

154 Contract of sale for New York office, commercial and multi-family residential premises. 2-95

Prepared by the Real Property Committee of the Association of the Bar of the City of New York

NOTE: This form is intended to cover matters common to most transactions. Provisions should be added, altered or deleted to suit the circumstances of a particular transaction.

Contract of Sale - Office, Commercial and Multi-Family Residential Premises

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CONTRACT dated **May 12, 2023** between

130 Bowery Acquisition LLC, a New York limited liability company, with an address located at **130 Bowery, New York, New York 10013**

("Seller"),

MM 130 Bowery Rest. Corp., a New York corporation, with an address located at **130 Bowery, New York, New York 10013**

("Tenant"), and

SC 130 Bowery LLC, a Delaware limited liability company, with an address located at **80 Pine Street, Suite 3202, New York, New York 10005**

("Purchaser").

Schedule A
DESCRIPTION OF PREMISES
(to be attached separately and to include tax map designation)

The Premises are located at or known as:

130 Bowery Street, New York, New York 10013

Tax Map Designation: **Block: 0470 Lot: 0061**

Schedule B
PERMITTED EXCEPTIONS

1. Zoning regulations, building restrictions, and ordinances which are not violated by the existing structures or present use thereof and which do not render title uninsurable without additional premium.
2. Written consents of record by the Seller or any former owner of the Premises for the erection of any structure or structures on, under or above any street or streets on which the Premises may abut.
- ~~3. The Existing Mortgage(s) and financing statements, assignments of leases and other collateral assignments ancillary thereto.~~
4. Leases and Tenancies specified in the Rent Schedule and any new leases or tenancies not prohibited by this Contract.
5. Unpaid installments of assessments not due and payable on or before the Closing Date, subject to apportionment.
6. Financing statements, chattel mortgages and liens on **personalty** filed more than 5 years prior to the Closing Date and not renewed, or filed against property or equipment no longer located on the Premises or owned by Tenants.
7. (a) Rights of utility companies to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Premises, provided that none of such rights imposes any monetary obligation on the owner of the Premises or render the Premises unusable for its intended purpose as a multifamily apartment dwelling.
(b) Minor encroachments (not more than one (1) foot) of stoops, areas, cellar steps, trim cornices, lintels, window sills, awnings, canopies, ledges, fences, hedges, coping and retaining walls projecting from the Premises over any street or highway or over any adjoining property and encroachments of similar elements projecting from adjoining property over the Premises.
(c) Revocability or lack of right to maintain vaults, coal chutes, excavations or sub-surface equipment beyond the line of the Premises.
(d) Any state of facts that an accurate survey would disclose, provided that such facts do not render title unmarketable.

Schedule C
PURCHASE PRICE

The Purchase Price shall be paid as follows:

Purchase price:	\$26,000,000.00
(a) By check or electronic wire transfer subject to collection, the receipt of which is hereby acknowledged by Seller	\$ 1,300,000.00
(b) By check or checks delivered to Seller at the Closing in accordance with the provisions of §2.02:	\$24,700,000.00
(c) By acceptance of title subject to the following Existing Mortgage(s):	_____ \$ _____
(d) By execution and delivery to Seller by Purchaser or its assignee of a note secured by a Purchase Money Mortgage on the Premises, payable as follows:	

**Schedule D
MISCELLANEOUS**

1. Title insurer designated by the parties (§1.02): **Any reputable title insurance company of Purchaser's choice licensed to conduct business in New York State (Purchaser's Title Company) or if Purchaser's title company is unwilling to insure, Madison Title Agency providing it is willing to insure.**

2. ~~Last date for consent by Existing Mortgagee(s) (§2.03(b)):~~

3. ~~Maximum Interest Rate of any Refinanced Mortgage (§2.04(b)):~~

4. ~~Prepayment Date on or after which Purchase Money Mortgage may be prepaid (§2.04(c)):~~

5. Seller's tax identification number (§2.05): **TBD**

6. Purchaser's tax identification number (§2.05): **TBD**

7. Scheduled time and date of Closing (§3.01): **On or about Sixty (60) days from the Expiration Date of the Due Diligence Period.**

8. Place of Closing (§3.01): **Law Offices of Fred L. Seeman, 32 Broadway, Suite 1214, New York, New York or a Remote Closing.**

9. Assessed valuation of Premises (§4.10): **N/A**

Actual Assessment:

Transition Assessment:

10. Fiscal year and annual real estate taxes on Premises (§4.10): **2022 / 2023 - \$826,096.96 Annual Property Tax**

11. Tax abatements or exemptions affecting Premises (§4.10): **None**

12. Assessments on Premises (§4.13): **N/A**

13. Maximum Amount which Seller must spend to cure violations, etc. (§7.02): **Zero**

14. Maximum Expense of Seller to cure title defects, etc. (§13.02): **Zero**

15. Broker, if any (§14.01):

For Seller:

**Meridian Investment Sales
One Battery Park Plaza
New York, New York 10004
Attn: David Schechtman
Tel: 212-468-5900
Email: Dschechtman@meridiancapital.com**

For Purchaser:

**Cushman & Wakefield
1290 Avenue of the Americas
New York, New York 10104
Attn: Neil Seth
Tel: 212-841-5063
Email: Neil.seth@cushwake.com**

16. Party to pay broker's commission (§14.01): **Seller.**

17. Address for notices (§15.01):

If to Seller:

**Law Offices of Fred L. Seeman
Attn: Fred L. Seeman, Esq.
32 Broadway, Suite 1214
New York, New York 10004
Tel: (212) 608-5000
Fax: (212) 385-8161
E-Mail: Fred@seemanlaw.com**

If to Purchaser:

**Hunton Andrew Kurth, LLP
Attn: Matthew A. Scoville, Esq.
200 Park Avenue
New York, New York 10166
Tel: (212) 309-1000
Email: Mscoville@Huntonak.com**

If to Escrowee:

**Fred L. Seeman, Esq.
32 Broadway, Suite 1214
New York, New York 10004
Tel: (212) 608-5000
Fax: (212) 385-8161
E-Mail: Fred@seemanlaw.com**

18. Limitation Date for actions based on Seller's surviving representations and other obligations (§16.01): **Zero.**

19. Additional Schedules or Riders (§17.08): **See Rider attached.**

Schedule E

None

**Schedule F
SERVICE CONTRACTS AND LICENSE AGREEMENTS**

1. None

Seller and Purchaser hereby covenant and agree as follows:

Section 1. Sale of Premises and Acceptable Title

§1.01. Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, at the price and upon the terms and conditions set forth in this contract: (a) the parcel of land more particularly described in Schedule A attached hereto ("Land"); (b) all buildings and improvements situated on the Land (collectively, "Building"); (c) all right, title and interest of Seller, if any, in and to the land lying in the bed of any street or highway in front of or adjoining the Land to the center line thereof and to any unpaid award for any taking by condemnation or any damage to the Land by reason of a change of grade of any street or highway; (d) the appurtenances and all the estate and rights of Seller in and to the Land and Building; (e) all right, title and interest of Seller, if any, in and to the fixtures, equipment and other personal property attached or appurtenant to the Building (the "Personalty"); (f) the Leases and security deposits made thereunder; (g) air and development rights appurtenant to the Land and/or Building; (h) permits and licenses, if any within possession of Seller, held for use in connection with all or any portion of the Building; and (i) any unpaid condemnation award or casualty insurance proceeds payment (collectively, "Premises"). The Premises are located at or known as **130 Bowery Street, New York, New York 10013 (Block: 0470, Lot: 0061)**.

§1.02. Seller shall convey and Purchaser shall accept fee simple title to the Premises in accordance with the terms of this contract, subject only to: (a) the matters set forth in Schedule B attached hereto (collectively, "Permitted Exceptions"); and (b) such other matters as (i) the title insurer specified in Schedule D attached hereto (or if none is so specified, then any title insurer licensed to do business by the State of New York) shall be willing, without special premium, to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the Premises and (ii) shall be accepted by any lender described in Section 274-a of the Real Property Law ("Institutional Lender") which has committed in writing to provide mortgage financing to Purchaser for the purchase of the Premises ("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.

Section 2. Purchase Price, Acceptable Funds, Existing Mortgages, Purchase Money Mortgage, Escrow of Down payment and Foreign Persons

§2.01. The purchase price ("Purchase Price") to be paid by Purchaser to Seller for the Premises as provided in Schedule C attached hereto.

§2.02. All monies payable under this contract, unless otherwise specified in this contract, shall be paid by (a) certified checks of Purchaser or any person making a purchase money loan to Purchaser drawn on any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York or (b) official bank checks drawn by any such banking institution, payable to the order of Seller, except that uncertified checks of Purchaser payable to the order of Seller up to the amount of one-half of one percent of the Purchase Price \$1,000.00 shall be acceptable for sums payable to Seller at the Closing or by Wire transfer.

§2.03. (a) If Schedule C provides for the acceptance of title by Purchaser subject to one or more existing mortgages (collectively, "Existing Mortgage(s)"), the amounts specified in Schedule C with reference thereto may be approximate. If at the Closing the aggregate principal amount of the Existing Mortgage(s), as reduced by payments required thereunder prior to the Closing, is less than the aggregate amount of the Existing Mortgage(s) as specified in Schedule C, the difference shall be added to the monies payable at the Closing, unless otherwise expressly provided herein.

(b) If any of the documents constituting the Existing Mortgage(s) or the note(s) secured thereby prohibits or restricts the conveyance of the Premises or any part thereof without the prior consent of the holder or holders thereof ("Mortgagee(s)") or confers upon the Mortgagee(s) the right to accelerate payment of the indebtedness or to change the terms of the Existing Mortgage(s) in the event that a conveyance is made without consent of the Mortgagee(s), Seller shall notify such Mortgagee(s) of the proposed conveyance to Purchaser within 10 days after execution and delivery of this contract, requesting the consent of such Mortgagee(s) thereto. Seller and Purchaser shall furnish the Mortgagee(s) with such information as may reasonably be required in connection with such request and shall otherwise cooperate with such Mortgagee(s) and with each other in an effort expeditiously to procure such consent, but neither shall be obligated to make any payment to obtain such consent. If such Mortgagee(s) shall fail or refuse to grant such consent in writing on or before the date set forth in Schedule D or shall require as a condition of the granting of such consent (i) that additional consideration be paid to the Mortgagee(s) and neither Seller nor Purchaser is willing to pay such additional consideration or (ii) that the terms of the Existing Mortgage(s) be changed and Purchaser is unwilling to accept such change, then unless Seller and Purchaser mutually agree to extend such date or otherwise modify the terms of this contract, Purchaser may terminate this contract in the manner provided in §13.02. If Schedule C provides for a Purchase Money Mortgage (as defined in §2.04), Seller may also terminate this contract in the manner provided in §13.02 if any of the foregoing circumstances occur or if Seller is unwilling to accept any such change in the terms of the Existing Mortgage(s).

§2.04. (a) If Schedule C provides for payment of a portion of the Purchase Price by execution and delivery to Seller of a note secured by a purchase money mortgage ("Purchase Money Mortgage"), such note and Purchase Money Mortgage shall be drawn by the attorney for the Seller on the most recent forms of the New York Board of Title Underwriters for notes and for mortgages of like lien, as modified by this contract. At the Closing, Purchaser shall pay the mortgage recording tax and recording fees therefor and the filing fees for any financing statements delivered in connection therewith.

(b) If Schedule C provides for the acceptance of title by Purchaser subject to Existing Mortgage(s) prior in lien to the Purchase Money Mortgage, the Purchase Money Mortgage shall provide that it is subject and subordinate to the lien(s) of the Existing Mortgage(s) and shall be subject and subordinate to any extensions, modifications, renewals, consolidations, substitutions or replacements thereof (collectively, "Refinancing" or "Refinanced Mortgage"), provided that (i) the rate of interest payable under a Refinanced Mortgage shall not be greater than that specified in Schedule D as the Maximum Interest Rate or, if no Maximum Interest Rate is specified in Schedule D, shall not be greater than the rate of interest that was payable on the refinanced indebtedness immediately prior to such Refinancing, and (ii) if the principal amount of the Refinanced Mortgage plus the principal amount of other Existing Mortgage(s), if any, remaining after placement of a Refinanced Mortgage exceeds the amount of principal owing and unpaid on all mortgages on the Premises superior to the Purchase Money Mortgage immediately prior to the Refinancing, an amount equal to the excess shall be paid at the closing of the Refinancing to the holder of the Purchase Money Mortgage in reduction of principal payments due thereunder in inverse order of maturity. The Purchase Money Mortgage shall further provide that the holder thereof shall, on demand and without charge therefor, execute, acknowledge and deliver any agreement or agreements reasonably required by the mortgagee to confirm such subordination.

(c) The Purchase Money Mortgage shall contain the following additional provisions:

(i) "The mortgagor or any owner of the mortgaged premises shall have the right to prepay the entire unpaid indebtedness together with accrued interest, but without penalty, at any time on or after [insert the day following the last day of the fiscal year of the mortgagee in which the Closing occurs or, if a Prepayment Date is specified in Schedule D, the specified Prepayment Date], on not less than 10 days written notice to the holder hereof."

(ii) "Notwithstanding anything to the contrary contained herein, the obligation of the mortgagor for the payment of the indebtedness and for the performance of the terms, covenants and conditions contained herein and in the note secured hereby is limited solely to recourse against the property secured by this mortgage, and in no event shall the mortgagor or any principal of the mortgagor, disclosed or undisclosed, be personally liable for any breach of or default under the note or this mortgage or for any deficiency resulting from or through any proceedings to foreclose this mortgage, nor shall any deficiency judgment, money judgment or other personal judgment be sought or entered against the mortgagor or any principal of the mortgagor, disclosed or undisclosed, but the foregoing shall not adversely affect the lien of this mortgage or the mortgagee's right of foreclosure."

(iii) "In addition to performing its obligations under Section 274-a of the Real Property Law, the mortgagee, if other than one of the institutions listed in Section 274-a, agrees that, within 10 days after written request by the mortgagor, but not more than twice during any period of 12 consecutive months, it will execute, acknowledge and deliver without charge a certificate of reduction in recordable form (a) certifying as to (1) the then unpaid principal balance of the indebtedness secured hereby, (2) the maturity date thereof, (3) the rate of interest, (4) the last date to which interest has been paid and (5) the amount of any escrow deposits then held by the mortgagee, and (b) stating, to the knowledge of the mortgagee, whether there are any alleged defaults hereunder and, if so, specifying the nature thereof."

(iv) All notices required or desired to be given under this mortgage shall be in writing and shall be delivered personally or shall be sent by prepaid registered or certified mail, addressed to the mortgagor and mortgagee at the addresses specified in this mortgage or to such other parties or at such other addresses, not exceeding two, as may be designated in a notice given to the other party or parties in accordance with the provisions hereof."

(v) The additional provisions, if any specified in a rider hereto.

2.05. (a) If the sum paid under paragraph (a) of Schedule C, Contract Rider, or any other sums paid on account of the Purchase Price prior to the Closing (collectively, "Downpayment") are paid by wire transfer, check or checks drawn to the order of and delivered to **Fred L. Seeman, Esq., 32 Broadway, Suite 1214, New York, New York 10004 ("Escrowee")**, the Escrowee shall hold the proceeds thereof in escrow in a special bank account (or as otherwise agreed in writing by Seller, Purchaser and Escrowee) until the Closing or sooner termination of this contract and shall pay over or apply such proceeds in accordance with the terms of this section or the Contract Rider. Escrowee shall hold such proceeds in a non interest-bearing account, and any interest earned thereon shall be paid to the same party entitled to the escrowed proceeds, and the party receiving such interest shall pay any income taxes thereon. The tax identification numbers of the parties are either set forth in Schedule D or shall be furnished to Escrowee upon request. At the Closing, such proceeds and the interest thereon, if any, shall be paid by Escrowee to Seller. If for any reason the Closing does not occur and either party makes a written demand upon Escrowee for payment of such amount, Escrowee shall give written notice to the other party of such demand. If Escrowee does not receive a written objection from the other party to the proposed payment within 10 business days after the giving of such notice, Escrowee is hereby authorized to make such payment. If Escrowee does receive such written 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 written instructions from the parties to this contract or a final judgment of a court. However, Escrowee shall have the right at any time to deposit the escrowed proceeds and interest thereon, if any, with the clerk of the Supreme Court of the county in which the Land is located. Escrowee shall give written notice of such deposit to Seller and Purchaser. Upon such deposit Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience, that Escrowee shall not be deemed to be the agent of either of the parties, and that Escrowee shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith, in willful disregard of this contract or involving gross negligence. Seller and Purchaser shall jointly and severally 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, in willful disregard of this contract or involving gross negligence on the part of Escrowee.

(c) Escrowee has acknowledged agreement to these provisions by signing in the place indicated on the signature page of this contract.

§2.06. In the event that Seller is a "foreign person", as defined in Internal Revenue Code Section 1445 and regulations issued thereunder (collectively, the "Code Withholding Section"), or in the event that Seller fails to deliver the certification of non-foreign status, required under § 10. 12(c), 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 ~~ten~~ **Fifteen percent (15%)** thereof and shall at Closing remit the withheld amount with Forms 8288 and 8288A (or any successors thereto) to the Internal Revenue Service; and if the cash balance of the Purchase Price payable to Seller at the Closing after deduction of net adjustments, apportionments and credits (if any) to be made or allowed in favor of Seller at the Closing as herein provided is less than ten percent (10%) of the Purchase Price, Purchaser shall have the right to terminate this contract, in which event Seller shall refund the Downpayment to Purchaser and shall reimburse Purchaser for title examination and survey costs as if this contract were terminated pursuant to §13.02. The right of termination provided for in this §2.06 shall be in addition to and not in limitation of any other rights or remedies available to Purchaser under applicable law.

Section 3. The Closing

§3.01. Except as otherwise provided in this contract, the closing of title pursuant to this contract ("Closing") shall take place on the scheduled date and time of closing specified in Schedule D (the actual date of the Closing being herein referred to as "Closing Date") at the place specified in Schedule D.

Section 4. Representations and Warranties of Seller

Seller represents and warrants to Purchaser as follows:

§4.01. Unless otherwise provided in this contract, Seller is the sole owner of the Premises.

~~**§4.02.** If the Premises are encumbered by an Existing Mortgage(s), no written notice has been received from the Mortgagee(s) asserting that a default or breach exists thereunder which remains uncured and no such notice shall have been received and remain uncured on the Closing Date. If copies of documents constituting the Existing Mortgage(s) and note(s) secured thereby have been exhibited to and initialed by Purchaser or its representative, such copies are true copies of the originals and the Existing Mortgage(s) and note(s) secured thereby have not been modified or amended except as shown in such documents.~~

~~**§4.03.** The information concerning written leases (which together with all amendments and modifications thereof are collectively referred to as "Leases") and any tenancies in the Premises not arising out of the Leases (collectively, "Tenancies") set forth in Schedule E attached hereto ("Rent Schedule") is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof, and there are no Leases or Tenancies of any space in the Premises other than those set forth therein and any subleases or subtenancies. Except as otherwise set forth in the Rent Schedule or elsewhere in this contract:~~

- ~~(a) all of the Leases are in full force and effect and none of them has been modified, amended or extended;~~
- ~~(b) no renewal or extension options have been granted to tenants;~~
- ~~(c) no tenant has an option to purchase the Premises;~~
- ~~(d) the rents set forth are being collected on a current basis and there are no arrearages in excess of one month;~~
- ~~(e) no tenant is entitled to rental concessions, reductions, or abatements for any period subsequent to the scheduled date of closing and no tenant has made a request for any rent concessions, reductions, or abatements for a period subsequent to the scheduled date of closing;~~
- ~~(f) Seller has not sent written notice to any tenant claiming that such tenant is in default, which default remains uncured;~~
- ~~(g) no action or proceeding instituted against Seller by any tenant of the Premises is presently pending in any court, except with respect to claims involving personal injury or property damage which are covered by insurance; and except as shown in schedule attached.~~
- ~~(h) Seller is not aware of any rent strike or call for a rent strike by any tenants;~~
- ~~(i) all rents are legal rents under New York State and New York City rent regulations;~~
- ~~(j) the Leases are the only leases and, except for the Leases, there are no other occupancy agreements, leases, or written agreements granting possessory rights to anyone for any portion of the Premises; and~~
- ~~(k) there are no security deposits other than those set forth in the Rent Schedule.~~
- ~~(l) true and complete copies of the Leases have been delivered to Purchaser or its counsel;~~
- ~~(m) the tenants, occupants and licensees under the Leases and Tenancies are in actual possession of the space demised;~~
- ~~(n) to best of Seller's actual knowledge, Seller has performed all of the landlord's obligations under the Leases and Tenancies;~~
- ~~(o) Seller has received no notice(s) of any default of the landlord under the Leases that remains pending;~~
- ~~(p) to the best of Seller's actual knowledge, no action or proceeding, voluntary or involuntary, is pending against any tenant, licensee or occupant under any bankruptcy or insolvency act; and~~
- ~~(q) no leasing commissions are due or owing with respect to any of the Leases or Tenancies and all leasing commissions have been paid in full with respect to all of the Leases and Tenancies, including, in connection with any renewal, extension or expansion of space.~~

~~**§4.04.** If the Premises or any part thereof are subject to the New York City Rent Stabilization Law, Seller is and on the Closing Date will be a member in good standing of the Real Estate Industry Stabilization Association, and, except as otherwise set forth in the Rent Schedule, there are no proceedings with any tenant presently pending before the Conciliation and Appeals Board in which a tenant has alleged an overcharge of rent or diminution of services or similar grievance, and there are no outstanding orders of the Conciliation and Appeals Board that have not been complied with by Seller.~~

~~**§4.05.** If the Premises or any part thereof are subject to the New York City Emergency Rent and Rehabilitation Law, the rents shown are not in excess of the maximum collectible rents, and, except as otherwise set forth in the Rent Schedule, no tenants are entitled to abatements as senior citizens, there are no proceedings presently pending before the rent commission in which a tenant has alleged an overcharge of rent or diminution of services or similar grievance, and there are no outstanding orders of the rent commission that have not been complied with by Seller.~~

~~**§4.06.** An insurance schedule is attached hereto, listing all insurance policies presently affording coverage with respect to the Premises, and the information contained therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof (the "Insurance Schedule").~~

~~**§4.07.** If a payroll schedule is attached hereto, such schedule lists all employees presently employed at the Premises, and the information contained therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof, and, except as otherwise set forth in such schedule, none of such employees is covered by a union contract and there are no retroactive increases or other accrued and unpaid sums owed to any employee.~~

~~**§4.08.** If a schedule of service, maintenance, supply and management contracts ("Service Contracts") is attached hereto, such schedule lists all such contracts affecting the Premises, and the information set forth therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof.~~

~~**§4.09.** If a copy of a certificate of occupancy for the Premises has been exhibited to and initialed by Purchaser or its representative, such copy is a true copy of the original and such certificate has not been amended, but Seller makes no representation as to compliance with any such certificate.~~

~~§4.10.~~ The assessed valuation and real estate taxes set forth in Schedule D, if any, are the assessed valuation of the Premises and the taxes paid or payable with respect thereto for the fiscal year indicated in such schedule. ~~Except as otherwise set forth in Schedule D, there are no tax abatements or exemptions affecting the Premises.~~

~~§4.11.~~ Except as otherwise set forth in a schedule attached hereto, if any, if the Premises are used for residential purposes, each apartment contains a range and a refrigerator, and all of the ranges and refrigerators and all of the items of personal property (or replacements thereof) listed in such schedule, if any, are and on the Closing Date will be owned by Seller free of liens and encumbrances other than the lien(s) of the Existing Mortgage(s), if any.

~~§4.12.~~ Seller has no actual knowledge that any incinerator, boiler or other burning equipment on the Premises is being operated in violation of applicable law. If copies of a certificate or certificates of operation therefor have been exhibited to and initialed by Purchaser or its representative, such copies are true copies of the originals.

~~§4.13.~~ Except as otherwise set forth in Schedule D, Seller has no actual knowledge of any assessment payable in annual installments, or any part thereof, which has become a lien on the Premises.

~~§4.14.~~ Seller is not a "foreign person" as defined in the Code Withholding Section.

~~§4.15.~~ The garage at the Premises is operated (a) by a licensed garage operator, (b) subject to the terms of that certain garage operator's agreement dated _____, which agreement shall terminate in advance of Closing (b) in compliance with all laws, including but not limited to the licensing requirements of the New York City Department of Consumer Affairs.

~~§4.16.~~ Seller is the sole owner of the Premises. Seller has not entered into any agreement to lease, sell, mortgage or otherwise encumber or dispose of its interests in the Premises or any part thereof (including any equipment leases or other financing arrangements with respect to the Personality), except for the Leases, and this Agreement **Contract**.

~~§4.17.~~ Seller has not received from any government agency written notice of any material outstanding violation of any zoning statute, ordinance, rule or regulation applicable (or alleged by any such governmental authority to be applicable) to the Premises, or any part thereof.

~~§4.18.~~ Seller has received no written notice of: (i) any plan, study or effort by any governmental authority which in any way materially and adversely affects, or would reasonably be expected to materially and adversely affect, the present use or zoning of the Premises; (ii) any existing, proposed or contemplated plan to widen, modify or realign any street or highway adjoining the Premises; (iii) any existing, proposed or contemplated eminent domain proceeding with respect to all or any portion of the Premises; or (iv) any proposed or contemplated landmark designation from the Landmarks Preservation Commission.

~~§4.19.~~ Seller is a corporation **Limited Liability Company** duly organized and in good standing under the laws of the State of New York, and has the power and authority to enter into and perform its obligations under this Contract. The individuals executing this Contract on behalf of Seller have the authority to bind Seller to the terms of this Contract. Neither the execution and delivery of this Contract nor the performance by Seller of its obligations hereunder will conflict with or result in the breach of any contract, agreement, law, rule, court order, judgment or regulation to which Seller is a party or by which Seller or the Premises is bound. This Contract is valid and enforceable against Seller in accordance with its terms, and each instrument to be executed by Seller pursuant to this Contract or in connection herewith will, when executed and delivered, be valid and enforceable against Seller in accordance with its terms.

~~§4.20.~~ The execution, delivery and performance of this Contract by Seller has been duly authorized by all necessary action on the part of Seller and **does** not require the consent of any third party that has not been obtained.

~~§4.21.~~ There is no action, suit, litigation, hearing or administrative proceeding pending or, to the best of Seller's knowledge, threatened against Seller with respect to all or any portion of the Premises which could reasonably have a material adverse effect on: (x) any physical characteristic of or access to the Premises, (y) the use, operations, leasability, marketability, value or appearance of the Premises, or the compliance of the Premises with laws (including, without limitation, any proceedings with respect to taxes or assessments to be levied against the Property), or (z) the ability of Seller to consummate the transactions contemplated hereby.

~~§4.22.~~ There are no brokerage agreements associated with the Premises that will be binding on Purchaser or affect the Premises after the Closing.

~~§4.23.~~ There will be no management agreement associated with the Premises which will be binding on Purchaser as of the date of the Closing.

~~§4.24.~~ To Seller's knowledge, (a) there has been no work done upon the Premises by the City of New York (the "City"), nor has the City made any demand for any such work that may result in charges by the City or any of the City's agencies; (b) there are no threatened filings of mechanics liens and there shall be at Closing no money owed on account of any work performed at the Premises by the City of New York or any private contractor or subcontractor, architect, engineer, or the like. All architects, engineers, contractors and/or subcontractors that have performed work at the Premises for Seller will have been paid in full at Closing.

Section 5. Acknowledgments of Purchaser

Purchaser acknowledges that:

~~§5.01.~~ Purchaser has inspected the Premises, is fully familiar with the physical condition and state of repair thereof, and, subject to the provisions of §7.01, §8.01, §9.04, and the rider annexed hereto, shall accept the premises "as is" and in their present condition, subject to reasonable use, wear, tear and natural deterioration between now and the Closing Date, without any reduction in the Purchase Price for any change in such condition by reason thereof subsequent to the date of this contract.

~~§5.02.~~ Before entering into this contract, Purchaser has made such examination of the Premises, the operation, income and expenses thereof and all other matters affecting or relating to this transaction as Purchaser deemed necessary. In entering into this contract, Purchaser has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller or any agent, employee or other representative of Seller or by any broker or any other person representing or purporting to represent Seller, which are not expressly set forth in this contract, whether or not any such representations, warranties or statements were made in writing or orally.

Section 6. Seller's Obligations as to Leases

~~§6.01.~~ Unless otherwise provided in a schedule attached to this contract, between the date of this contract and the Closing, Seller shall not, without Purchaser's prior written consent, which consent shall not be unreasonably withheld: (a) amend, renew or extend any Lease in any respect, unless required by law; (b) grant a written lease to any tenant occupying space pursuant to a Tenancy; or (c) terminate any Lease or Tenancy except by reason of a default by the tenant thereunder.

~~§6.02.~~ Unless otherwise provided in a schedule attached to this contract, between the date of this contract and the Closing, Seller shall not permit occupancy of, or enter into any new lease for, space in the Building which is presently vacant or which may hereafter become vacant without first giving Purchaser written notice of the identity of the proposed tenant, together with (a) either a copy of the proposed lease or a summary of the terms thereof in reasonable detail and (b) a statement of the amount of the brokerage commission, if any, payable in connection therewith and the terms of payment thereof. If Purchaser objects to such proposed lease, Purchaser shall so notify Seller within 4 business days after receipt of Seller's notice if such notice was personally delivered to Purchaser, or within 7 business days after the mailing of such notice by Seller to Purchaser, in which case Seller shall not enter into the proposed lease. Unless otherwise provided in a schedule attached to this contract, Purchaser shall pay to Seller at the Closing, in the manner specified in §2.02, the rent and additional rent that would have been payable under the proposed lease from the date on which the tenant's obligation to pay rent would have commenced if Purchaser had not so objected until the Closing Date, less the amount of the brokerage commission specified in Seller's notice and the reasonable cost of decoration or other work required to be performed by the landlord under the terms of the proposed lease to suit the premises to the tenant's occupancy ("Reletting Expenses"), prorated in each case over the term of the proposed lease and apportioned as of the Closing Date. If Purchaser does not so notify Seller of its objection, Seller shall have the right to enter into the proposed lease with the tenant identified in Seller's notice and Purchaser shall pay to Seller, in the manner specified in §2.02, the Reletting Expenses, prorated in each case over the term of the lease and apportioned as of the later of the Closing Date or the rent commencement date. Such payment shall be made by Purchaser to Seller at the Closing. In no event shall the amount so payable to Seller exceed the sums actually paid by Seller on account thereof.

~~§6.03.~~ If any space is vacant on the Closing Date, Purchaser shall accept the Premises subject to such vacancy, provided that the vacancy was not permitted or created by Seller in violation of any restrictions contained in this contract. Seller shall not grant any concessions, rent reductions, or rent abatements for any period following the Closing without Purchaser's prior written consent. Seller shall not apply all or any part of the security deposit of any tenant unless such tenant has vacated the Premises.

~~§6.04.~~ Seller does not warrant that any particular Lease or Tenancy will be in force or effect at the Closing or that the tenants will have performed their obligations thereunder. The termination of any Lease or Tenancy prior to the Closing by reason of the tenant's default shall not affect the obligations of Purchaser under this contract in any manner or entitle Purchaser to an abatement of or credit against the Purchaser Price or give rise to any other claim on the part of Purchaser.

~~§6.05.~~ Seller hereby indemnifies and agrees to defend Purchaser against any claims made pursuant to §7-107 or §7-108 of the General Obligations Law (the "GOL") by tenants **who filed a complaint against Seller** resided in the Premises on or prior to the Closing Date other than (a) claims with respect to tenants'

security deposits paid, credited or assigned to Purchaser pursuant to §10.03, (b) claims made pursuant to §7-107 of the GOL with respect to funds for which Seller was not liable, and (c) claims made pursuant to §7-108 of the GOL by tenants to whom Purchaser failed to give the written notice specified in §7-108(e) of the GOL within thirty days after the Closing Date. The foregoing indemnity and agreement shall survive the Closing and shall be in lieu of any escrow permitted by §7-108(d) of the GOL, and Purchaser hereby waives any right it may have to require any such escrow.

Section 7. Responsibility for Violations

§7.01. Except as provided in §7.02 and §7.03, all notices or notices of violations of law or governmental ordinances, orders or requirements which were noted or issued prior to the date of this contract and reduced to a monetary lien or judgment by any governmental department, agency or bureau having jurisdiction as to conditions affecting the Premises and all liens which have attached to the Premises prior to the Closing pursuant to the Administrative Code of the City of New York, if applicable, shall be removed or complied with by Seller; and all monetary fines associated therewith shall be paid by Seller at or prior to Closing. If such removal or compliance has not been completed prior to the Closing, Seller shall pay to Purchaser at the Closing the reasonably estimated unpaid cost to effect or complete such removal or compliance (plus the amount of monetary fines associated with such open violations), and Purchaser shall be required to accept title to the Premises subject thereto. All such notes or notices of violations noted or issued on or after the date of this contract, but not caused by Seller or Seller's agents, shall be the sole responsibility of Purchaser.

§7.02. If the reasonably estimated aggregate cost to remove or comply with any violations or liens which Seller is required to remove or comply with pursuant to the provisions of §7.01 shall exceed the Maximum Amount specified in Schedule D (or if none is so specified, the Maximum Amount shall be one-half of one percent of the Purchase Price), Seller shall have the right to cancel this contract, in which event the sole liability of Seller shall be as set forth in §13.02, unless Purchaser elects to accept title to the Premises subject to all such violations or liens, in which event Purchaser shall be entitled to a credit of an amount equal to the Maximum Amount against the monies payable at the Closing.

§7.03. Regardless of whether a violation has been noted or issued prior to the date of this contract, Seller's failure to remove or fully comply with any violations which a tenant is required to remove or comply with pursuant to the terms of its lease by reason of such tenant's use or occupancy shall not be an objection to title. Purchaser shall accept the Premises subject to all such violations without any liability of Seller with respect thereto or any abatement of or credit against the Purchase Price, except that if Purchaser's Institutional Lender reasonably refuses to provide financing by reason of a violation described above, Purchaser shall not be required to accept the Premises subject thereto and Purchaser shall have the right to terminate this contract in the manner provided in §13.02.

§7.04. If required, Seller, upon written request by Purchaser, shall promptly furnish to Purchaser written authorizations to make any necessary searches for the purposes of determining whether notes or notices of violations have been noted or issued with respect to the Premises or liens have attached thereto.

Section 8. Destruction, Damage or Condemnation

§8.01. The provisions of Section 5-1311 of the General Obligations Law shall apply to the sale and purchase provided for in this contract.

Section 9. Covenants of Seller

Seller covenants that between the date of this contract and the Closing:

§9.01. The Existing Mortgage(s) shall not be amended or supplemented or prepaid in whole or in part. Seller shall pay or make, as and when due and payable, all payments of principal and interest and all deposits required to be paid or made under the Existing Mortgage(s).

§9.02. Seller shall not modify or amend any Service Contract or enter into any new service contract unless the same is terminable without penalty by the then owner of the Premises upon not more than 30 days' notice.

§9.03. Seller shall maintain in full force and effect until the Closing the insurance policies in place as of the date hereof, which, if annexed hereto, are more particularly described in the Insurance Schedule.

§9.04. No fixtures, equipment or personal property included in this sale shall be removed from the Premises unless the same are replaced with similar items of at least equal quality prior to the Closing.

§9.05. Seller shall not withdraw, settle or otherwise compromise any protest or reduction proceeding affecting real estate taxes assessed against the Premises for any fiscal period in which the Closing is to occur or any subsequent fiscal period without the prior written consent of Purchaser, which consent shall not be unreasonably withheld. Real estate tax refunds and credits received after the Closing Date which are attributable to the fiscal tax year during which the Closing Date occurs shall be apportioned between Seller and Purchaser, after deducting the expenses of collection thereof, which obligation shall survive the Closing.

§9.06. Seller shall allow Purchaser or Purchaser's representatives access to the Premises, the Leases and other documents required to be delivered under this contract upon reasonable prior notice at reasonable times.

§9.07. Seller shall not change or modify the existing certificate of occupancy and such existing certificate of occupancy shall be valid and subsisting as of the date of the Closing.

Section 10. Seller's Closing Obligations

At the Closing, Seller shall deliver the following to Purchaser:

§10.01. A statutory form of bargain and sale deed with covenant against grantor's acts, in substantially the same form as annexed hereto as **Exhibit A**, containing the covenant required by Section 13 of the Lien Law, and properly executed in proper form for recording so as to convey the title required by this contract.

§10.02. All Leases initialed by Purchaser and all others in Seller's possession.

§10.03. A schedule of all security deposits (and, if the Premises contains six or more family dwelling units, the most recent reports with respect thereto issued by each banking organization in which they are deposited pursuant to GOL §7-103) and a check or credit to Purchaser in the amount of any cash security deposits, including any interest thereon, held by Seller on the Closing Date or, if held by an Institutional Lender, an assignment to Purchaser and written instructions to the holder of such deposits to transfer the same to Purchaser, and appropriate instruments of transfer or assignment with respect to any security deposits which are other than cash.

§10.04. A schedule updating the Rent Schedule and setting forth all arrears in rents and all prepayments of rents (subject to apportionment).

§10.05. All Service Contracts initialed by Purchaser and all others in Seller's possession which are in effect on the Closing Date and which are assignable by Seller.

§10.06. An assignment to Purchaser, in substantially the same form as annexed hereto as **Exhibit B**, without recourse or warranty, of all of the interest of Seller in those Service Contracts, insurance policies, certificates, permits and other documents to be delivered to Purchaser at the Closing which are then in effect and are assignable by Seller.

§10.07. (a) Written consent(s) of the Mortgagee(s), if required under §2.03(b), and (b) certificate(s) executed by the Mortgagee(s) in proper form for recording and certifying (i) the amount of the unpaid principal balance thereof, (ii) the maturity date thereof, (iii) the interest rate, (iv) the last date to which interest has been paid thereon and (v) the amount of any escrow deposits held by the Mortgagee(s). Seller shall pay the fees for recording such certificate(s). Any Mortgagee which is an Institutional Lender may furnish a letter complying with Section 274-a of the Real Property Law in lieu of such certificate.

§10.08. An assignment of all Seller's right, title and interest in escrow deposits for real estate taxes, insurance premiums and other amounts, if any, then held by the Mortgagee(s).

§10.09. All original insurance policies with respect to which premiums are to be apportioned or, if unobtainable, true copies or certificates thereof.

§10.10. To the extent they are then in Seller's possession and not posted at the Premises, certificates, licenses, permits, authorizations and approvals issued for or with respect to the Premises by governmental and quasi-governmental authorities having jurisdiction.

§10.11. Such affidavits as Purchaser's title company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to Seller's name.

§10.12 (a) Checks to the order of the appropriate officers in payment of all applicable real property transfer taxes and copies of any required tax returns therefor executed by Seller, which checks shall be certified or official bank checks if required by the taxing authority, unless Seller elects to have Purchaser pay any of such taxes and credit Purchaser with the amount thereof, **(b)** the Tentative Assessment and Return or Statement of No Tax Due or affidavit (whichever is applicable) and the checks and other items (if any) required under §17.09(a), and (c) a certification of non-foreign status, in form required by the Code Withholding Section, signed under penalty of perjury. Seller understands that such certification will be retained by Purchaser and will be made available to the Internal Revenue Service on request.

~~§10.13. To the extent they are then in Seller's possession, copies of current painting and payroll records. At Closing, Seller shall deliver all other Building and tenant files and records in Seller's possession, including but not limited to old/expired leases for apartments at the Premises and files of tenants who vacated the Premises, which obligation shall survive the Closing.~~

~~§10.14. An original letter in the form annexed hereto as Schedule G, executed by Seller or by its agent, advising the tenants of the sale of the Premises to Purchaser and directing that rents and other payments thereafter be sent to Purchaser or as Purchaser may direct.~~

~~§10.15. Notice(s) to the Mortgagee(s), executed by Seller or by its agent, advising of the sale of the Premises to Purchaser and directing that future bills and other correspondence should thereafter be sent to Purchaser or as Purchaser may direct.~~

§10.16. A resolution of the members of Seller authorizing the sale and delivery of the deed and a certificate executed by the secretary or assistant secretary of Seller certifying as to the adoption of such resolution and setting forth facts showing that the transfer complies with the requirements of such law, along with any other documentation reasonably required by Purchaser's Title Company relating to Seller. The deed referred to in §10.01 shall also contain a recital sufficient to establish compliance with such law.

§10.17. Possession of the Premises in the condition required by this contract, subject to the Leases and Tenancies, keys, and access codes therefor.

~~§10.18. An Assignment and Assumption of the Leases in the form annexed hereto as Schedule H.~~

~~§10.19. A Bill of Sale with respect to the personal property in the form annexed hereto as Schedule I.~~

§10.20. Any other documents required by this contract to be delivered by Seller or as may be required by the Title Company to record the deed.

Section 11. Purchaser's Closing Obligations

At the Closing, Purchaser shall:

§11.01. Deliver to Seller checks or wires in payment of the portion of the Purchase Price payable at the Closing, as adjusted for apportionments under Section 12, plus the amount of escrow deposits, if any, assigned pursuant to §10.08.

~~§11.02. Deliver to Seller the Purchase Money mortgage, if any, in proper form for recording, the note secured thereby, financing statements covering personal property, fixtures and equipment included in this sale and replacements thereof, all properly executed, and Purchaser shall pay the mortgage recording tax and recording fees for any Purchase Money Mortgage.~~

§11.03. Deliver to Seller an agreement indemnifying and agreeing to defend Seller against any claims made by tenants with respect to tenants' security deposits to the extent paid, credited or assigned to Purchaser under §10.03.

§11.04. Cause the deed to be recorded, duly complete all required real property transfer tax returns and cause all such returns and checks in payment of such taxes to be delivered to the appropriate officers promptly after the Closing.

§11.05. Deliver any other documents required by this contract to be delivered by Purchaser.

Section 12. Apportionments

§12.01. The following apportionments shall be made between the parties at the Closing as of the close of business on the day prior to the Closing Date:

(a) prepaid rents and Additional Rents (as defined in §12.03);

~~(b) interest on the Existing Mortgage(s);~~

(c) real estate taxes, water charges, sewer rents and vault charges, if any, on the basis of the fiscal period for which assessed, except that if there is a water meter on the Premises, apportionment at the Closing shall be based on the last available reading, subject to adjustment after the Closing when the next reading is available;

~~(d) wages, vacation pay, pension and welfare benefits and other fringe benefits of all persons employed at the Premises whose employment was not terminated at or prior to the Closing;~~

(e) value of fuel stored on Premises, at the price then charged by Seller's supplier, including any taxes;

~~(f) charges under transferable Service Contracts or permitted renewals or replacements thereof;~~

(g) permitted administrative charges, if any, on tenants' security deposits;

~~(h) dues to rent stabilization associations, if any;~~

(i) insurance premiums on transferable insurance policies listed on a schedule hereto or permitted renewals thereof;

(j) Relletting Expenses under §6.02, if any; and

(k) any other items listed in Schedule D.

If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes at the Closing shall be upon the basis of the old tax rate for the preceding period applied to latest assessed valuation. Promptly after the new tax rate is fixed, the apportionment of taxes shall be recomputed. Any discrepancy resulting from such recomputation and any errors or omissions in computing apportionments at Closing shall be promptly corrected, which obligations shall survive the Closing.

§12.02. If any tenant is in arrears in the payment of rent on the Closing Date, rents received from such tenant after the Closing shall be applied in the following order of priority: (a) first to the month preceding the month in which the Closing occurred; (b) then to the month in which the Closing occurred; (c) then to any month or months following the month in which the Closing occurred; and (d) then to the period prior to the month preceding the month in which the Closing occurred. If rents or any portion thereof received by Seller or Purchaser after the Closing are payable to the other party by reason of this allocation, the appropriate sum, less a proportionate share of any reasonable attorneys' fees, costs and expenses of collection thereof, shall be promptly paid to the other party, which obligation shall survive the Closing.

§12.03. If any tenants are required to pay percentage rent, escalation charges for real estate taxes, operating expenses, cost-of-living adjustments or other charges of a similar nature ("Additional Rents") and any Additional Rents are collected by Purchaser after the Closing which are attributable in whole or in part to any period prior to the Closing, then Purchaser shall promptly pay to Seller Seller's proportionate share thereof, less a proportionate share of any reasonable attorneys' fees, costs and expenses of collection thereof, if and when the tenant paying the same has made all payments of rent and Additional Rent then due to Purchaser pursuant to the tenant's Lease, which obligation shall survive the Closing.

Section 13. Objections to Title, Failure of Seller or Purchaser to Perform and Vendee's Lien

§13.01. Purchaser shall promptly order an examination of title and shall cause a copy of the title report to be forwarded to Seller's attorney upon receipt. Seller shall be entitled to a reasonable adjournment or adjournments of the Closing for up to ~~60~~ **forty-five (45)** days or until the expiration date of any written commitment of Purchaser's Institutional Lender delivered to Purchaser prior to the scheduled date of Closing, whichever occurs first, to remove any defects in or objections to title noted in such title report and any other defects or objections which may be disclosed on or prior to the Closing Date.

§13.02. If Seller shall be unable to convey title to the Premises at the Closing in accordance with the provisions of this contract or if Purchaser shall have any other grounds under this contract for refusing to consummate the purchase provided for herein, Purchaser, nevertheless, may elect to accept such title as Seller may be able to convey with a credit against the monies payable at the Closing equal to the reasonably estimated cost to cure the same (up to the Maximum Expense described below), but without any other credit or liability on the part of Seller. If Purchaser shall not so elect, Purchaser may terminate this contract and the sole liability of Seller shall be to refund the Downpayment to Purchaser and to reimburse Purchaser for the net cost of title examination, but not to exceed the net amount charged by Purchaser's title company therefor without issuance of a policy, and the net cost of updating the existing survey of the Premises or the net cost of a new survey of the Premises if there was no existing survey or the existing survey was not capable of being updated and a new survey was required by Purchaser's Institutional Lender. Upon such refund and reimbursement, this contract shall be null and void and the parties hereto shall be relieved of all further obligations and liability other than any arising under Section 14. Seller shall not be required to bring any action or proceeding or to incur any expense in excess of the Maximum Expense specified in Schedule D (or if none is so specified, the Maximum Expense shall be one-half of one percent of the Purchase Price) to cure any title defect or to enable Seller otherwise to comply with the provisions of this contract, but the foregoing shall not permit Seller to refuse to pay off at the Closing, to the extent of the monies payable at the Closing, mortgages on the Premises, other than Existing Mortgages, of which Seller has actual knowledge.

§13.03. Any unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon to a date not less than two days following the Closing Date, 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 on the Closing Date 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 a reasonable time 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 otherwise complying with §2.02. If Purchaser's title insurance company is willing to insure both Purchaser and Purchaser's Institutional Lender, if any, that such charges, liens and encumbrances will not be collected out of or enforced against the Premises, then, unless

Purchaser's Institutional Lender reasonably refuses to accept such insurance in lieu of actual payment and discharge, Seller shall have the right in lieu of payment and discharge to deposit with the title insurance company such funds or assurances or to pay such special or additional premiums as the title insurance company may require in order to so insure. In such case the charges, liens and encumbrances with respect to which the title insurance company has agreed so to insure shall not be considered objections to title.

§13.04. If Purchaser shall default in the performance of its obligation under this contract to purchase the Premises, the sole remedy of Seller shall be to retain the Downpayment as liquidated damages for all loss, damage and expense suffered by Seller, including without limitation the loss of its bargain.

§13.05. Purchaser shall have a vendee's lien against the Premises for the amount of the Downpayment, but such lien shall not continue after an unexcused default by Purchaser under this contract.

Section 14. Broker

§14.01. If a broker is specified in Schedule D, Seller and Purchaser mutually represent and warrant that such broker is the only broker with whom they have dealt in connection with this contract and that neither Seller nor Purchaser knows of any other broker who has claimed or may have the right to claim a commission in connection with this transaction, unless otherwise indicated in Schedule D. The commission of such broker shall be paid pursuant to separate agreement by the party specified in Schedule D. If no broker is specified in Schedule D, the parties acknowledge that this contract was brought about by direct negotiation between Seller and Purchaser and that neither Seller nor Purchaser knows of any broker entitled to a commission in connection with this transaction. Unless otherwise provided in Schedule D, Seller and Purchaser shall indemnify and defend each other against any costs, claims or expenses, including attorneys' fees, arising out of the breach on their respective parts of any Purchaser's representations, warranties or agreements contained in this paragraph. The representations and obligations under this paragraph shall survive the Closing or, if the Closing does not occur, the termination of this contract.

Section 15. Notices

§15.01. All notices under this contract shall be in writing and shall be delivered personally or shall be sent by prepaid registered or certified mail, overnight courier (e.g. Fedex or UPS) addressed as set forth in Schedule D, or as Seller or Purchaser shall otherwise have given notice as herein provided. Any notice, election, demand, request, letter, consent or other communication under this contract ("Notice") shall be in writing and either delivered in person, delivered via electronic transmission (e-mail), sent postage prepaid by registered or certified mail return receipt requested, or delivered by Federal Express or other reputable overnight courier with receipt confirmed: (a) if to Purchaser, then to Attorney for Purchaser at the address for Attorney for Purchaser given at the beginning of this contract, with a courtesy copy by regular mail delivered to Purchaser at the address for Purchaser given at the beginning of this contract and (b) if to Seller, to Attorneys for Seller at the address given for Attorneys for Seller at the beginning of this contract, with a courtesy copy by regular mail delivered to Seller at the address for Seller given at the beginning of this contract. Either party may hereafter designate to the other in writing a change in the address to which a Notice is to be sent. Except as otherwise expressly provided herein, a Notice shall be deemed "given" (i) if by personal delivery, on the date when personally delivered, (ii) if by electronic transmission (e-mail), on the day the electronic transmission was initiated, (iii) if by overnight courier, when delivered to the overnight courier, or (iv) in the case of mailing, three (3) days after the date mailed in a prepaid sealed wrapper at a United States Post Office.

§15.02. Seller and Purchaser hereby designate and empower their respective attorneys, as their agents, to give and receive Notice under this contract. In connection therewith, (x) any Notice given by either of the parties to the other party's attorney shall be deemed Notice to the party itself (with the same force and effect as if received by the party itself), and (y) any Notice received by either of the parties from the other party's attorneys shall be deemed to be Notice from such party itself (with the same force and effect as if given by the party itself). Notwithstanding anything set forth in this contract to the contrary, provided that Notice is given to Attorney for Purchaser or Attorneys for Seller (as applicable) in compliance with one of the methods set forth in the previous paragraph, the giving of Notice shall be deemed complete and sufficient for the purpose of any Notice requirement under this contract.

Section 16. Limitations on Survival of Representations, Warranties, Covenants and other Obligations

§16.01. No representations, warranties, covenants or other obligations of Seller set forth in this contract shall survive the Closing, and no action based thereon shall be commenced after the Closing. The representations, warranties, covenants and other obligations of Seller set forth in §4.03, §6.01 and §6.02 shall survive until the Limitation Date specified in Schedule D (or if none is specified, the Limitation Date shall be the date which is six months after the Closing Date), and no action based thereon shall be commenced after the Limitation Date.

§16.02. 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 obligations of Seller which are expressly stated in this contract to survive the Closing.

Section 17. Gains Tax and Miscellaneous Provisions

§17.01. If consent of the Existing Mortgagee(s) is required under §2.03(b), Purchaser shall not assign this contract or its rights hereunder without the prior written consent of Seller. No permitted assignment of Purchaser's rights under this contract shall be effective against Seller unless and until an executed counterpart of the instrument of assignment shall have been delivered to Seller and Seller shall have been furnished with the name and address of the assignee. The term "Purchaser" shall be deemed to include the assignee under any such effective assignment.

§17.02. This contract embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this contract. Neither this contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

§17.03. This contract shall be governed by, and construed in accordance with, the law of the State of New York.

§17.04. The captions in this contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this contract or any of the provisions hereof.

§17.05. This contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns.

§17.06. This contract shall not be binding or effective until properly executed and delivered by Seller and Purchaser.

§17.07. As used in this contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

§17.08. If the provisions of any schedule or rider to this contract are inconsistent with the provisions of this contract, the provisions of such schedule or rider shall prevail. Set forth in Schedule D is a list of any and all schedules and riders which are attached hereto but which are not listed in the Table of Contents.

§17.09. (a) Seller and Purchaser agree to comply in a timely manner with the requirements of Article 31-B of the Tax Law of the State of New York and the regulations applicable thereto, as the same from time to time may be amended (collectively, the "Gains Tax Law"). Purchaser agrees to deliver to Seller a duly executed and acknowledged Transferee Questionnaire simultaneously with the execution of this contract or within five (5) business days after subsequent written request from Seller or Seller's attorney. At the Closing, Seller shall deliver (i) an official Statement of No Tax Due or (ii) an official Tentative Assessment and Return accompanied by a certified check or official bank check drawn on any banking institution described in §2.02(a), payable to the order of the State Tax Commission in the amount of the tax shown to be due thereon (it being understood, however, that if Seller has duly elected to pay such tax in installments, the amount so required to be paid shall be the minimum installment of such tax then permitted to be paid); or (iii) if applicable, a duly executed and acknowledged affidavit in form permitted under the Gain Tax Law claiming exemption therefrom.

(b) Seller agrees (i) to pay promptly any installment(s) or additional tax due under the Gains Tax Law, and interest and penalties thereon, if any, which may be assessed or due after the Closing, (ii) to indemnify and save the Purchaser harmless from and against any of the foregoing and any damage, liability, cost or expense (including reasonable attorney's fees) which may be suffered or incurred by Purchaser by reason of the non-payment thereof, and (iii) to make any other payments and execute, acknowledge and deliver such further documents as may be necessary to comply with the Gains Tax Law.

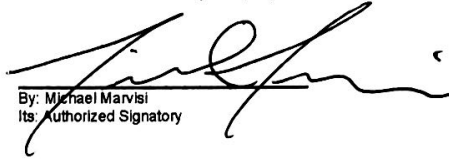
(c) If this contract is assignable by Purchaser, no assignment of any rights hereunder shall be effective unless every assignor and assignee complies in a timely manner with the requirements of the Gains Tax Law applicable to the assignment transaction and unless an assignor or assignee delivers to Seller at or before the Closing the applicable items referred to in subparagraph (a) of this Section, all as may be required as a prerequisite to the recording of the deed. In addition to making the payments and delivering the instruments and documents referred to above, Purchaser and any assignor or assignee of this contract shall promptly (i) make any other payments and (ii) execute, acknowledge and deliver such further documents and instruments as may be necessary to comply with the Gains Tax Law.

~~(d) Purchaser, if request is made within a reasonable time prior to the Closing Date, shall provide at the Closing a separate certified or official bank check drawn on any banking institution described in §2.02(a) in the amount of the tax shown to be due on the official Tentative Assessment and Return, which amount shall be credited against the balance of the Purchase Price payable at the Closing.~~

~~(e) The provisions of this §17.00 shall survive the delivery of the deed.~~

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first above written.

Seller: 130 Bowery Acquisition LLC,
a New York limited liability company


By: Michael Marvisi
Its: Authorized Signatory

Tenant: MM 130 Bowery Rest. Corp.,
a New York corporation

Name:
Title:

Purchaser: SC 130 Bowery LLC,
a Delaware limited liability company

By:
Its:

Receipt by Escrowee

The undersigned Escrowee hereby acknowledges receipt of One Million Three Hundred Thousand (\$1,300,000.00) Dollars by wire or check, to be held in escrow pursuant to §2.05.

Escrowee
First American Title Insurance Company

[SEE ESCROW AGREEMENT ATTACHED TO RIDER]

By:
Its:

(d) Purchaser, if request is made within a reasonable time prior to the Closing Date, shall provide at the Closing a separate certified or official bank check drawn on any banking institution described in §2.02(a) in the amount of the tax shown to be due on the official Tentative Assessment and Return, which amount shall be credited against the balance of the Purchase Price payable at the Closing.

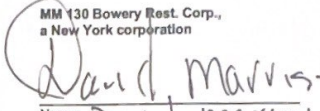
(e) The provisions of this §17.09 shall survive the delivery of the deed.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first above written.

Seller: 130 Bowery Acquisition LLC,
a New York limited liability company

By: Michael Marvis
Its: Authorized Signatory

Tenant: MM 130 Bowery Rest. Corp.,
a New York corporation


Name: David Marvis
Title: STAKEHOLDER

Purchaser: SC 130 Bowery LLC,
a Delaware limited liability company

By:
Its:

Receipt by Escrowee

The undersigned Escrowee hereby acknowledges receipt of One Million Three Hundred Thousand (\$1,300,000.00) Dollars by wire or check, to be held in escrow pursuant to §2.05.

Escrowee
First American Title Insurance Company

[SEE ESCROW AGREEMENT ATTACHED TO RIDER]

By:
Its:

~~(d) Purchaser, if request is made within a reasonable time prior to the Closing Date, shall provide at the Closing a separate certified or official bank check drawn on any banking institution described in §2.02(a) in the amount of the tax shown to be due on the official Tentative Assessment and Return, which amount shall be credited against the balance of the Purchase Price payable at the Closing.~~

~~(e) The provisions of this §17.09 shall survive the delivery of the deed.~~

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first above written.

Seller: **130 Bowery Acquisition LLC,
a New York limited liability company**

By: Michael Marvisi
Its: Authorized Signatory

Tenant: **MM 130 Bowery Rest. Corp.,
a New York corporation**

Name:
Title:

Purchaser: **SC 130 Bowery LLC,
a Delaware limited liability company**

Daniel Haimovic

By: Daniel Haimovic
Its: Member

Receipt by Escrowee

The undersigned Escrowee hereby acknowledges receipt of **One Million Three Hundred Thousand (\$1,300,000.00) Dollars** by wire or check, to be held in escrow pursuant to §2.05.

Escrowee
First American Title Insurance Company

[SEE ESCROW AGREEMENT ATTACHED TO RIDER]

By:
Its:

Schedule A
DESCRIPTION OF PREMISES



Title No. 3020-1169936

SCHEDULE "A"

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH OF MANHATTAN, CITY, COUNTY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EASTERLY SIDE OF ELIZABETH STREET WITH THE NORTHERLY SIDE OF GRAND STREET;

RUNNING THENCE NORTHERLY ALONG THE EASTERLY SIDE OF ELIZABETH STREET A DISTANCE OF 99.2 FEET TO A POINT;

THENCE EASTERLY AND PARALLEL WITH THE NORTHERLY SIDE OF GRAND STREET A DISTANCE OF 200.2 FEET TO THE WESTERLY SIDE OF BOWERY;

THENCE SOUTHERLY ALONG THE SAME A DISTANCE OF 50.1 FEET TO A POINT;

THENCE WESTERLY AND PARALLEL TO GRAND STREET A DISTANCE OF 100.0 FEET TO A POINT;

THENCE SOUTHERLY AND PARALLEL TO BOWERY A DISTANCE OF 50.0 FEET TO THE NORTHERLY SIDE OF GRAND STREET;

THENCE WESTERLY ALONG THE SAME A DISTANCE OF 100.4 FEET TO THE POINT OR PLACE OF BEGINNING.

THE policy to be issued under this report will insure the title to such buildings and improvements erected on the premises, which by law constitute real property.

FOR CONVEYANCING ONLY: TOGETHER with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.






Signature Page Packet - Bowery

Final Audit Report

2023-05-11

Created:	2023-05-11
By:	James Tsimis (JTsimis@huntonak.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGD0KB3NMA6ldQPOeXkSjk5WP-5ewJWNt

"Signature Page Packet - Bowery" History

-  Document created by James Tsimis (JTsimis@huntonak.com)
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-  Document emailed to Daniel Haimovic (daniel.haimovic@ebgr.com) for signature
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-  Email viewed by Daniel Haimovic (daniel.haimovic@ebgr.com)
2023-05-11 - 5:22:04 PM GMT
-  Document e-signed by Daniel Haimovic (daniel.haimovic@ebgr.com)
Signature Date: 2023-05-11 - 5:23:04 PM GMT - Time Source: server
-  Agreement completed.
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