker registered pursuant to Article 12-D of the New York Banking Law ("Mortgage Broker") shall constitute full compliance with the terms and conditions set forth in para. 22(a)(i) of this Contract, and that Purchaser's cooperation in good faith with such Mortgage Broker to obtain a commitment from an Institutional Lender (together with Purchaser's cooperation in good faith with any Institutional Lender to which Purchaser's application has been submitted by such Mortgage Broker), and the prompt giving of Notice of Purchaser to Seller of the name and address of each Mortgage Broker to which Purchaser has submitted such an application shall constitute full compliance with the terms and conditions set forth in para. 22 and (vi) of this Contract.~~

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

24. Entire Contract: All prior understandings and agreements, written or oral, between Seller and Purchaser are merged in the 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.

25. 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 hereof.

26. No Assignment by Purchaser: Purchaser may not assign this Contract or any of Purchaser's rights hereunder.

27. Successors and Assigns: Subject to the provisions of para. 26, the provisions of this Contract shall bind and inure to the benefit of the Purchaser and Seller and their respective distributees, executors, administrators, heirs, legal representatives, successors and permitted assigns.

28. No Oral Changes: This Contract cannot be changed or terminated orally. Any changes or additional provisions must be set forth in a rider attached hereto or in a separate written agreement signed by both parties to this Contract.

29. Contract Not Binding Until Signed: This Contract shall not be binding or effective until properly executed and delivered by Seller and Purchaser.

*In Witness Whereof*, the parties hereto have duly executed this Contract on the day and year first above written.

R. A. Schragger  
Richard Schragger, Seller

Zoe L. Pichler  
Zoe L. Pichler

Agreed to as to para. 16:  
Gabler & McVeety LLP

Escrow Depository:  
JP Morgan Chase Bank 919 1st Avenue New York, NY

#### 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, restriction, 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 stoops, 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, or if a storage unit, for storage 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.

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.

PERSONAL PROPERTY INCLUDED

1 sofa with two smaller matching pillows  
1 large black dresser  
2 large mirrors  
1 bed with bed frame  
2 black night stands  
2 small white lamps  
1 white coffee table  
1 white tv table  
2 black bar chairs

**RIDER TO CONTRACT OF SALE BY AND BETWEEN  
RICHARD SCHRAGGER, AS SELLER, AND ZOYA LIU AS PURCHASER,  
DATED JULY 6, 2016, FOR THE CONDOMINIUM UNIT 37A, LOCATED AT  
100 WEST 39<sup>TH</sup> STREET, NEW YORK, NEW YORK 10018**

30. **Rider to Prevail**

If the provisions of this Rider conflict in any way with the provisions of the printed form Contract of Sale to which this Rider is attached, the provisions of this Rider shall control.

31. **No Oral Representations**

It is understood and agreed that Purchaser has not relied on any statements, representations or warranties of Seller, either express or implied, and Purchaser has inspected the Unit, or caused an inspection to be made on his behalf, or has waived such inspection and no representation is made or responsibility assumed by Seller, as to the condition of the Unit, its fixtures and articles of personal property or the interest of Seller appurtenant thereto, and Purchaser agrees to take the Unit in an "AS IS" condition as of the date of this Contract of Sale, subject to further reasonable wear and tear and natural deterioration prior to Closing. The Seller is not liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to operation or to what use the Premises or Unit can be applied, including, but not limited to, any matter or thing affected or relating to said Premises and Unit, the improvements thereon, or the fixtures, utilities, equipment, furnishings, appliances and personalty therein, except as herein specifically set forth. Normal and expected marks and holes and wall and floor discolorations resulting from the removal of any item of personal property shall be deemed delivery of the Unit as set forth in the Contract of Sale and shall not be considered damage to the Unit pursuant to Paragraph 11, nor shall any natural variations in any flooring be considered damage.

32. **Title**

Supplementing and modifying Paragraph 18 of the form Contract of Sale:

In no event shall Seller be required to bring any action or institute any proceeding or incur expenses in excess of 1% of the Purchase Price to render title to the Unit insurable in accordance with the terms of this Contract of Sale. In the event that Seller is unable to deliver title to the Unit which is insurable in accordance with this Contract of Sale or the Condition of the Unit shall not be as provided in this Contract of Sale, Purchaser's sole remedy shall be: (i) to accept such title as Seller is prepared to convey without reduction of the purchase price and without any credit or allowance against the purchase price, in excess of 1% of the Purchase Price, (except that Purchaser shall be entitled to a credit against the purchase price of the principal amount of any mortgage affecting the Unit together with accrued interest and any prepayment or other penalty, unless the title insurance company is willing to insure against collection of such lien out of the Unit); or (ii) to give Seller notice of its election to rescind this Contract of Sale, in which event Seller

shall thereupon return to Purchaser all monies theretofore paid to Seller by Purchaser on account of the purchase price specified in Paragraph 3(i) of this Contract of Sale, (the "Purchase Price"), and upon such refund this Contract of Sale shall be deemed canceled and neither party shall have any claim against the other and Purchaser shall not be entitled to reimbursement for any other loss or damage which may have been sustained by him, except that, if cancellation was caused solely by Seller's actions, Purchaser shall be reimbursed for his title costs, if any up to a maximum of \$500.00. Notwithstanding anything contained herein to the contrary, Seller shall be entitled to a reasonable adjournment or adjournments of Closing, of 45 days in the aggregate, to remove any defects or objections to title which Seller may be required to cure or to render the condition of the Unit as provided herein. Seller shall not be liable to Purchaser for any loss or damage suffered by Purchaser by reason of Seller's delay in Closing for any reason.

33. **Notice**

Supplementing and modifying Paragraph 14 of the form Contract of Sale:

Notices signed by the respective attorneys of the parties shall be deemed sufficient within the meaning of this paragraph without the signatures of the parties themselves.

Notice to Seller shall be sent to:

Lisa H. Gabler, Esq.  
Gabler & McVeety LLP  
3 Park Avenue, 31<sup>st</sup> Floor  
New York, NY 10016

Telephone: 212-829-0454  
Fax: 212-299-7522

Notice to Purchaser shall be sent to:

Andrew Luftig, Esq.  
Chaves & Perlowitz LLP  
111 John Street, Suite 312  
New York, NY 10038

Telephone: (212) 791-5993  
Fax: (646) 430-8459

34. **Closing of Title**

Unless specifically stated to the contrary, none of the representations, warranties or obligations of Seller contained in this Contract of Sale shall survive Closing. The delivery of the deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full



performance and discharge of every obligation on the part of Seller to be performed hereunder except those, if any, which are herein specifically stated to survive Closing.

35. **Downpayment**

- A. The Downpayment check of Purchaser in the amount of \$77,500.00, payable on the execution and delivery of this Contract of Sale, as provided in Paragraph 3(i) of this Contract, shall be drawn to the order of Gabler & McVeety LLP, as Escrowee, and the proceeds thereof ("the Deposit") distributed in accordance with Paragraph 16 of this Contract of Sale.
- B. In the event that the check given as a Downpayment and delivered by Purchaser to Seller upon the execution of this Contract of Sale is dishonored for any reason by the bank upon which it is drawn, then Seller, in addition to any other rights and remedies which they may have, Seller may at Seller's option declare this Contract of Sale null and void and thereupon Seller shall be relieved and released from all obligations hereunder. The Purchaser shall have 3 business days to cure, upon written notice (by email) to Purchaser's attorney.

36. **Broker Statement**

Supplementing and modifying Paragraph 21 of the form Contract of Sale, insert the following at the end thereof:

"Seller shall not be liable or bound in any manner by any verbal or written statements, representations, real estate broker's setups' or other information pertaining to the Unit or the other elements of this transaction furnished by any real estate broker, agent, employee or other person, unless the same are specifically set forth in this Contract of Sale."

37. **Further Assurances**

Either party shall execute, acknowledge and deliver to the other party such instruments and take such other actions, in addition to the instruments and actions specifically provided for herein, as such other party may reasonably request in order to effectuate the provisions of this Agreement or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

38. **Common Charges/Assessments**

Seller makes no representation that as of the date of Closing the common charges or real estate taxes for the Unit will have not increased or that a special assessment shall not have been imposed.

39. **Purchaser's Representations**

Purchaser represents and warrants that (i) to Purchaser's actual knowledge, there are no

judgments or liens pending against Purchaser; (ii) Purchaser has not been convicted of a crime; and (iii) Purchaser has sufficient available funds to complete the purchase after financing.

40. **Miscellaneous**

The submission of this Contract of Sale by Seller or its attorneys to Purchaser does not constitute an offer or an acceptance of an offer. This Contract of Sale shall not be binding upon Seller unless (i) the same has been fully executed by Purchaser and Seller and a fully executed copy has been delivered to each party or their respective attorneys named above; and (ii) Purchaser has paid the Downpayment pursuant to Paragraph 3(i) of the Contract of Sale.

41. **Counterparts**

This Contract may be executed by the parties individually in several separate counterparts, and by scan or by facsimile, each of which shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

42. **Condominium/Managing Agent Fees**

Seller shall pay any fees charged by the Condominium or its Managing Agent and normally imposed upon a Seller and Purchaser shall pay any fees charged by the Condominium or its Managing Agent and normally imposed upon a Purchaser.

43. **Personal Property**

The Personal Property (attached hereto as Exhibit 1) currently existing in the Unit is included in this Contract of Sale at no cost to Purchaser and in "as is" condition as of the date of the Closing.

44. **§1031 Exchange**

Purchaser hereby acknowledges it is the intent of the Seller to effect a §1031 tax deferred exchange. Seller's rights under this agreement may be assigned to a qualified intermediary, for the purpose of completing such an exchange. Purchaser agrees to cooperate with Seller, and the qualified intermediary, at no expense to Purchaser, to complete the exchange.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Rider to the Contract of Sale as of the date first above written.

**SELLER:**

**PURCHASER:**

**SELLER:**

R. Schragger  
Richard Schragger

**PURCHASER:**

Zova Liu  
Zova Liu

**PURCHASER'S RIDER ANNEXED TO AND FORMING A PART OF  
CONTRACT OF SALE DATED JULY 16, 2016  
PERTAINING TO CONDOMINIUM UNIT 37A AT  
100 WEST 39<sup>TH</sup> STREET, NEW YORK, NEW YORK**

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1. In the event of any conflict or inconsistency between the provisions of this Purchaser's Rider ("Purchaser's Rider") and those set forth in the printed portion of the Contract of Sale- Condominium Unit ("Contract") and Seller's Rider to which this Purchaser's Rider is annexed, the provisions of this Purchaser's Rider shall govern and be binding..
2. Seller agrees to assign any warranty to Purchaser; to the extent it is assignable and in Seller's possession.
3. Supplementing Paragraph 5 of the printed portion of the Contract, Seller represents, and covenants that:
  - a) All alterations, additions or improvements which have been made in or to the Unit by the Seller which require Condominium board or governmental approval were made in compliance with all governmental laws, ordinances, codes, rules and regulation and were fully paid for. Furthermore, all necessary permits and licenses were obtained and all required fees were paid in connection with such alterations.
  - b) The plumbing, mechanical, heating and electrical systems, , air conditioning and appliances included in this sale, to the extent that seller is responsible for maintaining same, shall be in working order as of the time of title closing.
  - c) Seller represents it has not received any written notice from the Condominium, Managing Agent of any other unit owner or tenant in the building during the prior 24 month period immediately preceding the date of this Contract, complaining of any leaks in the Unit which are purported to emanate from the Unit or any leaks into the Unit or of any other material problems which affect the condition of the Unit, including but not limited to, lack of heat or hot water, rodents, vermin, insects, bugs (including bedbugs), water pressure issues, mold, asbestos, hazardous materials in the unit. In the event it is determined prior to closing that any of the aforementioned issues are present, provided the issue is Seller's responsibility as opposed to the responsibility of the condo, Seller shall have such condition remediated and treated at Seller's sole costs and expense prior to the closing. Further, Seller has not received any written notice complaining of excessive noise, offensive conduct, odors or issues tantamount to the creation of a nuisance, or any other disturbance or adverse condition emanating from the Unit. Further, Seller represents that they will deliver the Unit, at time of Closing, free of leaks.

- d) To the best of Seller's knowledge, except for the common charges and special assessments set forth in the Contract of Sale, there is currently no other monthly or periodic payments required to be made to the Condominium; and Seller has no knowledge of (i) any intended assessment or increase in common charges or (ii) any proposed amendment or modification to the Declaration, By-Laws of Rules and Regulation of the Condominium of which seller has not notified Purchaser.
  - e) Seller represents to Purchaser that they have not been the subject of any bankruptcy, insolvency or other similar proceeding during the period commencing one year prior to the Closing until and including the Closing.
  - f) Seller is unaware of any planned, potential or future renovations of apartment on the same floor at the Unit or on the floor above or below the Unit.
4. The parties mutually agree that all right, title and interest of the Seller in and to any and all personal property which may be in or upon the Premises or Unit and used in connection with the operation thereof, shall be deemed transferred or conveyed to the Purchaser under the deed of conveyance to be delivered and that no part of the purchase price shall be deemed to have been paid by the Purchaser for the same.
5. In the event that the removal of anything which has been affixed to the wall or the floor of the Unit which results in a hole which is larger than an ordinary nail or screw hole, the Seller shall repair the hole in question so as to create a uniform surface and appearance to the wall and floor in question with the application of spackling or similar compound but Seller shall not be obligated to paint.
6. Seller hereby represents that this Contract is subject to and conditioned upon there not being any adverse interest and/or pending litigation or claim against or concerning Seller, the Unit, which would adversely affect the Unit or Seller's ability to convey same to Purchaser hereunder; this clause shall survive the Closing.
7. In the event the death of Purchaser prior to Closing, this Contract shall be deemed cancelled and of no further force and effect and the Contract Deposit shall be promptly refunded to Purchaser's attorney.
8. Parties agree that the delivery of the title report to Seller's attorney is deemed sufficient notice of any objections, encumbrances and existing violations to title.
9. All permitted exceptions in this Contract of Sale shall be permitted if (i); (ii) the exception does not render title uninsurable; (iii) the Title Company shall be willing, without special premium, to omit same as an exception from coverage; and (iv) that said exception does not interfere with Purchaser's ability to obtain financing.

10. Seller shall not be entitled to any refund from Purchaser if Condominium imposes an assessment for the same or similar amount and said rebate and/or refund is recaptured by the Condominium and/or not actually received by Purchaser.
11. Seller agrees that Purchaser's obligation to close on this transaction is expressly conditioned upon the presentation and existence of a current valid Temporary Certificate of Occupancy or a Final Certificate of Occupancy for the Unit at the time of the Closing.
12. The parties acknowledge that this transaction is not contingent on Purchaser obtaining financing. Notwithstanding the foregoing, Purchaser shall be permitted to seek financing. In the event Purchaser decides to obtain financing for the purchase, Seller shall act in good faith throughout the financing period. Seller agrees to permit Purchaser's Lending Institution to gain access to the Unit for the purposes of an appraisal.
13. Supplementing Paragraph 6(c)(i) of the printed portion of the Contract of Sale, "date hereof" shall be amended to read "date of Closing".
14. Any time periods contained in this Contract which contains the language "from the date hereof" or words to similar effect, shall be deemed to mean from the date that a fully executed Contract is delivered to the office of Purchaser's attorney.
15. Purchaser shall have the ability to assign the Contract of Sale to any LLC or corporation in which Purchaser is a related party and is the majority shareholder, provided the assignment is done before submission of the board application and same does not delay the Closing.
16. Upon notice to the tenant currently in the Unit, Seller shall permit Purchaser to have the right of access to the Unit between the date hereof and the Closing for the purpose of inspecting the same and taking measurements, at reasonable times and upon reasonable notice to Seller.
17. It is consented to and agreed that "PDF" signature copies or facsimile copies of the signatures of the Parties of this Contract of Sale and pages that same are located thereon shall be deemed to be originals. It is further agreed that this Contract of Sale may be executed in one or more counterparts, each of which shall be an original, and all of which together shall constitute a single Contract of Sale. This Contract of Sale shall be deemed to have become effective when one or more such counterparts shall have been signed by each of the Parties below.
18. Notwithstanding anything to the contrary contained in this Contract, all notices under this Contract, except notices of default may be given by facsimile or by electronic mail to the address of the party specified in this Contract or such other address as either party may specify in writing. Notices are effective upon confirmation of electronic or facsimile delivery.

19. Seller represents that there is currently a tenant in the Unit with a lease ending on August 31, 2016. Seller represents that he has granted no options, rights or estates in or to the premises; this clause shall survive the Closing.
20. In the event Seller currently has a mortgage on the Unit, and Purchaser obtains financing, the parties agree to act in good faith and use their best efforts in order to facilitate a purchase CEMA. Seller shall sign documents related to the CEMA which are reasonably required and produce all information which is reasonably required. All costs and processing fees and costs incurred by the parties related to the purchase CEMA, shall be paid by the Purchaser.
21. As required under the recently enacted Truth-In-Lending Act and Real Estate Settlement Procedures Act, which took effect on October 3, 2015, the Seller acknowledges that the Purchaser's lender is required to deliver a closing disclosure to Purchaser at least three (3) business days before the Closing and in practice may require closing figures from Seller and Purchaser seven to ten days in advance of closing. Seller agrees to cooperate with purchaser and Purchaser's lender by responding timely to requests for adjustments, payoff figures, check requests and other figures required by Purchaser's lender or the title company in order to complete a closing disclosure for any scheduled closing. The parties agree that any closing disclosure that was delayed by a managing agent's failure to timely provide closing figures and resulted in a delay of Purchaser's lender to timely issue a closing disclosure for a scheduled closing shall not be considered a default of Purchaser. Seller shall cooperate with Purchaser's lender by signing any documents reasonable or customarily requested by Purchaser's lender in order to close.
22. Notwithstanding anything to the contrary, in the event Seller is unable to transfer ownership of the Unit free of all tenants on or before September 30, 2016, Purchaser have the option to terminate this Contract to Seller's Attorney via overnight courier or hand delivery not later than October 15, 2016. At said time, this Contract will be deemed null and void and Seller shall be obligated to return Purchaser's Down Payment to Purchaser within five (5) days of the receipt of the Termination Notice by Seller's Attorney, and with respect to such obligation, time shall be of the essence.

**SIGNATURE PAGE TO FOLLOW**

**SELLER:**

R. A. Schragger  
Richard Schragger

**PURCHASER:**

Zova Liu  
Zova Liu



**Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards****Lead Warning Statement**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**Seller's Disclosure**

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) ☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) ☒ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i) ☐ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) ☒ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**Purchaser's Acknowledgment (Initial)**

(c) \_\_\_\_\_ Purchaser has received copies of all information listed above.

(d) \_\_\_\_\_ Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.

(e) Purchaser has (check (i) or (ii) below):

(i) ☐ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) ☒ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**Agent's Acknowledgment (Initial)**

(f) \_\_\_\_\_ Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852(d) and is aware of his/her responsibility to ensure compliance.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Seller	<u>R. A. — 11 —</u>	Date	Seller	Date
Purchaser	<u>[Signature]</u>	Date	Purchaser	Date
Agent		Date	Agent	Date

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

RICHARD SCHRAGGER,

Chapter 11

Case No. 16-44532 (CEC)

Debtor.

-----X

**ORDER (A) AUTHORIZING THE SALE OF CERTAIN REAL PROPERTY  
LOCATED AT 100 WEST 39<sup>TH</sup> STREET, NEW YORK, NEW YORK 10018,  
FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND  
ENCUMBRANCES, (B) WAIVING THE 14-DAY STAY OF SALE ORDER,  
AND (C) GRANTING RELATED RELIEF**

Upon the motion dated October 27, 2016 (the “Sale Motion”)<sup>1</sup> of Richard Schragger, the above captioned debtor (the “Debtor”), by his counsel, Morrison Tenenbaum PLLC, seeking entry of an Order pursuant to §§ 105(a), 363(b), (f) and (m), 503 and 507 of title 13 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (g), 9006, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (A) approving and authorizing the sale (the “Sale”) of the Debtor’s real property located at 100 West 39<sup>th</sup> Street, New York, New York 10018 (the “Real Property”) free and clear of all liens, claims, interests and encumbrances and (B) waiving the 14-day stay of sale order; and a hearing having been held on November 16, 2016 authorizing the Contract of Sale (the “Contract of Sale”) by and between the Debtor and the purchaser named Zova Liu (the “Purchaser”); and no objections having been filed; and good cause having been shown

**THE COURT HEREBY FINDS AND CONCLUDES:**

A. That the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and that this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O).

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<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Sale Motion.

B. That the venue of this proceeding in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. That: (i) adequate notice of the Sale has been given pursuant to Bankruptcy Rules 2002 and 6004; (ii) there exists adequate business justification for the immediate sale of the Debtor's Real Property; (iii) the Debtor has made sufficient marketing efforts under the circumstances; (iv) no objections having been filed; (v) the Purchaser was determined to offer the highest and best offer; (vi) the Purchaser is a good faith purchaser of the Debtor's Real Property within the meaning of 11 U.S.C. § 363(m); and (vii) good and sufficient cause existing for the granting of all of the relief requested in the Motion as set forth herein below.

**BASED UPON THE FOREGOING FINDINGS, IT IS HEREBY**

**ORDERED**, that the findings set forth above and conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed. To the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed; and it is further

**ORDERED**, that Purchaser is authorized to close on the Purchase Agreement upon the entry of this Order; and it is further

**ORDERED**, that in consideration of the Purchase Price, the Debtor be, and is hereby, authorized and empowered to convey to Purchaser all of its right, title and interest in the Real Property as set forth in the Contract of Sale or a later prepared asset purchase agreement, free and clear of all taxes, liens, debts, causes of action, obligations, liabilities, interests, encumbrances, charges, mortgages and claims of any kind, nature, description or kind whatsoever whether fixed or contingent, perfected or unperfected (collectively, “Liens”), with all such Liens to attach to the proceeds of the sale in the order of their priority and to the extent of their validity pursuant to 11 U.S.C. §363(f); and it is further

**ORDERED**, that in consideration of the Purchase Price, the Debtor be, and is hereby, authorized and empowered to convey to Purchaser all of its right, title and interest in the Real Property as set forth in the Contract of Sale or a later prepared asset purchase agreement, free and clear of all taxes, liens, debts, causes of action, obligations, liabilities, interests, encumbrances, charges, mortgages and claims of any kind, nature, description or kind whatsoever whether fixed or contingent, perfected or unperfected (collectively, “Liens”), with all such Liens to attach to the proceeds of the sale in the order of their priority and to the extent of their validity pursuant to 11 U.S.C. §363(f); and it is further

**ORDERED** that the 14-day stay of sale order be waived

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HONORABLE CARLA E. CRAIG  
CHIEF UNITED STATES BANKRUPTCY JUDGE

*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").*

**CONSULT YOUR LAWYER BEFORE SIGNING THIS AGREEMENT**  
**Condominium Unit – Contract of Sale**

**This Contract** made as of July 6, 2016 between

Richard Schragger hereinafter called "Seller", having a residence or principal place of business at 100 West 39<sup>th</sup> Street, 37A New York, NY 10018

AND

Zova Liu hereinafter called "Purchaser", having a residence or principal place of business at

1. Unit: The Seller agrees to sell and convey, and the Purchaser agrees to purchase the unit known as Unit No. 37A

("Unit") in the building ("Building") known as Bryant Park Towers Condominium ("Condominium") and located at 100 West 39<sup>th</sup> Street, New York, together with an undivided 0.2173 percent interest in the Common elements (as defined in para. 6) appurtenant thereto, subject to the terms and conditions set forth. The Unit shall be as designated in the Declaration of Condominium Ownership and By-Laws (as the same may be amended from time to time, the "By-Laws") of the Condominium.

2. **Personal Property:** Included in this sale: (a) The sale includes all of Seller's right, title and interest, if any, in and to:

(i) the refrigerators including ice makers, freezers, ranges, ovens and built in microwave ovens, dishwashers, clothes washing machines, clothes dryers, cabinets and counters, lighting and plumbing fixtures, air conditioning equipment, venetian blinds, shades, screens, storm windows and other window treatments, wall-to-wall carpeting, bookshelves, switch plates, door hardware, built-ins, fireplace equipment, built in wine racks, mantels, stained glass, built in mirrors and articles of property included in this sale: will be in working order at the time of Closing;

(b) Excluded from this sale are:

(i) furniture and furnishings (other than as specifically provided in this Contract); and

(ii) The property referred to in subpara. 2(a)(i) and (ii) may not be purchased if title to the Unit is not conveyed pursuant to this contract.

3. **Purchase Price:** (a) The purchase price ("Purchase Price") is \$775,000, payable as follows:

(i) \$77,500.00 ("Downpayment") on the signing of this Contract by check subject to collection, the receipt of which is hereby recognized, to be held in escrow pursuant to para. 16; and

(ii) \$697,500.00 representing the balance of the Purchase Price, by certified check of Purchaser or official bank check (except as otherwise provided in this Contract) on the delivery of the deed.

(b) All instruments in payment of the Purchase Price shall represent United States currency and be drawn on or issued by a bank or trust company authorized to accept deposits in New York State. All checks in payment of the Downpayment shall be payable to the order of Escrowee (as hereinafter defined). All checks in payment of the balance of the Purchase Price shall be payable to the order of the Seller (or as Seller otherwise directs pursuant to subparas. 6(a)(ix) or 18(b)).

(c) Aside from the Downpayment and checks aggregating not more than one-half of one percent of the Purchase Price, including closing adjustments, all checks delivered by Purchaser shall be certified or official bank checks as herein provided.

4. **Closing of Title:** The closing documents referred to in para. 6 shall be delivered, and payment of the balance of the Purchase Price shall be made, at The Closing, to be held on or about 60 days from date hereof at 10AM, at the offices of Seller's counsel 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.

5. **Representations, Warranties and Covenants:** The Seller unconditionally represents, warrants and covenants that:

(a) The Seller is the sole rightful owner of the Unit and the personal property described in subpara. 2(a), and Seller has the full right, power and authority to sell, convey and transfer the same,

(b) The common charges imposed by the Condominium (excluding separately billed utility charges) for the Unit on the date hereof are \$831.00 per month;

(c) Seller has not received any notice, written or oral, of any intended assessment or increase in common charges not reflected in subpara. 5(b). 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 or oral notice;

(d) The real estate taxes for the Unit for the fiscal year of 7/1/2015 through 6/30/2016 are \$10,257.00

(e) Seller is not a "sponsor" or a nominee of a "sponsor" under any plan of condominium organization affecting the Unit;

(f) All refrigerators including ice makers, freezers, ranges, ovens and built in microwave ovens, dishwashers, clothes washing machines, clothes dryers, cabinets and counters, lighting and plumbing fixtures, air conditioning equipment, Venetian blinds, shades, screens, storm windows and other window treatments, wall-to-wall carpeting, bookshelves, switch plates, door hardware, built-ins, fireplace equipment, built in wine racks, mantels, stained glass, built in mirrors and articles of property included in this sale: will be in working order at the time of Closing;

(g) If a copy is attached to this Contract, the copy of the Certificate of Occupancy covering the Unit is a true and correct copy, and

(h) Seller is not a "foreign person" as defined in IRC #1445 as amended, and the regulations thereunder (Code Withholding Section). (If applicable, delete and provide for compliance with Code Withholding Section, as defined in para. 17).

6. **Closing Documents:** (a) At the Closing, Seller shall deliver to Purchaser the following:

(i) Bargain and sale deed with covenant against grantor's acts ("Deed"), complying with RPL § 339-0 and containing the covenant required by LL § 13 (5), conveying to Purchaser title to the Unit, and any garage or storage units appurtenant to the Unit, together with its undivided interest in the Common Elements (as such term is defined in the Declaration and which term shall be deemed to include Seller's right, title and interest in any limited common elements attributable to or used in connection with the Unit) appurtenant thereto, free and clear of all liens and encumbrances other than Permitted Exceptions. The Deed shall be executed and acknowledged by Seller and, if requested by the Condominium, executed and acknowledged by Purchaser, in proper statutory form for recording;

(ii) If a corporation and if required pursuant to BCL § 909, Seller shall deliver to Purchaser (1) a resolution of its board of directors authorizing the delivery of the Deed or a statement included in the Deed as follows: "This conveyance is made in the ordinary course of business actually conducted by the Grantor", and (2) a certificate executed by an officer of such corporation certifying as to the adoption of such resolution and setting forth facts demonstrating that the delivery of the Deed is in conformity with the requirements of BCL § 909. The Deed shall also contain a recital sufficient to establish compliance with such law;

(iii) A waiver of right of first refusal of the board of managers of the Condominium ("Board") if required in accordance with para. 8;

(iv) A statement by the Condominium or its managing agent on behalf of and authorized by the Condominium that the common charges and any assessments then due and payable to the Condominium have been paid to the date of the Closing;

(v) All keys to the doors of, and mailbox and for, the Unit; and storage units.

(vi) Such affidavits and/or other evidence as the title company ("Title Company") from which Purchaser has ordered a title insurance report and which is authorized to do business in New York State 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;

(vii) New York City Real Property Transfer Tax Return, if applicable, prepared, executed and acknowledged by Seller in proper form for submission;

(ix) Checks in payment of all applicable real property transfer taxes except a transfer tax which by law is primarily imposed on the purchaser ("Purchaser Transfer Tax") in connection with the sale. In lieu of delivery of such checks, Seller shall have the right, upon not less than 3 business days notice to Purchaser, to cause Purchaser to deliver checks at the Closing and to credit the amount against the balance of the Purchase Price. Seller shall pay the additional transfer taxes, if any, payable after the Closing by reason of the conveyance of the Unit, which obligation shall survive the Closing;

(ix) Certification that Seller is not a foreign person pursuant to para. 18. (If inapplicable, delete and provide for compliance with Code Section, as defined in para. 17.), and

(x) Affidavit that a single station smoke detecting alarm device is installed pursuant to New York Executive Law § 378(5).

(b) At the Closing, Purchaser shall deliver to Seller the following:

(i) Checks in payment of (y) the balance of the Purchase Price in accordance with subpara. 3(b) and (z) any Purchaser Transfer Tax;

(ii) If required by the Declaration or By-Laws, power of attorney to the Board, prepared by Seller, in the form required by the Condominium. The Power of attorney shall be executed and acknowledged by Purchaser and, after being recorded, shall be sent to the Condominium;

(iii) New York City Real Property Transfer Tax Return executed and acknowledged 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

(iv) If required, New York State Equalization Return executed and acknowledged by Purchaser in proper form for submission.

(c) It is a condition of Purchaser's obligation to close title hereunder that:

(i) All notes or notices of violations of law or governmental 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;

(ii) 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 rules and regulations of the Condominium shall have been cured; and

(iii) The Condominium is a valid condominium created pursuant to RPL Art. 9-B and the Title Company will insure the same.

7. **Closing Adjustments:** (a) The following adjustments shall be made as of 11:59 P.M. of the day before the Closing:

(i) Real estate taxes and water charges and sewer rents, unless same are part of common charges, 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 actual reading, subject to adjustment after the 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 on the same basis as provided in the Declaration or By-Laws or, in the absence of such provision, based upon the Unit's percentage interest in the Common Elements;

(ii) Common charges of the Condominium; and

(iii) 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.

(b) 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 due shall be considered due and are to be paid by Seller at the Closing. All subsequent installments at the time of Closing shall be the obligation of Purchaser.

(c) Any errors or omissions in computing closing adjustments shall be corrected. This subpara. 7c shall survive the Closing.

(d) 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 provided herein.

8. **Right of First Refusal:** If so provided in the Declaration or By-Laws, this sale is subject to and conditioned upon the waiver of a right of first refusal to purchase the Unit held by the Condominium and exercisable by the Board. Seller agrees to give notice promptly to the Board of the contemplated sale of the Unit to Purchaser, which notice shall be given in accordance with the terms of the Declaration and By-Laws, and Purchaser agrees to provide promptly all applications, information and references reasonably requested by the Board. If the Board shall exercise such right of first refusal, Seller shall promptly refund to Purchaser the Downpayment (which term, for all purposes of this contract, shall be deemed to include interest, if any, earned thereon, and title charges including but not limited to examination of title and departmental charges) 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 obligation or liabilities to, the other by reason of this contract. If the Board shall fail to exercise such right of first refusal within the time and in the manner provided for in the Declaration or By-Laws or shall declare in writing its intention not to exercise such right of first refusal (a copy of which writing shall be delivered to Purchaser promptly following receipt thereof), the parties hereto shall proceed with this sale in accordance with the provisions of this contract.

9. **Processing Fee:** Seller shall, at the Closing, pay all fees and charges payable to the Condominium (and/or its managing agent) in connection with this sale, including, but not limited to, any processing fee, the legal fees, if any, of the condominium's attorney in connection with this sale and, unless otherwise agreed to by Seller and Purchaser in writing, all "flip taxes," transfer or entrance fees or similar charges, if any, payable to or for the Condominium or otherwise for the benefit of

the Condominium unit owners, which arise by reason of this sale. Said fees, as directed by the Declaration, are as follows:

10. **No Other Representations:** Purchaser has examined and is satisfied with the Declaration, By-Laws and rules and regulations of the Condominium as amended, or has waived the examination thereof. Purchaser has inspected the Unit, its fixtures, appliances and equipment and the personal property, if any, included in this sale, as well as the Common Elements of the Condominium, and knows the condition thereof and, subject to subpara. 5(f), 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 the Closing. Purchaser has examined or waived examination of the last audited financial statements of the Condominium, and has considered or waived consideration of all other matters pertaining to this Contract and to the purchase to be made hereunder, and 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 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.

11. **Possession:** Seller shall, at or prior to the Closing, remove from the Unit all furniture, furnishings and other personal property not included in this sale, shall repair any damage caused by such removal, and shall deliver exclusive possession of the Unit at the Closing, vacant, broom-clean and free of tenancies or other rights of use or possession.

12. **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 the 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 during the 24-hour period immediately preceding the Closing.

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

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

14. **Notices:** Any notice, request or other communication ("Notice") given or made hereunder (except for the notice required by para. 12), shall be in writing and either (a) sent by any of the parties hereto or their respective attorneys, by registered or certified mail, return receipt requested, postage prepaid, or (b) delivered in person or by overnight courier, with receipt acknowledged, to the address given at the beginning of this Contract for the party to whom the Notice is to be given, or to such other address for such party as said party shall hereafter designate by Notice given to the other party pursuant to this para. 14. Each Notice mailed shall be deemed given on the fourth business day following the date of mailing and each Notice delivered in person or by overnight courier shall be deemed given when delivered.

15. **Purchaser's Lien:** The Downpayment and all other sums paid on account of this Contract and the reasonable expenses of the examination of title, and departmental violation searches in respect of, the Unit are hereby made a lien upon the Unit, but such lien shall not continue after default by Purchaser.

16. **Downpayment in Escrow:** (a) Seller's attorney ("Escrowee") shall hold the Downpayment for Seller's account in escrow in a segregated bank account at the depository identified at the end of this Contract until Closing or sooner termination of this Contract and shall pay over or apply the Downpayment in accordance with the terms of this para. 16. Escrowee shall (not) (Delete if inapplicable) hold the Downpayment in an interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee at the end of this contract. At closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (as defined in para. 14) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive such Notice of objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this Contract or a final, nonappealable judgment, order or decree of a court of competent jurisdiction. However, Escrowee shall have the right at any time to deposit the Downpayment with the clerk of a court in the county in which the Unit is located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this para. 16, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that, although Escrowee is holding the Downpayment for Seller's account, for all other purposes Escrowee is acting solely as a stakeholder at the request of the parties and for their convenience and that Escrowee shall not be liable to either party for any

net or omission on its part unless taken or suffered in bad faith or in willful disregard of this Contract or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally agree to defend, indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this Contract or involving gross negligence on the part of Escrowee.

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

(d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this para. 16 by signing in the place indicated in this Contract.

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

**17. FIRPTA:** Seller represents and warrants to Purchaser that Seller is not a "foreign person" as defined in IRC § 1445, as amended, and the regulations issued thereunder ("Code Withholding Section"). At the Closing Seller shall deliver to Purchaser a certification stating that Seller is not a foreign person in the form then required by the Code Withholding Section. In the event Seller fails to deliver the aforesaid certification or in the event that Purchaser is not entitled under the Code Withholding Section to rely on such certification, Purchaser shall deduct and withhold from the Purchase Price a sum equal to 10% thereof and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

**18. Title Report; Acceptable Title:** (a) Purchaser shall promptly after the date hereof, or after receipt of the mortgage commitment letter, if applicable, order a title insurance report from the Title Company. Promptly after receipt of the title report and thereafter of any continuation thereof and supplements thereto, Purchaser shall forward a copy of each such report, continuation or supplement to the attorney for Seller. Purchaser shall further notify Seller's attorney of any other objections to title not reflected in such title report of which Purchaser becomes aware following the delivery of such report, reasonably promptly after becoming aware of such objections.

(b) Any unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon to a date not less than two business 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 the Closing if Seller delivers to Purchaser at the Closing official bills for such taxes, assessments, water charges, sewer rents, interest and penalties and instruments in recordable form sufficient to discharge any other liens and encumbrances of record. Upon request made not less than 3 business days before the Closing, Purchaser shall provide at the Closing separate checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance and other-wise complying with subpara. 3(b).

(c) 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 Institutional Lender (as hereinafter defined) free and clear of any such charges, liens and encumbrances, the Seller shall have the right in lieu of payment and discharge to deposit with the Title Company such funds or give such assurances or to pay such special or additional premiums as the Title Company may require in order to so insure. In such cases the charges, liens and encumbrances with respect to which the Title Company has agreed to insure shall not be considered objections to title.

(d) Seller shall convey and Purchaser shall accept fee simple title to the Unit in accordance with the terms of this Contract, subject only to: (a) the Permitted Exceptions and (b) such other matters as (i) the Title Company or any other title insurer licensed to do business by the State of New York shall be willing, without special or additional premium, to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the Unit (ii) shall be accepted by any lender which has committed in writing to provide mortgage financing to Purchaser for the purchase of the Unit ("Purchaser's Institutional Lender"), except that if such acceptance by Purchaser's Institutional Lender is unreasonably withheld or delayed, such acceptance shall be deemed to have been given.

(e) Notwithstanding any contrary provisions in the 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 after the date hereof 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 Downpayment to Purchaser, together with the reasonable cost of the examination of title and departmental violation searches in respect of the Unit, and upon the making of such refund and payment, 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. However, nothing contained in the subpara. 18(d) shall be construed to relieve Seller from liability due to a willful default.

**19. Risk of Loss; Casualty:** (a) The risk of loss or damage to the Unit or the personal property included in this sale, by fire or other casualty, until the earlier of the 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. Seller shall notify Purchaser of the occurrence of any such loss or damage to the Unit or the personal property included in this sale 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 the 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 the 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 the Closing, Purchaser shall have the following options:

(i) To declare this Contract cancelled and of no further force or effect and receive a refund of the Downpayment in which event neither party shall thereafter have any further rights against, or obligations or liabilities to, the other by reason of this Contract; or

(ii) 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 the 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 any property included in this sale.

(b) If seller does not elect to make such repairs and restorations, Purchaser may exercise the resulting option under (i) or (ii) of (a) 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.

(c) 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 the 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:

(i) To complete the purchase in accordance with this Contract without reduction in the Purchase Price; or

(ii) To adjourn the 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 60<sup>th</sup> day after the date of the giving of Seller's aforesaid notice. In the event Purchaser elects to adjourn the 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 Downpayment, in which latter event neither party shall thereafter have any further rights against, or obligations or liabilities to, the other by reason of this Contract.

(d) 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.

**20. Internal Revenue Service Reporting Requirement:** Each party 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 para. 20 shall survive the Closing. The parties designate Purchaser's Counsel as the attorney responsible for reporting this information as required by the Internal Revenue Code.

**21. Brokers:** Seller and Purchaser represent and warrant to each other that the only real estate broker with whom they have dealt in connection with this Contract and the transaction set forth herein is Evan Shaffer & Tatiana Moss Douglas Elliman 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 commission of such real estate shall be paid by Seller pursuant to separate agreement. If no real estate broker is specified 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. Seller and Purchaser shall indemnify and defend each other against any costs, claims or expenses (including reasonable attorneys' fees) arising out of the breach of any representation, warranty or agreement contained in this para. 21. The provisions of this para. 21 shall survive the Closing or, if the Closing does not occur, the termination of this Contract.

~~22. Mortgage Contingency: (Delete if inapplicable) (a) The obligations of Purchaser hereunder are conditioned upon issuance on or before (the "Commitment Date") of a written commitment from any Institutional Lender pursuant to which such Institutional Lender agrees to make a loan, other than a VA, FHA or other governmentally insured loan to Purchaser, at Purchaser's sole cost and expense of \$ or such lesser sum as Purchaser shall be willing to accept at the prevailing fixed rate of interest not to exceed prevailing rates or initial adjustment rate of interest not to exceed prevailing rates for a term of at least 30 years and on other customary commitment terms, whether or not conditioned upon any factors other than an appraisal satisfactory to the Institutional Lender, secured by a first mortgage on the Unit together with its undivided interest in the Common Elements. Purchaser shall (i) make prompt application to an Institutional Lender for such mortgage loan, (ii) furnish accurate and complete information on Purchaser and members of Purchaser's family, as required, (iii) pay all fees, points and charges required in connection with such application and loan, (iv) pursue such application with diligence, (v) cooperate in good faith with such Institutional Lender to the end of securing such first mortgage loan and (vi) promptly give Notice to Seller of the name and address of each Institutional Lender to which Purchaser has made such application. Purchaser shall comply with all requirements of such commitment (or of any commitment accepted by Purchaser) and shall furnish Seller with a copy thereof promptly after receipt thereof. If such commitment is not issued on or before the Commitment Date, then, unless Purchaser has accepted a commitment that does not comply with the requirements set forth above, Purchaser may cancel this Contract by giving Notice to Seller within 5 business days after the Commitment Date, in which case this Contract shall be deemed cancelled and thereafter neither party shall have any further rights against, or obligation or liabilities to, the other by reason of this Contract, except that the Downpayment shall be promptly refunded to Purchaser and except as set forth in para. 21. If Purchaser fails to give Notice of cancellation or if Purchaser shall accept a commitment that does not comply with the terms set forth above, the Purchaser shall be deemed to have waived Purchaser's right to cancel this Contract and to receive a refund of the Downpayment by reason of the contingency contained in this para. 22.~~

~~(b) For purposes of this Contract, an "Institutional Lender" is any bank, savings bank, private banker, trust company, savings and loan association and credit union or similar banking institution whether~~

~~organized under the laws of the United States or any other state, foreign banking corporation licensed by the Superintendent of Banks of New York or the Comptroller of the Currency to transact business in New York State; insurance company duly organized or licensed to do business in New York State; insurance company duly organized or licensed to do business in New York State; mortgage banker licensed pursuant to Article 12-D of the Banking Law, and any instrumentality created by the United States or any state with the power to make mortgage loans.~~

~~(Delete if inapplicable) (c) Purchaser and Seller agree that the submission of an application to a mortgage broker registered pursuant to Article 12-D of the New York Banking Law ("Mortgage Broker") shall constitute full compliance with the terms and conditions set forth in para. 22(a)(i) of this Contract, and that Purchaser's cooperation in good faith with such Mortgage Broker to obtain a commitment from an Institutional Lender (together with Purchaser's cooperation in good faith with any Institutional Lender to which Purchaser's application has been submitted by such Mortgage Broker), and the prompt giving of Notice of Purchaser to Seller of the name and address of each Mortgage Broker to which Purchaser has submitted such an application shall constitute full compliance with the terms and conditions set forth in para. 22 and (vi) of this Contract.~~

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

24. Entire Contract: All prior understandings and agreements, written or oral, between Seller and Purchaser are merged in the 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.

25. 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 hereof.

26. No Assignment by Purchaser: Purchaser may not assign this Contract or any of Purchaser's rights hereunder.

27. Successors and Assigns: Subject to the provisions of para. 26, the provisions of this Contract shall bind and inure to the benefit of the Purchaser and Seller and their respective distributees, executors, administrators, heirs, legal representatives, successors and permitted assigns.

28. No Oral Changes: This Contract cannot be changed or terminated orally. Any changes or additional provisions must be set forth in a rider attached hereto or in a separate written agreement signed by both parties to this Contract.

29. Contract Not Binding Until Signed: This Contract shall not be binding or effective until properly executed and delivered by Seller and Purchaser.



*In Witness Whereof*, the parties hereto have duly executed this Contract on the day and year first above written.

R. A. Schragger  
Richard Schragger, Seller

Zoe L. Pichler  
Zoe L. Pichler

Agreed to as to para. 16:  
Gabler & McVeety LLP

Escrow Depository:  
JP Morgan Chase Bank 919 1st Avenue New York, NY

**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, restriction, 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 stoops, 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, or if a storage unit, for storage 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.
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.

PERSONAL PROPERTY INCLUDED

1 sofa with two smaller matching pillows  
1 large black dresser  
2 large mirrors  
1 bed with bed frame  
2 black night stands  
2 small white lamps  
1 white coffee table  
1 white tv table  
2 black bar chairs

**RIDER TO CONTRACT OF SALE BY AND BETWEEN  
RICHARD SCHRAGGER, AS SELLER, AND ZOYA LIU AS PURCHASER,  
DATED JULY 6, 2016, FOR THE CONDOMINIUM UNIT 37A, LOCATED AT  
100 WEST 39<sup>TH</sup> STREET, NEW YORK, NEW YORK 10018**

30. **Rider to Prevail**

If the provisions of this Rider conflict in any way with the provisions of the printed form Contract of Sale to which this Rider is attached, the provisions of this Rider shall control.

31. **No Oral Representations**

It is understood and agreed that Purchaser has not relied on any statements, representations or warranties of Seller, either express or implied, and Purchaser has inspected the Unit, or caused an inspection to be made on his behalf, or has waived such inspection and no representation is made or responsibility assumed by Seller, as to the condition of the Unit, its fixtures and articles of personal property or the interest of Seller appurtenant thereto, and Purchaser agrees to take the Unit in an "AS IS" condition as of the date of this Contract of Sale, subject to further reasonable wear and tear and natural deterioration prior to Closing. The Seller is not liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to operation or to what use the Premises or Unit can be applied, including, but not limited to, any matter or thing affected or relating to said Premises and Unit, the improvements thereon, or the fixtures, utilities, equipment, furnishings, appliances and personalty therein, except as herein specifically set forth. Normal and expected marks and holes and wall and floor discolorations resulting from the removal of any item of personal property shall be deemed delivery of the Unit as set forth in the Contract of Sale and shall not be considered damage to the Unit pursuant to Paragraph 11, nor shall any natural variations in any flooring be considered damage.

32. **Title**

Supplementing and modifying Paragraph 18 of the form Contract of Sale:

In no event shall Seller be required to bring any action or institute any proceeding or incur expenses in excess of 1% of the Purchase Price to render title to the Unit insurable in accordance with the terms of this Contract of Sale. In the event that Seller is unable to deliver title to the Unit which is insurable in accordance with this Contract of Sale or the Condition of the Unit shall not be as provided in this Contract of Sale, Purchaser's sole remedy shall be: (i) to accept such title as Seller is prepared to convey without reduction of the purchase price and without any credit or allowance against the purchase price, in excess of 1% of the Purchase Price, (except that Purchaser shall be entitled to a credit against the purchase price of the principal amount of any mortgage affecting the Unit together with accrued interest and any prepayment or other penalty, unless the title insurance company is willing to insure against collection of such lien out of the Unit); or (ii) to give Seller notice of its election to rescind this Contract of Sale, in which event Seller

shall thereupon return to Purchaser all monies theretofore paid to Seller by Purchaser on account of the purchase price specified in Paragraph 3(i) of this Contract of Sale, (the "Purchase Price"), and upon such refund this Contract of Sale shall be deemed canceled and neither party shall have any claim against the other and Purchaser shall not be entitled to reimbursement for any other loss or damage which may have been sustained by him, except that, if cancellation was caused solely by Seller's actions, Purchaser shall be reimbursed for his title costs, if any up to a maximum of \$500.00. Notwithstanding anything contained herein to the contrary, Seller shall be entitled to a reasonable adjournment or adjournments of Closing, of 45 days in the aggregate, to remove any defects or objections to title which Seller may be required to cure or to render the condition of the Unit as provided herein. Seller shall not be liable to Purchaser for any loss or damage suffered by Purchaser by reason of Seller's delay in Closing for any reason.

33. **Notice**

Supplementing and modifying Paragraph 14 of the form Contract of Sale:

Notices signed by the respective attorneys of the parties shall be deemed sufficient within the meaning of this paragraph without the signatures of the parties themselves.

Notice to Seller shall be sent to:

Lisa H. Gabler, Esq.  
Gabler & McVeety LLP  
3 Park Avenue, 31<sup>st</sup> Floor  
New York, NY 10016

Telephone: 212-829-0454  
Fax: 212-299-7522

Notice to Purchaser shall be sent to:

Andrew Luftig, Esq.  
Chaves & Perlowitz LLP  
111 John Street, Suite 312  
New York, NY 10038

Telephone: (212) 791-5993  
Fax: (646) 430-8459

34. **Closing of Title**

Unless specifically stated to the contrary, none of the representations, warranties or obligations of Seller contained in this Contract of Sale shall survive Closing. The delivery of the deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full

performance and discharge of every obligation on the part of Seller to be performed hereunder except those, if any, which are herein specifically stated to survive Closing.

35. **Downpayment**

- A. The Downpayment check of Purchaser in the amount of \$77,500.00, payable on the execution and delivery of this Contract of Sale, as provided in Paragraph 3(i) of this Contract, shall be drawn to the order of Gabler & McVeety LLP, as Escrowee, and the proceeds thereof ("the Deposit") distributed in accordance with Paragraph 16 of this Contract of Sale.
- B. In the event that the check given as a Downpayment and delivered by Purchaser to Seller upon the execution of this Contract of Sale is dishonored for any reason by the bank upon which it is drawn, then Seller, in addition to any other rights and remedies which they may have, Seller may at Seller's option declare this Contract of Sale null and void and thereupon Seller shall be relieved and released from all obligations hereunder. The Purchaser shall have 3 business days to cure, upon written notice (by email) to Purchaser's attorney.

36. **Broker Statement**

Supplementing and modifying Paragraph 21 of the form Contract of Sale, insert the following at the end thereof:

"Seller shall not be liable or bound in any manner by any verbal or written statements, representations, real estate broker's setups' or other information pertaining to the Unit or the other elements of this transaction furnished by any real estate broker, agent, employee or other person, unless the same are specifically set forth in this Contract of Sale."

37. **Further Assurances**

Either party shall execute, acknowledge and deliver to the other party such instruments and take such other actions, in addition to the instruments and actions specifically provided for herein, as such other party may reasonably request in order to effectuate the provisions of this Agreement or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

38. **Common Charges/Assessments**

Seller makes no representation that as of the date of Closing the common charges or real estate taxes for the Unit will have not increased or that a special assessment shall not have been imposed.

39. **Purchaser's Representations**

Purchaser represents and warrants that (i) to Purchaser's actual knowledge, there are no

judgments or liens pending against Purchaser; (ii) Purchaser has not been convicted of a crime; and (iii) Purchaser has sufficient available funds to complete the purchase after financing.

40. **Miscellaneous**

The submission of this Contract of Sale by Seller or its attorneys to Purchaser does not constitute an offer or an acceptance of an offer. This Contract of Sale shall not be binding upon Seller unless (i) the same has been fully executed by Purchaser and Seller and a fully executed copy has been delivered to each party or their respective attorneys named above; and (ii) Purchaser has paid the Downpayment pursuant to Paragraph 3(i) of the Contract of Sale.

41. **Counterparts**

This Contract may be executed by the parties individually in several separate counterparts, and by scan or by facsimile, each of which shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

42. **Condominium/Managing Agent Fees**

Seller shall pay any fees charged by the Condominium or its Managing Agent and normally imposed upon a Seller and Purchaser shall pay any fees charged by the Condominium or its Managing Agent and normally imposed upon a Purchaser.

43. **Personal Property**

The Personal Property (attached hereto as Exhibit 1) currently existing in the Unit is included in this Contract of Sale at no cost to Purchaser and in "as is" condition as of the date of the Closing.

44. **§1031 Exchange**

Purchaser hereby acknowledges it is the intent of the Seller to effect a §1031 tax deferred exchange. Seller's rights under this agreement may be assigned to a qualified intermediary, for the purpose of completing such an exchange. Purchaser agrees to cooperate with Seller, and the qualified intermediary, at no expense to Purchaser, to complete the exchange.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Rider to the Contract of Sale as of the date first above written.

**SELLER:**

**PURCHASER:**

**SELLER:**

R. Schragger  
Richard Schragger

**PURCHASER:**

Zova Liu  
Zova Liu

**PURCHASER'S RIDER ANNEXED TO AND FORMING A PART OF  
CONTRACT OF SALE DATED JULY 16, 2016  
PERTAINING TO CONDOMINIUM UNIT 37A AT  
100 WEST 39<sup>TH</sup> STREET, NEW YORK, NEW YORK**

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1. In the event of any conflict or inconsistency between the provisions of this Purchaser's Rider ("Purchaser's Rider") and those set forth in the printed portion of the Contract of Sale- Condominium Unit ("Contract") and Seller's Rider to which this Purchaser's Rider is annexed, the provisions of this Purchaser's Rider shall govern and be binding..
2. Seller agrees to assign any warranty to Purchaser; to the extent it is assignable and in Seller's possession.
3. Supplementing Paragraph 5 of the printed portion of the Contract, Seller represents, and covenants that:
  - a) All alterations, additions or improvements which have been made in or to the Unit by the Seller which require Condominium board or governmental approval were made in compliance with all governmental laws, ordinances, codes, rules and regulation and were fully paid for. Furthermore, all necessary permits and licenses were obtained and all required fees were paid in connection with such alterations.
  - b) The plumbing, mechanical, heating and electrical systems, , air conditioning and appliances included in this sale, to the extent that seller is responsible for maintaining same, shall be in working order as of the time of title closing.
  - c) Seller represents it has not received any written notice from the Condominium, Managing Agent of any other unit owner or tenant in the building during the prior 24 month period immediately preceding the date of this Contract, complaining of any leaks in the Unit which are purported to emanate from the Unit or any leaks into the Unit or of any other material problems which affect the condition of the Unit, including but not limited to, lack of heat or hot water, rodents, vermin, insects, bugs (including bedbugs), water pressure issues, mold, asbestos, hazardous materials in the unit. In the event it is determined prior to closing that any of the aforementioned issues are present, provided the issue is Seller's responsibility as opposed to the responsibility of the condo, Seller shall have such condition remediated and treated at Seller's sole costs and expense prior to the closing. Further, Seller has not received any written notice complaining of excessive noise, offensive conduct, odors or issues tantamount to the creation of a nuisance, or any other disturbance or adverse condition emanating from the Unit. Further, Seller represents that they will deliver the Unit, at time of Closing, free of leaks.



- d) To the best of Seller's knowledge, except for the common charges and special assessments set forth in the Contract of Sale, there is currently no other monthly or periodic payments required to be made to the Condominium; and Seller has no knowledge of (i) any intended assessment or increase in common charges or (ii) any proposed amendment or modification to the Declaration, By-Laws of Rules and Regulation of the Condominium of which seller has not notified Purchaser.
  - e) Seller represents to Purchaser that they have not been the subject of any bankruptcy, insolvency or other similar proceeding during the period commencing one year prior to the Closing until and including the Closing.
  - f) Seller is unaware of any planned, potential or future renovations of apartment on the same floor at the Unit or on the floor above or below the Unit.
4. The parties mutually agree that all right, title and interest of the Seller in and to any and all personal property which may be in or upon the Premises or Unit and used in connection with the operation thereof, shall be deemed transferred or conveyed to the Purchaser under the deed of conveyance to be delivered and that no part of the purchase price shall be deemed to have been paid by the Purchaser for the same.
5. In the event that the removal of anything which has been affixed to the wall or the floor of the Unit which results in a hole which is larger than an ordinary nail or screw hole, the Seller shall repair the hole in question so as to create a uniform surface and appearance to the wall and floor in question with the application of spackling or similar compound but Seller shall not be obligated to paint.
6. Seller hereby represents that this Contract is subject to and conditioned upon there not being any adverse interest and/or pending litigation or claim against or concerning Seller, the Unit, which would adversely affect the Unit or Seller's ability to convey same to Purchaser hereunder; this clause shall survive the Closing.
7. In the event the death of Purchaser prior to Closing, this Contract shall be deemed cancelled and of no further force and effect and the Contract Deposit shall be promptly refunded to Purchaser's attorney.
8. Parties agree that the delivery of the title report to Seller's attorney is deemed sufficient notice of any objections, encumbrances and existing violations to title.
9. All permitted exceptions in this Contract of Sale shall be permitted if (i); (ii) the exception does not render title uninsurable; (iii) the Title Company shall be willing, without special premium, to omit same as an exception from coverage; and (iv) that said exception does not interfere with Purchaser's ability to obtain financing.

10. Seller shall not be entitled to any refund from Purchaser if Condominium imposes an assessment for the same or similar amount and said rebate and/or refund is recaptured by the Condominium and/or not actually received by Purchaser.
11. Seller agrees that Purchaser's obligation to close on this transaction is expressly conditioned upon the presentation and existence of a current valid Temporary Certificate of Occupancy or a Final Certificate of Occupancy for the Unit at the time of the Closing.
12. The parties acknowledge that this transaction is not contingent on Purchaser obtaining financing. Notwithstanding the foregoing, Purchaser shall be permitted to seek financing. In the event Purchaser decides to obtain financing for the purchase, Seller shall act in good faith throughout the financing period. Seller agrees to permit Purchaser's Lending Institution to gain access to the Unit for the purposes of an appraisal.
13. Supplementing Paragraph 6(c)(i) of the printed portion of the Contract of Sale, "date hereof" shall be amended to read "date of Closing".
14. Any time periods contained in this Contract which contains the language "from the date hereof" or words to similar effect, shall be deemed to mean from the date that a fully executed Contract is delivered to the office of Purchaser's attorney.
15. Purchaser shall have the ability to assign the Contract of Sale to any LLC or corporation in which Purchaser is a related party and is the majority shareholder, provided the assignment is done before submission of the board application and same does not delay the Closing.
16. Upon notice to the tenant currently in the Unit, Seller shall permit Purchaser to have the right of access to the Unit between the date hereof and the Closing for the purpose of inspecting the same and taking measurements, at reasonable times and upon reasonable notice to Seller.
17. It is consented to and agreed that "PDF" signature copies or facsimile copies of the signatures of the Parties of this Contract of Sale and pages that same are located thereon shall be deemed to be originals. It is further agreed that this Contract of Sale may be executed in one or more counterparts, each of which shall be an original, and all of which together shall constitute a single Contract of Sale. This Contract of Sale shall be deemed to have become effective when one or more such counterparts shall have been signed by each of the Parties below.
18. Notwithstanding anything to the contrary contained in this Contract, all notices under this Contract, except notices of default may be given by facsimile or by electronic mail to the address of the party specified in this Contract or such other address as either party may specify in writing. Notices are effective upon confirmation of electronic or facsimile delivery.

19. Seller represents that there is currently a tenant in the Unit with a lease ending on August 31, 2016. Seller represents that he has granted no options, rights or estates in or to the premises; this clause shall survive the Closing.
20. In the event Seller currently has a mortgage on the Unit, and Purchaser obtains financing, the parties agree to act in good faith and use their best efforts in order to facilitate a purchase CEMA. Seller shall sign documents related to the CEMA which are reasonably required and produce all information which is reasonably required. All costs and processing fees and costs incurred by the parties related to the purchase CEMA, shall be paid by the Purchaser.
21. As required under the recently enacted Truth-In-Lending Act and Real Estate Settlement Procedures Act, which took effect on October 3, 2015, the Seller acknowledges that the Purchaser's lender is required to deliver a closing disclosure to Purchaser at least three (3) business days before the Closing and in practice may require closing figures from Seller and Purchaser seven to ten days in advance of closing. Seller agrees to cooperate with purchaser and Purchaser's lender by responding timely to requests for adjustments, payoff figures, check requests and other figures required by Purchaser's lender or the title company in order to complete a closing disclosure for any scheduled closing. The parties agree that any closing disclosure that was delayed by a managing agent's failure to timely provide closing figures and resulted in a delay of Purchaser's lender to timely issue a closing disclosure for a scheduled closing shall not be considered a default of Purchaser. Seller shall cooperate with Purchaser's lender by signing any documents reasonable or customarily requested by Purchaser's lender in order to close.
22. Notwithstanding anything to the contrary, in the event Seller is unable to transfer ownership of the Unit free of all tenants on or before September 30, 2016, Purchaser have the option to terminate this Contract to Seller's Attorney via overnight courier or hand delivery not later than October 15, 2016. At said time, this Contract will be deemed null and void and Seller shall be obligated to return Purchaser's Down Payment to Purchaser within five (5) days of the receipt of the Termination Notice by Seller's Attorney, and with respect to such obligation, time shall be of the essence.

**SIGNATURE PAGE TO FOLLOW**

**SELLER:**

R. A. Schragger  
Richard Schragger

**PURCHASER:**

Zova Liu  
Zova Liu

**Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards****Lead Warning Statement**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**Seller's Disclosure**

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) ☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) ☒ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i) ☐ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) ☒ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**Purchaser's Acknowledgment (Initial)**

(c) \_\_\_\_\_ Purchaser has received copies of all information listed above.

(d) \_\_\_\_\_ Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.

(e) Purchaser has (check (i) or (ii) below):

(i) ☐ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) ☒ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**Agent's Acknowledgment (Initial)**

(f) \_\_\_\_\_ Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852(d) and is aware of his/her responsibility to ensure compliance.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Seller	<u>R. A. — 11 —</u>	Date	Seller	Date
Purchaser	<u>[Signature]</u>	Date	Purchaser	Date
Agent		Date	Agent	Date