

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

---

**FORM 8-K**

---

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported) September 16, 2005**

---

**ONE LIBERTY PROPERTIES, INC.**

(Exact name of Registrant as specified in charter)

---

**Maryland**  
(State or other jurisdiction  
of incorporation)

**001-09279**  
(Commission file No.)

**13-3147497**  
(IRS Employer  
I.D. No.)

**60 Cutter Mill Road, Suite 303, Great Neck, New York 11021**  
(Address of principal executive offices) (Zip code)

**Registrant's telephone number, including area code 516-466-3100**

---

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

Item 2.01. Completion of Acquisition or Disposition of Assets.

On September 16, 2005, a limited liability company wholly owned by the registrant, consummated the acquisition from Falk US Property Income Fund, L.P., a Delaware limited partnership (“Seller”), of an approximately 106,000 square foot office building situated on approximately 10.5 acres in Parsippany, New Jersey for a purchase price of \$30 Million, which was paid in cash.

Pursuant to the Sale Agreement with respect to this property (reported on Form 8-K filed by the registrant on August 25, 2005), a lease with respect to the property with an unaffiliated tenant is in full force and effect as of the closing. The term of the lease expires August 31, 2017, subject to two five-year renewal periods at tenant’s option. Currently, the annual rent under the lease is \$1,781,556, which rent is subject to annual increases. The lease, which is a net lease, is guaranteed by Koninklijke DSM, N.V., the parent of the tenant.

The property was acquired as replacement property in connection with a 1031 tax-deferred exchange and a portion of the purchase price was paid using proceeds from a previous sale of unused development or “air” rights by a wholly-owned limited liability company of the registrant relating to a property located in Brooklyn, New York.

All terms and conditions of the transaction, including the Sale Agreement and the consideration paid were negotiated at arms length and there is no relationship between the registrant or any of its affiliates and the Seller or any of its affiliates.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Businesses Acquired. To be filed by Amendment by November 30, 2005.

(b) Pro Forma Financial Information. To be filed by Amendment by November 30, 2005.

(c) Exhibits.

10.1 Sale Agreement, dated as of August 25, 2005, between the registrant and Falk US Property Income Fund, L.P.

10.2 Assignment of Sale Agreement, dated as of September 15, 2005, between the registrant and OLP Parsippany LLC.

10.3 Standard Form of Office Net Lease, dated November 6, 1996, between Bellemead Development Corporation and Hoffman-LaRoche Inc.

10.4 First Amendment to Lease, dated as of May 1, 2005, between Falk US Property Income Fund, L.P. and DMS Nutritional Products, Inc.

10.5 Lease Guaranty, dated as of March 2005, by Koninklijke DSM, N.V. in favor of Falk US Property Income Fund, L.P.

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ONE LIBERTY PROPERTIES, INC.

Date: September 20, 2005

By: /s/ Simeon Brinberg

---

Simeon Brinberg  
Senior Vice President

DSM Nutritional Products Building  
45 Waterview Plaza  
Parsippany, New Jersey

**SALE AGREEMENT**

by and between

**FALK US PROPERTY INCOME FUND, L.P.**

as Seller,

and

**ONE LIBERTY PROPERTIES, INC.**

as Purchaser

## **SALE AGREEMENT**

THIS SALE AGREEMENT (this “Agreement”) is made and entered into by and between FALK US PROPERTY INCOME FUND, L.P., a Delaware limited partnership (hereinafter referred to as “Seller”) and ONE LIBERTY PROPERTIES, INC., a real estate investment trust incorporated under the laws of the State of Maryland, and its permitted assign (hereinafter referred to as “Purchaser”) to be effective as of the date on which the last of Seller and Purchaser execute this Agreement and a fully executed counterpart hereof is received by the other party or its attorney via facsimile or e-mail (the “Effective Date”).

### **AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree as follows:

#### **SECTION 1 DEFINITIONS**

For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the following meaning:

**1.1 Additional Earnest Money.** If applicable, the sum of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) to be paid by Purchaser to Escrow Agent in accordance with Section 9.3 below should Purchaser elect to proceed with the transaction after expiration of the Due Diligence Period, together with all interest earned thereon.

**1.2 As-Built Survey.** An update of the Initial Survey, sufficient to cause the Title Company to provide extended coverage as to matters of survey.

**1.3 Broker.** Sonnenblick-Goldman Company.

**1.4 Building.** The building known as the DSM Nutritional Products Building located at 45 Waterview Plaza, Parsippany, New Jersey.

**1.5 Business Day.** Monday through Friday excluding bank holidays on which national banking associations are authorized to be closed.

**1.6 Closing.** The Closing and consummation of the purchase and sale of the Property as contemplated by this Agreement.

**1.7 Closing Date.** The date upon which Closing occurs.

**1.8 Commercially Reasonable Efforts.** Such action (or inaction) as would be taken (or not taken, as the case may be) in good faith by a reasonably prudent businessperson in the conduct of his or her own affairs.

**1.9 Commission Agreement.** Any agreement whereby Seller is obligated to pay a Leasing Commission in connection with the Lease.

**1.10 Condemnation Proceeding.** This term shall have the meaning ascribed thereto in Section 14.2 hereof.

**1.11 Due Diligence Period.** The period commencing on the Effective Date and ending at 6:00 p.m. Eastern Standard Time on September 6, 2005.

**1.12 Earnest Money.** Collectively, the Good Faith Deposit and, if paid, the Additional Earnest Money. Purchaser may, at its discretion, deliver an irrevocable standby letter of credit or letters of credit in lieu of the Earnest Money in the amount of the Earnest Money to be issued in favor of Seller, in form and substance satisfactory to Seller and Purchaser, in which event, (i) any reference in this Agreement to refund or return of the Earnest Money shall mean return of such letter(s) of credit, (ii) any reference to payment of the Earnest Money to Seller shall mean that Seller shall be entitled to draw upon the letter(s) of credit and retain all proceeds thereof; and (iii) such letter(s) of credit shall be returned to Purchaser at Closing without any credit against the Purchase Price for the amount (s) of such letters of credit.

**1.13 Environmental Report.** A Phase 1 environmental assessment audit (and, if Purchaser reasonably deems necessary, a Phase 2 environmental audit), both to be conducted by Purchaser's environmental engineer, at Purchaser's expense, with respect to the Property.

**1.14 Escrow Agent.** First American Title Insurance Company of New York, 407 S. Warren Street, Syracuse, New York 13202 Attn: William Bradt, Esq., Vice President (e-mail: [wbradt@firstam.com](mailto:wbradt@firstam.com)) Telephone 1- 800-679-4718, Facsimile: 888-722-4081.

**1.15 Evidence of Authority.** Evidence of authority for execution and performance of this Agreement by Purchaser and Seller, including (i) necessary resolutions or consents, (ii) a certificate duly executed by a secretary or other reasonably acceptable representative of Seller with respect to the offices or titles held by the Persons who executed this Agreement and will execute documents on behalf of Purchaser and Seller required or contemplated by this Agreement, and (iii) Certificates of Existence as to Purchaser and Seller relative to the state in which each of them was formed, all issued not earlier than ten (10) days prior to the date of Closing.

**1.16 Existing Survey.** The existing ATLA/ASCM as built survey of the Land and Improvements to be delivered to Purchaser as part of the Submission Items required by Section 9.1 below.

**1.17 Good Faith Deposit.** The sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) to be deposited with Escrow Agent in accordance with Section 3 below, together with all interest earned thereon.

**1.18 Hazardous Substances.** All hazardous waste, hazardous substances, extremely hazardous substances, hazardous constituents, hazardous materials, toxic substances, or related substances or materials, whether solids, liquids or gases as each of these terms are defined under

all applicable federal or state statutes and regulations including, but not limited to, (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., (B) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 et seq., (C) the Resource, Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 et seq., (D) the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq., (E) the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq., (F) the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (G) any so-called “superfund” or “superlien” law or (H) any other current or prior federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or regulation, relating to or imposing liability or standards of conduct concerning such waste, substance or material. Hazardous Substances include, but are not limited to, polychlorinated biphenyls (commonly known as PCBs), asbestos, radon, urea formaldehyde, petroleum products (including gasoline and fuel oil), toxic substances, hazardous chemicals, spent solvents, sludge, ash, containers with hazardous waste residue, spent solutions from manufacturing processes, pesticides, explosives, organic chemicals, inorganic pigments and other similar substances, but Hazardous Substances shall not include cleaning supplies, paint and other substances that are otherwise Hazardous Substances as long as the same are used, stored and disposed of in the ordinary course of business and in compliance with applicable Legal Requirements.

**1.19 Improvements.** The Building and other improvements and facilities constructed on the Land.

**1.20 Insurance Requirements.** All terms of any insurance policy, all requirements of the issuer of any insurance policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) incorporated into any insurance policy applicable to or affecting the Property or any part thereof or any use or condition thereof.

**1.21 Intangible Property.** To the extent transferable, all of Seller’s right, title and interest in and to any intangible property now or hereafter owned by Seller, if any, and used in connection with or relating to the ownership, use, development, operation, management, occupancy, maintenance or leasing of the Land, the Improvements and/or the Personal Property, including, but not limited to, the Permits and any interest of Seller in any trade names, service marks, trademarks, and logos used by Seller in the operation and identification of the Property (except that Seller makes no representation of warranty as to its right to use or transfer the common name of the Building), the Survey, the Warranties, all public and private contract rights and development or usage rights of Seller solely with respect to the Land, the Improvements and/or the Building and the Plans and Specifications.

**1.22 Land.** A parcel of land being more particularly described on Exhibit “A” attached hereto and incorporated herein by reference and appurtenant easements thereto, together with all of Seller’s right, title and interest (whether now owned or hereafter acquired) in and to all easements, rights of way, strips and gores of land, tenements, hereditaments and appurtenances, reversions, remainders, privileges, licenses and other rights and benefits belonging to, running with or in any way relating thereto, and together with all right, title and interest of Seller, if any, in and to any land lying in the bed of any street, road or highway, open or proposed, in front of, abutting or adjoining the Land.

**1.23 Lease.** That certain Lease, dated as of January 1, 1997, between Bellemead Development Corporation and Hoffman-LaRoche, Inc., as assigned to Roche Vitamins, Inc. and further assigned to Tenant effective as of September 30, 2003, together with that certain First Amendment to Lease, effective as of May 1, 2005, between Seller and Tenant.

**1.24 Leasing Commissions.** All brokerage commissions, finder's fees, referral fees and other similar compensation payable by Seller in connection with the Lease.

**1.25 Legal Requirements.** All laws, statutes, codes, acts, ordinances, orders,

**1.26** judgments, decrees, injunctions, rules, regulations, Permits, licenses, authorizations, directions and requirements of governmental authorities or quasi-governmental authorities, which now or at any time hereafter exercise jurisdiction over the Property, or any use, operation or condition thereof, including, but not limited to, the Americans With Disabilities Act of 1990 and all regulations promulgated pursuant thereto and concurrency requirements, if any, which apply to the Property or Purchaser immediately after the Closing.

**1.27 Manager.** The Gale Company.

**1.28 Monetary Lien.** Any mortgage, deed of trust, security deed, lien, monetary judgment, security interest, past due tax or assessment or other similar encumbrance of a monetary nature entered into or consented to by Seller and arising against the Property or any portion of the Property.

**1.29 Operating Agreements.** All service, equipment, supply, security, maintenance, concession, pest control, employment and collective bargaining agreements, equipment leases, advertising contracts, vending machine contracts and other such agreements (and any amendments, modifications or supplements thereto) now existing or hereafter entered into by Seller or by any other authorized Person on Seller's behalf with respect to or affecting the Property or any portion thereof (excluding the Lease, the management agreement with Manager, any Commission Agreements and the Permitted Exceptions) (except that nothing contained herein shall require Seller to cause any Tenant to terminate any Operating Agreements to which Seller is not a party, and nothing contained herein shall require Seller to assign or Purchaser to assume any Operating Agreement entered into solely by any Tenant).

**1.30 Owner's Title Policy.** An ALTA Owner's Extended Coverage Policy of Title Insurance (Form 1990, as amended 1992) issued by the Title Company, pursuant to the Title Commitment, together with such endorsements as Purchaser may reasonably require. The Owner's Title Policy shall insure marketability of title in fee simple absolute in the amount of the Purchase Price, subject only to the Permitted Exceptions and free from the standard exceptions for matters of survey (except for matters shown on the As-Built Survey or the Title Commitment as approved by Purchaser), parties in possession (except for Tenant as a Tenant only under the Lease) and mechanics' and materialmen's liens.



**1.31 Permits.** The certificates of use and occupancy with respect to the Building and all other consents, notices of completion, environmental and utility permits and approvals, authorizations, variances, waivers, licenses, permits (including conditional use permits), certificates and zoning and other approvals from any governmental or quasi-governmental authority necessary, issued or granted with respect to the Property now or prior to Closing.

**1.32 Permitted Exceptions.** Those matters identified or referred to in Section 5.3 as “Permitted Exceptions.”

**1.33 Person.** Any individual, sole proprietorship, partnership, limited partnership, joint venture, general partnership, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

**1.34 Personal Property.** The tangible personal property owned by Seller, if any, located on or used primarily in connection with the Land or the Improvements.

**1.35 Plans and Specifications.** The final plans and specifications for the Improvements.

**1.36 Property.** Seller’s interest in the following property:

**1.36.1** The Land;

**1.36.2** The Improvements;

**1.36.3** The Personal Property;

**1.36.4** The landlord’s rights under the Lease; and

**1.36.5** The Seller’s rights under the Surviving Contracts, the Warranties, the Permits and the other Intangible Property.

**1.37 Purchase Price.** Purchase Price shall have the meaning ascribed thereto in Section 4 hereof.

**1.38 Rental Payments.** Rental Payments shall have the meaning ascribed thereto in Section 11.2 hereof.

**1.39 Submission Items.** The due diligence submission items delivered or to be delivered to Purchaser by Seller as more particularly described in Section 9.1 below.

**1.40 Survey.** Collectively, (i) the Existing Survey and (ii) the As-Built Survey.

**1.41 Surviving Contracts.** The Operating Agreements which Purchaser does not elect to cancel and agrees to assume, such election to be made on or before the expiration of the Due Diligence Period; provided that the management agreement with Manager shall be terminated as

of the Closing Date under all circumstances. If Purchaser fails to make an election to assume an Operating Agreement as provided above, Purchaser shall be deemed to have elected not to assume such Operating Agreement.

**1.42 Tenant.** DSM Nutritional Products, Inc.

**1.43 Tenant Deposits.** If applicable, security or other monetary deposits of Tenant under the Lease.

**1.44 Tenant Estoppel Certificate.** An estoppel certificate substantially in the form required by the Lease, to be obtained from and executed by Tenant, including a statement by Tenant that, to Tenant's knowledge, neither Landlord nor Tenant is in default under the Lease.

**1.45 Title Commitment.** The title commitment to be obtained in accordance with Section 5.1 below.

**1.46 Title Company.** First American Title Insurance Company (by Majestic Abstract Corp., as agent) or other reputable title insurance company doing business in the State of New Jersey.

**1.47 Utility Deposits.** All deposits for utility services provided to the Property, exclusive of utility deposits posted by the Tenants.

**1.48 Voluntary Lien.** Any lien or other encumbrance affecting title to the property (other than Permitted Exceptions and Monetary Liens) that Seller has knowingly and intentionally placed on the Property after the Effective Date.

**1.49 Warranties.** All assignable guarantees, warranties, and indemnities now existing or existing prior to Closing relating to the construction, operation and/or use of the Improvements or the Personal Property and in effect at the time of Closing.

## **SECTION 2 PURCHASE AND SALE**

**2.1 Covenant to Buy and Sell.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser shall purchase the Property from Seller, and Seller shall sell, convey, transfer and assign the Property to Purchaser, subject to and in accordance with the terms and conditions of this Agreement.

## **SECTION 3 EARNEST MONEY**

**3.1 Good Faith Deposit.** Within two (2) Business Days after the Effective Date, Purchaser shall deliver the Good Faith Deposit to Escrow Agent.

**3.2 Additional Earnest Money.** Concurrently with Purchaser's delivery of the Acceptance Notice as provided in Section 9.3 below, if applicable, Purchaser shall deliver the Additional Earnest Money to Escrow Agent.

**3.3 Earnest Money Escrow Agreement.** The Earnest Money (which includes the Good Faith Deposit and, if applicable, the Additional Earnest Money) shall be held pursuant to an Earnest Money Escrow Agreement in the form attached hereto as Schedule 3.3.

**3.4 Earnest Money Applied to Purchase Price.** The Earnest Money shall be applied to Purchase Price at Closing or returned to Purchaser upon termination of this Agreement for any reason other than Purchaser's wrongful failure to close the purchase of the Property under this Agreement. If applicable, any letter(s) of credit posted as Earnest Money shall be returned to Purchaser at Closing or upon termination of this Agreement for reasons other than Purchaser's default.

#### **SECTION 4 PURCHASE PRICE**

**4.1 Purchase Price.** The purchase price for the Property (herein referred to as the "Purchase Price") shall be Thirty Million and No/100 Dollars (\$30,000,000.00). The Purchase Price shall be due and payable in immediately available funds at Closing, less the amount of the Earnest Money, subject to any adjustments and prorations required pursuant to the terms of this Agreement.

#### **SECTION 5 TITLE**

**5.1 Initial Searches.** Within three Business Days after the Effective Date, Purchaser shall order a Standard Form Commitment for the Owner's Title Policy, with legible copies of all exceptions listed therein (the "Title Commitment") issued by the Title Company covering the Land and the Improvements, pursuant to which the Title Company shall agree to issue the Owner's Title Policy to Purchaser at Closing. Title to the Property shall be insurable at not more than ordinary or promulgated rates by the Title Company pursuant to the Owner's Title Policy; provided, however, that if the Title Company has committed to insure over any title defect, such defect and affirmative insurance coverage shall be subject to Purchaser's approval in its reasonable discretion. The Owner's Title Policy shall insure against all mechanics' liens, shall have full survey coverage and shall have deleted therefrom all "printed standard exceptions." At or prior to Closing, Seller shall deliver such affidavits and agreements as may be reasonably required by the Title Company in order to issue the Owner's Title Policy in accordance with this Agreement.

**5.2 Survey.** Purchaser shall, at Purchaser's expense, cause the Initial Survey to be updated to satisfy the requirements of the Title Company, to be delivered to Seller, Purchaser and the Title Company not later than the last day of the Due Diligence Period.

**5.3 Permitted Title Exceptions.** The sale of the Property shall be subject to the following:

**5.3.1** The Lease and the rights of Tenant under the Lease;

**5.3.2** The lien of all ad valorem real estate taxes, special improvement district and general assessments for the calendar year in which Closing occurs, subject to proration as herein provided, and for subsequent years which are not yet due and payable; and

**5.3.3** Any items shown on the Title Commitment and/or on the Survey, as approved or deemed approved by Purchaser pursuant to this Agreement.

The above items described in this Section 5.3 are herein collectively referred to as the "Permitted Exceptions".

**5.4 Objections to Title/Survey.** Purchaser shall have until the date that is the earlier of (i) five (5) Business Days after receipt of the Title Commitment and the As-Built Survey, or (ii) the last day of the Due Diligence Period within which to object in writing to any matters shown on the Title Commitment or As-Built Survey. Seller shall have until the later of (i) the Closing Date or (ii) five (5) Business Days after receipt of such written objections (the "Cure Period") to cure or cause to be cured Purchaser's objections to Purchaser's reasonable satisfaction (with Closing being extended accordingly); provided that Seller shall indicate its intentions as to whether it will commit to cure any such objections within five (5) Business Days after Seller's receipt of the same. If Seller fails to respond within such five (5) Business Day period or in the event Seller is unable or unwilling to so cure such objections prior to expiration of the Cure Period, Purchaser may (A) waive such objections, or (B) terminate this Agreement by written notice to Seller, in which event the Earnest Money shall be returned to Purchaser and neither Purchaser nor Seller shall have any further obligations hereunder, except obligations that expressly survive termination of this Agreement.

**5.5 Cure of Certain Liens.** Notwithstanding Section 5.4 above, if the Title Commitment reveals the existence of a Voluntary Lien or a Monetary Lien, then Seller shall, at or prior to Closing, remove any such Voluntary Lien, or remove, pay or bond over any amount due in satisfaction of such Monetary Lien (or, subject to Purchaser's reasonable approval, otherwise cause the same to be removed as an exception in the Title Commitment). If one or more Monetary Liens have not been satisfied at or before the Closing Date, then Purchaser is hereby authorized to satisfy such Monetary Liens from the proceeds of the Purchase Price at Closing.

**SECTION 6**  
**SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller represents, warrants and covenants to Purchaser on and as of the Effective Date as follows (it being a condition to closing but not a covenant that such representations and warranties of Seller shall be true and correct in all material respects as of the Closing Date as set forth in Section 10.4.1(C) below):

**6.1 Organization, Power and Authority.** Seller is a limited partnership duly organized, validly existing and in good standing under the laws of Delaware. Seller is duly qualified to do business in the State of New Jersey and has all necessary power to execute and deliver this Agreement and perform all of its obligations hereunder. The execution, delivery and performance of this Agreement by Seller: (A) have been duly and validly authorized by all necessary action on the part of Seller and its partners, (B) do not conflict with or result in a violation of any applicable partnership agreement or other organizational documents, or of any judgment, order or decree of any court or arbiter in any proceeding to which Seller is a party or by which any one of them is bound, and (C) to Seller's knowledge, do not conflict with or constitute a breach of, or constitute a default under, any contract, agreement or other instrument by which Seller or the Property is bound or to which Seller is a party.

**6.2 No Conflict with Laws.** To Seller's knowledge, the execution and delivery of this Agreement by Seller and the performance by Seller of its obligations hereunder will not conflict with or result in a breach of any law, order, judgment, writ, injunction or decree of any court or governmental instrumentality having jurisdiction over the Property.

**6.3 No Hazardous Substances on Property.** Seller has no knowledge that: (A) Hazardous Substances have been discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape on, in, or under the Property in violation of any applicable Legal Requirements; (B) asbestos or asbestos containing materials have been installed, used, incorporated into, or disposed of on the Property in violation of applicable Legal Requirements; (C) PCBs have been located on or in the Property, whether in electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or otherwise, in violation of applicable Legal Requirements; and (D) underground storage tanks are located on the Property, except as shown in environmental assessment obtained by Seller in connection with its purchase of the Property (copies of which have been furnished to Seller).

**6.4 Litigation.** Seller has not received written notice, nor does Seller have actual knowledge, of any pending or threatened litigation or administrative proceeding that is adverse to Seller and would affect its ability to perform under this Agreement.

**6.5 Condemnation.** To Seller's knowledge, there is no condemnation or eminent domain proceeding pending or threatened against the Property (or any portion thereof).

**6.6 Lease.** As of the Effective Date:

**6.6.1** To Seller's knowledge, the Lease is in full force and effect;

**6.6.2** Seller has provided to Purchaser a full and complete copy of the Lease from Seller's files, which, to Seller's knowledge, is a full and complete copy of the Lease.

**6.6.3** Seller has neither sent written notice to Tenant, nor received any written notice from Tenant, claiming that Tenant or Seller, as the case may be, is in default under the Lease;

**6.6.4** Seller has not received any Tenant Deposits other than those, if any, set forth in the Lease; and

**6.6.5** Seller has no knowledge of any Leasing Commission due with respect to the current term of the Lease or upon the exercise of any renewal or expansion option set forth in the Lease.

**6.6.6** Tenant has not paid any rent, fees or other charges for more than one month in advance.

**6.7 No Violation Notice.** To Seller's knowledge, Seller has not received written notice:

**6.7.1** from any federal, state, county or municipal authority alleging any fire, health, safety, building, pollution, environmental, zoning or other violation of law in respect of the Property or any part thereof, which has not been entirely corrected; or

**6.7.2** from any insurance company or bonding company of any defects or inadequacies in the Property or any part thereof, which would adversely affect the insurability of the same or threatened termination of any policy of insurance or bond.

**6.8 Actual Knowledge.** As used in this Agreement or in any Schedule attached or to be attached hereto, any reference to "knowledge" with respect to Seller shall mean the current, actual knowledge of Daniel T. Borger (as seller's primary asset manager), without any duty to investigate or inquire other than inquiry of Kal Hazer, the employee of Manager who has primary responsibility for management for the Property. In that regard, Daniel Borger has served as Seller's primary North American asset manager since Seller's purchase of the Property and Kal Hazer has been the employee of Manager with primary responsibility for the Property for at least five (5) years.

**6.9 As-Is Sale.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SALE OF THE PROPERTY IS AND WILL BE MADE ON AN "AS IS", "WHERE IS," AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY CONCERNING TITLE TO THE PROPERTY, THE PHYSICAL CONDITION OF THE PROPERTY (INCLUDING THE CONDITION OF THE SOIL OR THE IMPROVEMENTS), THE ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON OR AFFECTING THE PROPERTY), THE COMPLIANCE OF THE PROPERTY WITH APPLICABLE LAWS AND REGULATIONS (INCLUDING ZONING AND BUILDING CODES OR THE STATUS OF DEVELOPMENT OR USE RIGHTS RESPECTING THE COMPANY PROPERTY), THE FINANCIAL CONDITION OF SELLER OR ANY TENANT OR ANY OTHER REPRESENTATION OR WARRANTY RESPECTING ANY INCOME, EXPENSES, CHARGES, LIENS OR ENCUMBRANCES, RIGHTS OR CLAIMS ON, AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF. PURCHASER ACKNOWLEDGES THAT SELLER DOES NOT MAKE ANY REPRESENTATION OR

WARRANTY REGARDING THE OFFERING MEMORANDUM PREPARED BY BROKER FOR THE PROPERTY AND THAT SELLER SHALL NOT HAVE ANY LIABILITY FOR ANY ERROR, OMISSION OR INACCURACY THEREIN. PURCHASER FURTHER ACKNOWLEDGES THAT, DURING THE DUE DILIGENCE PERIOD, PURCHASER WILL EXAMINE, REVIEW AND INSPECT ALL MATTERS THAT IN PURCHASER'S JUDGMENT BEAR UPON THE COMPANY AND THE COMPANY PROPERTY AND ITS VALUE AND SUITABILITY FOR PURCHASER'S PURPOSES. EXCEPT AS TO MATTERS SPECIFICALLY SET FORTH IN THIS AGREEMENT: (A) PURCHASER WILL ACQUIRE SELLER'S INTEREST SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS OF THE PROPERTY AND THE TITLE INSURANCE PROTECTION AFFORDED BY THE OWNER'S POLICY, AND (B) WITHOUT LIMITING THE FOREGOING, PURCHASER WAIVES ANY RIGHT IT OTHERWISE MAY HAVE AT LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO SEEK DAMAGES FROM SELLER IN CONNECTION WITH THE CONDITION OF THE PROPERTY, INCLUDING ANY RIGHT OF CONTRIBUTION UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT. SELLER IS UNDER NO DUTY TO MAKE ANY AFFIRMATIVE DISCLOSURES OR INQUIRY REGARDING ANY MATTER WHICH MAY OR MAY NOT BE KNOWN TO SELLER, AND PURCHASER, FOR ITSELF AND FOR ITS SUCCESSORS AND ASSIGNS, HEREBY EXPRESSLY WAIVES AND RELEASES SELLER AND ITS PARTNERS FROM ANY SUCH DUTY THAT OTHERWISE MIGHT EXIST.

**6.10 No Seller Duty to Cure.** Any reports, repairs or work required by Purchaser are the sole responsibility of Purchaser, and Purchaser agrees that there is no obligation on the part of Seller to make any changes, alterations or repairs to the Property or to cure any violations of Law or to comply with the requirements of any insurer.

**6.11 Release of Seller.** Except as expressly provided in this Section 6.11, Purchaser, for Purchaser and Purchaser's successors and assigns, hereby releases Seller and its partners from, and waives all claims and liability for or attributable to, the following:

**6.11.1** any and all statements or opinions heretofore or hereafter made, or information furnished, by Seller, Broker, Manager or any of their representatives; and

**6.11.2** any and all losses, costs, claims, liabilities, expenses, demands or obligations of any kind or nature whatsoever attributable to the Property, whether arising or accruing before, on or after the Closing Date and whether attributable to events or circumstances which have heretofore or may hereafter occur, including, without limitation, all losses, costs, claims, liabilities, expenses, demands and obligations with respect to the structural, physical, or environmental condition of the Property;

provided, however, that the release and waiver set forth in this Section 6.12 is not intended and shall not be construed to affect or impair any rights or remedies that Purchaser may have against Seller as a result of a breach of any of Seller's warranties or of any covenant of Seller expressly set forth in this Agreement to the extent the same expressly survive Closing or as a result of Seller's fraud.

**6.12 Survival.** The foregoing representations, warranties and covenants of Seller in this Section (except Sections 6.1, 6.2 and 6.4) should survive the Closing for six (6) months.

**6.13 Closing Constitutes Waiver.** Notwithstanding and without limiting the foregoing, if any of the representations or warranties of Seller contained in this Agreement or in any certificate delivered in connection herewith are materially false or inaccurate, or Seller is in material breach or default of any of its obligations under this Agreement, but Purchaser nonetheless closes the transactions hereunder and purchases the Property, then (i) Seller shall have no liability or obligation respecting such false or inaccurate representations or warranties or other breach or default (and any cause of action resulting therefrom shall terminate upon the Closing) in the event and to the extent that on or prior to the Closing, Purchaser shall have had actual knowledge of the false or inaccurate representations or warranties or other breach or default, and (ii) to the extent the due diligence materials furnished or made available to Purchaser contain provisions or information that are inconsistent with the foregoing representations and warranties (unless Seller had actual knowledge of such inconsistency and failed to disclose the same to Purchaser), such representations and warranties being deemed modified to the extent necessary to eliminate such inconsistency and to conform such representations and warranties to such due diligence materials.

## **SECTION 7 PURCHASER'S REPRESENTATIONS AND WARRANTIES**

**7.1 Authority.** Purchaser represents and warrants to Seller that Purchaser is a Delaware limited partnership, duly organized and validly existing under the laws of the State of New Jersey and has all necessary power to execute and deliver this Agreement and perform all of its obligations hereunder. The execution, delivery and performance of this Agreement by Purchaser, (A) has been duly and validly authorized by all necessary action on the part of Purchaser, (B) does not conflict with or result in a violation of Purchaser's organizational documents or any judgment, order or decree of any court or arbiter in any proceeding to which Purchaser is a party, and (C) to Purchaser's knowledge, does not conflict with or constitute a breach of, or constitute a default under, any contract, agreement or other instrument by which Purchaser is bound or to which Purchaser is a party.

**7.2 No Conflict with Laws.** To Purchaser's knowledge, the execution and delivery of this Agreement by Purchaser and the performance by Purchaser of its obligations hereunder will not conflict with or result in a breach of any law, order, judgment, writ, injunction or decree of any court or governmental instrumentality having jurisdiction over Purchaser.

**7.3 No Bankruptcy.** Purchaser is not a party to any voluntary or involuntary proceedings under any applicable laws relating to insolvency, bankruptcy, moratorium or other laws affecting creditors rights to the extent that such laws may be applicable to Purchaser and impair Purchaser's ability to perform this Agreement.



**7.4 Litigation.** Purchaser has not received written notice, nor does Purchaser have any actual knowledge, of any litigation, proceeding or action that would or could have an adverse effect upon Purchaser or upon Purchaser's ability to perform under this Agreement.

**7.5 Survival.** The foregoing representations and warranties of Purchaser shall not survive the Closing.

## **SECTION 8 SELLER'S COVENANTS**

**8.1 Notices of Violation.** As soon as Seller has actual knowledge, Seller shall provide Purchaser with written notice of any violation of any Legal Requirements or Insurance Requirements affecting the Property, any service of process which relates to the Property or which affects Seller's ability to perform its obligations under this Agreement or any allegations of a material default received from any Tenant. If Seller is unwilling or unable to remove such violation or comply with such notices by or before Closing, and the cost curing such violation or complying with such notice exceeds \$100,000.00, Purchaser shall have the option to (a) waive such notification and proceed to close without reduction in the Purchase Price; (b) terminate this Agreement and receive a return of the Earnest Money unless after receipt of notice of termination from Purchaser, Seller elects to reinstate this Agreement by committing in writing to cure such violation or comply with such notice, at Seller's sole cost and expense, as soon as reasonably possible after the Closing Date and in connection therewith Seller shall deposit with Purchaser cash or other security reasonably satisfactory to Purchaser to cover the estimated cost to cure such violation or comply with such notice.

**8.2 Lease Obligations.** Seller shall use Commercially Reasonable Efforts to comply with all of the landlord's obligations under the Lease. Seller will not enter into any lease with regard to the Property, and will not amend, modify or cancel any of the Lease, unless Purchaser has given its prior written consent, such consent not to be unreasonably withheld.

**8.3 Employees.** Seller shall not hire any employees (and none are currently employed) with respect to the ownership, maintenance, repair, use, operation or enjoyment of the Property whose employment is not terminable by Seller, without penalty, payment or expense, at or prior to Closing.

**8.4 Operating Agreements.** Seller shall not, without Purchaser's written consent, which consent shall not be unreasonably withheld or delayed, enter into or consent to any Operating Agreements (except those which are terminable without premium, cost, expense or penalty on not more than thirty (30) days' notice). Seller shall submit to Purchaser a copy of any proposed Operating Agreement, together with such information regarding the proposed Operating Agreement as is reasonably available to Seller and as Purchaser may reasonably request. Purchaser shall respond to the same within seven (7) days after receipt of the request, and shall be deemed to have approval the same unless written objection or disapproval is given within such seven (7) day period.

**8.5 Tenant Estoppel Certificates.** Seller shall good faith efforts to obtain a Tenant Estoppel Certificate from Tenant at least three (3) Business Days prior to Closing. Obtaining such Tenant Estoppel Certificate shall be a condition to Closing as set forth in Section 10.1.4(a) below, but, as long as Seller uses good faith efforts, Seller shall not be in default under this Agreement and Purchaser's sole remedy for failure of such condition shall be termination of this Agreement and receipt of a refund of the Earnest Money.

## **SECTION 9 PURCHASER'S DUE DILIGENCE AND INSPECTION OF PROPERTY**

**9.1 Outstanding Deliveries by Seller for Initial Diligence.** Seller has delivered to Purchaser certain due diligence submissions requested by Purchaser. Seller shall deliver to Purchaser the additional Submission Items (if any) set forth on Schedule 9.1 attached hereto not later than five (5) Business Days after the Effective Date.

**9.2 Inspection of Property.** Purchaser or its appointed agents or independent contractors shall have, at all reasonable times prior to the Closing and subject to the rights of the Tenant under the Lease, the privilege of going upon the Land and in the Improvements, at Purchaser's sole cost and expense, contacting the Tenant, inspecting, examining, testing, appraising and surveying the Property; provided that Purchaser shall not deal directly with Tenant without affording Seller the opportunity to have a representative present. In exercising the privileges granted pursuant to this Section, Purchaser shall use Commercially Reasonable Efforts to avoid interfering with the use and enjoyment of the Property by any Tenant, and Purchaser shall substantially restore the Property to the condition existing prior to such activities on the Property. No physically invasive testing may be undertaken without the prior written consent of Seller. In consideration of Purchaser's right to inspect the Property as described in this Section, Purchaser agrees to indemnify, defend and hold Seller and Tenant harmless from any actions, suits, liens, claims, damages, expenses (including reasonable attorneys' fees), losses and liabilities for damage to personal property or personal or bodily injury arising from or attributable to any acts performed in exercising Purchaser's rights under this Section 9.2 (including, without limitation, any rights or claims of materialmen or mechanics to liens on the Property, but excluding any matter to the extent arising primarily out of the negligence or misconduct of Seller and excluding damages resulting from Purchaser's discovery of any adverse conditions). Prior to entry on the Property, Purchaser shall provide evidence of liability insurance reasonably satisfactory to Seller and naming Seller and its mortgagee as an additional insured. This agreement to indemnify Seller shall survive the Closing and any termination of this Agreement.

**9.3 Due Diligence Period.** Purchaser shall have the right to terminate this Agreement prior to the expiration of the Due Diligence Period if Purchaser elects not to proceed with the purchase for any reason or no reason by delivering written notice to Seller (the "Acceptance Notice"). If Purchaser fails to deliver an Acceptance Notice prior to the expiration of the Due Diligence Period, this Agreement shall automatically terminate and the Good Faith Deposit shall be refunded to Purchaser.

## **SECTION 10 CLOSING**

**10.1 Closing Date.** The Closing shall be held during regular business hours on or before September 15, 2005; provided, that Purchaser shall have the right to extend the Closing Date for up to two (2) additional Business Days if (a) Purchaser is prevented from closing on September 15, 2005 for reasons that are wholly outside of Purchaser's control, (b) Purchaser sends written notice of extension not later than September 13, 2005, with a representation as to the specific cause for delay. The Closing shall be a so called "New York style closing" held at the offices of Herrick, Feinstein LLP, Purchaser's counsel, located at 2 Park Avenue, New York, New York 10016, and the exact time and Closing Date shall be selected by Purchaser by written notice to delivered to Seller not less than five (5) days prior to the date so selected.

**10.2 Delivery; Possession.** At Closing, Seller shall deliver to Purchaser the items required of Seller under this Agreement, and Purchaser shall deliver to Seller the Purchase Price (after making the adjustments and proration as provided herein), together with the other items required of Purchaser under this Agreement. Seller shall deliver possession of the Property to Purchaser, subject only to the Permitted Exceptions and the Surviving Contracts, at the time of Closing. Subject to Section 14 and 15 below, risk of loss shall remain with Seller until Closing.

### **10.3 Closing Costs.**

**10.3.1 Seller's Costs.** Seller shall pay (A) the fees and expenses of Seller's attorneys, (B) all charges for releases of applicable documents evidencing or securing Seller's financing, (C) one-half (1/2) of any intangible tax, grantee or grantor tax, transfer tax and deed stamps payable in connection with the transfer of the Property or the recording of the Deed, and (D) one-half of all escrow charges.

**10.3.2 Purchaser's Costs.** Purchaser shall pay (A) any costs incurred by Purchaser in preparing and performing its due diligence investigations, including, without limitation, the cost of environmental or engineering investigations in addition to those undertaken in connection with the Environmental Report and other reports made available to Purchaser, (B) the fees and expenses of Purchaser's attorneys, (C) one-half (1/2) of any indexing fee, intangible tax, grantor or grantee tax, transfer tax, deed stamps or other governmental charges payable in connection with the transfer of the Property or recording of the Deed, (D) the cost of the Title Commitment and the Title Policy, (E) the cost of the As-Built Survey, and (F) one-half of all escrow charges.

**10.3.3 Other Costs.** Any other costs not specifically provided for in Section 10.3.1 and Section 10.3.2 hereof shall be paid by the party who incurred those costs, or if neither party is charged with incurring any such costs, then by the party customarily assessed for such costs in the place where the Property is located.

**10.3.4 Survival.** The provisions of this Section 10.3 shall survive the Closing.

#### **10.4 Conditions to Closing.**

**10.4.1 Purchaser's Conditions to Closing.** The obligation of Purchaser to consummate the purchase the Property is expressly conditioned upon the fulfillment or satisfaction of each of the following conditions on or before the Closing Date:

- (A) Purchaser shall have received the Tenant Estoppel Certificate;
- (B) Seller shall have performed each material undertaking, covenant and agreement to be performed by Seller under this Agreement, including, but not limited to, delivery of all items and documents required under Section 12 below;
- (C) Each representation and warranty made in this Agreement by Seller shall be true and correct in all material respects as of the Closing Date, except due to changes in facts and circumstances disclosed to Purchaser, it being agreed that failure of a representation or warranty to be true and correct due to a change in the facts or circumstances (not caused by Seller's willful or intentional misconduct) shall not constitute a default by Seller under this Agreement but shall merely be deemed a failure of condition if the cost to cure such change in fact or circumstance, or the aggregate decrease in the value of the Property is more than \$100,000.00; and
- (D) Purchaser shall have received the Owner's Title Policy, or in lieu of issuance of the foregoing at Closing, the delivery by Seller of a "marked up" Title Commitment dated as of the Closing Date, committing to the issuance of the Owner's Title Policy in the form of such "marked up" Title Commitment, subject only to the Permitted Exceptions, with gap coverage, deleting all requirements and deleting the standard exceptions in accordance with Section 5 above.

**10.4.2 Seller's Conditions to Closing.** The obligation of the Seller to consummate the sale the Property is expressly conditioned upon the fulfillment or satisfaction of each of the following conditions on or before the Closing Date:

- (A) Purchaser shall have performed each material undertaking, covenant and agreement to be performed by Purchaser under this Agreement, including, but not limited to, delivery of all items and documents required under Section 12 below; and
- (B) Each representation and warranty made in this Agreement by Purchaser shall be true and correct in all material respects as of the Closing Date.

**10.4.3 Failure of Condition.** If any of the foregoing conditions is not satisfied on or before the Closing Date, then the party whom the failed condition benefits may terminate this Agreement by written notice to the other, in which event the Earnest Money (including any letter(s) of credit) shall be returned to Purchaser and the parties shall be released from liability under this Agreement, except for those liabilities that expressly survive termination of this Agreement.

## **SECTION 11 PRORATIONS AND CREDITS AT CLOSING**

All prorations "as of the Closing Date" shall be made as of 12:01 A.M. local time on the Closing Date. In each proration set forth below, the portion thereof allocable to periods beginning with the Closing Date shall be credited to Purchaser or charged to Purchaser, as applicable, at Closing or, in the case of allocations made after Closing, upon receipt of such payments or invoices as of the Closing Date. The following items shall, as applicable, be prorated between Purchaser and Seller or credited to Purchaser or Seller:

### **11.1 Property Taxes and Assessments.**

**11.1.1 Real Estate and Personalty Taxes.** Seller shall provide to Purchaser a copy of all real estate and personal property tax bills and assessments for the year in which the Closing occurs, if available, at least five (5) Business Days before Closing, and Seller shall pay all ad valorem or general property taxes and personalty taxes attributable to and assessed for the calendar year in which Closing occurs and for prior years, if such taxes shall be due and payable as of Closing. If such taxes are not yet due or payable, Purchaser shall receive a credit therefor in an amount equal to the amount of prior collections from Tenant with respect to such calendar year and shall pay taxes as and when due. If Seller has paid ad valorem or general real and personal property taxes with respect to the Property attributable to and assessed for the calendar year in which the Closing occurs, Seller shall receive a credit equal to that portion of the taxes so paid that is attributable to the period after the Closing Date As between Seller and Purchaser, there shall be no post closing adjustment for taxes, and Purchaser will look solely to Tenant for any shortage.

**11.1.2 Special Improvement Assessments.** Special taxes and assessments payable over time shall be assumed by Purchaser, and current special taxes and assessments shall be prorated in accordance with Section 11.1.1 above.

**11.2 Rents.** Subject to Section 11.1 above relating to proration of tax collections, rents and other reimbursements under the Lease (herein collectively called "Rental Payments") actually received by Seller, shall be prorated as of the Closing Date and the portion thereof allocable to periods beginning with the Closing Date shall be credited to Purchaser at Closing. To the extent that as of the Closing there shall be any unpaid Rental Payments due under the Lease, then Purchaser shall use Commercially Reasonable Efforts to collect the same and shall pay Seller the amounts so collected, subject to proration of the same upon collection and subject to the requirement that any Rental Payments received by Purchaser after Closing shall first be applied to current rents and then to amounts past due.

**11.3 Tenant Deposits.** Purchaser shall receive a credit at Closing for all Tenant Deposits (and any interest thereon required to be reimbursed to any Tenant) pursuant to the Lease or pursuant to applicable law, or such Tenant Deposits and interest thereon shall be assigned and delivered to Purchaser at Closing.

**11.4 Utility Expenses and Payments.** All payments or expenses for utilities shall be prorated but only to the extent Seller, as landlord, is responsible for payment under the Lease.

**11.5 Payments Under Surviving Contracts.** All payments due or made under any Surviving Contracts (excluding in any event Operating Agreements entered into by any Tenant) shall be prorated as of the Closing Date.

**11.6 No Reconciliation.** In the event final figures have not been reached on any of the adjustments, prorations or costs which are to be adjusted at or prior to Closing pursuant to this Section 11, the parties shall close using adjustments and prorations reasonably estimated by Seller and Purchaser, with appropriate reconciliation and adjustments for errors being made within ninety (90) days after Closing. All prorations shall be final as of Closing, except as set forth in Section 11.2 above with regard to unpaid Rental Payments due at Closing.

**11.7 Other Matters.** Seller and Purchaser shall make such other adjustments and apportionments as are expressly set forth in this Agreement.

## **SECTION 12 CONVEYANCES AND DELIVERIES AT CLOSING**

**12.1 Special Warranty Deed.** At Closing, Seller shall convey the Land and Improvements to Purchaser by a duly executed and recordable Bargain and Sale Deed (with covenant as to grantor's acts) in substantially the form attached hereto as Schedule 12.1, subject only to the Permitted Exceptions.

**12.2 Quitclaim Deed.** If the description of the Property as shown on the Survey and confirmed in the Title Commitment is different from the description of the Property in Exhibit "A", at Closing, Seller shall, in addition to the Bargain and Sale Deed (with covenant as to grantor's acts) based upon the description of the Property as shown in Exhibit "A" convey title by quitclaim deed based upon the description of the Property on the Survey and Title Commitment. Nothing in this Section shall be construed so as to diminish Purchaser's right to object to matters shown on the As-Built Survey as provided in Section 5.4.

**12.3 Bill of Sale.** At Closing, Seller shall convey the Personal Property to Purchaser by a duly executed Bill of Sale in the form attached hereto as Schedule 12.3.

**12.4 Assignment and Assumption of Lease.** At Closing, Seller shall assign to Purchaser, and Purchaser shall assume, the landlord/lessor's interest in and to the Lease by duly executed assignment and assumption agreement in the form attached hereto as Schedule 12.4.

**12.5 Assignment and Assumption of Surviving Contracts.** At Closing, Seller shall assign to Purchaser, and Purchaser shall assume, Seller's interest in the Surviving Contracts, by duly executed assignment and assumption agreement in the form attached hereto as Schedule 12.5. Seller shall use Commercially Reasonable Efforts (without the expenditure of funds) to obtain any and all necessary consents, if any, for such assignment and shall deliver the same to Purchaser at or prior to Closing; provided that if any necessary consents are not timely obtained, Purchaser may elect to require that Seller cause any such Operating Agreements to be canceled prior to Closing, in which event Seller shall cancel the same.

**12.6 Tenant Estoppel Certificate.** Seller shall use Commercially Reasonable Efforts to obtain and deliver to Purchaser prior to the Closing the Tenant Estoppel Certificate as provided in Section 8.5 above.

**12.7 Notice of Sale.** On or about the Closing Date, Seller shall send a written notice, in the form attached hereto as Schedule 12.7, to the Tenant.

**12.8 Lease and Surviving Contracts.** At or simultaneously with the Closing, Seller shall deliver to Purchaser the original (or certified copies of) the Lease, the Surviving Contracts, the Warranties, the Plans and Specifications and the Permits. Seller may keep copies of such materials at Seller's sole cost and expense. For a period of two (2) years after the Closing Date, Purchaser shall permit Seller to examine and make copies (at Seller's expense) of such materials at the Property or at the place of business of Purchaser during regular business hours with reasonable advance notice. The provisions of this Section 12.8 shall survive the Closing and the delivery of the Special Warranty Deed.

**12.9 Section 1445 Certificate.** At Closing, Seller shall execute and deliver to Purchaser (a) a certificate substantially in the form of Schedule 12.9 attached hereto stating that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and the regulations thereunder, and (b) an IRS Form 1099 with respect to this transaction and such other documents or instruments as may be required by the Internal Revenue Code (or regulations promulgated pursuant thereto).

**12.10 Affidavit of Title.** At Closing, Seller shall execute and deliver to Purchaser and to the Title Company such resolutions, affidavits and certificates as the Title Company may reasonably require to issue the Owner's Title Policy in accordance with the Title Commitment.

**12.11 Closing Statement.** At Closing, Seller and Purchaser shall execute and deliver a Closing Statement which shall, among other items, set forth the Purchase Price, all credits against the Purchase Price, the amounts of all prorations and other adjustments to the Purchase Price and all disbursements made at Closing on behalf of Purchaser and Seller in accordance with the terms of this Agreement.

**12.12 Evidence of Authority.** At Closing, Seller and Purchaser shall deliver to the other the Evidence of Authority dated not more than twenty (20) days before the Closing Date.

**12.13 Assignment of Intangible Property.** At Closing, Seller shall deliver to Purchaser a general assignment of the Warranties, Utility Deposits, Permits and the other Intangible Property, which assignment shall be substantially in the form attached hereto as Schedule 12.13.

**12.14 Conveyance of Awards.** At Closing, Seller shall, if and to the extent applicable, deliver to Purchaser all proper instruments for the conveyance of any condemnation, insurance or other awards or proceeds described in and subject to and in accordance with 13.2 hereof, all duly executed by Seller.

**12.15 Physical Possession.** At Closing, Seller shall deliver to Purchaser keys to the Property and actual sole and exclusive physical possession of the Property, subject only to the rights of Tenant and the Permitted Exceptions.

**12.16 Other Documents.** At Closing, Seller and Purchaser shall deliver to each other appropriate transfer tax returns and any other documents expressly required to be delivered or furnished pursuant to any other provisions of this Agreement or reasonably required to carry out the purpose and intent of this Agreement.

### **SECTION 13 NOTICES**

**13.1 Notices.** All notices, consents, approvals and other communications which may be or are required to be given by either Seller or Purchaser under this Agreement shall be properly given only if made in writing (except as expressly provided to the contrary in this Agreement) and sent by (A) hand delivery, (B) U.S. Certified Mail, Return Receipt Requested, (C) electronic transfer device with telephone or other confirmation of receipt on a Business Day, or (D) a nationally recognized overnight delivery service (such as Federal Express, UPS Next Day Air, or DHL), with all delivery charges paid by the sender and addressed to Purchaser or Seller, as applicable, to the following addresses:

If to Purchaser:	One Liberty Properties, Inc. 60 Cutter Mill Road Suite 303 Great Neck, New York 11021 Telephone: (516) 466-3100 Facsimile: (516) 773-2770 Attn: Lawrence G. Ricketts, Jr.
------------------	---



With a Copy to: Herrick, Feinstein LLP  
2 Park Avenue  
New York, New York 10016  
Telephone: (212) 592-1416  
Facsimile: (212) 545-3334  
Attn: Carl F. Schwartz, Esq.

If to Seller: c/o Falk of North America, Inc.  
6 Adelaide Street East, Suite 310  
Toronto, Ontario M5C 1H6 Canada  
Telephone: (416) 410-8713  
Facsimile: (416) 410-8714  
Attn: Daniel T. Borger

With a Copy to: Boulton Cummings Connors & Berry PLC  
1600 Division Street, Suite 700  
Nashville, Tennessee 37203  
Telephone: (615) 252-2343  
Facsimile: (615) 252-6343  
Attn: John R. Haynes

**13.2 Notice Effective Date.** All such notices shall be deemed received, (1) if delivered by hand, certified mail or overnight delivery service, on the date of delivery and (2) if sent by electronic transfer on a Business Day during the recipient's normal business hours, on the date of transmission (with confirmation of successful transmission), otherwise the same shall be deemed to have been received on the following Business Day. The refusal to accept delivery shall constitute acceptance and, in such event, the date of delivery shall be the date on which delivery was refused.

#### **SECTION 14 CASUALTY AND CONDEMNATION**

**14.1 Casualty.** Prior to the Closing Date, and notwithstanding the pendency of this Agreement, the entire risk of loss or damage by fire or other casualty (a "Casualty") shall be borne and assumed by Seller, except as otherwise specifically provided in this Section 14.1. Until the Closing has occurred, Seller shall keep its insurance policies in effect and shall comply with all Insurance Requirements. If, prior to the Closing Date, any part of the Property is damaged or destroyed by a Casualty, Seller shall immediately notify Purchaser of such fact. If (i) such damage or destruction results in damage for which repair costs are estimated by Purchaser in good faith to exceed \$250,000.00, (ii) there occurs uninsured damage or destruction to the Property under circumstances where Seller does not promptly provide funds for restoration in amount equal to the uninsured damage, (iii) the damage or destruction allows the reduction or abatement of rent, or (iv) it allows Tenant to terminate the Lease, which right is not waived in

writing by Tenant prior to the scheduled Closing Date, Purchaser shall have the option to terminate this Agreement upon written notice to Seller given not later than thirty (30) days after receipt of Seller's written notice of the Casualty (with the Closing Date being extended as necessary to allow such 30 day period to run), in which event the Earnest Money (including any letter(s) of credit) shall be returned to Purchaser and the parties shall be released from any further liability hereunder, except for those liabilities that expressly survive termination of this Agreement. If the repair and restoration of the Property has not been completed as of Closing, and if Purchaser does not elect to terminate this Agreement by reason of any Casualty, Seller shall, subject to any requirements set forth in the Lease, pay over or assign to Purchaser all amounts received or due (plus an amount equal to the deductible, if any, under Seller's casualty insurance policy covering the Property unless previously expended by Seller for an Approved Casualty Repair, as defined below) from and all claims against, any insurance company or governmental entity as a result of such casualty (other than rent loss insurance with regard to the period prior to Closing and amounts expended by Seller for emergency repairs or for repairs which are required by the Lease or approved in writing by Purchaser (an "Approved Casualty Repair")). To the extent permitted by the Lease, Purchaser shall have the right to participate in, and after Closing control, any adjustment of the insurance claim and, in such event, Purchaser and Seller shall cooperate each with the other in good faith.

**14.2 Condemnation.** At Closing, Seller shall quitclaim to Purchaser all of Seller's right, title and interest, if any, in and to the beds of streets, roads, alleys, avenues and highways abutting the Property and all of Seller's right, title and interest in and to all awards in condemnation, or damages of any kind, to which Seller is entitled at the time of Closing, by reason of any exercise of the power of eminent domain with respect thereto or for the taking of the Property or any part thereof or by reason of any other event affecting the value of the Property which gives rise to a compensatory claim against a third Person after the Effective Date. Prior to the Closing Date, if all or any portion of the Property is taken, or if access thereto is reduced or restricted, by eminent domain or otherwise (or if such taking, reduction or restriction is pending, threatened or contemplated) (hereinafter a "Condemnation Proceeding"), Seller shall immediately notify Purchaser of such fact. In the event that such notice relates to the taking of a material portion of the Property, Purchaser shall have the option, in its sole and absolute discretion, to terminate this Agreement upon written notice to Seller given not later than ten (10) days after receipt of Seller's written notice of the Condemnation Proceeding, whereupon the Earnest Money (including any letter(s) of credit) and neither Party shall have any further rights, obligations or liabilities hereunder except with respect to those rights, obligations or liabilities which expressly survive the termination of this Agreement. For the purposes of this Section, and without limiting the generality of the foregoing, a taking shall be deemed "material" if it (i) allows the reduction or abatement of rent, or (ii) allows Tenant to terminate the Lease, which right is not waived in writing by such Tenant prior to the scheduled Closing Date. If the Property or a portion thereof is taken and this Agreement is not terminated, then the parties shall proceed to the Closing pursuant to the terms hereof without any reduction in the Purchase Price. Tenant shall receive Condemnation proceeds to the extent provided by the Lease, and Seller shall at Closing, assign to Purchaser its rights (if any) to receive any Condemnation award. Prior to Closing (to the extent permitted by the Lease), Purchaser may participate with Seller in any Condemnation Proceeding affecting the Property and after Closing, Purchaser shall control such proceedings.

## **SECTION 15 BROKERS**

**15.1 Commissions Due Broker.** Seller shall pay all commissions due to Broker at Closing.

**15.2 Representation and Indemnity.** Except for Broker, each of Seller and Purchaser warrants and represents to the other that such party has employed (expressly or impliedly) no broker, agent or other such Person as to which a commission or other such fee is or would become due or owing as a result of the purchase and sale contemplated hereby and has made no agreement (express or implied) to pay any broker's commissions or other such fees in connection with the purchase and sale contemplated by this Agreement. Each of Seller and Purchaser agrees to indemnify and defend the other against, and to hold the other harmless of and from, all claims, demands and liabilities (including reasonable attorneys' fees and expenses incurred in defense thereof) for any commissions or fees payable to, or claimed by, any broker, agent or other such Person arising out of the employment or engagement of such Person employed (expressly or impliedly) by Seller or Purchaser, as applicable, or with whom Seller or Purchaser, as applicable, has, or is claimed to have, made an agreement (express or implied) to pay or cause to be paid a commission or other such fee.

## **SECTION 16 DEFAULT/REMEDIES**

**16.1 Seller's Default/Purchaser's Remedies.** Notwithstanding any other remedy provided for herein, if Seller wrongfully fails to close the sale of the Property, Purchaser shall be entitled to either (i) terminate this Agreement and receive a refund of the Earnest Money, or (ii) pursue an action for specific performance, it being agreed and understood that if Purchaser does not terminate this Agreement, Seller shall remain liable for performance and shall be subject to an action for specific performance, but shall not be liable for direct or other damages, or any other remedial relief available at law or in equity on account of such failure, it being agreed and understood that it is the intention of the parties hereto that specific performance should be awarded, if such performance is possible, even though monetary damages or another remedy is otherwise available at law. Notwithstanding the foregoing, if specific performance is not available because of an intentional default by Seller in contravention of this Agreement with the intent to deprive Purchaser of the benefit of its bargain, Purchaser may, in addition to terminating this Agreement and receiving a refund of the Earnest Money, recover the out of pocket costs incurred by Purchaser in connection with this Agreement, not to exceed \$50,000.00. The foregoing remedies are exclusive. In no event shall Seller be liable for consequential, incidental or punitive damages.

**16.2 Purchaser's Default/Seller's Remedies.** Notwithstanding any other remedy provided herein, subject to all conditions set forth in this Agreement, if Purchaser wrongfully fails to close the purchase of the Property under this Agreement, then Seller as its sole and exclusive remedy at law, in equity or otherwise shall be entitled to receive the Earnest Money from Escrow Agent, as liquidated damages, it being acknowledged that Seller's actual damages are difficult or impossible to ascertain. To the extent all or part of the Earnest Money is in the

form of letter(s) of credit, Seller be entitled to draw upon and retain the proceeds of such letter(s) of credit. In no event shall Purchaser be liable for consequential, incidental or punitive damages and in no event shall Purchaser be subject to an action for specific performance.

**16.3 Limitation of Liability.** Notwithstanding anything to the contrary contained in this Agreement or any documents executed in connection herewith, if the Closing of the transaction contemplated hereunder shall have occurred, the aggregate liability of Seller arising pursuant to or in connection with the representations, warranties, indemnifications, covenants or other obligations (whether express or implied) of Seller under this Agreement (or any document or certificate executed or delivered in connection herewith) shall not exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00), absent fraud by Seller. The provisions of this Section 16.3 shall survive Closing or termination of this Agreement.

## **SECTION 17 ASSIGNMENT**

Purchaser may not assign its rights under this Agreement without Seller's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, that Purchaser shall have the right to assign its rights under this Agreement without Seller's consent to (i) any entity owned or controlled by, or under common control with, Purchaser or to (ii) a "qualified intermediary" as defined under Treas. Reg. § 1.1031(k)-1(g)(4), in order to effect an exchange of the Property for like-kind property under Section 1031 of the Internal Revenue Code of 1986, as amended, as long as (a) the completion of such exchange shall not cause any unreasonable delay in the Closing Date, (b) the party which does not initiate the exchange shall not incur any additional costs in connection with such exchange, and (c) neither Seller nor Purchaser shall be required to take title to any property involved in such exchange. In connection with any such exchange of the Property, Seller shall execute and deliver to Purchaser or the "qualified intermediary" at or prior to the closing and all documents reasonably required by Purchaser or the "qualified intermediary" to complete such exchange. No assignment shall release Purchaser or Seller from their obligations under this Agreement. Notwithstanding the foregoing, Purchaser shall provide Seller with written notice at least two (2) business days prior to the effective date of such proposed assignment together with a copy of the assignment document, which document shall state that the assignee assumes all of Purchaser's obligations hereunder.

## **SECTION 18 GENERAL PROVISIONS**

**18.1 Agreement Binding.** This Agreement (and the representations, warranties and covenants contained herein) shall run with the land and shall be binding upon each party hereto and such party's successors and permitted assigns and shall inure to the benefit of each party hereto and such party's successors and permitted assigns.

**18.2 Entire Agreement.** This Agreement, and all of the Schedules and Exhibits referenced herein and annexed hereto, contain the final, complete and entire agreement of the parties hereto with respect to the matters contained herein, and no prior agreement or

understanding pertaining to any of the matters connected with this transaction shall be effective for any purpose. Except as may be otherwise provided herein, the agreements embodied herein may not be amended except by an agreement in writing signed by the parties hereto.

**18.3 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

**18.4 Further Assurances.** Seller and Purchaser each agree to execute and deliver to the other such further documents or instruments as may be reasonable and necessary in furtherance of the performance of the terms, covenants and conditions of this Agreement. This covenant shall survive the Closing.

**18.5 Interpretation.** TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT. The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this Agreement or any provision hereof. If any party to this Agreement is made up of more than one Person, then all such Persons shall be included jointly and severally, even though the defined term for such party is used in the singular in this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

**18.6 Counterparts.** This Agreement may be executed in separate counterparts, which may be transmitted via facsimile. It shall be fully executed when each party whose signature is required has signed at least one (1) counterpart even though no one (1) counterpart contains the signatures of all of the parties to this Agreement.

**18.7 Non-waiver.** No waiver by Seller or Purchaser of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. No delay or omission in the exercise of any right or remedy accruing to Seller or Purchaser upon any breach of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Seller or Purchaser of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition herein contained.

**18.8 Severability.** This Agreement is intended to be performed in accordance with and only to the extent permitted by applicable law. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy the basis of the bargain between the parties as contained herein, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

**18.9 Schedules/Exhibits.** The Schedules and Exhibits referred in and attached to this Agreement are incorporated herein in full by this reference.

**18.10 Attorneys' Fees.** In the event of any controversy, claim or dispute between the parties arising from or relating to this Agreement (including, but not limited to, the enforcement of any indemnity provisions or enforcement of any document executed in connection with or at the Closing), the prevailing party shall be entitled to recover reasonable costs, expenses and reasonable attorneys' fees, including, but not limited to, court costs and other expenses through all appellate levels and in bankruptcy court. This provision shall survive the Closing.

**18.11 No Third-Party Beneficiary.** This Agreement is made solely and specifically between and for the benefit of the parties hereto, and their respective successors and permitted assigns, and no other Person whatsoever shall have any rights, interests, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

**18.12 Business Days.** If any date provided for in this Agreement shall fall on a day which is not a Business Day, the date provided for shall be deemed to refer to the next Business Day.

**18.13 Relationship Between Purchaser and Seller.** Seller and Purchaser intend that the relationship between them shall be solely that of seller and buyer. Neither this Agreement nor any other instrument executed in connection with this Agreement, nor the consummation of the transactions contemplated herein or therein, shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between Seller and Purchaser, or to create a relationship between Seller and Purchaser other than that of buyer and seller.

**18.14 Waiver of Jury Trial.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

**18.15 No Personal Liability.** No officer, partner, director, shareholder, beneficial owner, agent or employee of Seller, Manager or Purchaser (including successors and assigns), or any of their constituents, shall be personally liable under this Agreement.

**18.16 Confidentiality.** Purchaser shall continue to be bound by the terms of that certain Confidentiality and Registration Agreement, executed by Purchaser in connection with this transaction, a copy of which is attached hereto as Schedule 18.16 and incorporated herein by this reference (the “Confidentiality Agreement”)

**18.17 No Public Disclosure.** Except and as to the extent required by law, without the prior written consent of the other party, neither Seller nor Purchaser will, and each will direct its representatives not to make, directly or indirectly, any public comment, statement or communication with respect to or otherwise to disclose or permit the public disclosure of the existence or discussions regarding the acquisition of the Property or the terms and conditions of this Contract. Without limitation, Purchaser shall not divulge the existence of this Agreement or the status of Purchaser’s due diligence, except to those persons who are authorized recipients of such information under the Confidentiality Agreement and then only to the extent expressly permitted thereby.

**18.18 No Cessation of Marketing Efforts.** Purchaser submitted a so-called pre-emptive offer to purchase the Property before Seller’s marketing efforts were complete. Seller agreed to enter into this Agreement as long as it could continue planned marketing efforts, including asking for and receiving bids from others if Seller so elects. Accordingly, nothing contained herein shall prevent Seller from continuing with current marketing efforts to sell the Property; provided, that Seller shall not enter into any backup or subordinate contract to purchase as long as this Agreement remains in effect.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed, as of the day and year first above written.

SELLER:

FALK US PROPERTY INCOME FUND, L.P.

By: Falk U.S. Investments, Inc.  
General Partner

By: /s/ John R. Haynes

\_\_\_\_\_  
John R. Haynes  
Assistant Secretary

Date: 8/24/05

PURCHASER:

ONE LIBERTY PROPERTIES, INC.

By: /s/ Lawrence G Ricketts, Jr.

\_\_\_\_\_  
Title: Vice President  
Date: 8/23/05



**EXHIBIT A**

LEGAL DESCRIPTION

Lot 1, Block 421.04 as shown on Map entitled "Final Plat Waterview Corporate Centre Section IV, Tax Map Sheet 112, Block 421, Lots 27, 28, 29, 30, 31 and 33, Parsippany-Troy Hills Township, Morris County, New Jersey," filed of record in the Morris County, New Jersey Clerk's Office as Registered Map Number 5006.

### **SCHEDULE 3.3**

#### **ESCROW AGREEMENT**

THIS ESCROW AGREEMENT (the "Agreement") is entered into as of the \_\_\_ day of August 2005, by and among FALK US PROPERTY INCOME FUND, L.P., a Delaware limited partnership (hereinafter referred to as "Seller"), ONE LIBERTY PROPERTIES, INC., [PURCHASER ENTITY INFO] (hereinafter referred to as "Purchaser") and FIRST AMERICAN TITLE INSURANCE COMPANY OF NEW YORK ("Escrow Agent").

#### **RECITALS:**

A. Seller and Purchaser have entered into a certain Sale Agreement, dated as of August \_\_, 2005 (the "Sale Agreement"), pursuant to which Seller is selling to Purchaser a building known as 45 Waterview Plaza located in Parsippany, New Jersey. Under the terms of the Sale Agreement, Purchaser has agreed to deposit into escrow with Escrow Agent the Good Faith Deposit in the amount of \$500,000.00, and Purchaser may deposit the Additional Earnest Money in the amount of \$1,500,000.00 (such sums with interest earned thereon is collectively referred to as the "Escrow Funds"), all in accordance with the Sale Agreement.

B. The Escrow Funds are to be held, invested and disbursed by Escrow Agent in accordance with the terms and conditions of the Sale Agreement and this Agreement.

C. Escrow Agent agrees to act as escrow agent to hold, administer, invest and disburse the Escrow Funds on the terms and conditions set forth in the Sale Agreement and set forth herein.

NOW, THEREFORE, In consideration of the foregoing and the mutual covenants of the parties contained herein, the parties hereto agree as follows:

**1. Conflicting Terms.** This Agreement is intended to supplement and not supersede the Sale Agreement. Accordingly, if any terms or conditions in this Agreement conflict with the terms or conditions of the Sale Agreement, the terms and conditions of the Sale Agreement shall govern.

**2. Receipt.** Escrow Agent acknowledges receipt of the Good Faith Deposit in the amount of \$500,000.00, and agrees to receive and hold the Good Faith Deposit and, to the extent applicable, the Additional Deposit posted by Purchaser pursuant to the Sale Agreement.

**3. Administration and Investment of Escrow Funds.** Escrow Agent shall hold, administer and disburse the Escrow Funds pursuant to this Agreement. Escrow Agent shall invest, and from time to time reinvest, the Escrow Funds, in a money market investment account constituting the obligations of national banks having undivided capital and surplus of at least \$125,000,000. In the absence of any such written investment instructions, Escrow Agent shall have no obligation to invest the Escrow Funds.

**4. Termination by Purchaser on or before Expiration of the Due Diligence Period.** In accordance with the Sale Agreement, Purchaser may, for various reasons or for no reason, elect to terminate the Sale Agreement by notice to Seller or by Purchaser's failure to deliver an Acceptance Notice to Seller and Escrow Agent on or before September 6, 2005 (the "Expiration Date"). If Purchaser elects to terminate the Sale Agreement prior to the Expiration Date or if Escrow Agent fails to receive a Notice of Acceptance from Purchaser on or before September 6, 2005, Escrow Agent shall promptly pay the Good Faith Deposit (and any interest earned thereon) to Purchaser and this Agreement shall thereupon be null and void and the parties hereto shall have no further liability or obligations hereunder. No notice to Escrow Agent from Seller shall be required for the release of the Good Faith Deposit to Purchaser by Escrow Agent, this being a "sole order escrow" until the Expiration Date.

**5. Termination by Seller or Purchaser After the Expiration Date.**

(a) At any time after the Expiration Date, upon not less than five (5) business days' prior written notice executed by Seller and delivered to both Purchaser and Escrow Agent in accordance with Section 9 hereof, asserting that (i) Purchaser has breached or otherwise defaulted and failed to perform its obligations under the Sale Agreement, and (ii) Seller is entitled to retain the Escrow Funds on account thereof as provided in the Sale Agreement, Escrow Agent shall deliver the Escrow Funds to Seller; provided, however, that if Purchaser shall, within said 5 business day period, deliver to Seller and Escrow Agent a written notice that it disputes Seller's claim to the Escrow Funds, Escrow Agent shall retain the Escrow Funds until it receives written instructions executed by both Seller and Purchaser as to the disposition and disbursement of the Escrow Funds, or until ordered by final court order, decree or judgment, which is not subject to appeal, to deliver the Escrow Funds to a particular party, in which event the Escrow Funds shall be delivered in accordance with such notice, instruction, order, decree or judgment.

(b) At any time after the Expiration Date, upon not less than 5 business days' prior written notice executed by Purchaser and delivered to Seller and Escrow Agent in accordance with Section 9 hereof, asserting that Purchaser is entitled to the return of the Escrow Funds under the Sale Agreement, Escrow Agent shall deliver the Escrow Funds (and any interest earned thereon) to Purchaser; provided, however, that if Seller shall, within said five (5) business day period, deliver to Purchaser and Escrow Agent a written notice that it disputes Purchaser's claim or right to receive back the Escrow Funds, Escrow Agent shall retain the Escrow Funds until it receives written instructions executed by both Seller and Purchaser as to the disposition and disbursement of the Escrow Funds, or until ordered by final court order, decree or judgment, which is not subject to appeal, to deliver the Escrow Funds to a particular party, in which event the Escrow Funds shall be delivered in accordance with such notice, instruction, order, decree or judgment.

(c) In the event either (a) or (b) of this Section shall occur, Purchaser's or Seller's notice to Escrow Agent shall include a statement, upon which Escrow Agent may rely, that Purchaser or Seller has notified the other party that the requesting party is entitled to the Escrow Funds. Notwithstanding such statement, upon receipt by Escrow Agent of a notice from Seller or Purchaser, as the case may be, claiming the Escrow Funds, Escrow Agent shall immediately forward a copy of such notice to the other party via facsimile or overnight mail.

Schedule 3.3

**6. Disbursement at Closing.** Subject to Sections 4 and 5 hereof, at Closing (as defined in the Sale Agreement), Escrow Agent shall deliver the Escrow Funds as directed by Purchaser.

**7. Escrow Agent Duties.**

(a) Escrow Agent will perform its obligations hereunder fairly and impartially according to the intent of the parties as herein expressed; provided, however, that Escrow Agent is to be considered as a depository only, shall not be deemed to be a party to any document other than this Agreement and the Sale Agreement, and shall not be responsible or liable in any manner whatsoever for the sufficiency, manner of execution, or validity of any written instructions, certificates or any other documents received by it, nor as to the identity, authority, or rights of any persons executing the same. Escrow Agent shall be entitled to rely at all times on instructions given by Seller and/or Purchaser, as the case may be and as required hereunder, without any necessity of verifying the authority therefor. Notices given by counsel to Purchaser, shall be deemed given by Purchaser. Notices given by counsel to Seller shall be deemed given by Seller.

(b) Escrow Agent shall not at any time be held liable for actions taken or omitted to be taken in good faith and without gross negligence. Seller and Purchaser agree to save and hold Escrow Agent harmless from any loss and from any claims or demands arising out of its actions hereunder and hereby agree to indemnify Escrow Agent from any claims or demands for losses arising out of its activities hereunder.

(c) It is further understood by Seller and Purchaser that if, Escrow Agent shall become involved in litigation with respect to this Agreement or the Sale Agreement, whether as the result of any disagreement between Seller and Purchaser or adverse demands and claims being made by any of them upon Escrow Agent or otherwise, such parties agree that they, jointly and severally, are and shall be liable to Escrow Agent and shall reimburse Escrow Agent for the reasonable costs, expenses and counsel fees it shall incur or be compelled to pay by reason of such litigation. Seller and Purchaser agree among themselves that each shall be responsible to advance one-half of all amounts due Escrow Agent for its services as set forth in this Agreement, provided that any such advance by Seller or Purchaser as the result of any dispute or litigation between them shall be without prejudice to their right to recover such amount as damages from the breaching party.

(d) In taking or omitting to take any action whatsoever hereunder, Escrow Agent shall be protected in relying upon any notice, paper, or other document believed by it to be genuine, or upon evidence deemed by it to be sufficient, and in no event shall Escrow Agent be liable hereunder for any act performed or omitted to be performed by it hereunder in the absence of gross negligence or bad faith. Escrow Agent may consult with counsel in connection with its duties hereunder and shall be fully protected in any act taken, suffered or permitted by it in good faith and without gross negligence in accordance with the advice of such counsel.

Schedule 3.3

**8. Term of Agreement.** The term of this Agreement shall be from and after the date of this Agreement as hereinafter set forth to and including the termination hereof by written agreement of the parties hereto or disbursement of all of the Escrow Funds pursuant to the terms hereof.

**9. Notices.** All notices, demands, requests or other communications which may or shall be given or served by any party to this Agreement upon any other parties to this Agreement, shall be either (i) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three business days after deposit, postage prepaid in the U.S. mail, (ii) sent by overnight delivery using a nationally recognized overnight courier, in which case it shall be deemed delivered one business day after deposit with such courier, (iii) sent by facsimile, in which case notice shall be deemed delivered upon transmission of such notice, or (iv) sent by personal delivery, in which case notice shall be deemed delivered upon personal delivery. Such notices, demands, requests or other communications shall be in writing and addressed to the following:

(ii) 407 S. Warren Street Syracuse, New York 13202 Attn: William Bradt, Esq., Vice President (e-mail: [wbradt@firstam.com](mailto:wbradt@firstam.com)) Telephone 1-800-679-4718, Facsimile: 888-722-4081.

If to Escrow Agent: First American Title Insurance Company of New York  
407 S. Warren Street  
Syracuse, New York 13202  
Telephone (800) 679-4718  
Facsimile: (888) 722-4081  
Attn: William Bradt, Esq.,  
Vice President

If to Purchaser: One Liberty Properties, Inc.  
60 Cutter Mill Road  
Suite 303  
Great Neck, New York 11021  
Telephone: (516) 466-3100  
Facsimile: (516) 773-2770  
Attn: Lawrence G. Ricketts, Jr.

With a Copy to: Herrick, Feinstein LLP  
2 Park Avenue  
New York, New York 10016  
Telephone: (212) 592-1416  
Facsimile: (212) 545-3334  
Attn: Carl F. Schwartz, Esq.

Schedule 3.3

If to Seller: c/o Falk of North America, Inc.  
6 Adelaide Street East, Suite 310  
Toronto, Ontario M5C 1H6 Canada  
Telephone: (416) 410-8713  
Facsimile: (416) 410-8714  
Attn: Daniel T. Borger

With a Copy to: Boulton Cummings Connors & Berry PLC  
1600 Division Street, Suite 700  
Nashville, Tennessee 37203  
Telephone: (615) 252-2343  
Facsimile: (615) 252-6343  
Attn: John R. Haynes

All parties shall have the right from time to time to designate by written notice to all other parties any other address or place where such notice, demand, or request be addressed.

**10. Miscellaneous.**

(a) No party may assign its interest in or obligations under this Agreement except as may be permitted pursuant to the Sale Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives, successors and assigns.

(b) This Agreement shall be construed under and governed by the laws of the State in which the office of Escrow Agent is located and, in the event that any provision hereof shall be deemed illegal or unenforceable, said provision shall be severed herefrom and the remainder of this Agreement shall be enforced in accordance with the intent of the parties as herein expressed.

(c) This Agreement may not be amended or altered except by an instrument in writing executed by all the parties hereto.

(d) This Agreement may be executed in separate counterparts, which may be transmitted via facsimile. It shall be fully executed when each party whose signature is required has signed at least one (1) counterpart even though no one (1) counterpart contains the signatures of all of the parties to this Agreement.

Schedule 3.3

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

SELLER:

FALK US PROPERTY INCOME FUND, L.P.

By: Falk U.S. Investments, Inc.  
General Partner

By: \_\_\_\_\_  
John R. Haynes  
Assistant Secretary

Date: \_\_\_\_\_

PURCHASER:

ONE LIBERTY PROPERTIES, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE  
COMPANY OF NEW YORK.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Schedule 3.3

**SCHEDULE 9.1**  
**OUTSTANDING SUBMISSION ITEMS**  
**[NONE]**

Schedule 9.1



**SCHEDULE 12.1**  
**SPECIAL WARRANTY DEED**  
**[STATE COUNSEL TO PROVIDE]**

Schedule 12.1

**SCHEDULE 12.2**  
**QUITCLAIM DEED**

Schedule 12.2

- 1 -

Meadows IV  
45 Waterview Plaza  
Parsippany, New Jersey

**SCHEDULE 12.3**

**BILL OF SALE**

THIS BILL OF SALE is executed and delivered as of the \_\_\_ day of \_\_\_\_\_, 2005, by FALK US PROPERTY INCOME FUND, L.P., a Delaware limited partnership (“Seller”), to ONE LIBERTY PROPERTIES, INC., [PURCHASER ENTITY INFO] (“Purchaser”).

**WITNESSETH:**

WHEREAS, contemporaneously with the execution and delivery of this Bill of Sale, Seller has sold and conveyed to Purchaser all that tract or parcel of land more particularly described in Exhibit “A” attached hereto and incorporated herein by reference, together with all improvements owned by Seller thereon and all rights, easements and appurtenances thereto (collectively, the “Property”); and

WHEREAS, in connection with such conveyance of the Property, Seller has agreed to sell to Purchaser and Purchaser has agreed to purchase from Seller all personal property owned by Seller, if any, and used in connection with the ownership, operation, management, maintenance, and leasing of the Property, including, but not limited to, the personal property described in Exhibit “B” attached hereto and incorporated herein by this reference (the “Personal Property”);

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller, Seller hereby agrees as follows:

**1. Sale and Conveyance.** Seller hereby sells, transfers and conveys the Personal Property unto Purchaser, its successors and assigns.

**2. Representations and Warranties.** Seller represents and warrants that (i) all of the Personal Property is free and clear of financing statements, chattel, mortgages, security agreements, title retention agreements, liens or other encumbrances created or consented to by Seller, and (ii) Seller has the right, power and authority to sell the Personal Property to Purchaser without obtaining the consent of any third party whose consent has not been obtained and written evidence thereof furnished to Purchaser. Seller, for itself, its successors and assigns, does hereby warrant and will forever defend title to the Personal Property unto Purchaser, its successors and assigns, against the lawful claims of all persons claiming by, through or under Seller.

Schedule 12.3

**3. Governing Law.** This Bill of Sale shall be construed and enforced in accordance with and governed by the laws of the State of New Jersey.

**4. Binding Effect.** This Bill of Sale shall be binding upon Seller, its legal representatives, successors and assigns, and shall inure to the benefit of Purchaser, its legal representatives, successors and assigns.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed as of the day and year first above written.

SELLER:

FALK US PROPERTY INCOME FUND, L.P.

By: Falk U.S. Investments, Inc.  
General Partner

By: \_\_\_\_\_  
John R. Haynes  
Assistant Secretary

Date: \_\_\_\_\_

Schedule 12.3

**EXHIBIT "A" TO BILL OF SALE**  
**LEGAL DESCRIPTION OF PROPERTY**

- 1 -

**EXHIBIT "B" TO BILL OF SALE**  
**LIST OF PERSONAL PROPERTY**

DSM Nutritional Products Building  
45 Waterview Plaza  
Parsippany, New Jersey

**SCHEDULE 12.4**  
**ASSIGNMENT AND ASSUMPTION OF LEASE**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (the "Assignment") is made and entered into and effective as of the \_\_\_ day of \_\_\_\_\_ 2005, by and between FALK US PROPERTY INCOME FUND, L.P., a Delaware limited partnership ("Assignor"), and [NAME OF ULTIMATE PURCHASER], a \_\_\_\_\_ ("Assignee"), whose general partner is ONE LIBERTY PROPERTIES, INC., a real estate investment trust organized under the laws of the State of Maryland ("Original Purchaser")

**W I T N E S E T H:**

WHEREAS, contemporaneously with the execution and delivery of this Assignment, Assignor has sold and conveyed to Assignee all that tract or parcel of land more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, together with all improvements owned by Seller thereon, and all rights, easements and appurtenances thereto (collectively, the "Property"), pursuant to the terms and conditions of a certain Sale Agreement, dated as of \_\_\_\_\_, 2005, by and between Assignor and Original Purchaser, as assigned to Assignee by Assignment and Assumption Agreement, dated as of \_\_\_\_\_, 2005 (the "Sale Agreement") [all capitalized terms not expressly defined herein shall have the meaning ascribed thereto in the Sale Agreement]; and

WHEREAS, in connection with such conveyance of the Property, Assignor and Assignee have agreed that Assignor shall transfer and assign to Assignee all right, title and interest of Assignor in and to that certain Lease, dated as of January 1, 1997 between Bellmead Development Corporation and Hoffman-LaRoche, Inc., as assigned to Roche Vitamins, Inc. and further assigned to DSM Nutritional Products, Inc., effective as of September 30, 2003, together with that certain First Amendment to Lease, effective as of May 1, 2005, between Seller and Tenant (collectively, the "Lease") and all deposits held by Assignor pursuant to the Lease (the "Tenant Deposits"); and

WHEREAS, Assignor and Assignee have further agreed that Assignee shall expressly assume all of the obligations of Assignor arising under the Lease from and after the date of this Assignment, including, without limitation, all obligations under the Lease with respect to refund of the Tenant Deposits;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

**1. Transfer and Assignment.** Assignor hereby sells, transfers, assigns, delivers and conveys to Assignee, its successors and assigns, all right, title and interest of Assignor in, to and under the Lease and the Tenant Deposits.

Schedule 12.4

**2. Representations of Assignor.** Assignor hereby represents and warrants to Assignee that (i) Assignor is the sole owner and holder of the landlord's interest under the Lease, (ii) there have been no prior assignments of the Lease or the Guaranties which remain outstanding as of the date of this Assignment, and (iii) neither the landlord's interest in the Lease nor the Tenant Deposits are subject to any liens, security interests or adverse claims by any non-lessee third party.

**3. Assumption of Obligations.** Assignee hereby assumes and agrees to observe and perform all of the obligations and duties of Assignor under the Lease for that period of time from and after the date of this Assignment, including, without limitation, all covenants and obligations of Assignor with respect to refund of the Tenant Deposits; provided that Assignor shall remain responsible for, and Assignee is not assuming, any duties or obligations which relate or arise in connection with events or circumstances that occurred prior to the Effective Date, even though such duties, obligations, events or circumstances may not become known to Assignor or Assignee until after the Effective Date.

**4. Governing Law.** This instrument shall be construed and enforced in accordance with and governed by the laws of the State of New Jersey.

**5. Binding Effect.** This instrument shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

Schedule 12.4



IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

ASSIGNOR:

FALK US PROPERTY INCOME FUND, L.P.

By: Falk U.S. Investments, Inc.  
General Partner

By: \_\_\_\_\_  
John R. Haynes  
Assistant Secretary

Date: \_\_\_\_\_

ASSIGNEE:

ONE LIBERTY PROPERTIES, INC.

By: \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

Schedule 12.4

**EXHIBIT "A" TO ASSIGNMENT AND**  
**ASSUMPTION OF LEASE**  
**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT "B" TO ASSIGNMENT AND  
ASSUMPTION OF LEASE**

- 1 -

DSM Nutritional Products Building  
45 Waterview Plaza  
Parsippany, New Jersey

**SCHEDULE 12.5**  
**ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS  
AND OTHER INTERESTS**

THIS ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENTS AND OTHER INTERESTS (the "Assignment") is made and entered into and effective as of this \_\_\_\_ day of \_\_\_\_\_ 2005, by and between FALK US PROPERTY INCOME FUND, L.P., a Delaware limited partnership ("Assignor"), and [NAME OF ULTIMATE PURCHASER], a \_\_\_\_\_ ("Assignee"), whose general partner is ONE LIBERTY PROPERTIES, INC., a real estate investment trust organized under the laws of the State of Maryland ("Original Purchaser")

**W I T N E S E T H:**

WHEREAS, contemporaneously with the execution and delivery hereof, Assignor has sold and conveyed to Assignee all that tract or parcel of land more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, together with all improvements thereon owned by Seller, and all rights, easements and appurtenances thereto (collectively, the "Property"), pursuant to the terms and conditions of a certain Sale Agreement, dated as of August \_\_, 2005, by and between Assignor and Original Purchaser, as assigned to Assignee (the "Sale Agreement") [all capitalized terms not expressly defined herein shall have the meaning ascribed thereto in the Sale Agreement]; and

WHEREAS, in connection with such conveyance of the Property, Assignor and Assignee have agreed that Assignor shall transfer and assign to Assignee all right, title and interest of Assignor in and to all service, management, equipment, labor, material, maintenance, repair and other contracts relating to the maintenance, repair or operation of the Property which have not been terminated by Assignor as of the Effective Date and continue in force and effect, all of which are more particularly described on Exhibit "B" attached hereto and incorporated herein by reference (collectively, the "Surviving Contracts"); and

WHEREAS, Assignor and Assignee have further agreed that Assignee shall expressly assume all of the obligations of Assignor arising under the Surviving Contracts from and after the date of this Assignment;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

**1. Transfer and Assignment.** Assignor hereby sells, transfers and assigns to Assignee, its successors and assigns, all right, title and interest of Assignor in, to and under the Surviving Contracts.

Schedule 12.5

**2. Assumption of Obligations.** Assignee hereby assumes and agrees to observe and perform all of the obligations and duties of Assignor under each of the Surviving Contracts, arising with respect to the period of time from and after the date of this Assignment.

**3. Governing Law.** This Assignment shall be construed and enforced in accordance with and governed by the laws of the State of New Jersey.

**4. Binding Effect.** This assignment and assumption shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

ASSIGNOR:

FALK US PROPERTY INCOME FUND, L.P.

By: Falk U.S. Investments, Inc.  
General Partner

By: \_\_\_\_\_  
John R. Haynes  
Assistant Secretary

Date: \_\_\_\_\_

ASSIGNEE:

ONE LIBERTY PROPERTIES, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Schedule 12.5

**EXHIBIT "A" TO ASSIGNMENT**  
**OF OPERATING AGREEMENTS AND OTHER INTERESTS**  
**LEGAL DESCRIPTION OF PROPERTY**

- 1 -

**EXHIBIT "B" TO ASSIGNMENT**  
**OF OPERATING AGREEMENTS AND OTHER INTERESTS**  
**LIST OF SURVIVING OPERATING AGREEMENTS**

**SCHEDULE 12.7**  
**NOTICE OF SALE**

[VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED OR HAND-DELIVERY]

\_\_\_\_\_, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: DSM Nutritional Products Building, 45 Water-view Plaza (the "Project")  
Parsippany, New Jersey

Dear Tenant:

The purpose of this letter is to notify you that the referenced project has been sold to ONE LIBERTY PROPERTIES, INC. ("Purchaser"). Under the acquisition documents, FALK US PROPERTY INCOME FUND, L.P. assigned its interest under your lease for the Project to Purchaser. Your security deposit/letter of credit in the amount of \$\_\_\_\_\_ was also transferred to Purchaser. After this date, any notices or other correspondence with respect to your lease should be addressed to Purchaser as follows:

ONE LIBERTY PROPERTIES, INC.

Attn:

Further, rents and other payments due under the lease shall be made to the following address:

If you have any questions, please feel free to call me at the above-referenced telephone number, or Purchaser's representative, \_\_\_\_\_ at \_\_\_\_\_.

Very truly yours,

FALK US PROPERTY INCOME FUND, L.P.

By: Falk U.S. Investments, Inc.  
General Partner

By: \_\_\_\_\_

John R. Haynes  
Assistant Secretary

Date: \_\_\_\_\_

cc: ONE LIBERTY PROPERTIES, INC.

Schedule 12.7



45 Waterview Plaza  
Parsippany, New Jersey

**SCHEDULE 12.9**  
**SECTION 1445 CERTIFICATE**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform ONE LIBERTY PROPERTIES, INC. (the "Transferee") that withholding of tax is not required upon the disposition of a U.S. real property interest by FALK US PROPERTY INCOME FUND, L.P. (the "Seller"), the undersigned hereby certifies the following on behalf of Seller:

1. The undersigned is the Assistant Secretary of the General Partner of Seller.
2. Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
3. Seller's U.S. employer identification number is \_\_\_\_\_; and
4. Seller's office address is: \_\_\_\_\_.

FALK US PROPERTY INCOME FUND, L.P.

By: Falk U.S. Investments, Inc.  
General Partner

By: \_\_\_\_\_  
John R. Haynes  
Assistant Secretary

Date: \_\_\_\_\_

Schedule 12.9

DSM Nutritional Products Building  
45 Waterview Plaza  
Parsippany, New Jersey

**SCHEDULE 12.13**

**ASSIGNMENT OF INTANGIBLE PROPERTY**

THIS ASSIGNMENT OF INTANGIBLE PROPERTY (the "Assignment") is made and entered into and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between FALK US PROPERTY INCOME FUND, L.P., a Delaware limited partnership ("Assignor"), and [NAME OF ULTIMATE PURCHASER], a \_\_\_\_\_ ("Assignee"), whose general partner is ONE LIBERTY PROPERTIES, INC., a real estate investment trust organized under the laws of the State of Maryland ("Original Purchaser").

**W I T N E S E T H:**

WHEREAS, contemporaneously with the execution and delivery hereof, Assignor has sold and conveyed to Assignee certain improved real property known as the DSM Nutritional Products Building in Parsippany, New Jersey (the "Property"); and

WHEREAS, in connection with such conveyance of the Property, Assignor and Assignee have agreed that Assignor shall transfer and assign to Assignee all right, title and interest of Assignor in and to the Intangible Property, as the same is defined in that certain Sale Agreement, dated as of the \_\_ day of August, 2005, by and between Assignor and Original Purchaser, as assigned to Assignee (the "Sale Agreement"), to the extent assignable and transferable [all capitalized terms not expressly defined herein shall have the meaning ascribed thereto in the Sale Agreement];

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

**1. Transfer and Assignment.** Assignor hereby transfers, assigns, sets over and delivers to Assignee, its successors and assigns, all right, title and interest of Assignor in, to and under the Intangible Property.

**2. Governing Law.** This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of New Jersey.

**3. Binding Effect.** This assignment and assumption shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

Schedule 12.13

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

ASSIGNOR:

FALK US PROPERTY INCOME FUND, L.P.

By: Falk U.S. Investments, Inc.  
General Partner

By: \_\_\_\_\_  
John R. Haynes  
Assistant Secretary

Date: \_\_\_\_\_

ASSIGNEE:

ONE LIBERTY PROPERTIES, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Schedule 12.13

**SCHEDULE 18.16**  
**EXECUTED CONFIDENTIALITY AND REGISTRATION AGREEMENT**

Schedule 18.16

- 1 -

ASSIGNMENT OF SALE AGREEMENT

THIS ASSIGNMENT is made as of the 15<sup>th</sup> day of September, 2005, by ONE LIBERTY PROPERTIES, INC. ("Assignor"), to OLP PARSIPPANY LLC ("Assignee").

W I T N E S S E T H :

Assignor, for and in consideration of the sum of TEN and 00/100 DOLLARS (\$10.00) paid by Assignee to Assignor and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, does hereby grant, bargain, sell, assign, transfer and set over unto Assignee all of Assignor's right, title and interest in and to that certain Sale Agreement between Falk US Property Income Fund, L.P., as Seller, and One Liberty Properties, Inc., as Purchaser, with respect to the property known as and located at 45 Waterview Plaza, Parsippany, New Jersey, including, but not limited to, the right of Assignor to acquire said property pursuant to said Sale Agreement and the earnest money deposit made thereunder.

TO HAVE AND HOLD the same unto Assignee, its successors and assigns, subject to the covenants, conditions and limitations therein contained.

Assignee hereby accepts said assignment and agrees to be bound by all of the terms and conditions binding on Purchaser under the aforesaid Sale Agreement.

IN WITNESS WHEREOF, this Assignment has been executed, sealed, acknowledged and delivered as of the date first above written.

Assignor:

ONE LIBERTY PROPERTIES, INC.

By: /s/ Lawrence G. Ricketts, Jr.

\_\_\_\_\_  
Name: Lawrence G. Ricketts, Jr.

Title: Vice President - Acquisitions

Assignee:

OLP PARSIPPANY LLC

By: One Liberty Properties, Inc., its member

By: /s/ Lawrence G. Ricketts, Jr.

\_\_\_\_\_  
Name: Lawrence G. Ricketts, Jr.

Title: Vice President - Acquisitions

STANDARD FORM OF NET OFFICE LEASE

1. SUMMARY OF BASIC LEASE PROVISIONS DEFINITIONS, AND TABLE OF CONTENTS

BASIC DEFINITIONS

1.1 The following are the basic definitions and provisions of this Lease and are subject to all the terms and provisions of this Lease or any amendments or exhibits hereto:

- (a) Date of Lease: November 6, 1996
- (b) Landlord: Bellemead Development Corporation,  
Landlord's a Delaware corporation  
Address 280 Corporate Center  
4 Becker Farm Road  
Third Floor  
Roseland, New Jersey 07068-3788
- (c) Tenant: Hoffmann-La Roche Inc.,  
Tenant's a New Jersey corporation  
Address 45 Eisenhower Drive  
Paramus, New Jersey 07652-1429
- (d) Building: 45 Waterview Boulevard  
Parsippany-Troy Hills, New Jersey
- (e) Demised Premises: the entire four (4) floors in the Building, as shown on Exhibit A attached and made a part hereof
- (f) Rentable Size of Building: deemed as 106,680 sq. ft.
- (g) Rentable Size of Demised Premises: deemed as 106,680 sq. ft.
- (h) Tenant's Occupancy Percentage: deemed as 100%
- (i) Intentionally Deleted Prior To Execution
- (j) Intentionally Deleted Prior To Execution
- (k) Term of Lease: 10 years
- (l) Intentionally Deleted Prior To Execution
- (m) Minimum Rent:

<u>Lease Months</u>	<u>Annual</u>	<u>Monthly</u>
1 - 60	\$1,920,240.00	\$160,020.00
61 - 120	\$2,186,940.00	\$182,245.00

- (n) Prepayment of Rent: \$160,020.00
- (o) Security: None
- (p) Permitted use: First-class executive and administrative offices for the Roche Vitamins & Fine Chemicals Division
- (q) Allotted Parking: three hundred forty (340) spaces
- (r) Broker: Gale and Wentworth Real Estate Advisors Inc.  
Real Estate Services & Investments  
200 Campus Drive  
Suite 200  
Florham Park, New Jersey 07932
- (s) Intentionally Deleted Prior To Execution
- (t) Renewal Options: two (2) five (5) year terms
- (u) Intentionally Deleted Prior To Execution
- (v) Construction Credit: \$2,667,000.00

1.2 Additional Definitions. For the purposes of this Lease, the following terms shall have the meanings set forth below:

Accelerated Rent shall have the meaning given to it in Section 35.1(c).

Affiliated Property shall have the meaning given to it in Section 16.5.

Agent shall mean any agent, consultant, contractor or subcontractor hired by or reporting to Tenant or its employee, and any employee of any such entity.

Appraiser shall have the meaning given to it in Section 51.3(c).

Approved Final Drawings shall have the meaning given to it in Section 23.1.

Article shall refer to the major subdivisions of this Lease listed in Section 1.3.

Assignee or assignee shall have the meaning given to it in Section 16.9.

Assignment or assignment shall have the meaning given to it in Section 16.9.

Assignor or assignor shall have the meaning given to it in Section 16.9.

Bankruptcy Code shall have the meaning given to it in Section 39.1.

Base Building Credit shall have the meaning given to it in Section 23.11.

Building Lessor shall have the meaning given it in Section 8.3.

Cleaning Service Rider shall mean Exhibit C and all amendments thereto.

Commencement Date shall have the meaning given to it in Section 3.1.

Commencement Date Notice shall have the meaning given to it in Section 3.4.

Control shall have the meaning given to it in Section 16.18(a).

Cure Period shall have the meaning given to it in Section 34.2.

Default shall have the meaning given to it in Section 34.1.

Environmental shall mean anything affecting the physical health, safety or condition of human beings, wildlife, or natural resources.

Environmental Authority shall have the meaning given to it in Section 15.2.

Estimated Minimum Rent shall have the meaning given to it in Section 51.3(d).

Event of Default shall have the meaning given to it in Section 34.2.

Expiration Date shall have the meaning given to it in Section 3.4.

Financial Organizations shall have the meaning given to it in Section 41.5.

G&W shall have the meaning given to it in Section 23.2.

Governmental Authority shall mean any governmental or quasi-governmental legislative, executive, judicial, regulative or independent body, department, office, agency, bureau or similar entity or any agent, officer or representative thereof.

HVAC shall mean heating, ventilation or air conditioning.

Improvements shall mean the Building and other improvements on the Land.

Initial Term shall have the meaning given to it in Section 3.4.

Interest shall have the meaning given to it in Section 34.3.

Land shall mean the land described in Exhibit B.

Land Lessor shall have the meaning given it in Section 29.3.

Landlord shall have the meaning given to it in Section 29.2.

Landlord's Determination Notice shall have the meaning given to it in Section 51.3(a).



Landlord's Recapture Notice shall have the meaning given to it in Section 16.4.

Landlord's Recapture Right shall have the meaning given to it in Section 16.4.

Law shall mean any statute, ordinance, order, code, rule or regulation of a Governmental Authority now or hereafter in effect as applicable under the circumstances.

Legal Holiday shall have the meaning given to it in Exhibit D.

License shall have the meaning given to it in Section 10.2.

Managing Agent shall mean the managing agent named on the signature page of this Lease, or such other person or entity as Landlord may designate by written notice from Landlord to Tenant, subject to Article 45.

Market Rent shall have the meaning given to it in Section 51.4(b).

Monument shall have the meaning given to it in Section 52.1.

Moving Costs shall have the meaning given to it in Section 23.10.

Non-Standard Installations shall have the meaning given to it in Section 13.5(c).

Operating Costs shall have the meaning given to it in Section 6.2(b).

Parking Area shall have the meaning given to it in Section 10.2.

Real Estate shall mean, collectively, the Land and the Building and other improvements thereon.

Renewal Option shall have the meaning given to it in Section 51.1

Renewal Term shall have the meaning given to it in Section 51.1.

Rent Commencement Date shall have the meaning given to it in Section 3.5.

Rules and Regulations shall mean the rules and regulations set forth in Exhibit E, as same may be amended from time to time as provided herein.

Section shall refer to subdivisions of each Article.

State shall mean the state of the United States in which the Land is located.

Sublease shall have the meanings given to it in Sections 16.2 and 16.3.

Subleasing shall have the meaning given to it in Section 16.3.

Sublessee shall have the meaning given to it in Section 16.2.

Tax Assessment shall have the meaning given to it in Section 6.1.

Taxes shall have the meaning given to it in Section 6.1.

Tenant Requested Modifications shall have the meaning given to it in Section 23.5.

Tenant's Notice of Disagreement shall have the meaning given to it in Section 51.3(a).

Tenant's Renewal Notice shall have the meaning given to it in section 51.2(a).

Tenant's Transfer Notice shall have the meaning given to it in Section 16.3.

Tenant's Work shall have the meaning given to it in Section 13.1(b).

Visitor shall mean any visitor, guest, licensee or invitee of Tenant or any Sublessee, including any Agent, while on the Real Estate.

### 1.3 Table of Contents

1.	SUMMARY OF BASIC LEASE PROVISIONS, TABLE OF CONTENTS, AND DEFINITIONS	1
2.	LEASE OF DEMISED PREMISES	6
3.	COMMENCEMENT OF TERM; EXPIRATION DATE	6
4.	INTENTIONALLY DELETED PRIOR TO EXECUTION	7
5.	RENT	7
6.	TAXES; OPERATING COSTS; REIMBURSEMENTS	7
7.	TENANT'S PERSONAL TAXES	10
8.	SECURITY	10
9.	USE AND OCCUPANCY	11
10.	ACCESS; COMMON AREAS; PARKING	11
11.	RESTRICTIVE COVENANT - FOOD SERVICE	12
12.	TENANT'S CARE AND REPAIR OF PREMISES	13
13.	TENANT'S WORK AND INSTALLATIONS	13
14.	COMPLIANCE WITH LAWS	16
15.	ENVIRONMENTAL COMPLIANCE	16
16.	ASSIGNMENT; SUBLEASING	17
17.	NOTIFICATION BY TENANT	23
18.	RULES AND REGULATIONS	23
19.	PEACEABLE ENJOYMENT	23
20.	SURRENDER	23
21.	HOLDING OVER	24
22.	INDEMNITY	24
23.	BASE BUILDING WORK AND LANDLORD'S CONSTRUCTION CREDIT	24
24.	SERVICES TO BE PROVIDED BY LANDLORD	27
25.	ELECTRICITY	28
26.	HEATING, VENTILATION AND AIR CONDITIONING	29
27.	CLEANING SERVICES	29
28.	LANDLORD'S ACCESS TO DEMISED PREMISES AND ALTERATIONS	29
29.	LIMITATION OF LIABILITY	30
30.	PROPERTY LOSS; DAMAGE; TENANT'S INSURANCE	31
31.	DAMAGES BY FIRE OR OTHER CASUALTY	32
32.	WAIVER OF SUBROGATION	33
33.	EMINENT DOMAIN	34
34.	DEFAULTS; EVENTS OF DEFAULT	34
35.	REMEDIES FOR EVENTS OF DEFAULT	36
36.	LANDLORD'S PERFORMANCE; EXPENDITURES	38

37.	ACCORD AND SATISFACTION	38
38.	EFFECT OF WAIVERS	38
39.	BANKRUPTCY; INSOLVENCY	38
40.	STATUTORY WAIVER; WAIVER OF TRIAL BY JURY	39
41.	SUBORDINATION OF LEASE; ESTOPPEL CERTIFICATES	40
42.	INTENTIONALLY DELETED PRIOR TO EXECUTION	42
43.	INTENTIONALLY DELETED PRIOR TO EXECUTION	42
44.	CORPORATE AUTHORITY	42
45.	MANAGING AGENT	42
46.	BROKER	43
47.	NOTICES	43
48.	INTERPRETATION	43
49.	NO OFFER, AGREEMENT OR REPRESENTATIONS	44
50.	APPLICABILITY TO HEIRS AND ASSIGNS	44
51.	RENEWAL OPTION	44
52.	EXTERIOR SIGNAGE	47
53.	CHANGES IN BUILDING SERVICE	47

SIGNATURE PAGE

EXHIBITS

- A. RENTAL PLAN
- B. LEGAL DESCRIPTION OF LAND
- C. CLEANING SERVICE RIDER
- D. LEGAL HOLIDAYS
- E. RULES AND REGULATIONS
- F. BASE BUILDING WORK

## **2. LEASE OF DEMISED PREMISES**

2.1 Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, upon the terms and conditions herein set forth, the Demised Premises in the Building which is situated on the Land.

## **3. COMMENCEMENT OF TERM; EXPIRATION DATE**

3.1 Subject to Section 23.9 hereof, the commencement of the Term of Lease ("Commencement Date") shall be the earlier of (1) November 1, 1997; or (2) the date on which Tenant shall have taken possession or control of or moved furniture or other personal property into all or any portion of the Demised Premises.

3.2 Intentionally Deleted Prior To Execution.

3.3 Intentionally Deleted Prior To Execution.

3.4 On or about the Commencement Date, Landlord or Managing Agent shall deliver to Tenant a notice (the "Commencement Date Notice") fixing the Commencement Date and the expiration date ("Expiration Date"), which shall be the last day of the month which reflects the Term of Lease (the "Initial Term"), as well as the payee and address for all rental payments. Tenant shall acknowledge receipt of the Commencement Date Notice by signing a copy of same and returning it to Landlord within five (5) business days of the receipt thereof. Tenant's failure to sign the Commencement Date Notice and return same to Landlord as provided in this Section shall be deemed to be Tenant's acceptance of the Commencement Date and Expiration Date as stated in the Commencement Date Notice.

3.5 The date upon which Tenant is obligated to commence payment of Minimum Rent hereunder ("Rent Commencement Date") shall be the Commencement Date. Notwithstanding the foregoing, Tenant shall pay Landlord upon the execution of this Lease (a) the Prepayment of Rent, which shall be applied to Minimum Rent due beginning the first full month that Tenant is obligated to pay Minimum Rent; and (b) the Security. The Prepayment of Rent shall be promptly deposited by Landlord in an interest-bearing account and the Prepayment of Rent, together with all interest earned thereon during the period beginning on the date Landlord deposits the Prepayment of Rent in an interest-bearing account and ending on the day immediately prior to the Rent Commencement Date, shall be applied to the amount of Minimum Rent due on the Rent Commencement Date. If the Commencement Date occurs on a day other than the first (1st) day of a calendar month, then, the Minimum Rent for such partial calendar month shall be prorated at a per diem rate of one-thirtieth (1/30) of the first full monthly installment of Minimum Rent.

3.6 As a condition of Landlord's agreement hereunder, Tenant agrees to take possession of and accept the Demised Premises in their "as is" physical condition and state of repair as of the Commencement Date, subject to Article 23 hereof. In this regard, Landlord shall have no obligation to do any work or perform any services with respect to the Demised Premises, subject to Article 23 hereof. On or before the Commencement Date, Tenant shall obtain, at its expense, and provide to Landlord an original official certificate of occupancy for the Demised Premises.

3.7 If, prior to the Commencement Date, Tenant shall enter the Demised Premises to make any installations of its equipment, fixtures or furnishings, Landlord shall have no liability for any personal injury or property damage suffered by Tenant, its employees or Agents, except to the extent caused directly by Landlord's gross negligence or misconduct.

#### **4. INTENTIONALLY DELETED PRIOR TO EXECUTION**

#### **5. RENT**

5.1 Tenant covenants to pay to Landlord the Minimum Rent, payable in equal monthly installments in advance, so that such payments are received by Landlord no later than the first day of each month during the term of this Lease, subject to Section 3.5 hereof.

5.2 Tenant covenants to pay all items of additional rent in a timely manner as provided in Article 6 hereof.

5.3 The Minimum Rent and additional rent payable hereunder by Tenant shall be paid without notice or demand and without set-off, counterclaim, abatement, reduction or defense, in currency or immediately-available funds which at the time of payment is legal tender for public and private debts in The United States of America, at the address of Landlord set forth above or at such other place as Landlord or its Managing Agent may from time to time designate.

#### **6. TAXES; OPERATING COSTS; REIMBURSEMENTS**

6.1 "Taxes" shall mean all real estate taxes, charges and assessments imposed upon the Demised Premises or the Real Estate or any part thereof by any Governmental Authority. Landlord shall have the right, but not the obligation, to contest or appeal any Taxes or assessments levied on the Real Estate or any portion thereof and any expense incurred by Landlord in connection with such contest or appeal, including, but not limited to, fees payable to attorneys, appraisers and consultants, shall be deemed "Taxes". If Tenant desires to challenge the Tax assessment for the Real Estate ("Tax Assessment"), Tenant shall so notify Landlord in writing. Within thirty (30) days after Landlord receives said written notice from Tenant, Landlord shall advise Tenant whether Landlord has made a final and irrevocable decision not to challenge the Tax Assessment. Provided (i) Tenant has not breached any term of the Lease, (ii) Tenant is in actual occupancy of the entire Building, (iii) Tenant has not sublet all or any part of the Building (except as provided in Section 16.18 hereof), (iv) Tenant has not assigned the Lease (except as provided in Section 16.18 hereof) and (v) Landlord has notified Tenant in writing that Landlord has made a final and irrevocable decision not to challenge the Tax Assessment, then, in such case, Tenant may challenge, in good faith and at no cost to Landlord, the Tax Assessment. Any Taxes, whether challenged or contested by either Landlord or Tenant, shall be promptly paid and discharged by Tenant if, as and when due pursuant to the Lease. Copies of all letters and other documents received by Tenant from the tax court or any governmental or quasi-governmental authorities regarding any aspect of Tenant's challenge of the Tax Assessment shall be given to Landlord by Tenant within ten (10) days after Tenant's receipt thereof. Any letters or other documents to be given by Tenant, or on Tenant's behalf, to the tax court and/or any governmental or quasi-governmental authorities regarding any aspect of Tenant's challenge of the Tax Assessment shall be given by Tenant to Landlord simultaneously with the giving of the same by Tenant, or on Tenant's behalf, to the tax court and/or any governmental or quasi-governmental authorities. If, at any time during the course of Tenant's challenge of the Tax Assessment, (a) Tenant has breached any term of the Lease, (b) Tenant is in actual occupancy of less than the entire Building, (c) the term of the Lease has less than two (2) years to run, (d) Tenant has sublet all or any part of the Building (except as provided in Section 16.18 hereof) and/or (e) Tenant has assigned the Lease (except as provided in Section 16.18 hereof), then, at Landlord's option, Tenant shall immediately withdraw its challenge of the Tax Assessment.

6.2 (a) This Lease is intended to be a "net lease" and, except as otherwise provided in this Lease, Tenant shall, as additional rent, pay Tenant's Occupancy Percentage of all Operating

Costs [defined in Section 6.2(b) hereof] and all Taxes [defined in Section 5.1 hereof]. Landlord shall from time to time bill Tenant for Tenant's Occupancy Percentage of all Operating Costs and all Taxes and Tenant shall pay to Landlord all such amounts so invoiced within thirty (30) days after Landlord gives Tenant the bill. Further, with respect to any expense incurred by Landlord on account of improvements, special services or otherwise requested by Tenant, Tenant shall pay Landlord on demand as additional rent the full amount (not Tenant's Occupancy Percentage) of such expense.

(b) "Operating Costs" shall include each and every expense incurred in connection with the ownership, administration, management, operation, repair, replacement, renewal, and maintenance of the Real Estate, including but not limited to, wages, salaries and fees paid to persons either employed by Landlord or engaged as contractors in the operation of the Real Estate, and such other typical items of expense as are indicated below in subsection (d).

(c) Notwithstanding anything contained to the contrary in Section 6.2(b) hereof, the following repair, maintenance and/or replacement costs shall be handled as set forth below:

I. Replacement of Floors, Walls, Exterior Wall System and Roof. Any cost incurred by Landlord to replace the structural foundation floors, the exterior load-bearing walls, the exterior wall system and/or the roof of the Building shall not be included as an Operating Cost.

II. Replacement of Capital Improvements. Except as provided in subsection I, above, if Landlord replaces a major capital improvement whose estimated replacement cost (as determined by a competent contractor of Landlord's choice) exceeds \$175,000.00, then, the cost of replacement shall be included as an Operating Cost but charged to Tenant as follows: (1) Landlord shall amortize on a straight-line basis over the useful life of the major capital improvement (as determined by Landlord) the cost of replacing said major capital improvement; and (2) Landlord shall include as an Operating Cost during the year of the Lease in which work commences for the replacement of the major capital improvement, and in each subsequent year of the Lease, an amount equal to said amortized cost of replacing the major capital improvement plus interest on the unamortized cost of replacing the major capital improvement, which interest shall equal, on an annual basis, three percent (3%) above the prime lending rate then charged by Citibank, N.A., or any successor thereto. If, however, the estimated replacement cost (as determined by a competent contractor of Landlord's choice) for the major capital improvement is equal to or less than \$175,000.00, then, the cost thereof shall be due as an Operating Cost at once and in full within thirty (30) days after Landlord gives Tenant a bill therefor.

III. Structural Repairs Due to Faulty Workmanship Prior To Sixth (6th) Lease Year. See insert on page 8a.

IV. Roof Repairs. Landlord, at its expense, shall procure a roof guaranty (in form and content satisfactory to Landlord) with coverage lasting no less than ten (10) years. To the extent any repair or maintenance of the roof is performed by the roof guarantor at its expense, the costs of such repair or maintenance shall not be included as an Operating Cost.

(d) Some of the typical items of expense which comprise or may comprise the Operating Costs are or may be, without limiting the generality of the term Operating Costs: (1) general repairs, maintenance, and renewal to the exterior and common areas of the Improvements; (2) utility costs, including but not limited to, costs of energy to power Landlord's standard HVAC units serving the Building (both tenant and common areas), and costs of electricity to light the common areas; (3) cleaning costs, including but not limited to, window cleaning, general interior office cleaning, and cleaning of common areas; (4) service and/or maintenance contracts, including but not limited to, HVAC, rubbish removal, carting, janitorial, security watchmen, exterminating and snow removal to the extent such services and/or maintenance are contracted for by Landlord or Managing Agent; (5) costs of landscaping and maintenance of the Building grounds; (6) salaries, benefits and work uniforms of superintendents, engineers, mechanics, and custodians; (7) towel service for common lavatories; (8) sales and use taxes; (9) cost of regularly replacing fluorescent tubes and ballasts in tenant spaces, unless due to the carelessness of such individual tenant; and (10) such other costs and expenses generally incurred in the operation, maintenance and repair of first-class real property of the nature and in the area of the Real Estate.

(e) The expenditures referred to in this Article shall be determined in accordance with generally acceptable accounting practices. Tenant or its representative shall have the right, at its own expense, upon reasonable notice and during reasonable hours, to inspect the books of Landlord for the purpose of verifying the information contained in any bills for expenses Tenant is required to pay Landlord under Section 6.2 hereof, provided (1) prior written request for such inspection shall be made by Tenant; (2) such request is made within sixty (60) days of receipt of the bill to be verified; and (3) Tenant shall have paid the bill in full. Any bill not verified within said sixty (60) day period shall be deemed to be correct. Landlord agrees that so long as the immediately preceding three (3) conditions have been fully met, Landlord shall, by no later than thirty (30) days after Landlord's receipt of Tenant's written request for inspection, furnish Tenant with a proposed resolution in reply to the concerns raised in said written request for inspection. If Landlord's proposed resolution is unacceptable to Tenant, then, Landlord and Tenant shall promptly meet and attempt in good faith to reach a mutually acceptable resolution.

6.3 If, due to an error in the preparation of any bill, there shall be an additional amount payable or a refund due with respect to Taxes and/or Operating Costs for the period covered by such bill(s), such amount shall be calculated by Landlord or Managing Agent and sent to Tenant in a revised bill, and any amount payable by the Tenant to the Landlord shall be paid within thirty (30) days, as additional rent or the amount due to the Tenant shall either be credited against amounts due or to become due to Landlord or promptly refunded to Tenant hereunder. However, it is agreed by the parties that any credit shall not in any way operate to reduce the Minimum Rent payable by Tenant. If such calculation takes place and/or any payment in connection herewith becomes payable after the expiration or earlier termination of this Lease, this section shall be deemed to have survived such expiration or termination.

6.4 Any additional rent due under this Article shall be prorated for the final Lease year. Tenant's obligation to pay additional rent occurring hereunder prior to the Expiration Date shall survive the expiration or sooner termination of this Lease.

6.5 If any appliances or electrical or mechanical

To the extent any costs for performing any structural repairs are necessitated by faulty workmanship, defective materials or substandard construction, such costs shall not be included as an Operating Cost during the first five (5) years of the Term. At all times within the Term, even during that period falling before the sixth (6th) anniversary of the Commencement Date, costs for performing repairs to the Building shall not be included as Operating Costs to the extent those costs are (i) specifically covered by insurance proceeds actually received by Landlord and (ii) paid to Landlord by its insurer as a result of a casualty affecting the Building. At all times within the Term, even during that period falling before the sixth (6th) anniversary of the Commencement Date, costs for performing repairs to the Building shall not be included as Operating Costs to the extent those costs for such work are specifically waived either by the contractor who performed the repair or by the party required to perform the work under any applicable warranty or guaranty agreement. If Landlord, reasonably and in good faith, believes that the terms of an insurance policy, warranty agreement or guaranty agreement affecting the Building entitle Landlord (at no cost to Landlord) to either repairs or funds for the performance of repairs, then, Landlord shall request such repairs or funds from the party whom Landlord, reasonably and in good faith, believes is required to furnish same under said insurance policy, warranty agreement or guaranty agreement.

INTENTIONALLY

LEFT

BLANK

PRIOR

TO

EXECUTION



equipment are installed in the Demised Premises or elsewhere on the Real Estate solely for the use of Tenant or the Demised Premises, such appliances or electrical or mechanical equipment shall be maintained in good operating condition by Tenant at its sole cost and expense.

6.6 Tenant shall pay to Landlord, within thirty (30) days of rendition of an invoice therefor, any sales, use, excise or similar tax or assessment imposed upon this Lease or upon all or any portion of the Minimum Rent or additional rent payable hereunder.

6.7 Tenant shall reimburse Landlord for all reasonable expenses in connection with the review by Landlord's architect, engineer, planner, construction advisor or attorney of any alteration, assignment, sublease, financing, waiver or similar proposed activity or document of or on behalf of Tenant or any Sublessee within thirty (30) days of rendition of an invoice therefor.

## **7. TENANT'S PERSONAL TAXES**

7.1 Tenant agrees to pay all taxes, assessments and fees imposed upon Tenant or on the personal property or operations of Tenant in connection with its use and occupancy of the Demised Premises including, but not limited to, personal property, income, withholding and unemployment compensation taxes, and to hold Landlord harmless from collection of any such taxes out of monies due and owing Landlord or property in which Landlord may have an interest. This provision shall survive the expiration or sooner termination of this Lease.

## **8. SECURITY**

8.1 Tenant shall deposit the Security, if any, with Landlord on the date hereof as security for the faithful performance and observance by Tenant of the terms, provisions, covenants and conditions of this Lease. It is agreed that if an Event of Default occurs, Landlord may use, apply or retain the whole or any part of the Security to the extent required for the payment of any Minimum Rent or additional rent, or any other sum as to which Tenant is in Default, or for any sum which Landlord may expend or may be required to expend by reason of such Event of Default, including but not limited to, any damages or deficiency in the re-letting of the Demised Premises, whether such damages or deficiency accrued before, after or in the absence of summary proceedings or other re-entry by Landlord.

8.2 If Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the Security shall be returned to Tenant after the Expiration Date, after delivery of possession of the entire Demised Premises to Landlord as required hereunder, and less any amounts either due and owing Landlord hereunder or reasonably required to return the Demised Premises to the condition required herein.

8.3 In the event of a sale of the Building (with or without the Land) or a leasing of the Building in its entirety to a third party subject to the space leases therein (a "Building Lessor"), Landlord shall have the right to transfer the Security to the grantee or lessee, and Landlord shall thereupon be released by Tenant from all liability for the return of such Security; and Tenant agrees to look solely to the new owner or Building Lessor, as the case may be, for the return of said Security. It is agreed that the provisions hereof shall apply to every transfer or assignment made of the Security to a new Building owner or Building Lessor. The aforementioned provisions shall be self-operative without any further act by Landlord or Tenant necessary to effectuate the same. Tenant further covenants that it will not

assign or encumber or attempt to assign or encumber the Security, and that Landlord shall not be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

8.4 If Landlord applies or retains all or any portion of the Security as may be permitted herein, Tenant shall restore within thirty (30) days of Landlord's notice the amount so applied or retained so that at all times during the term hereof the amount deposited with Landlord shall be not less than the amount indicated in Article 1, subject to adjustment pursuant to Articles 16 and 35.

8.5 Tenant shall not designate any portion of the Security as Minimum Rent or Adjusted Minimum Rent due hereunder.

#### **9. USE AND OCCUPANCY**

9.1 Tenant covenants to use and occupy the Demised Premises for the Permitted Use and for no other purpose whatsoever, and in compliance with the other provisions of this Lease.

9.2 Tenant shall not do or permit any act or thing to be done in or to the Demised Premises which is contrary to Law, or which will invalidate, be in conflict with, or increase the rates of any public liability, fire or other policies of insurance at any time carried by or for the benefit of Landlord with respect to the Demised Premises or the Building, or which shall or might subject Landlord to any liability or responsibility to any person or for property or Environmental damage. Tenant shall not keep anything in the Demised Premises which is contrary to Law except as now or hereafter permitted by any Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization or other similar authority having jurisdiction over the Real Estate, nor shall Tenant use the Demised Premises or any other portion of the Real Estate in a manner which would otherwise present an unreasonable risk to the Building or the occupants thereof.

#### **10. ACCESS; COMMON AREAS; PARKING**

10.1 Subject to the other provisions of this Lease, including Section 10.2, and the Rules and Regulations, Tenant shall have the right of nonexclusive use, in common with others, of (a) automobile parking spaces not designated for use by others, (b) driveways, (c) footways, (d) lobbies, corridors and elevators for access to the Demised Premises; and (e) such other facilities as may be constructed from time to time on the Real Estate and designated by Landlord for Tenant's use.

10.2 Provided no Event of Default has occurred, Tenant shall have a nonexclusive, revocable license (the "License") to park up to the number of cars indicated under Allotted Parking in Section 1.1(q) by Tenant and any Sublessee, or the employees or Visitors of either, in the parking area or areas serving the Building (the "Parking Area"). Landlord shall not be responsible to Tenant for enforcing the License or for violation of the License by other tenants of the Building or by third parties.

10.3 Any of the following actions shall be deemed a material Default under this Lease: the use of any more than the Allotted Parking by Tenant, any Subleasee or their employees or Visitors; the parking in spaces designated for the exclusive use of any other tenant in the Building by Tenant, any Subleasee or their employees or Visitors, the parking other than in marked parking spaces by Tenant, any Sublessee or their employees or Visitors or the maintenance, repair or cleaning of any vehicle in the Parking Area by Tenant, any Sublessee or their employees or Visitors. In any of such events, Landlord may suspend or revoke the License should such practice continue after written notice from Landlord or Managing Agent; and/or Landlord may exercise such other remedies as are provided in this Lease.

10.4 If the number of parking spaces in the Parking Area is reduced by circumstances beyond the reasonable control of Landlord, the Allotted Parking shall be reduced proportionately.

10.5 Nothing contained in this Lease shall be deemed to create liability upon Landlord for any damage to motor vehicles in the Parking Area or for any loss of property from within those motor vehicles, or for any injury in the Parking Area to Tenant or any Sublessee or any of their employees or Visitors except to the extent determined to be caused by the gross negligence or willful misconduct of Landlord. Tenant shall acquaint its and any Sublessee's employees with any parking rules and regulations promulgated by Landlord or Managing Agent and Tenant assumes responsibility for compliance by said employees with such parking provisions, and shall be liable to Landlord for all unpaid parking charges, if any, incurred by said employees.

10.6 If Tenant or any Sublessee or the employees or Visitors of either park illegally or in areas designated for use by others, or in driveways, fire lanes or areas not striped for general parking, then Landlord may charge Tenant, as additional rent, fifty and 00/100 dollars (\$50.00) per day for each instance each motor vehicle is so parked. In addition, Tenant authorizes Landlord and Managing Agent to tow away from the Parking Area, at Tenant's sole cost and expense, vehicles used by Tenant, any Sublessee or any employees or Visitors of either and/or to attach violation stickers or notices to any motor vehicles used by Tenant or any Sublessee or their employees or Visitors parked illegally or in violation of this Article or any parking rules and regulations promulgated by Landlord or Managing Agent. Any amount due from Tenant pursuant to this Article shall be deemed additional rent.

10.7 So long as Tenant has not breached any term of the Lease and occupies the entire Building, Landlord, after receipt from Tenant of a written notice referencing this Section, shall, at Tenant's expense, mark as the designated spaces of Tenant any number of parking spaces within any reasonable area of the Parking Area chosen by Tenant. If Tenant breaches the Lease and/or occupies less than the entire Building, then, (i) Tenant's rights and Landlord's obligations under this Section shall be null and void and (ii) Landlord may, at Tenant's expense, remove any or all of Tenant's designations from the Parking Area. Tenant understands that Landlord shall neither be responsible to Tenant for policing Tenant's designated parking spaces nor responsible to Tenant if third parties use all or any of said designated spaces. The number of designated parking spaces shall not increase the Allotted Parking defined in Section 1.1 hereof.

10.8 Tenant shall not conduct, nor permit any Sublessee or the employees or Visitors of either to conduct, any soliciting or picketing in or on any of the common areas of the Real Estate.

10.9 Tenant shall not permit its or any Sublessee's employees or Visitors to smoke or carry lighted tobacco products in the common areas of the Building, including but not limited to lobbies, elevators, hallways, stairwells, and restrooms. Landlord shall post such areas as nonsmoking areas in accordance with Law.

## **11. RESTRICTIVE COVENANT - FOOD SERVICE**

11.1 Tenant hereby covenants and agrees that it shall not permit the use of the Demised Premises or any portion thereof, for the service of food to anyone other than Tenant's employees or their guests whose primary purpose in being at the Demised Premises is not to use Tenant's food service facilities; nor shall Tenant maintain any facilities for the sale or consumption of food to and by anyone other than Tenant's employees or their guests whose primary purpose in being at the Demised Premises is not to use Tenant's food service facilities.

11.2 Intentionally Deleted Prior To Execution.

11.3 Tenant shall not suffer or permit the sale or consumption of food or drink in the common areas of the Building or in the driveways or Parking Area of the Real Estate by the employees or Visitors of Tenant or any Sublessee; provided, however, that Tenant's and any Sublessee's employees may utilize any picnic tables or similar areas on the Real Estate which may be designated by Landlord or Managing Agent for consumption of lunch.

## **12. TENANT'S CARE AND REPAIR OF DEMISED PREMISES**

12.1 Landlord, at Tenant's expense, shall, throughout the term of this Lease, take good care of the Demised Premises and maintain, replace or repair the fixtures and appurtenances therein. Tenant shall give Landlord or Managing Agent prompt notice of any maintenance or repairs needed to the Demised Premises or the fixtures therein, including but not limited to lighting fixtures. Tenant shall also be responsible for all damage or injury to the Demised Premises or any other part of the Real Estate and the systems and equipment thereof, whether requiring structural or nonstructural repairs, caused by or resulting from the carelessness, omission, neglect or improper conduct of Tenant, any Sublessee or the employees or Visitors of either; or which arises out of any work, labor, service or equipment done for or supplied to Tenant or any Sublessee; or which arises out of the installation, use or operation of the property or equipment of Tenant or any Sublessee. Landlord, at Tenant's expense, shall repair all damage to the Building and the Demised Premises caused by the moving of fixtures, furniture and equipment of Tenant or any Sublessee.

12.2 Landlord, at Tenant's expense, shall make all repairs in and to the Demised Premises. Any other repairs in or to the Building or the facilities and systems thereof shall also be performed by Landlord at Tenant's expense.

12.3 Tenant shall not clean nor require, permit, suffer or allow any window in the Demised Premises to be cleaned from the outside. Such cleaning shall be governed by the Cleaning Service Rider.

## **13. TENANT'S WORK AND INSTALLATIONS**

13.1 (a) Subject to the prior written consent of Landlord, which Landlord may only withhold reasonably, and to the provisions of this Article, Tenant may perform structural changes in or to the Demised Premises, including, but not limited to, modifications to any of the electrical, plumbing or HVAC systems in the Building, changes to common areas, base building elements and the atrium.

(b) Subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld, and to the provisions of this Article, Tenant or any permitted Sublessee at its expense, may make alterations, decorations, installations, renovations or improvements in or to the interior of the Demised Premises which are non-structural and which do not adversely affect or place unusual loads upon any utility services, or plumbing and electrical lines, or electrical or HVAC systems, by using mechanics or other contractors previously approved by Landlord and properly licensed to do such work in the community where the Real Estate is located. Any changes or work in or to the Demised Premises performed by or for Tenant are herein referred to as Tenant's Work. Notwithstanding anything contained to the contrary in this Section 13.1(a) - (b), Tenant may perform non-structural Tenant's work

without Landlord's prior written consent, provided that (i) Tenant has not breached any term of the Lease, (ii) no single or series of related non-structural Tenant's Work in any single calendar year exceed an estimated cost of \$25,000.00 and (iii) no such non-structural Tenant's Work adversely affects or places unusual loads upon any utility services, or plumbing and electrical lines, or electrical or HVAC systems. With respect to non-structural Tenant's Work for which Landlord's prior written consent is not required, Tenant shall submit to Landlord detailed plans and specifications at least twenty (20) days prior to the commencement of work so that Landlord may ascertain whether the conditions (i) - (iii) in the immediately preceding sentence have been met. Upon completion of any Tenant's Work, Tenant shall give Landlord a set of "as-built" plans therefor. Tenant covenants that Tenant's Work, whether prior, on or subsequent to the Commencement Date, shall be in harmony with any other work in the Real Estate and shall not result in work stoppages or picketing at the Real Estate; and Tenant, at its own expense, shall immediately take whatever steps are necessary to avoid any such work stoppage or picketing.

13.2 Tenant shall not place a load upon any floor of the Demised Premises exceeding either the floor load per square foot of area which it was designed to carry or the amount prescribed by Law. Landlord reserves the right to prescribe the weight and position in the Demised Premises of all safes, file cabinets, bookshelves, business machines (other than desk-top machines), mechanical equipment and other heavy personal property. Such installations shall be placed and maintained by Tenant, at Tenant's sole cost and expense, in settings sufficient, in Landlord's judgement, to absorb and prevent vibration, noise and annoyance to any occupant of the Building or adjacent properties.

13.3 Tenant shall, before undertaking any Tenant's Work, at its cost and expense, obtain all permits, approvals and certificates required by any Governmental Authority and (upon completion) certificates of final approval thereof, and shall promptly deliver originals or duplicates of all such permits, approvals and certificates to Landlord or Managing Agent. Tenant agrees to carry and will cause Tenant's Agents to carry during any activities under this Article such workman's compensation, general liability, personal and property damage insurance as Landlord may reasonably require, naming Landlord as an additional insured as its interest may appear. With regard to insurance that Tenant agrees to carry pursuant to the immediately preceding sentence, Tenant may self-insure, provided conditions (i) - (iii) in Section 30.7 hereof are all fully satisfied. Tenant agrees (a) to pay or cause to be paid promptly, when due, the entire cost of any work done by or for Tenant or any Sublessee upon the Demised Premises so that the Demised Premises shall be at all times free of claims or liens for labor or materials; and (b) to defend, indemnify and hold Landlord harmless from and against any and all injury, loss, demands, claims or damages to any person or property occasioned by or in connection with Tenant's Work, to the extent not paid to Landlord by the carrier of any insurance, and except to the extent directly due to the gross negligence or willful misconduct of Landlord.

13.4 Notwithstanding the foregoing, if any mechanic's or other lien is filed against the Demised Premises or the Building for work claimed to have been done for or materials or services furnished to Tenant or any Sublessee, whether or not done pursuant to this Article, the same shall be discharged by Tenant within thirty (30) days after notice thereof from Landlord or Managing Agent, at Tenant's expense, by posting a bond or taking such other steps as may be required by Law. If Tenant fails to discharge such lien within such thirty-day period, Landlord may do so on Tenant's behalf at Tenant's sole cost and expense.

13.5 (a) Subject to Sections 13.5(b) - (c) hereof, all fixtures and all paneling, permanent partitions, non-furniture

partitions, railings, flooring, electrical conduits and cabling and any other improvements installed in the Demised Premises at any time, either by Tenant or any Sublessee or by Landlord on Tenant's behalf, shall, upon installation, become the property of Landlord and shall remain upon and be surrendered with the Demised Premises, unless Landlord, by notice to Tenant no fewer than twenty (20) days prior to the expiration or sooner termination of this Lease, elects to relinquish Landlord's right thereto and to have same removed by Tenant, in which event the same shall be removed from the Demised Premises by Tenant prior to the expiration of the Lease, at Tenant's sole cost and expense.

(b) If, however, Landlord consents in writing, after the Commencement Date, to the installation in the Demised Premises of fixtures, paneling, permanent partitions, non-furniture partitions, railings, flooring, electrical conduits, cabling, Non-Standard Installations [hereinafter defined in subsection (c) below], or any other improvements, Landlord shall advise Tenant, simultaneously with Landlord's written consent, whether Landlord is relinquishing its right to such installation and requiring such installation to be removed prior to the expiration of the Lease by Tenant at its expense. Tenant shall strictly abide by and timely comply with any such advice. Notwithstanding anything contained to the contrary in the immediately preceding sentence, Landlord shall have no obligation whatsoever to so advise Tenant at the time Landlord consents to an installation, unless both of the following conditions have been met prior to Landlord's granting of consent:

(i) Landlord receives from Tenant detailed plans and specifications for the particular installation; and

(ii) Landlord receives from Tenant a written request for consent which specifically demands that Landlord advise Tenant whether Landlord requires the particular installation to be removed prior to the expiration of the Lease by Tenant at its expense.

(c) With regard to installations, fixtures, paneling, permanent partitions, non-furniture partitions, railings, flooring, electrical conduits, cabling and any other improvements installed prior to the Commencement Date, Landlord may relinquish its right to and require removal of [in accordance with Section 13.5(a) hereof] only those installations that, in Landlord's opinion, are not standard and ordinary improvements routinely installed in business offices. Any installations that, in Landlord's opinion, are not standard and ordinary improvements routinely installed in business offices are herein referred to as "Non-Standard Installations". If, Landlord timely receives from Tenant the Approved Final Drawings (hereinafter defined in Section 23.1) simultaneously with a written notice requesting that Landlord identify all Non-Standard Installations described in the Approved Final Drawings, then, by January 20, 1997, Landlord shall advise Tenant as to which items shown in the Approved Final Drawings constitute Non-Standard Installations.

13.6 Nothing in this Article shall be construed to give Landlord title to or to prevent Tenant's removal of Tenant's or any Sublessee's moveable trade fixtures, office furniture and equipment, temporary partitions or furniture partitions but upon removal of any such property from the Demised Premises or upon removal of other improvements as may be required by Landlord pursuant to the terms of this Lease, Tenant shall immediately and at its expense, repair and restore the Demised Premises to the condition existing prior to installation and shall repair any damage to the Demised Premises or the Building due to such removal.

13.7 All monies due Landlord or Landlord's agent or contractor by Tenant for work performed pursuant to Article 12 or this Article shall be paid within thirty (30) days of Tenant's

receipt of an invoice therefor. All such monies which are not timely received by Landlord or Landlord's contractor shall accrue interest from the due date at the rate of Interest.

13.8 Tenant shall promptly remove or correct any Tenant's Work not performed in accordance with this Article and, in the case of removal, restore the Demised Premises to its preexisting condition.

13.9 Tenant, at its cost and expense, shall remove from the Demised Premises and the Building all boxes and other packaging resulting from Tenant's or any Sublessee's installations, alterations, renovations and decorating.

#### **14. COMPLIANCE WITH LAWS**

14.1 Landlord, at Tenant's sole cost and expense, shall comply with (a) all present and future Laws of all Governmental Authorities and all changes therein applicable to Tenant or to the Demised Premises or, to the extent incumbent upon Tenant, to any other portion of the Real Estate; (b) any direction of any public officer pursuant to Law; and (c) all Laws which shall impose any violation, order or duty upon Landlord or Tenant with respect to the Demised Premises or, to the extent incumbent upon Tenant, any other portion of the Real Estate, whether or not arising out of Tenant's occupancy, use or manner of use thereof (including Tenant's Permitted Use).

14.2 Tenant may, at its expense (and if necessary, in the name of but without expense to Landlord) contest by appropriate proceedings, prosecuted diligently and in good faith, the validity or applicability to the Demised Premises of any such Law, and Landlord, at Tenant's expense, shall cooperate with Tenant in such proceedings; provided that (a) Tenant shall defend, indemnify and hold Landlord harmless against all liability, loss or damage which Landlord shall suffer by reason of such non-compliance or contest, including, but not limited to, reasonable attorney's fees and other expenses reasonably incurred by Landlord; (b) such non-compliance or contest shall not constitute or result in any violation of any superior lease or superior mortgage, or if such superior lease and/or superior mortgage shall permit such non-compliance or contest on condition of the taking of action or furnishing of security by Landlord, such action shall be taken and such security shall be furnished at the sole cost and expense of Tenant; (c) such non-compliance or contest shall not subject Landlord to prosecution for a criminal offense; (d) such action shall not cause the Demised Premises or any part thereof or of the Real Estate to become subject to a lien or to be condemned or vacated; and (e) Tenant shall keep Landlord advised as to the status of such proceedings.

#### **15. ENVIRONMENTAL COMPLIANCE**

15.1 Tenant shall, at Tenant's own cost and expense, comply with the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq.), the Comprehensive Environmental Response, Compensation & Liability Act (42 U.S.C. 9601 et seq.), the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), any and all amendments thereto and regulations and orders promulgated thereunder, and any other Environmental Law affecting the Demised Premises or the Real Estate, to the extent related to or arising out of the use or occupancy of the Demised Premises by Tenant or any Sublessee.

15.2 Tenant shall, at Tenant's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of, the Bureau of Industrial Site Evaluation of the New Jersey Department of Environmental Protection, or the U.S. Environmental Protection Agency, or any other Governmental Authority having Environmental jurisdiction over the Real Estate or any portion thereof or the occupants thereof (collectively, an "Environmental Authority") which are related to or arise out of the use and occupancy of the Demised Premises.

15.3 Should any Environmental Authority determine that a cleanup or similar plan be prepared or that a cleanup be undertaken because of any spills or discharges of hazardous substances or wastes in or about the Real Estate caused by Tenant, any Sublessee or the employees or Visitors of either, then Tenant shall, at Tenant's own expense, promptly and diligently prepare and submit the required plans and financial assurances, and carry out the approved plans to the satisfaction of such Environmental Authority. Tenant acknowledges that its obligations under this Article may arise if there is any closing, termination or transfer of operations of Tenant or any Sublessee which is classified as an industrial establishment, or from a transfer of the Real Estate or any portion thereof which falls under the purview of an Environmental Authority.

15.4 At no expense to Landlord, Tenant shall promptly provide all information reasonably requested by Landlord or Managing Agent or by any Environmental Authority for preparation of non-applicability affidavits and similar documents for submission to such Environmental Authority, and shall promptly sign such affidavits when requested by Landlord or Managing Agent.

15.5 In connection with Tenant's compliance with this Article 15, Landlord agrees to reasonably cooperate with Tenant after receipt from Tenant of a written notice specifically referencing this Section, provided such cooperation does not cause Landlord to incur any expense and/or assume any liability whatsoever.

#### **16. ASSIGNMENT; SUBLEASING**

16.1 Tenant, for itself, its legal representatives, creditors, heirs, distributees, administrators, trustees, successors and assigns, expressly covenants that it shall not assign, mortgage, pledge or otherwise encumber this Lease; nor, except as specifically set forth below, underlet, or suffer or permit the Demised Premises or any part thereof to be used by anyone other than the Tenant named in Section 1.1.

16.2 For purposes of this Article, any occupancy arrangement (including, without limitation, verbal agreements, management agreements, concessions, licenses and space-sharing agreements or arrangements) affecting all or any part of the Demised Premises, other than a direct lease with Landlord or an assignment of this Lease permitted hereunder, shall be referred to as a "Sublease"; and any user or occupant of all or part of the Demised Premises, other than the Tenant or an assignee permitted under this Article shall be referred to as a "Sublessee."

16.3 If Tenant shall desire to assign this Lease, or to permit a Sublessee to use or occupy all or any portion of the Demised Premises (to "sublease" or a "Subleasing"), Tenant shall first submit in writing to Landlord or Managing Agent a notice ("Tenant's Transfer Notice") setting forth in reasonable detail:

- (a) the identity and address of the proposed assignee or Sublessee;
- (b) the terms and conditions of the assignment or Subleasing, including, but not limited to, the commencement date thereof;
- (c) the nature and character of the business of the proposed assignee or Sublessee and its proposed use of the Demised Premises;
- (d) evidence that the proposed assignee or Sublessee is a United States citizen or a partnership or corporation qualified to do business in the State of New Jersey and organized and in good standing under the laws of one of the states of the United States;



(e) banking, financial and other credit information relating to the proposed assignee or Sublessee reasonably sufficient to enable Landlord to determine the proposed assignee's or Sublessee's financial responsibility; and

(f) in the case of a Subleasing of only a portion of the Demised Premises, plans and specifications for Tenant's layout, partitioning, and electrical installations for the portion of the Demised Premises to be subleased.

16.4 (a) If the nature and character of the business of the proposed assignee or Sublessee, and the proposed use and occupancy of the Demised Premises, or any portion thereof, by the proposed assignee or Sublessee, is in keeping and compatible with the Permitted Use and the dignity and character of the Building, then, subject to compliance with the requirements of this Article, Landlord agrees not to unreasonably withhold its consent to any such proposed assignment or Subleasing; provided, however, that Tenant shall, in Tenant's Transfer Notice, advise Landlord of Tenant's intention to assign this Lease or to permit a Subleasing of all or any part of the Demised Premises, from, on and after a stated date (which date shall not be less than sixty (60) days after the sending of Tenant's Transfer Notice), in which event Landlord shall have the right ("Landlord's Recapture Right"), to be exercised by giving written notice ("Landlord's Recapture Notice") to Tenant within ten (10) days after Landlord's receipt of Tenant's Transfer Notice, to recapture the space described in Tenant's Transfer Notice. Landlord's Recapture Notice shall, if given, cancel and terminate this Lease with respect to the space therein described as of the date set forth in Tenant's Transfer Notice as the commencement of the proposed assignment or Sublease.

(b) If less than all of the Demised Premises are recaptured by Landlord, Landlord shall construct and erect such partitioning and modify Building systems as may be required to separate the space retained by Tenant from the space recaptured. The cost of such alterations shall be borne by Landlord. The Minimum Rent, Tenant's Occupancy Percentage, and Tenant's Allotted Parking shall be adjusted pursuant to a written amendment to this Lease on the basis of the number of square feet retained by Tenant in proportion to the number of square feet demised under this Lease immediately prior to such recapture; and this Lease, as so amended, shall continue thereafter in full force and effect as to the portion of the Demised Premises retained by Tenant.

16.5 In addition to the foregoing requirements, (a) no Sublease shall violate any Law or result in the occupancy of the Demised Premises by more than four (4) sole proprietors, firms, partnerships or corporations, including the Tenant hereunder; (b) no Sublease shall be for a term of less than two years, unless the unexpired term of this Lease shall be less than two years at the commencement of the Sublease; (c) no assignee or Sublessee shall be an existing tenant of, or any party then negotiating for space in, the Building, or any other land or building in the office park in which the Building is located which is (1) owned by Landlord or any affiliate of Landlord or any partnership in which Landlord or an affiliate of Landlord is a partner, or (2) managed by Landlord or an affiliate of Landlord [any such property referred to under subsection 16.5(c)(1) or (2) being hereinafter referred to as an "Affiliated Property"]; (d) no Sublease shall result in the occupancy of less than 1,000 square feet of space; (e) there shall be no Default under any of the terms and conditions of this Lease at the time of Tenant's Transfer Notice or at the effective date of such assignment or Subleasing; (f) no Subleasing shall be for a rental rate less than that currently being charged for comparable space in the Building or any Affiliated Property, which rental rate Landlord shall quote to Tenant after Landlord receives from Tenant a written demand therefor. The rental rate quoted by Landlord to Tenant shall be valid only for ninety (90) days after Landlord

advises Tenant of the rental rate. Once a Sublease is fully executed by the parties thereto and is approved in writing by Landlord, then, so long as the effective rent under said Sublease is equal to or greater than the rental rate quoted by Landlord, Tenant shall be deemed, even after the expiration of the aforementioned ninety (90) day period, to have fully complied with this Section 16.5(f) as it relates solely to the particular Sublease in question; and (g) Tenant shall pay when due all brokerage or similar commissions arising from any assignment or Sublease.

16.6 Anything to the contrary in this Article notwithstanding, Landlord shall not consent to any assignment or Sublease unless Tenant agrees at the time of the proposed assignment or Sublease and in Tenant's Transfer Notice to pay over to Landlord sixty (60%) percent of all consideration (of whatever nature) that would be payable by the prospective assignee or Sublessee to Tenant, whether in one or more payments or transfers and whether pursuant to such assignment or Sublease or any other agreement related thereto, which exceeds the *pro rata* share of the Minimum Rent payable by Tenant hereunder.

16.7 Any Sublease must specifically provide that (a) it shall be subject and subordinate to all of the terms and conditions of this Lease; (b) the use of the Demised Premises thereunder shall be restricted exclusively to the Permitted Use; (c) the term thereof shall not extend beyond the Expiration Date; (d) no Sublessee or its heirs, distributees, executors, administrators, legal representatives, trustees, successors or assigns, without the prior consent of Landlord in each instance, which consent Landlord may withhold in its absolute discretion, shall (1) assign, whether by merger, consolidation or otherwise, mortgage or encumber its interest in any Sublease, in whole or in part, (2) Sublease or permit the subleasing of, that part of the Demised Premises affected by such Subleasing or any portion thereof, or (3) permit such part of the Demised Premises affected by such Subleasing or any part thereof to be occupied or used, by any person other than such Sublessee; and (e) in the event of cancellation or termination of this Lease for any reason whatsoever or of the surrender of this Lease, whether voluntary, involuntary or by operation of Law, prior to the expiration date of such Sublease, including any extensions and renewals granted thereunder, the Sublessee, at Landlord's option and in its sole discretion, shall either vacate the Demised Premises or shall make full and complete attornment to Landlord for the balance of the term of the Sublease, which attornment shall be evidenced by an agreement in form and substance satisfactory to Landlord which the Sublessee shall execute and deliver within five (5) business days after request by Landlord. The Sublessee shall waive the provisions of any Law now or hereafter in effect which may give the Sublessee any right of election to terminate the Sublease or to surrender possession of the Demised Premises in the event any proceeding is brought by Landlord to terminate or assume this Lease.

16.8 No assignee or Sublessee shall receive any credit whatsoever from Landlord for security deposits, rent or any other monies paid to Tenant unless same shall have been actually received and receipted by Landlord.

16.9 Each of the following events shall be deemed to constitute an "assignment" of this Lease and shall require the prior written consent of Landlord in each instance as provided in this Article; any person or entity making an assignment shall be referred to herein as an "assignor", and any person or entity to whom an assignment is made shall be referred to herein as an "assignee":

- (a) Any assignment or other transfer of this Lease by operation of Law;
- (b) Any hypothecation, pledge or collateral assignment of this Lease;

- (c) Any assignment or other transfer of this Lease in connection with bankruptcy or creditor's rights;
- (d) Any transfer or acquisition, whether in a single transaction or cumulatively, of (1) the majority of the issued and outstanding stock or voting interests of a corporate Tenant, except as may occur through public trades on any recognized security exchange or over-the-counter market; (2) a majority of the equitable or voting interests of a Partnership Tenant; or (3) any general partnership interest of a Partnership Tenant (each of the foregoing being referred to as a "Controlling Interest");
- (e) Any issuance (other than in a public offering) of an interest or interests in Tenant (whether stock or partnership interests or otherwise) to any person, entity or group of related persons or affiliated entities, whether in a single transaction or in a series of related or unrelated transactions, such that following such issuance, such person, entity or group shall hold a Controlling Interest in Tenant.

16.10 Tenant, its Sublessees, and their respective legal representatives, heirs, distributees, executors, administrators, trustees, creditors, successors and assigns acknowledge and agree that the restriction that Landlord's consent under certain circumstances to a proposed assignment of this Lease or to a Subleasing shall not be unreasonably withheld shall not be intended or construed as an agreement or covenant on the part of Landlord, but rather as a qualification on Tenant's covenant not to assign this Lease or enter into or permit any Sublease; and it is further agreed that Landlord shall not be liable in damages or subject to liability of any kind or nature whatever by reason of Landlord's failure or refusal to grant its consent to any proposed assignment of this Lease or Subleasing of the Demised Premises, the sole and exclusive recourse being a declaratory judgment on the question of Landlord's reasonableness. Notwithstanding anything contained to the contrary in this Section 16.10, Landlord agrees that if a final and unappealable judgment has been entered against Landlord by a court of competent jurisdiction stating that Landlord unreasonably failed or refused to grant its consent to any proposed assignment of this Lease or subletting of all or any part of the Demised Premises, then, in such case, Landlord shall be liable in damages, but only to the extent said damages are actual, direct, foreseeable, proximate and compensatory. Tenant agrees that under no circumstances shall Landlord be liable for indirect, special, unforeseeable, speculative, punitive, exemplary or consequential damages.

16.11 (a) It is a condition to the effectiveness of any assignment otherwise complying with this Article that (a) Tenant shall increase, within thirty (30) days after Landlord's demand, the amount of Security deposited with Landlord by a sum to be reasonably determined by Landlord and (b) the assignee shall execute, acknowledge and deliver to Landlord an agreement in form and substance satisfactory to Landlord whereby the assignee assumes all obligations of Tenant under this Lease, and agrees that the provisions of this Article shall continue to be binding upon it in respect of all future assignments of this Lease. No assignment of this Lease shall release the assignor or any guarantor or obligor hereof from its continuing obligations to Landlord under this Lease or any renewals extensions or modifications thereof, except as expressly herein provided in Section 16.11(b); and Tenant its guarantors and obligors and any subsequent assignor [except as otherwise provided in Section 16.11(b) hereof] shall continue to remain jointly and severally liable (as primary obligor) for all of Tenant's obligations hereunder.

- (b) Tenant agrees that Landlord may, in its sole and absolute discretion, release Tenant from all of its liabilities,

obligations, duties and responsibilities under the Lease in the event the Lease is assigned in strict accordance with this Article. Such release shall be deemed ineffective unless, and shall be effective only if, (1) Landlord receives from Tenant a written novation agreement in recordable form that has been executed by all assignees of the Lease and Landlord and (2) Tenant receives from Landlord a written statement executed by Landlord wherein Landlord acknowledges that it is fully satisfied with the creditworthiness, cash flow position, liquidity, assets, liabilities and financial strength of the assignee(s) of the Lease. Landlord shall have sole and absolute discretion in electing whether to execute the aforementioned novation agreement and/or the aforementioned written statement regarding the economic status of the assignee(s) of the Lease. Landlord, however, agrees that in assessing the creditworthiness, cash flow position, liquidity, assets, liabilities and financial strength of the assignee(s) of the Lease, Landlord shall apply reasonable standards of evaluation customarily utilized by institutional owners of commercial real estate.

16.12 Tenant, at its expense, covenants to obtain all permits, approvals and certificates of occupancy required by any Governmental Authority for any work or in connection with any assignment of this Lease or any Sublease and any alterations to the Demised Premises in connection therewith, and Tenant shall deliver copies of the same to Landlord prior to the commencement of work, if work is to be done, and prior to the occupancy of any or all of the Demised Premises by the assignee or sublessee. All such alterations shall be in strict compliance with Article 13 hereof. Tenant shall submit a duplicate original counterpart of the assignment or Sublease to Landlord within five (5) business days of the date of execution.

16.13 If Landlord reasonably withholds its consent to any proposed assignment or Sublease as permitted in this Article, or if Landlord exercises Landlord's Recapture Right pursuant to Section 16.4(a) - (b) hereof, Tenant shall indemnify, defend and hold harmless Landlord against and from all loss, liability, damage, cost and expense (including reasonable attorneys' fees and disbursements) resulting from any claims that may be made against Landlord by the proposed assignee or Sublessee or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease.

16.14 If Landlord consents to any proposed assignment or Sublease and Tenant fails to consummate the assignment or Sublease to which Landlord consented within ninety (90) days after the giving of such consent, Tenant shall be required again to comply with all of the provisions and conditions of this Article before assigning this Lease or Subleasing all or part of the Demised Premises.

16.15 Intentionally Deleted Prior To Execution.

16.16 The listing of any name other than that of Tenant or any permitted assignee or Sublessee on any door of the Demised Premises or on any directory or in any elevator in the Building or otherwise shall be at Landlord's sole discretion, and shall not operate to vest in the person so named any right or interest in this Lease or in the Demised Premises or the Building, or be deemed to constitute, or serve as a substitute for, any prior consent required under this Article, and it is understood that any such listing shall constitute a license extended by Landlord which shall be revocable at Landlord's will by written notice to Tenant.

16.17 If this Lease is assigned, or if the Demised Premises or any part thereof is subleased, Landlord may, after a Default, collect rent directly from the assignee or Sublessee and apply the net amount collected to the Minimum Rent and additional rent herein reserved; but no such assignment, Subleasing or collection shall be deemed a waiver of this covenant or the acceptance of the assignee or Sublessee as a tenant, or a release

of Tenant from the further performance by Tenant of any of the covenants on the part of Tenant contained herein [except as otherwise provided in Section 16.11(b)]; and no such collection of rent by Landlord shall be characterized as a termination, cancellation or modification of this Lease, unless Landlord so notifies Tenant in writing.

16.18 Any provisions of this Article to the contrary notwithstanding, but subject to the other terms, conditions and provisions contained in said Article, including but not limited to Section 16.3, the following provisions contained in subsections (a) - (d) below shall apply to Landlord and Tenant:

(a) Any corporate Tenant shall have the right, without the consent of Landlord and free of Landlord's Recapture Right, but after Landlord's receipt of Tenant's Transfer Notice, to assign this Lease or sublease all or any part of the Demised Premises to any corporation controlling, controlled by or under common control with Tenant; provided that no such assignee shall further assign this Lease or Sublease any or all of the Demised Premises and no such Sublessee shall assign or encumber its Sublease or further sublease all or any part of the Demised Premises; and provided, further, that any event resulting in such assignee or Sublessee ceasing to be a corporation controlling, controlled by or under common control with Tenant shall be deemed to be an assignment or Sublease requiring the prior consent of Landlord pursuant to the provisions of this Article and Tenant shall thereupon comply with all provisions of this Article applicable thereto. For purposes hereof, "control" means ownership of at least eighty percent (80%) of the issued and outstanding voting stock of such corporation.

(b) Any corporate Tenant shall also have the right, without the consent of Landlord and free of Landlord's Recapture Right, but after Landlord's receipt of Tenant's Transfer Notice, to assign this Lease to any corporation succeeding to Tenant by merger or consolidation in accordance with applicable statutory provisions for merger or consolidation of corporations or by purchase of all or substantially all of Tenant's assets; provided that subsequent to such merger, consolidation or purchase, the shareholder's equity (capital stock, additional paid-in capital and retained earnings) of the successor corporation or the purchasing corporation, as the case may be, shall be at least equal to the shareholder's equity of Tenant immediately prior to such merger, consolidation or purchase and this fact shall be so certified by the chief financial officer of the assignor and the assignee.

(c) It is Landlord's intent to permit assignment and Subleasing pursuant to this Section exclusively as an accommodation to the bona fide and legitimate business organizational needs of Tenant, and notwithstanding the provisions hereof, no assignment of this Lease or Subleasing of all or any part of the Demised Premises without Landlord's consent hereunder shall be permitted where the sole or primary purpose of such assignment or Subleasing is to permit occupancy of all or any part of the Demised Premises by a third party in avoidance of Landlord's consent, or in the case of a corporation's purchasing all or substantially all of Tenant's assets, where this Lease constitutes all or a substantial portion of such assets.

(d) Tenant shall promptly give Landlord prior written notice of any assignment of this Lease or Subleasing as required under this Section accompanied by all documentation required by Landlord to establish compliance with the requirements of subsections (a) and (b) above, and Tenant shall also promptly provide Landlord with a copy of any executed instrument of merger, consolidation or assignment or the executed Sublease, as the case may be.

## **17. NOTIFICATION BY TENANT**

17.1 Tenant shall inform Landlord or its Managing Agent immediately in case of fire or accident within the Demised Premises or elsewhere upon the Real Estate if involving Tenant, any Sublessee, or the employees or Visitors of either, or if Tenant has actual knowledge of such fire or accident.

## **18. RULES AND REGULATIONS**

18.1 Tenant, for itself and for any Sublessee and their employees and Visitors, covenants to comply with the Rules and Regulations. Landlord and Managing Agent shall have the right to make reasonable additions and amendments to the Rules and Regulations from time to time, and Tenant, on behalf of itself, any Sublessee and their employees and Visitors, agrees to comply with such additions and amendments after deliveries of copies thereof to Tenant or the posting of copies thereof in a prominent place in the Building.

## **19. PEACEABLE ENJOYMENT**

19.1 Subject to the terms and provisions of this Lease and to all mortgages and ground leases of record to which this Lease may be or may become subordinate, Tenant, upon timely payment of all Minimum Rent, additional rent, and other monies due and payable by Tenant hereunder and upon Tenant's observing, keeping and performing all of the other terms and provisions of this Lease, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Demised Premises during the term hereof.

## **20. SURRENDER**

20.1 Upon the last day of the term of this Lease, or the sooner termination thereof, Tenant shall quit and surrender the Demised Premises to Landlord in good order, condition and repair, except for ordinary wear and tear; and the Demised Premises and the remainder of the Real Estate shall be free of any and all hazardous substances, wastes or conditions and shall be in compliance with all applicable Laws of any Environmental Authority with respect to any hazardous substances or wastes for which Tenant is responsible hereunder or pursuant to any Law.

20.2 Prior to or upon the expiration or sooner termination of this Lease, Tenant, at its own cost and expense shall remove from the Demised Premises all trade fixtures, partitions, equipment, personal property, or other improvements required to be removed from the Demised Premises pursuant to Article 13 without injury to the Demised Premises. All such property that is not removed from the Demised Premises prior to the expiration or sooner termination of this Lease shall be, at the election of Landlord and with absolutely no liability whatsoever to Tenant or any Sublessee, either (a) retained or disposed of by Landlord as its own property without any obligation whatsoever to Tenant or any Sublessee or (b) removed from the Demised Premises and disposed of by any means whatsoever by Landlord, at Tenant's sole cost and expense.

20.3 Tenant's obligation to observe the covenants contained in this Article shall survive the expiration or sooner termination of this Lease.

20.4 Notwithstanding anything to the contrary contained herein, if the last day of the term of this Lease or any renewal or extension thereof falls on Sunday, this Lease shall expire at noon the preceding Saturday; if the last day of the term of this Lease or any renewal or extension thereof falls on a Legal Holiday, this Lease shall expire at noon on the preceding business day.

## **21. HOLDING OVER**

21.1 Tenant shall pay Landlord double the fair market rental value of the Demised Premises, as reasonably determined by landlord [but in no event less than double the sum of (1) Minimum Rent plus (2) all additional rent then applicable under the Lease] for each month or partial month during which Tenant or any Sublessee retains possession of the Demised Premises, or any part thereof, after the expiration or earlier termination of this Lease.

21.2 Nothing contained in this Lease, nor the paying by Tenant and acceptance by Landlord or Managing Agent of holdover rent, nor any verbal consent by anyone nor any detrimental reliance by Tenant or any Sublessee, shall be construed as a consent by Landlord to the occupancy or possession by Tenant or such Sublessee of the Demised Premises or any portion thereof beyond the Expiration Date or sooner termination of the term hereof, unless consented to in writing by Landlord in its sole discretion. Landlord, upon the Expiration Date or sooner termination of the term hereof, shall be entitled to the benefit of all other available legal remedies for summary possession of the Demised Premises.

## **22. INDEMNITY**

22.1 Tenant shall be liable for the acts and omissions of Tenant, its Sublessee(s) and any Visitors with respect to the Real Estate. In accordance therewith, Tenant shall defend, indemnify and hold harmless Landlord, its directors, officers, partners, employees, shareholders and agents and their predecessors in interest and successors and assigns against and from (a) any and all claims (1) arising from the conduct of Tenant or any Sublessee, or the employees or Visitors of either, or of any business or any work or thing whatsoever done to the Demised Premises, or any condition created in or about the Demised Premises during the term of this Lease, except to the extent due to the gross negligence or willful misconduct of Landlord, or (2) arising from any negligent or otherwise wrongful act or omission of Tenant or any Sublessee, or the employees or Visitors of either; (b) any failure by Tenant or any Sublessee to comply with the provisions of this Lease; (c) all costs, expenses and liabilities reasonably incurred by Landlord in connection with each such claim or action or proceeding brought thereon, including but not limited to all legal fees and expenses; and (d) any damages suffered by Landlord due to the holding over in the Demised Premises by Tenant or any Sublessee beyond the expiration or sooner termination of this Lease.

22.2 In case any action or proceeding shall be brought against Landlord on a claim to which Tenant's indemnification obligation applies, then, Tenant, upon notice from Landlord, shall resist and defend such action or proceeding with counsel selected by Tenant and acceptable to Landlord, in its reasonable discretion. In case any action or proceeding shall be brought against Tenant on a claim to which Landlord's indemnification obligation applies, Landlord, upon notice from Tenant, shall resist and defend such action or proceeding with counsel selected by Landlord and acceptable to Tenant, in its reasonable discretion.

22.3 Landlord shall defend, indemnify and hold harmless Tenant, its directors, officers, partners, employees, shareholders and agents and their predecessors in interest and successors and assigns against and from any and all claims (a) arising from the gross negligence or willful misconduct of Landlord and (b) costs, expenses and liabilities reasonably incurred by Tenant in connection with each such claim described in Section 22.3(a) hereof, including, but not limited to, all legal fees and expenses.

## **23. BASE BUILDING WORK AND LANDLORD'S CONSTRUCTION CREDIT**

23.1 Tenant shall provide to Landlord on or before

January 10, 1997 such final drawings and specifications that have first been approved in writing by Landlord (“Approved Final Drawings”) for all work that Tenant performs in or to any part of the Building on or before the Commencement Date. No changes, additions or deletions may be made to the Approved Final Drawings without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

23.2 Tenant represents that it has retained and hired Gale & Wentworth Construction Services, Inc. (“G&W”) as Tenant’s sole general contractor to perform all the work shown in the Approved Final Drawings. Landlord hereby consents to G&W being the sole general contractor that shall perform all the work shown in the Approved Final Drawings. Each and every subcontractor, materialman and supplier of goods or services involved directly or indirectly in the performance of work at the Building must first be approved in writing by Landlord, which approval shall not be unreasonably withheld. Tenant shall use no other general contractor beside G&W, without first obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld.

23.3 Provided Tenant has not breached any term of the Lease (after receipt of written notice and beyond the expiration of any applicable cure period), Landlord shall issue checks to G&W aggregating a total sum equal to the Construction Credit. The Construction Credit shall be disbursed in individual progress payments not more often than once during any calendar month. Each progress payment, however, shall be subject to a ten percent (10%) retainage. Within twenty (20) days after Landlord receives from Tenant (1) an invoice issued by G&W, (2) a fully executed and acknowledged waiver of construction liens in form satisfactory to Landlord and (3) a fully executed and acknowledged statement, in form satisfactory to Landlord, showing all subcontractors, materialmen and suppliers with whom G&W has entered into agreements, the amount of each such agreement and the amount requested for each subcontractor, materialman and supplier, Landlord shall, only if it ascertains that the billed work has been completed, remit a check to Tenant payable to G&W for the amount shown on the invoice. Tenant agrees that Landlord shall in no way be responsible for the accuracy of said invoices or for the quality or completeness of the work performed to the Demised Premises.

23.4 So long as no breach has occurred under the Lease, which breach remains uncured after receipt of written notice and beyond the expiration of any applicable cure period, the ten percent (10%) retainage held by Landlord from each and every progress payment shall be given to Tenant (in the form of a check payable to G&W) within thirty (30) days after Landlord has received from Tenant all of the following documents:

(i) final, unconditional lien waivers from G&W and all subcontractors, materialmen and suppliers who performed any of the work shown in the Approved Final Drawings;

(ii) a written statement from Tenant’s architect certifying that all work shown in the Approved Final Drawings has been completed;

(iii) a permanent or temporary certificate of occupancy for the Demised Premises;

(iv) all certificates, permits and/or licenses required by governmental and quasi-governmental authorities evidencing completion of the work shown in the Approved Final Drawings and legal occupancy of the Demised Premises by the Tenant; and

(v) an “as built” plan.

23.5 Landlord, at its expense, shall construct those items described in Exhibit F (Base Building Work), attached hereto



and made a part hereof. Landlord shall, at Tenant's sole expense, perform modifications to the Base Building Work requested in writing prior to the Commencement Date by Tenant, provided Landlord deems said modifications to be reasonable and approves said modifications in writing. Those modifications to the Base Building Work that are (1) requested in writing by Tenant, (2) reasonable and (3) approved by Landlord in writing, are herein referred to as "Tenant Requested Modifications". Landlord agrees that each of its subcontractors engaged in performing Tenant Requested Modifications may not charge Landlord more than fifteen percent (15%) for profit and overhead. Within twenty (20) days after Tenant receives from Landlord an invoice, Tenant shall pay Landlord, as additional rent, (a) all of Landlord's costs and expenses in any way related to having Tenant Requested Modifications performed, (b) the full amount charged for the Tenant Requested Modifications by each subcontractor performing said work, (c) the profit and overhead charged by each subcontractor performing Tenant Requested Modifications and (d) a Landlord supervisory and coordination fee equal to five percent (5%) of the sum total of subsections (a), (b) and (c) of this sentence. Within five (5) business days after receipt by Landlord of a written notice from Tenant requesting backup documentation to substantiate the amount Tenant is required to pay Landlord pursuant to the immediately preceding sentence, Landlord shall give Tenant a reasonably detailed breakdown of that amount which shows, among other things, the charge for labor, materials and subcontractor profit and overhead. All Tenant Requested Modifications shall constitute Tenant Work for purposes of this Lease. The failure of all or any of the Tenant Requested Modifications to be completed by October 1, 1997 shall in no event defer or delay the Commencement Date.

23.6 Landlord hereby grants Tenant a revocable license to have only G&W, and its materialmen, laborers, subcontractors and consultants, enter the Demised Premises to perform the work shown in the Approved Final Drawings on the condition that (i) such work is performed in harmony with and in no way delays, hampers or interferes with the construction of the Base Building Work and (ii) G&W and all of its materialmen, laborers, subcontractors and contractors maintain workman's compensation, public liability and property damage insurance, with a hold harmless provision in favor of Landlord, all in amounts and with companies satisfactory to Landlord and proof of said insurance is furnished to Landlord prior to the commencement of any work. Landlord expressly reserves the right to revoke the aforementioned license (a) as allowed by law or (b) if Tenant breaches any of the terms or provisions of this Lease.

23.7 That portion of the Base Building Work substantially completed by Landlord on or before March 31, 1997 shall be covered by Landlord on April 1, 1997 so the substantially completed portion is watertight or protected from penetration by the natural elements of outside weather. Landlord represents that such covering shall be of a scope and nature sufficient to allow Tenant's performance of its interior work within the Demised Premises free from material weather interference.

23.8 Subject to force majeure events and Tenant Requested Modifications, Landlord shall substantially complete the Base Building Work by October 1, 1997. The Base Building Work shall be deemed substantially completed even if items of construction remain incomplete by October 1, 1997, provided that such non-completion does not prohibit the issuance of a permanent or temporary certificate of occupancy. Furthermore, the Base Building Work shall be deemed substantially completed even if punch-list items of construction remain incomplete by October 1, 1997, provided that such non-completion of punch-list items does not unduly hamper Tenant from completing any unfinished work called for under the Approved Final Drawings.

23.9 If (a) Tenant has not in any way delayed Landlord's performance of the Base Building Work, (b) Tenant has not in any

way interfered with Landlord's discharge of its obligations under Section 23.7 hereof, (c) solely by virtue of Landlord's negligence or misconduct, Landlord breaches its obligations under Section 23.7 or 23.8 hereof and (d) by November 1, 1997, the Demised Premises are, in Landlord's reasonable opinion, not ready for Tenant's occupancy, then, so long as Tenant has not breached the Lease, the Commencement Date shall be advanced into the future by one (1) day for each day within the period between October 1, 1997 and the day by when Landlord substantially completes the Base Building Work.

23.10 If (I) conditions (a) - (d) in Section 23.9 of the Lease are all met and (II) the Commencement Date occurs after November 1, 1997, then, so long as Landlord receives from Tenant, by no later than the Commencement Date, a written notice specifically referencing this Section, (1) Tenant shall receive two (2) days' free Minimum Rent for each day between November 1, 1997 and the Commencement Date and (2) Landlord shall pay Tenant the Moving Costs (hereinafter defined). Moving Costs shall be the lesser of \$10,000.00 or the documented, out-of-pocket and reasonable furniture moving-related costs that Tenant necessarily incurred as a result of not relocating its business operation to the Demised Premises on November 1, 1997. Said furniture moving-related costs shall include, but shall not be limited to, furniture storage charges and forfeited deposits with furniture movers. Tenant's entitlement, if any, to any benefits pursuant to this Section shall be Tenant's sole and exclusive remedy in the event the Commencement Date, for any reason whatsoever, fails to occur on or before November 1, 1997.

23.11 Provided Tenant has not breached any term of the Lease (after receipt of written notice and beyond the expiration of any applicable cure period), Landlord shall issue checks to G&W aggregating a total sum of \$511,720.00 ("Base Building Credit"). The foregoing obligation of Landlord shall be in addition to its obligation under the first (1st) sentence of Section 23.3 hereof. All the terms, conditions and qualifications regarding the Construction Credit shall be applicable to the Base Building Credit, except that, if, as and when the Base Building Credit is disbursed, it shall be spent only as follows:

Atrium, Bathroom and other Common Area Finishes:	\$358,448.00
Elevator Finishes	\$ 16,800.00
Electrical Distribution and Digital Access System:	\$ 60,000.00
Sprinkler Work	\$ 76,472.00

23.12 For the period beginning on the Date of Lease and ending on May 31, 1997, Landlord shall (provided Tenant has not breached any term of the Lease) be responsible for the cost to operate all freight and passenger elevators in the Building during normal business hours, as determined by Landlord, on non-Legal Holidays. At all other times, Tenant shall pay Landlord, as additional rent and within thirty (30) days after receipt of an invoice, the cost to operate all freight and passenger elevators in the Building. For the period beginning on the Date of Lease and ending on May 31, 1997, Landlord shall (provided Tenant has not breached any term of the Lease) be responsible for all utility charges, including, but not limited to, the cost of supplying temporary heat, incurred while construction in the Building is taking place. On and after June 1, 1997 until November 1, 1997, provided Tenant has not breached any term of the Lease, Landlord shall pay one-half ( $\frac{1}{2}$ ) of all utility charges incurred while construction in the Building is taking place. Tenant shall pay Landlord, as additional rent and within thirty (30) days after receipt of an invoice, all utility charges incurred in the Building on and after June 1, 1997 that are not required to be paid by Landlord pursuant to the immediately preceding sentence.

**24. SERVICES TO BE PROVIDED BY LANDLORD**

24.1 Subject to the other provisions hereof, including,

but not limited to, Article 6, Landlord, at Tenant's expense, shall maintain in good working order and repair the exterior and the structural portions of the Building, including the structural portions of the Demised Premises. Subject to the other provisions hereof, including, but not limited to Article 6, Landlord, at Tenant's expense, shall maintain in good working order the common portions of the Building interior and the Building plumbing, electrical, HVAC systems, including those Building systems serving the Demised Premises. Subject to the other provisions hereof, including, but not limited to Article 6, Tenant's expenses referred to in the previous sentence shall be included in Operating Costs. Tenant agrees to give prompt notice to Landlord or Managing Agent of any condition in the Demised Premises in need of repair.

24.2 So long as no Event of Default has occurred, Landlord, at Tenant's expense, shall provide the following services to Tenant, the cost of which services shall be included in Operating Costs:

(a) Public elevator service on business days from 7 a.m. to Midnight, seven (7) days a week.

(b) Subject to Article 26, HVAC to the Demised Premises and the Building.

(c) Water for ordinary lavatory purposes; provided, however, if Tenant uses or consumes water for any other purposes or, in Landlord's reasonable opinion, in quantities per square foot of Demised Premises which are excessive, Landlord may install a water meter at Tenant's cost and expense to register such water consumption; Landlord, at Tenant's expense, shall thereafter maintain the water meter in good working order and repair and Tenant shall be obligated to pay Landlord as additional rent for water consumed as shown on said meter.

(d) Subject to the Cleaning Service Rider and Article 27, cleaning service for the Demised Premises and for the common areas of the Building.

(e) The listing of Tenant's name on the Building lobby directory, if any; provided that any changes to Tenant's listing on said directory or any other directory in the Building or on the remainder of the Real Estate shall be (1) in conformity with Landlord's Building standard design, (2) prepared by Landlord and at Tenant's expense, if subsequent to the Commencement Date; and (3) for the Tenant named in Article 1 or such Sublessee or assignee permitted in strict compliance with Article 16. Landlord shall have no obligation to list more than four (4) names on the Building lobby directory.

24.3 Landlord reserves the right to stop any of the services to be provided hereunder when reasonably necessary by reason of accident or emergency, or for repairs, alterations, replacements or improvements which Landlord, in its reasonable discretion, may deem necessary or desirable, without same affecting Tenant's obligations hereunder.

## **25. ELECTRICITY**

25.1 Landlord's obligation to supply electric current shall be limited to the current required to power the Building standard HVAC systems, elevators, and the lighting of common areas of the Building and the Real Estate, the costs of which shall be included in Operating Costs.

25.2 Tenant shall arrange with the appropriate utility to purchase and pay for all of the electric current requirements for light and power used in connection with Tenant's use and occupancy of the Demised Premises, including all electrical power for Tenant's office equipment and for any special electrical or mechanical equipment serving only the Demised Premises. Landlord,

at Tenant's expense, shall furnish and install an electric meter for the measurement of the consumption of Tenant's electric current as herein provided.

25.3 Tenant shall in a timely manner execute any and all forms or applications for electric service, and shall provide any security required by the local utility company supplying electric current to the Building for the metering of all electric current and power required for the operation of the electrical equipment of any nature whatsoever and lights within or serving the Demised Premises.

25.4 Tenant shall not bypass or otherwise adversely affect the proper operation of any electrical or other utility meter.

## **26. HEATING, VENTILATION AND AIR CONDITIONING**

26.1 Landlord, at Tenant's expense, shall provide and furnish Building HVAC to the Demised Premises and the Building between the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday and Saturdays between the hours of 8:00 a.m. and Noon, other than Legal Holidays. Any other HVAC requirements of Tenant shall also be at Tenant's sole cost and expense.

26.2 At all other times not otherwise provided for in Section 26.1 above, Landlord agrees that it shall provide after-hours HVAC, upon written or telephone request from Tenant at least eight (8) business hours in advance of such extra hours of operation, stating the hours of operation desired. Any costs attributable to such after-hours HVAC shall be entirely at Tenant's sole expense.

## **27. CLEANING SERVICES**

27.1 Landlord, at Tenant's expense, shall maintain the grounds, common areas and Parking Areas, and, so long as no Event of Default has occurred and is continuing hereunder, such other cleaning services within the Demised Premises as are set forth on the Cleaning Service Rider.

27.2 Tenant acknowledges that Landlord's obligation to cause the office areas of the Demised Premises to be cleaned shall be detailed in Exhibit C. Tenant shall pay directly to Landlord the cost of removal from the Demised Premises of any of Tenant's refuse or rubbish, including large cartons or other containers or refuse, in excess of that generated from the day-to-day operation of an executive and administrative office of Tenant's size; and Tenant, at Tenant's expense, shall cause all portions of the Demised Premises not used as office areas to be cleaned daily in a manner and by a person or entity satisfactory to Landlord. Tenant, at Tenant's expense, also shall cause any portions of the Demised Premises used for the storage, preparation, service or consumption of food or beverages to be exterminated against infestation by vermin, rodents, bugs and insects both on a regular basis and whenever there shall be evidence of any infestation.

27.3 Tenant, at its expense, shall contract directly with Landlord or, at Landlord's option, directly with Landlord's contractors, for the removal of garbage, excess refuse and rubbish, for cleaning services in excess of those furnished by Landlord, and for the extermination services required hereunder.

## **28. LANDLORD'S ACCESS TO DEMISED PREMISES AND ALTERATIONS**

28.1 (a) Landlord or Landlord's employees or agents, shall have the right to enter and/or pass through the Demised Premises or any part thereof, at reasonable times during reasonable hours (or in the event of an emergency, at any time) (1) to examine the Demised Premises and to show them to the holders of mortgages

or prospective purchasers, mortgagees or lessees of the Building; (2) for the purpose of making such repairs or changes in or to the Demised Premises or its facilities, as may be provided for by this Lease or as may be mutually agreed upon by the parties or as Landlord may be required to make by Law or in order to repair, maintain or improve the Demised Premises or any other portion of the Building or its fixtures or facilities; and (3) during the last twelve (12) months of the term of the Lease, for the purposes of showing the Demised Premises to prospective tenants. Tenant shall permit Landlord to use, maintain, replace and improve pipes, conduits and supports in and through the Demised Premises and to erect new pipes and conduits and structural members therein or therethrough, provided such new installations are concealed within walls, floors, or ceilings. Landlord may, during the progress of any work in or about the Demised Premises, take all necessary materials and equipment therein or therethrough without the same constituting an eviction.

(b) If Tenant is not present to open and permit an entry into the Demised Premises, Landlord or Landlord's employees or agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and, provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Landlord or its employees or agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's or any Sublessee's property therefrom and shall have ceased its use of the Demised Premises, Landlord may immediately enter, alter, renovate or redecorate the Demised Premises without limitation or abatement of rent and without incurring liability to Tenant for any compensation, and such act shall have no effect on this Lease or any of Tenant's obligations hereunder.

28.2 In the event the demised premises is less than One Hundred Percent (100%) occupied by Tenant, or as otherwise required by law, Landlord, its agents and employees shall have the right at any time, without the same constituting an eviction and without incurring liability to Tenant therefor (a) to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets or any other Public parts of the Building; (d) to change the name, number or designation by which the Building may be known; or (e) to change any lawns, sidewalks, driveways, Parking Areas or streets adjacent to or around the Building.

28.3 Landlord shall use reasonable efforts to minimize its disturbance of Tenant in undertaking the activities described in this Article in or adjacent to the Demised Premises. Landlord shall not be liable to Tenant by reason of any inconvenience, annoyance or injury to business arising from any of the aforementioned alterations, additions, and improvements, unless said inconvenience, annoyance or injury to business is adjudged to have been solely caused by the gross negligence of Landlord.

## **29. LIMITATION OF LIABILITY**

29.1 Notwithstanding anything to the contrary contained herein, each and every term, covenant, condition and provision of this Lease, is hereby made specifically subject to the provisions of this Article.

29.2 The term "Landlord" as used in this Lease means only the current Landlord or Building Lessor, so that in the event of any conveyance of such interest and the transfer to the transferee of any funds then being held under this Lease by Landlord, such Landlord shall be and hereby is entirely freed and relieved of any and all obligations of Landlord hereunder thereafter accruing, and

the transferee shall be and hereby is deemed to have assumed all of the obligations of Landlord hereunder. The foregoing provision shall be self-operative and shall be deemed to occur automatically without further agreement between Landlord and Tenant.

29.3 It is further specifically understood and agreed that notwithstanding anything to the contrary contained herein or otherwise provided at Law or in equity, there shall be absolutely (a) no liability whatsoever to Landlord or any lessor of the Land (a "Land Lessor") in excess of either's interest in the Real Estate, (whether any of the foregoing be an individual, proprietorship, corporation, joint venture, tenancy in common, firm, partnership or other entity); (b) no personal liability whatsoever on the part of the members of any firm, proprietorship, partnership, joint venture or other unincorporated Landlord or Land Lessor with respect to any of the terms, covenants and/or conditions of this Lease; and (c) no personal liability on the part of any director, officer, or employee of any Landlord or Land Lessor. In the event of a breach or default by Landlord of any of its obligations under this Lease or any claim or suit in respect of this Lease or the Demised Premises or the Real Estate or any portion thereof, Tenant shall look solely to the then Landlord for the satisfaction of each and every remedy of Tenant, and no judgment shall be entered against any individual, director, officer, employee, partner, proprietor or joint venturer of Landlord or Land Lessor or any of their predecessors in interest or successors in interest, such exculpation of personal and additional liability which is in excess of such person's or partnership's interest in the Real Estate to be absolute and without any exception whatsoever.

29.5 Landlord shall not be liable for failure to furnish any services or take any other action required to be provided by it hereunder by reason of conditions beyond Landlord's reasonable control, nor for consequential damages arising, therefrom. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Landlord or its employees or agents by reason of inconvenience, annoyance or injury to business arising from Landlord or others making repairs, alterations, additions, improvements or installations in or to any portion of the Building or the Demised Premises or in and to the fixtures, appurtenances or equipment thereof. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Article shall not apply in the case of fire or other casualty which are not the responsibility of Tenant and which shall be governed by Article 31 hereof.

### **30. PROPERTY LOSS; DAMAGE; TENANT'S INSURANCE**

30.1 Tenant and any Sublessee, at their sole cost and expense, shall procure, provide and maintain in force during the term of this Lease "All Risk" insurance reasonably satisfactory to Landlord or Managing Agent, and having a policyholders' rating of no less than A+ XV as determined by the AM Best Company, or any successor thereto, which shall cover Tenant's (or Sublessee's) personal property, equipment and improvements in the Demised Premises or elsewhere on the Real Estate against loss or damage by theft, vandalism, fire and any other hazards or casualties in an amount sufficient to provide for the actual replacement cost thereof. Neither Landlord nor its employees or agents shall be obligated to make any repair or reimburse Tenant for any act or loss to be covered by the insurance required hereunder.

30.2 Landlord or its contractors or agents shall not be liable for any loss of or damage to any property of Tenant or of others whatsoever, whether by reason of theft, burglary or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, except to the extent determined to be due to the gross negligence or willful misconduct of Landlord.

30.3 Should Tenant or any Sublessee be self-insured for all or any portion of any loss or damage to its property, or should Tenant's or any Sublessee's insurer be unwilling or unable to compensate Tenant or such Sublessee in full for such damage, Tenant and all such Sublessees shall be deemed to have released and waived all right of recovery for such damage against Landlord by Tenant or anyone claiming through or under Tenant by way of subrogation or otherwise.

30.4 Intentionally Deleted Prior To Execution.

30.5 Tenant and any Sublessee at its sole cost and expense, shall also procure, provide and maintain in force during the term of this Lease comprehensive general liability insurance, which (a) shall be written by good and solvent insurance companies reasonably satisfactory to Landlord; (b) shall include coverage for personal liability, contractual liability, Tenant's (or Sublessee's) legal liability, bodily injury, death and property damage in or from the Demised Premises and Tenant's (or Sublessee's) use and occupancy of the Demised Premises; (c) shall provide coverage for any one occurrence or claim of not less than \$2,000,000; and shall insure against such other perils and in such amounts as Landlord or Managing Agent may from time to time reasonably require upon not less than ninety (90) days' prior written notice.

30.6 Each of the insurance policies required in this Article shall contain an undertaking by the insurer that no material change adverse to Landlord will be made and such policy will not lapse or be cancelled, except after not less than thirty (30) days' prior written notice to Landlord of the intended change, lapse or cancellation. Any such notice shall not relieve Tenant of any of its obligations hereunder. On or before the Commencement Date and thereafter, at least thirty (30) days prior to the expiration date of any policy, Tenant agrees to deliver to Landlord a certificate thereof reasonably satisfactory to Landlord.

30.7 Tenant may self-insure against all the risks set forth in Sections 30.1 and 30.5 hereof for the amounts recited in said Sections, provided (i) Tenant's self-insurance program is maintained in accordance with prudent self-insurance principles, as reasonably determined by Landlord exercising due care and prudent fiscal responsibility, and adequate reserves are maintained, as reasonably determined by Landlord exercising due care and prudent fiscal responsibility, for funding of losses and (ii) Tenant's creditworthiness, as of the date hereof, does not materially diminish and (iii) Tenant shall indemnify Landlord in accordance with this Lease to the same extent as if Tenant had procured standard insurance policies in accordance with this Article.

### **31. DAMAGES BY FIRE OR OTHER CASUALTY**

31.1 If the Building or the Demised Premises or any part thereof shall be damaged by fire or other casualty, Tenant shall immediately inform Landlord or Managing Agent thereof, and this Lease shall continue in full force and effect, except as hereinafter set forth.

31.2 Tenant waives the benefit of N.J.S.A. 46:8-6, and N.J.S.A. 46:8-7 and any similar Law. Except as specifically

provided in this Article, Tenant agrees that it shall not be relieved of the obligations to pay Minimum Rent or any additional rent in case of damage to or destruction of the Building or any portion thereof.

31.3 If all or a material portion of the Demised Premises are damaged or rendered unusable by fire or other casualty but the Building is not substantially damaged, and the damages to the Demised Premises can, in Landlord's reasonable judgment, be reasonably repaired within one hundred eighty (180) days of the occurrence of such damage, the damages, to the extent affecting the tenant installation provided by Landlord, shall be repaired by Landlord and the Minimum Rent, until such repair shall be substantially completed, shall abate in proportion to the area of the Demised Premises which was damaged or unusable by Tenant for so long as the Demised Premises, or each such portion thereof, is damaged or unusable, it being the intent that such abatement shall not affect or reduce Landlord's rent insurance coverage. Notwithstanding anything to the contrary herein, Landlord shall not be obligated to repair or restore any personal property of Tenant or any fixtures or Tenant installation not installed by and paid for by Landlord.

31.4 If Landlord repairs and restores the Demised Premises in accordance with Section 31.3, such repairs and restorations shall be made with all reasonable expedition. After any such fire or other casualty, Tenant shall cooperate with Landlord's restoration by removing from the Demised Premises as promptly as reasonably possible and to the extent reasonably necessary, all of Tenant's and any Sublessee's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for Minimum Rent shall resume five (5) business days after written notice from Landlord of substantial completion of repairs to the Demised Premises.

31.5 If all or substantially all of the Demised Premises are damaged or rendered unusable by fire or other casualty, or (whether or not the Demised Premises are damaged in whole or in part; if the Building shall be substantially damaged so that Landlord in its reasonable opinion, cannot rebuild both the Demised Premises and the Building to their pre-existing condition within one hundred eighty (180) days after the Demised Premises are damaged or rendered unusable by fire or other casualty, then, in either of such events, either Landlord or Tenant may elect to terminate this Lease by written notice to the other, specifying a date for the expiration of the Lease, which date shall not be more than one hundred eighty (180) days after such fire or other casualty, and upon the date specified in such notice the term of this Lease shall expire as fully and completely as if such date were the Expiration Date and Tenant shall forthwith quit, surrender and vacate the Demised Premises without prejudice however, to Landlord's rights and remedies against Tenant under the Lease provisions in effect prior to such termination; and any Minimum Rent and additional rent owing shall be paid up to such date and any payments of Minimum Rent and additional rent made by Tenant which were on account of any period subsequent to such date shall be credited against amounts owed by Tenant to Landlord or refunded to Tenant.

31.6 Notwithstanding anything to the contrary contained in this Article or any Law, should the Demised Premises or the Building be damaged by fire or other casualty as a result of the negligence of Tenant or any Sublessee or any employee, Agent or Visitor of either, Tenant shall have no right to terminate this Lease and there shall be no abatement of Minimum Rent under this Article, and Tenant shall be liable to Landlord for such damage, subject to the other provisions hereof.

## **32. WAIVER OF SUBROGATION**

32.1 Notwithstanding any other provision herein, Landlord



and Tenant shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by Law, Landlord and Tenant each hereby releases and waives all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if both Landlord and Tenant obtain their insurance required hereunder and only if both of their insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums, then the party benefitting from the waiver shall pay such premium within thirty (30) days after written demand from the other party or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation.

### **33. EMINENT DOMAIN**

33.1 If all or substantially all of the Demised Premises or the Building or a substantial portion of the Land should be acquired or condemned by eminent domain by any Governmental Authority, then Landlord or Tenant may terminate this Lease as of the date when title vests pursuant to such taking. In such event, the Minimum Rent shall be apportioned as of said expiration date and any Minimum Rent paid for any period beyond said date and in excess of amounts owing by Tenant to Landlord shall be repaid to Tenant.

33.2 In the event of a taking of less than all or substantially all of the Demised Premises, Landlord shall have the right to equitably reduce the Demised Premises, Tenant's Occupancy Percentage, the Minimum Rent and the Allotted Parking, and this Lease shall continue in full force and effect. Notwithstanding the foregoing, Tenant shall have the right to terminate this Lease if the area of the Demised Premises shall not be reasonably sufficient for Tenant to continue feasible operation of its business.

33.3 Landlord or Tenant may exercise its respective right(s) to terminate this Lease under Section 33.1 or 33.2 by giving written notice to the other within thirty (30) days after the date of the vesting of title in such proceeding, specifying a date not more than fifteen (15) days after the giving of such notice as the date for such termination.

33.4 Neither Tenant nor any Sublessee shall have any claim in any condemnation or eminent domain proceeding for the value of any unexpired term of the Lease with respect to the Demised Premises or any portion thereof, and Tenant hereby assigns to Landlord Tenant's entire interest in any such award. Although Tenant shall not be entitled to any part of the award for such taking or any payment in lieu thereof, Tenant (or any Sublessee) may file a separate claim for any taking of fixtures and improvements owned by Tenant (or such Sublessee) which have not become Landlord's property, and for moving expenses, provided the same shall in no way affect or diminish Landlord's award.

### **34. DEFAULTS; EVENTS OF DEFAULT**

34.1 Tenant shall be in default under this Lease upon the occurrence of any one or more of the following events (collectively, "Defaults", and individually, a "Default"):

(a) If Tenant fails to move into or take possession of the Demised Premises within fifteen (15) days after the Commencement Date;

(b) If the Tenant vacates the Demised Premises for a period in excess of thirty (30) days other than during the month prior to the Expiration Date;

(c) If the Tenant is delinquent in the due and punctual payment of all or any portion of Minimum Rent, additional rent or any other monies payable by Tenant hereunder;

(d) If any execution, attachment or other action shall be taken against Tenant or any or Tenant's property whereupon the Demised Premises shall be taken, occupied or used by someone other than Tenant or any assignee or Sublessee permitted in strict accordance with Article 16, including the storage of any of Tenant's property on behalf of another person or entity; or

(e) If Tenant is delinquent in the performance of or compliance with any of the other covenants, agreements or conditions contained in this Lease, any other lease demising space in the Building to Tenant, or any other written agreement between Landlord and Tenant pertaining to the Demised Premises, the Building, and/or the Real Estate.

34.2 Upon the occurrence of a Default, Landlord, at any time thereafter, may give written notice to Tenant specifying the nature of such Default. Tenant shall have five (5) business days from the receipt of said notice (the "Cure Period") to comply with or remedy any such Default, except in the case of any Default presenting a clear and present danger to life or property, which Tenant shall cure immediately upon request of Landlord or Managing Agent, written or otherwise. If such Default is not of an emergency nature, is other than due to the nonpayment of money, and shall be of a nature that the same cannot be substantially cured or remedied within said Cure Period, Tenant shall promptly give Landlord written notice of such fact, and Tenant shall diligently and in good faith proceed to remedy or cure such Default within a reasonable time, but in no event in excess of thirty (30) days. Neither the cost to Tenant of curing any Default nor Tenant's financial or other inability to cure any Default (for whatever reason) shall operate to extend any Cure Period. Tenant's failure to remedy such Default within the applicable time set forth in this Section shall be an "Event of Default".

34.3 Tenant acknowledges that Landlord is obligated to make timely payments on obligations arising out of its ownership, operation, and financing of the Real Estate. In the event that the payment of any sum required to be paid by Tenant to Landlord under this Lease (including, without limiting the generality of the foregoing, Minimum Rent, additional rent, payment made by Landlord under any provision of this Lease for which Landlord is entitled to reimbursement by Tenant, or for construction or other work performed by Landlord or its contractor specifically for Tenant) is not received by Landlord in good funds within seven (7) business days after the date on which it is due and payable or should any check from Tenant be returned to Landlord as uncollectible, then, notwithstanding any notice provision or Cure Period, Tenant shall pay Landlord, as additional rent, interest ("Interest") at an annual rate equal to five hundred (500) basis points over the prime rate announced from time-to-time by Citibank, NA (or any successor thereto) (but subject to any maximum interest permitted by Law) on any amounts not received by Landlord from the date on which they became due and payable until the date they are received in full. In the event of nonpayment of any Interest provided for above, Landlord shall have, in addition to all other rights and remedies, all the rights and remedies provided for herein and by Law in the case of nonpayment of rent. Failure by Landlord or Managing Agent to insist upon the strict performance by Tenant of Tenant's obligations to pay any Interest shall not constitute a waiver by Landlord of its rights to enforce the provisions of this Section in any instance thereafter occurring. Neither the provisions of this Section nor Tenant's payment of any Interest shall be construed in any way to extend any time period provided for in this Lease or to Limit Landlord's other remedies hereunder. Tenant's obligation to pay any Interest as provided in this Section shall continue beyond the expiration or sooner termination of this Lease.

34.4 In addition to the provisions of Section 34.3, should Minimum Rent be received by Landlord or Managing Agent later than the first day of the month on which it is due twice or more in any twelve-month period, Landlord may, in addition to all other rights and remedies provided herein and by Law, require that Tenant either (1) increase the amount of the Security by an additional amount equal to three (3) months' of the then applicable Adjusted Minimum Rent or (2) deposit such amount as Security if none has previously been paid.

### **35. REMEDIES FOR EVENTS OF DEFAULT**

35.1 Upon the occurrence of any Event of Default hereunder, Landlord may, in addition to all other rights and remedies provided herein or at Law or in equity, exercise any or all of the following remedies:

(a) Landlord may give a written notice of termination upon Tenant setting forth a date, no fewer than five (5) business days from the date of the giving of such notice, terminating this Lease and/or Tenant's right to use and occupy the Demised Premises. Upon the expiration of such period, this Lease and the term hereof, or the right of Tenant or any Sublessee to use and occupy the Demised Premises, as the case may be, shall terminate and expire as fully and completely as if the day on which said notice of cancellation is to be effective were the Expiration Date, and Tenant shall then peaceably quit and surrender the Demised Premises to Landlord, but Tenant shall remain liable as herein provided. Landlord may also, without further notice, re-enter the Demised Premises and repossess same by summary proceedings or ejectment or otherwise and/or may dispossess the Tenant and remove the Tenant and all other persons and property from the Demised Premises and may have, hold, use and enjoy the Demised Premises and the right to receive all rental income therefrom.

(b) Landlord may (1) declare all Minimum Rent and all other sums due and payable hereunder immediately due and payable; (2) re-let or sublet the Demised Premises or any part or parts thereof, in the name of Tenant, Landlord or otherwise, for a term or terms, which may at Landlord's option be less than, equal to, or exceed the period which would otherwise have constituted the balance of the term of this Lease, and Landlord may grant concessions or free rent or charge such higher or lower rental as may be reasonable under the circumstances; (3) recover from Tenant any commission paid by Landlord to Broker on account of this Lease for the current term; (4) collect rental payments directly from any Sublessee, upon written notice to such Sublessee directing it to make such payment strictly to Landlord (5) cancel any option to renew, extend or cancel this Lease or expand or contract the Demised Premises which Tenant may have; (6) cancel any right of first refusal or first offer held by Tenant; and/or (7) if such Event of Default occurs during the Initial Term, recover any Construction Credit and/or any Rental Credit.

(c) Landlord may require Tenant or the legal representative(s) of Tenant immediately to pay to Landlord a sum (the "Accelerated Rent") which, at the time of the Event of Default, equals the aggregate Minimum Rent payable hereunder which would have become payable by Tenant hereunder through the day previously set as the Expiration Date. Such Accelerated Rent shall be held by Landlord and applied by Landlord on a monthly basis to any deficiency between the Minimum Rent or any other monies hereby reserved and/or covenanted to be paid by Tenant and the net amount, if any, of the rents collected on account of any re-letting or subletting of the Demised Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. The failure of Landlord to re-let or sublet the Demised Premises or any part or parts thereof shall not release or affect

Tenant's obligations or liability hereunder. In computing any such deficiencies, there shall be added thereto such expenses as Landlord may reasonably incur in connection with re-letting or subletting or attempting to relet or sublet the Demised Premises, including but not limited to, legal expenses, attorney's fees, brokerage fees, advertising expenses and expenses incurred in connection with the marketing, showing, fix-up, cleaning, repair or maintenance of the Demised Premises including those for preparation of the Demised Premises for re-letting or subletting and the removal of Tenant's property, fixtures or other improvements therefrom. In connection with Landlord's preparation of the Demised Premises for re-letting or subletting, Landlord may, at its option, make such alterations, repairs, replacements, and/or decorations in the Demised Premises as Landlord, in Landlord's reasonable discretion, considers advisable and necessary for the purpose of re-letting or subletting the Demised Premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability hereunder. Landlord shall in no event be liable in any way whatsoever for failure to re-let or sublet the Demised Premises, or in the event that the Demised Premises are re-let or sublet, for failure to collect the rent under such re-letting or subletting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Landlord hereunder. If the Demised Premises or any part thereof should be re-let or sublet in combination with the other space, then proper apportionment on a square-foot basis shall be made of the rent received from such re-letting and of the expenses of re-letting.

#### 35.2 Intentionally Deleted Prior To Execution.

35.3 In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at Law or in equity as if re-entry, summary proceedings and other remedies were not provided for herein.

35.4 Any suit or suits for the recovery of monies due Landlord hereunder may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the term of this Lease otherwise would have expired. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy, at Law or in equity. Nothing herein contained shall be construed to limit or preclude recovery by Landlord against Tenant for any sums or damages to which, in addition to the sums particularly provided above, Landlord may lawfully be entitled by reason of any Default hereunder on the part of Tenant.

35.5 Nothing herein contained shall be construed to limit or prejudice the right of Landlord to prove for and obtain as actual, direct and foreseeable damages, punitive damages and/or liquidated damages for any Event of Default of Tenant under this Lease, an amount equal to the maximum allowed by any Law governing the proceedings in which such damages are to be proved, or in equity, whether or not such amount be greater, equal to, or less than any of the sums referred to in this Article.

35.6 Tenant, for Tenant, and on behalf of any and all persons claiming through or under Tenant, including but not limited to Sublessees, creditors, trustees, security holders and representatives of all kinds, does hereby waive and surrender all right and privilege which they or any of them might have under or by reason of any present or future Law, to redeem the Demised Premises or to have a continuance of this Lease for the term hereby demised after being dispossessed or ejected therefrom by process of law or under the terms of this Lease or after the termination of this Lease as herein provided.

### **36. LANDLORD'S PERFORMANCE; EXPENDITURES**

36.1 If an Event of Default shall occur under this Lease, Landlord, without thereby waiving such Event of Default, may (but shall not be obligated to) immediately or at any time thereafter, without further notice, perform the same for the account and at the expense of Tenant.

36.2 Tenant shall also promptly reimburse Landlord for all costs, expenses and disbursements of every kind and nature whatsoever reasonably incurred by Landlord, including, but not limited to, attorney's fees, involved in (a) instituting, prosecuting or defending any action or proceeding against Tenant in which Tenant fails to prevail; (b) collecting or endeavoring to collect the Minimum Rent or additional rent or any part thereof or any other money payable by Tenant hereunder; or (c) enforcing or endeavoring to enforce any rights of Landlord against Tenant, under or in connection with this Lease or pursuant to Law, including any such cost, expense and disbursement involved in instituting and prosecuting summary proceedings. Any bills for any property, material, labor or services provided, furnished, or rendered by Landlord pursuant to this Article shall be obligations of Tenant.

36.3 The foregoing expenses incurred by Landlord shall be deemed to be additional rent hereunder and shall be paid by Tenant to Landlord within thirty (30) days of rendition of any bill or statement to Tenant therefor. The obligations of Tenant to pay such sums to Landlord shall survive the expiration or sooner termination of this Lease, and such sums shall be thereafter recoverable by Landlord or its agent or representative.

### **37. ACCORD AND SATISFACTION**

37.1 No payment by Tenant or receipt by Landlord or its employee or agent of a lesser amount than the rent and additional charges payable hereunder shall be deemed to be other than a payment on account to be credited against monies owed Landlord hereunder, in such order as Landlord may reasonably determine, nor shall any restrictive endorsement, statement or name on any check or any letter accompanying any check or payment delivered to Landlord or its employee or agent be deemed, declared or interpreted an accord and satisfaction; and Landlord or its agent may accept and deposit such check or payment without notice to Tenant, without same operating as a satisfaction or an acceptance of satisfaction by Landlord or its employee or agent, and without prejudice to Landlord's right to recover the balance of any monies due hereunder, or to pursue any other remedy provided herein or by Law.

### **38. EFFECT OF WAIVERS**

38.1 No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease, or to exercise any right or remedy permitted hereunder, and no acceptance of full or partial rent during the continuance of any such Default, shall constitute a waiver of any such Default or of such covenant, agreement, term or condition. No consent or waiver, express or implied, by Landlord or its employee or agent to or of any Default, and no reliance by Tenant thereon, shall be construed as a consent or waiver to or of any other Default of the same or any other covenant, condition or duty, unless in writing signed by Landlord.

### **39. BANKRUPTCY; INSOLVENCY**

39.1 Notwithstanding anything herein to the contrary, this Lease may be cancelled by Landlord by the sending of a written five (5) day notice of cancellation to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the appointment of a trustee, custodian, liquidator, receiver or other similar official to take possession of all or

substantially all of the assets of Tenant or of the Demised Premises; (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors pursuant to any Law; (3) the filing by Tenant, or the public announcement of the intent to file, of a voluntary petition pursuant to 11 U.S.C. 101 *et seq.* and the Rules and Official Forms thereunder or any such successor or substitute legislation or rule thereto, or any similar federal or state law collectively (the "Bankruptcy Code") seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief thereunder; (4) the adjudication of Tenant as a bankrupt or insolvent; (5) the failure of Tenant or any guarantor of the Tenant's obligations hereunder to pay debts generally as they become due. Landlord's statutory liens for rent shall be honored by Tenant and any trustee, representative or creditor of Tenant.

39.2 If Landlord shall have no right to terminate this Lease by reason of the applicable provisions of the Bankruptcy Code, Tenant or its trustee or other representative shall promptly provide adequate protection to Landlord pursuant to the provisions of the Bankruptcy Code.

(a) Tenant or its trustee shall promptly accept or reject this Lease. Any Lease not assumed or rejected within sixty (60) days after an order for relief is entered shall be deemed rejected, and the trustee shall immediately surrender the Demised Premises to Landlord.

(b) If Tenant shall not be in liquidation, Tenant or its trustee shall assume or reject the Lease as soon as such decision can reasonably be made, and shall compensate Landlord for the use and occupancy of the Demised Premises monthly in advance until such decision is made.

(c) This Lease may not be assumed, unless at the time of such assumption, the trustee or assignee shall promptly (1) cure or provide adequate assurance that it will promptly cure any Default(s) under this Lease; (2) compensate or provide adequate assurance that it shall compensate Landlord for any actual or pecuniary loss to Landlord resulting from such Default(s); (3) provide adequate assurance reasonably satisfactory to Landlord of future performance under this Lease; and (4) compensate Landlord for all post-filing use and occupancy of the Demised Premises, and shall timely perform all of Tenant's other obligations hereunder.

39.3 If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, Tenant or its legal representative shall give prompt written notice thereof to Landlord along with adequate assurance of future performance by the assignee. Any and all monies or other consideration to be delivered in connection with the assignment shall be delivered to Landlord, and shall be and remain the exclusive property of Landlord to be applied to post-filing use and occupancy payments to Landlord or other monies owed by Tenant to Landlord and shall not constitute property of Tenant or of the estate of Tenant. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed to have assumed all of the obligations arising under this Lease on and after the date of such assignment, and shall upon demand execute and deliver to Landlord an instrument confirming that assumption.

#### **40. STATUTORY WAIVER; WAIVER OF TRIAL BY JURY**

40.1 Tenant acknowledges that its possession, use and peaceful enjoyment of the Demised Premises is conditioned upon Tenant's timely performing all of its obligations hereunder, including but not limited to the payment of all Minimum Rent, as set forth in Section 5.3. In consideration thereof, Tenant hereby waives its right under N.J.S.A. 2A:18-60 or other similar statutes to remove any action for non-payment of Minimum Rent brought by Landlord or its Managing Agent pursuant to N.J.S.A. 2A:18-53 to

another court. Any other matter mentioned in any such action brought by Landlord under the latter statute shall not waive Landlord's or Tenant's right to bring a separate action in the proper court for monies due and owing either party hereunder; nor shall Landlord be prohibited from instituting a dispossess action for nonpayment of monies other than Minimum Rent.

40.2 To the extent such waiver is permitted by Law, the parties hereto waive trial by jury in any action or proceeding brought in connection with this Lease or the Real Estate or any portion thereof.

40.3 Tenant waives the benefit of N.J.S.A. 46:8-6 and 46:8-7, as same may be amended.

#### **41. SUBORDINATION OF LEASE; ESTOPPEL CERTIFICATES**

41.1 This Lease is subject and subordinate to all ground or underlying leases and to all deeds of trust or mortgages which may now or hereafter affect the Real Estate, including all renewals, modifications, consolidations, replacements and extensions of any such underlying leases, deeds of trust and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any Land Lessor or by any mortgagee in order to effectuate such subordination. Notwithstanding the foregoing, Tenant shall execute and promptly deliver to Landlord or its agent within five (5) business days any instrument that Landlord or its agent, as the case may be, may reasonably request confirming the subordination of this Lease.

41.2 If any lender shall request reasonable modifications of this Lease as a condition of Landlord's obtaining any financing or refinancing of the Building, the Real Estate and/or any interest of Landlord in either, Tenant covenants not to unreasonably withhold or delay its agreement to such modification provided that such modification does not materially or adversely affect the rights of Tenant under this Lease.

41.3 Tenant agrees to give any mortgagee, deed of trust holder, or Land Lessor by certified mail, a copy of any notice and a right to cure any default of Landlord, provided that, prior to such notice, Tenant has been notified in writing (by way of notice of assignment of rents and leases, or otherwise) of the address of such mortgagee, deed of trust holder, or Land Lessor. Tenant further agrees that so long as any mortgagee, deed of trust holder or Land Lessor has commenced and is diligently pursuing the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings, if necessary to effect such cure), Tenant shall not seek to terminate this Lease.

41.4 Tenant agrees at any time and from time to time, upon not less than ten (10) days' prior written request from Landlord or Managing Agent, that Tenant shall execute, acknowledge and deliver to Landlord, or its designee, a statement in writing certifying (a) that this Lease is unmodified and is in full force and effect (or if there have been modifications, the specifics thereof and that the Lease is in full force and effect as modified); (b) the dates to which the Minimum Rent and additional rent have been paid; the amount of all rents paid in advance, if any; and any other information that Landlord or Managing Agent shall reasonably request. Tenant further agrees to furnish Landlord or Managing Agent upon written request at any time such information and assurances as Landlord or Managing Agent, as the case may be, may reasonably request that Tenant has not breached any of the provisions of this Lease. It is intended hereby that any such statement delivered pursuant to this Article may be relied upon by a prospective purchaser or mortgagee of Landlord's interest, or any assignee of any mortgage upon Landlord's interests in the Real Estate. The foregoing obligation shall be deemed a material obligation of Tenant. Tenant's failure to timely deliver such statement shall be conclusive evidence (x) that this Lease is

in full force and effect, without modification except as may be represented by Landlord; (y) that there are no uncured defaults in Landlord's performance and Tenant has no right of offset, counterclaim, defenses or deduction against the Minimum Rent, additional rent or against Landlord; and (z) that no more than one month's installment of Minimum Rent has been paid in advance.

41.5 In the event a financing institution, such as, but not limited to, a bank, insurer or institutional investor, or an entity contemplating the acquisition of an interest in the Building, such as, but not limited to, an individual, corporation, partnership or limited liability company (hereafter collectively referred to as "Financial Organizations") requires information regarding the financial status of Tenant (or any of Tenant's Sublessees), Landlord shall so notify Tenant in writing, supplying Tenant with the name and telephone number of a representative of such Financial Organization. Upon receipt of such notification, Tenant will promptly telephone such representative and arrange on a date promptly after such telephone call, a meeting between Tenant's Treasurer and the representative of such Financial Organization. At such meeting any representative of the Financial Organization may review necessary documents pertaining to Tenant's financial status (or to any of Tenant's Sublessees) and Tenant's Treasurer shall satisfy any other financially related informational needs of the Financial Organization's representative in connection with Tenant's financial status or that of Tenant's Sublessees. At such meeting, Tenant's Treasurer shall produce for inspection all necessary documents pertaining to Tenant's financial status or that of Tenant's Sublessees. Tenant represents that it shall diligently and in good faith promptly cooperate with all reasonable requests of the Financial Organization. In no event, however, will such Financial Organization be provided copies of any financial statements of Tenant. All the foregoing obligations of Tenant contained in this Section shall be deemed a material obligation of Tenant.

41.6 With respect to all mortgages which may now or hereafter affect this Lease or the Building, Landlord, only after receipt of a written notice from Tenant specifically referencing this Section, shall use reasonable efforts (at no cost or expense to Landlord) to obtain a non-disturbance and attornment agreement in recordable form from the holder of any such mortgage, providing in substance that so long as Tenant shall have entered into possession and occupancy of the Demised Premises and commenced payment of Minimum Rent and additional rent due hereunder, and so long as no Event of Default then exists, Tenant's possession of the Demised Premises will not be disturbed during the term hereof, notwithstanding the foreclosure of any such mortgage, and Tenant will not be named as a party defendant in any foreclosure proceedings brought for the recovery of possession, it being hereby covenanted and agreed by Tenant that the holder of any such mortgage, or anyone claiming by, through or under said holder shall not be (i) liable for any act or omission of any prior landlord (including Landlord), or (ii) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), or (iii) bound by any Minimum Rent or additional rent or other charges which Tenant might have paid for more than the current month to a prior landlord (including Landlord), or (iv) bound by any modifications of this Lease (made on or after the date the non-disturbance and attornment agreement has been fully executed and unconditionally delivered among the parties thereto) without the prior written consent of such mortgagee.

41.7 The failure of Landlord to obtain a non-disturbance and attornment agreement shall not be deemed a default on Landlord's part of its obligations under Section 41.6 hereof, or impose any claim in favor of Tenant against Landlord by reason thereof, or affect the validity of this Lease. Tenant agrees to (i) execute and deliver to any mortgagee a non-disturbance and attornment agreement in form and substance satisfactory to and customarily adopted by such mortgagee and (ii) pay Landlord for all expenses reasonably incurred by Landlord in connection therewith, including legal expenses.



**42. INTENTIONALLY DELETED PRIOR TO EXECUTION**

**43. INTENTIONALLY DELETED PRIOR TO EXECUTION**

**44. CORPORATE AUTHORITY**

44.1 Each of the undersigned for Tenant represents that the person executing and delivering this Lease for Tenant has been duly authorized to enter into this Lease and that the execution and delivery of this Lease does not and shall not violate any provision of any by-law, agreement, order, judgment, governmental regulation or any other obligation to which Tenant is subject.

44.2 Upon the request of Landlord or Managing Agent, Tenant shall promptly deliver an affidavit or certification by its secretary, assistant secretary or other appropriate person to the above effect.

44.3 Throughout the term of this Lease, Tenant shall maintain its good standing in its organizational jurisdiction and in the State of New Jersey.

**45. MANAGING AGENT**

45.1 Landlord has contracted to have Bellemead Management Co., Inc. be the Managing Agent for the Term of the Lease.

45.2 Subject to Section 45.4 hereof, upon the conveyance of title in and to the Building from Bellemead Development Corporation to the immediate purchaser of Bellemead Development Corporation's interest in the Building, the Managing Agent shall be Bellemead Management Co., Inc.

45.3 Nothing contained in this Article nor any notices pursuant to this Article shall in any way modify or amend any other written agreement to which Landlord and Managing Agent are parties.

45.4 If Tenant is dissatisfied with the manner in which Landlord's Managing Agent is discharging Landlord's duties under the Lease, Tenant may give Landlord written notice of such dissatisfaction. Should Landlord receive a detailed written notice of explanation from Tenant setting forth with specificity the reasons for Tenant's dissatisfaction, then, Landlord and Tenant shall thereafter meet to discuss those issues with which Tenant is dissatisfied. If, within one hundred twenty (120) days after such meeting is concluded, Landlord has failed to commence a course of action intended to remedy the sources of Tenant's dissatisfaction with Landlord's Managing Agent, Tenant may request in writing that Landlord (1) dismiss its existing Managing Agent and (2) engage a company reasonably satisfactory to both Landlord and Tenant as a substitute Managing Agent. If Landlord receives such a written request from Tenant and Tenant has not breached any term of the Lease, then, Landlord and Tenant shall in good faith jointly endeavor to identify a reputable, qualified and experienced management company interested in being retained by Landlord as its Managing Agent. Only if both Landlord and Tenant approve in writing such Building management company, then, Landlord shall hire that company at Tenant's expense, as Landlord's Managing Agent. The fees, salaries and other compensation of the Managing Agent hired by Landlord shall constitute an Operating Cost. Any expense that Landlord reasonably incurs as a result of dismissing its existing Managing Agent (or any laborer, materialman or service provider) and any expense that Landlord reasonably incurs as a result of engaging a substitute Managing Agent (or any laborer, materialman or service provider) shall constitute an Operating Cost.

#### **46. BROKER**

46.1 Tenant represents that no real estate broker other than the Broker(s) (if any) listed under Section 1.1(r) is responsible for bringing about, or negotiating, this Lease; and Tenant has not dealt with any other broker, agent, salesperson, leasing consultant, or similar person in connection with the Demised Premises.

46.2 In accordance with the foregoing representation, Tenant agrees to defend, indemnify and hold harmless the Landlord, its affiliates and/or subsidiaries, partners and officers from any legal action, expense or liability (including attorney's fees) arising out of any claim for commission by any person other than the Broker claiming or alleging to have acted on behalf of or to have dealt with Tenant.

#### **47. NOTICES**

47.1 All notices, which may or are required to be given by either party hereunder to the other, shall be in writing.

47.2 All notices by Landlord to Tenant shall be deemed properly given only if sent by Landlord or its Managing Agent and mailed by registered or certified mail, return receipt requested, postage prepaid, or by reliable, independent courier, with guaranteed next-business-day delivery, addressed to Tenant at the address set forth in Article 1 prior to the Commencement Date, and at the Demised Premises subsequent to the Commencement Date, or to such other address as Tenant may from time to time designate by written notice to Landlord.

47.3 All notices by Tenant to Landlord shall be deemed properly given only if sent by registered or certified mail, return receipt requested, postage prepaid, or by reliable, independent courier with guaranteed next-business-day delivery, addressed to Landlord at the address set forth in Article 1 hereof and, at the prior written request of Landlord or Managing Agent to such other persons and/or addresses as Landlord or its Managing Agent may from time to time designate by written notice to Tenant.

47.4 All notices referred to hereunder shall be deemed given and received two (2) days after the date said notice is mailed by United States registered or certified mail as aforesaid, in any post office regularly maintained by the United States Government, or upon actual receipt if sent by independent courier.

47.5 Notwithstanding the other provisions of this Article, any written notice under this Lease may be personally served upon an officer or partner of Landlord or Tenant, in which case such notice shall be deemed given when delivered and receipted.

#### **48. INTERPRETATION**

48.1 If any of the terms or provisions of this Lease, or the application thereof to any party or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to parties or circumstances other than to those as to whom or to which it is held invalid or unenforceable, shall not be affected thereby. If any time period stated herein shall be in contravention of any Law, such time period shall be modified to be that time period permitted by such Law which is nearest to the time period stated herein. Each term and provision of this Lease shall be interpreted so that it is valid and enforceable to the fullest extent permitted by Law, in order to reflect the agreement of the parties as expressed herein.

48.2 The term "this Lease" shall include all the Exhibits and written amendments hereto or thereto. The terms "herein", "hereunder", "hereof", "herewith", and "hereto" shall refer to this Lease.

48.3 Time is of the essence with respect to the observance and performance of every provision hereof regarding the payment of money to be observed and performed by Tenant.

48.4 This Lease shall be governed by, construed under and enforced pursuant to the Laws of the State of New Jersey.

48.5 Tenant acknowledges that this Lease represents a written memorial of the terms negotiated by Landlord and Tenant, and Landlord and Tenant agree that this Lease shall be given a fair and reasonable construction in accordance with the parties' intent as expressed herein, without regard to any presumption or other rule requiring construction against the party electing to cause this Lease to be drafted or prepared.

48.6 The Article titles or content organization of this Lease exist only as a matter of reference or convenience and in no way define, limit, extend or describe the scope of this Lease or the intent of any of the provisions hereof.

48.7 Tenant acknowledges and agrees that it has had the assistance of counsel in the review, negotiation and execution of this Lease or has waived its opportunity to employ counsel for such purpose.

48.8 Neither this Lease nor any memorandum hereof shall be recorded by Tenant. Any violation of this provision shall be deemed an Event of Default hereunder.

48.9 Notwithstanding anything contained to the contrary elsewhere in this Lease, all payments owing by one party to the other under this Lease, except Minimum Rent, shall be due within thirty (30) days after the party required to make the payment receives an invoice therefor. All costs, expenses and fees due by one party to the other under this Lease shall be reasonably incurred by the party entitled to payment thereof.

#### **49. NO OFFER, AGREEMENT OR REPRESENTATIONS**

49.1 No broker or agent nor any salesperson or employee of either has authority to make or agree to make a lease on behalf of the Landlord named herein or any other agreement or undertaking in connection herewith, including, but not limited to the modification, amendment of or cancellation of a lease.

49.2 Intentionally Deleted Prior To Execution.

49.3 All prior undertakings and agreements between Landlord and Tenant are merged in this Lease and it completely expresses their agreement with respect to the subject matter hereof. This Lease has been entered into after full investigation, neither party relying upon any statement or assumption not completely set forth herein. No representations or promises shall be binding on the parties hereto except those representations and promises contained in a fully-executed copy of this document or in some future writing signed by Landlord and Tenant.

#### **50. APPLICABILITY TO HEIRS AND ASSIGNS**

50.1 The provisions of this Lease shall apply to, bind and inure to the benefit of Landlord and Tenant, and their respective heirs, legal representatives, trustees, successors and assigns, subject to the constraints on alienation and limits on liability contained herein.

#### **51. RENEWAL OPTION**

51.1 Subject to the provisions of Section 51.2 below,

Tenant shall have the option to renew this Lease for the number of Renewal Terms set forth in Section 1.1(t) (the "Renewal Options"), the first of which Renewal Terms shall commence upon the expiration of the Initial Term. Subject to the determination of Minimum Rent as set forth below, the terms, covenants and conditions during the Initial Term shall be projected and carried over into each subsequent renewal term (a "Renewal Term"), except as specifically set forth hereinafter to the contrary.

51.2 Tenant's Renewal Options, as provided in Sections 1.1 and 51.1 above, shall be strictly conditioned upon and subject to the following, each of which shall be considered material hereto:

(a) Tenant shall notify Landlord in writing ("Tenant's Renewal Notice") of Tenant's exercise of its option to renew this Lease at least nine (9) months, but not more than twelve (12) months, prior to the expiration of the then current Term;

(b) At the time Landlord receives Tenant's Renewal Notice as provided in Section 51.2 (a) above, and at the expiration of the Initial Term or the first Renewal Term, as the case may be, Tenant shall not be in Default under the terms or provisions of this Lease, and the Tenant named in Section 1.1 hereof shall be in occupancy of the entire Demised Premises. The conditions contained in this Section 51.2 (b) may be waived by Landlord at its sole discretion and may not be used by Tenant as a means to negate the effectiveness of Tenant's exercise of this option to renew;

(c) Tenant shall have no further renewal option other than the options to extend for the Renewal Terms as set forth in Section 1.1(t);

(d) Any Renewal Options shall be deemed personal to the Tenant named on the first page of this Lease and may not be assigned or assumed;

(e) Landlord shall have no obligation to do any work or perform any special services for any Renewal Term with respect to the Demised Premises or the remainder of the Real Estate, which Tenant agrees to accept in their then "as is" condition;

(f) At the request of either party, Landlord and Tenant shall promptly execute and return to the other party a written amendment to this Lease memorializing the commencement, Minimum Rent payable, and Expiration Date of the respective Renewal Term; and

(g) No later than thirty (30) days prior to the commencement of any Renewal Term, Tenant shall deposit with Landlord such additional sums as may be required to increase any Security then held by Landlord proportionate to the increase in the Minimum Rent during that Renewal Term.

51.3 (a) Landlord shall notify Tenant ("Landlord's Determination Notice") of Landlord's determination of the Market Rent (as hereinafter defined) within thirty (30) days after Landlord's receipt of Tenant's Renewal Notice. If Tenant disagrees with Landlord's determination of Market Rent, Tenant shall notify Landlord ("Tenant's Notice of Disagreement") within fifteen (15) days of receipt of Landlord's Determination Notice. Time shall be of the essence with respect to Tenant's Notice of Disagreement, and the failure of Tenant to give such notice specifically as provided below within the time period set forth above shall conclusively be deemed an acceptance by Tenant of the Market Rent as determined by Landlord and a waiver by Tenant of any right to dispute such Market Rent.

(b) Tenant's Notice of Disagreement, shall contain either (1) a cancellation of Tenant's exercise of its Renewal

Option (which cancellation shall operate as a cancellation of all subsequent Renewal Options, if any), or (2) a request to submit the determination of Market Rent to arbitration as provided below.

(c) Landlord and Tenant shall, within thirty (30) days of the date on which Tenant's Notice of Disagreement under Subsection 51.3(b)(2) is given, each appoint an Appraiser (hereinafter defined) for the purpose of determining the Market Rent. An "Appraiser" shall mean a duly qualified impartial real estate appraiser having at least ten (10) years' experience in the area in which the Demised Premises are located. In the event that the two (2) Appraisers so appointed fail to agree as to the Market Rent within a period of thirty (30) days after the appointment of the second Appraiser, such two (2) Appraisers shall forthwith appoint a third Appraiser who alone shall make a determination of Market Rent within thirty (30) days thereafter. If such two Appraisers fail to agree upon such third Appraiser within ten (10) days following the last thirty (30) day period, such third Appraiser shall be appointed by the presiding Judge of the Superior Court of the State of New Jersey for the County in which the Real Estate is located. Such two Appraisers or third Appraiser, as the case may be, shall proceed with all reasonable dispatch to determine the Market Rent. The decision of such two Appraisers or third Appraiser shall be final and shall be unappealable, absent any showing of fraud by such Appraiser(s); such decision shall be in writing and a copy shall be delivered simultaneously to Landlord and to Tenant.

(d) If such two Appraisers or third Appraiser, as the case may be, shall fail to deliver a decision as set forth above prior to the commencement of any Renewal Term, Tenant shall continue to pay to Landlord thereafter on the first day of each month, until the decision of the Appraiser(s) is rendered, the Minimum Rent payable under this Lease as of the last day of the term preceding the Renewal Term in question plus any amounts payable by Tenant pursuant to Article 6, until such decision is so delivered. Once the rental is determined for the Renewal Term by the Appraiser(s), an equitable adjustment, if necessary and appropriate, shall be computed and promptly remitted to the party entitled to same.

(e) Landlord and Tenant shall be responsible for and shall pay the fee of the Appraiser appointed by each of them respectively, and Landlord and Tenant shall share equally the fee of the third Appraiser, if any.

(f) Promptly upon determination of the Market Rent for the respective Renewal Term, Tenant shall execute and deliver to Landlord or Managing Agent an amendment to this Lease prepared by Landlord setting forth the terms of the respective Renewal Term.

51.4 (a) The Minimum Rent during each Renewal Term shall be the greater of (1) Market Rent (as defined in clause (b) below) or (2) the Minimum Rent as of the last day of the immediately-preceding term.

(b) For purposes of this Article, "Market Rent" shall mean the projected fair market rent for office space containing the Rentable size of the Demised Premises (during the respective Renewal Term), as of the commencement date of the applicable Renewal Term, based upon the rents generally in effect for first class office space in the area in which the Real Estate is located. Market Rent shall be determined on what is commonly known as a "net" basis; that is, in computing Market Rent, it shall be assumed that all real estate taxes and operating expenditures are passed through to the Tenant as separate additional charges.

(c) The Minimum Rent for each the Renewal Term shall be increased from time to time thereafter as provided in this Lease, including as provided in Article 6 hereof.

Tenant waives any claims or action against Landlord or its successor in title in the event that the renewal provided for in this Lease is made impossible because of the taking of the Demised Premises in whole or in part for public use by condemnation. Tenant further agrees to waive any demand or claim for any award or allowance or any part thereof granted to Landlord as compensation for such condemnation.

## **52. EXTERIOR SIGNAGE**

52.1 Landlord, at Tenant's sole cost and expense and only after Landlord receives from Tenant plans and specifications acceptable to Landlord, shall include the name and corporate logotype of Tenant on a portion of the remaining unused facia of the outside Building identification monument (the "Monument") that stands on the Real Estate as of the Commencement Date. Landlord shall determine in its reasonable discretion (after consultation with Tenant) the color, size and style of any signage on the Monument. Tenant shall, at its sole cost and expense, fully and promptly cooperate with Landlord in connection with Landlord's efforts to obtain any necessary municipal approvals. If Tenant (i) breaches any term of the Lease, (ii) assigns the Lease, (iii) sublets all or any part of the Demised Premises and/or (iv) for any reason whatsoever occupies less than the entire Building, then, (A) Tenant shall have no rights and Landlord shall have no obligations under this Section and (B) if Tenant has already exercised its rights under this Section, then, Landlord may, at Tenant's expense, remove the name and/or corporate logotype of Tenant from the Monument and may restore, at Tenant's sole expense, any damage or injury that said removal may have caused. Upon the expiration or earlier termination of the Lease, Landlord may, at Tenant's expense, remove Tenant's name and/or logotype from the Monument and may restore, at Tenant's sole expense, any damage or injury that said removal may have caused. Tenant's obligation to pay Landlord in accordance with this Section shall survive the expiration or earlier termination of this Lease. If, by the date falling ten (10) days after the expiration or earlier termination of the Lease, (I) Tenant's name and corporate logotype are not removed from the Monument and (II) all damage or injury that said removal may have caused is not fully restored, then, Landlord may deem Tenant as a holdover tenant from said tenth (10th) day and hold Tenant liable under Article 21 hereof.

## **53. CHANGES IN BUILDING SERVICE**

53.1 So long as (i) Tenant has not breached any term of the Lease and (ii) the Building is entirely occupied by Tenant, then, Tenant may request that Landlord diminish, expand or otherwise modify any or all of the Building services described in Articles 24, 26 and 27 hereof and Exhibit C hereof. Subject to the prior sentence and provided the proposed diminution, expansion or modification of Building services is acceptable to Landlord, Landlord shall implement said change in Building services, in which case, Tenant shall be obligated for the balance of the Term of the Lease to pay Landlord, as an Operating Cost, any expense Landlord incurs in (a) altering its then existing level of Building service and (b) furnishing the new level of Building service. Should Tenant cease to occupy the entire Building, Landlord reserves the right to reasonably change the character and/or scope of any Building service so as to furnish Tenant with Landlord's then standard level of Building service.

53.2 If, however, Landlord receives from Tenant, within thirty (30) days after Tenant ceases to occupy the entire Building, a written notice requesting that Landlord continue to maintain for the balance of the term any above-standard Building service which Landlord had been providing prior to the date Tenant ceased to occupy the entire Building, then, in that case, Landlord shall continue to maintain said above-standard Building service, provided (1) Tenant has not breached any term of the Lease and, (2) Tenant pays upon demand as additional rent one hundred percent (100%) of

all costs whatsoever that Landlord incurs from time-to-time during the balance of the term in providing said above-standard Building service. To the extent an above-standard Building service affects tenant space, Tenant agrees that, subject to the terms of this Section, Landlord's obligation to continue providing such above-standard Building service after Tenant ceases to occupy the entire Building shall apply only to those portions of the Building occupied exclusively by Tenant. Should Landlord determine that an above-standard Building service is inappropriate for a multi-tenant building or in any way interferes with Landlord's ability to market all or any part of the Building, then, notwithstanding anything contained to the contrary in this Section, Landlord, after giving Tenant prior written notice, may discontinue providing any above-standard Building service.

IN WITNESS WHEREOF, the parties hereto have entered into this Lease as of the day first set forth above.

ATTESTED BY:

LANDLORD:  
BELLEMEAD DEVELOPMENT CORPORATION

/s/ Marc Leonard Ripp

By: /s/ Robert R. Martie

\_\_\_\_\_  
Marc Leonard Ripp  
Assistant Secretary

\_\_\_\_\_  
Robert R. Martie  
Vice President

APPLY CORPORATE SEAL HERE

ATTESTED BY:

MANAGING AGENT:  
BELLEMEAD MANAGEMENT CO., INC.

/s/ Marc Leonard Ripp

By: /s/ Robert R. Martie

\_\_\_\_\_  
Marc Leonard Ripp  
Assistant Secretary

\_\_\_\_\_  
Robert R. Martie  
Vice President

APPLY CORPORATE SEAL HERE

ATTESTED BY:

TENANT:  
HOFFMANN-La ROCHE INC.

/s/ Robert Koerner

By: /s/ [ILLEGIBLE] Gilgen

\_\_\_\_\_  
Name: Robert Koerner  
(Please Print)  
Title: Vice President, Finance & Administration  
(Please Print)

\_\_\_\_\_  
Name: [ILLEGIBLE] Gilgen  
(Please Print)  
Title: President  
(Please print)

APPLY CORPORATE SEAL HERE

Apprv'd As To Form LAW DEPT.

By: [ILLEGIBLE]

**EXHIBIT A**  
**(RENTAL PLAN)**



**LEGAL DESCRIPTION**

Being known as Lot 1 Block 421.04, in the Township of Parsippany, Morris County, New Jersey, and being more particularly described as follows:

Beginning at a point on the northerly sideline of U.S. Route 46 and running thence:

- (1) 141.90 feet along a curve to the right having a radius of 90.00 feet; thence
- (2) North 21 degrees 54 minutes 04 seconds East along the easterly sideline of Waterview Boulevard a distance of 193.78 feet; thence,
- (3) continuing along said sideline a distance of 490.52 feet along a curve to the right having a radius of 875.00 feet; thence,
- (4) departing said sideline South 45 degrees 40 minutes 58 seconds East a distance of 533.92 feet; thence,
- (5) South 77 degrees 16 minutes 20 seconds East a distance of 102.00 feet; thence,
- (6) South 18 degrees 35 minutes 37 seconds West a distance of 543.68 feet to the northerly sideline of U.S. Route 46; thence,
- (7) North 74 degrees 25 minutes 06 seconds West a distance of 94.87 feet along said sideline; thence,
- (8) North 69 degrees 53 minutes 36 seconds West a distance of 200.00 feet; thence,
- (9) North 68 degrees 25 minutes 56 seconds West a distance of 374.85 feet to the point and place of beginning.

Containing 10.56 acres more or less.

All as shown on a plan entitled "Final Plat-Waterview Corporate Centre-Section IV" prepared by Studer and McEldowney, P.A. filed at the Morris County Clerk's Office on February 23, 1993 as Map #5006.

## EXHIBIT E

### RULES AND REGULATIONS

1. The sidewalks, entrances, driveways, passageways, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by Tenant or used for storage or for any other purpose other than for ingress to or egress from the Demised Premises and for delivery of merchandise and equipment to or from the Demised Premises in a prompt and efficient manner, using elevators and passageways designated for such delivery by Landlord. There shall not be used in any space, or in the public hall of the Building, either by Tenant or by jobbers or others in the delivery or receipt of merchandise, any hand-trucks, except those equipped with rubber tires and sideguards. Tenant shall provide protection of all floor surfaces during the moving of furniture or heavy equipment as may be reasonably required by Landlord or its Managing Agent.
2. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the Demised Premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Landlord. Landlord reserves the right to inspect all freight to be brought into the Building and to exclude from the Building all freight which violates any of these Rules and Regulations or this Lease.
3. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed and no sweepings, rubbish, rags, sanitary napkins, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by Tenant.
4. No carpet, rug or other article shall be hung or shaken out of any window of the Building; and Tenant shall not sweep or throw or permit to be swept or thrown from the Demised Premises any dirt or other substances into any of the corridors or halls, elevators, or out of the doors or windows or stairways of the Building and Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Demised Premises, or permit or suffer the Demised Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors, and/or vibrations, or interfere in any way with other tenants or those having business therein, nor shall any animals or birds be kept in or about the Building. Smoking or carrying lighted cigars or cigarettes in the elevators or other common areas of the Building is prohibited.
5. No awnings, signs or other projections shall be attached to the outside walls of the Building without the prior written consent of Landlord, which may be withheld at Landlord's sole discretion.
6. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside of the Demised Premises or the Building or on the inside of the Demised Premises if the same is visible from the outside of the Demised Premises without the prior written consent of Landlord, except that the name of Tenant may appear on the entrance door of the Demised Premises in lettering approved by Landlord. In the event of the violation of the foregoing by Tenant, Landlord may remove and dispose of same without any liability, and may charge the expense incurred by such removal to Tenant. Any interior listings and directories shall be inscribed, painted or affixed for Tenant only by Landlord or Managing Agent at the expense of such Tenant, and shall be of a size, color and style acceptable to Landlord or Managing Agent.
7. Tenant shall not mark, paint, drill into, or in any way deface any part of the Demised Premises or the Building. No boring,

cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct. Tenant shall not lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the Demised Premises, and, if linoleum or other similar floor covering is desired to be used, an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, pursuant to Landlord's direction, the use of cement or other similar adhesive material being expressly prohibited.

8. No additional locks, bolts or alarms of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any changes be made in existing locks: or mechanisms thereof. Tenant shall give Landlord or Managing Agent a duplicate or master key or access card or code for each and every door in the Demised Premises. Tenant must, upon the termination of his tenancy, restore to Landlord all keys or access cards to the Demised Premises, the Building, and any doors therein, either furnished to, or otherwise procured by, Tenant, and in the event of the loss of any keys or access cards, so furnished, Tenant shall pay to Landlord the cost thereof. Tenant, at its expense, shall be responsible for repair to all doors and locks which are in violation of this Rule, and shall pay any alarm fee resulting from Landlord or Managing's Agent's entrance into the Demised Premises as permitted under this Lease.

9. Canvassing, soliciting, pamphletting and peddling in the Building and about the sidewalks, driveways and parking areas adjacent thereto are prohibited and Tenant shall cooperate to prevent the same. Tenant shall report all peddlers, solicitors and beggars to the Managing Agent or as Landlord otherwise requests.

10. Landlord reserves the right, but shall have no obligation, to exclude from the Building between the hours of 6 P.M. and 8 A.M. and at all hours on Sundays, and Legal Holidays all persons who do not present a pass to the Building signed by Landlord. Landlord will furnish passes to persons for whom Tenant requests same in writing. Tenant shall be responsible for all persons for whom it requests such pass and shall be liable to Landlord for all acts of such persons.

11. Landlord shall have the right to prohibit any advertising by Tenant which in Landlord's opinion, tends to impair the reputation of the Building or its desirability as a Building for first-class offices, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.

12. Tenant shall not bring or permit to be brought or kept in or on the Demised Premises, any inflammable, combustible or explosive fluid, material, chemical or substance, or any hazardous substance in violation of Law or of this Lease, or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the Demised Premises.

13. If the Building contains central air conditioning and ventilation, Tenant agrees to keep all windows and exterior doors closed at all times and to abide by all rules and regulations issued by the Landlord with respect to such services.

14. Tenant shall not move any safe, heavy machinery, heavy equipment, bulky matter, or fixtures into or out of the Building without Landlord's prior written consent. If such safe, machinery, equipment, bulky matter or fixtures requires special handling, all work in connection therewith shall comply with all Laws applicable thereto and shall be done during such hours as Landlord may designate.

15. To the extent required by applicable Laws or Governmental Authorities, Tenant shall separate its rubbish into any required

categories including, but not limited to, food products, paper, solid wastes, metals and glass. Any excess trash or garbage which Tenant generates in excess of that generated by a normal office user, and all garbage from Tenant's food service operation, if any, shall be removed by the Landlord upon notice from Tenant, at Tenant's sole cost and expense. Tenant shall not dispose of any hazardous substance or waste in wastebaskets, boxes, or in Landlord's dumpster or trash compactor.

16. Tenant shall take reasonable action to ensure that its visitors do not (a) utilize any parking spaces designated for the use of others, nor (b) park in any driveways, fire lanes or other areas not striped for vehicular parking.

17. No portion of the driveways or parking areas serving the Building shall be used for washing, maintaining, oil changing, repairing, or installing or replacing parts in any vehicle, except to the extent that repairs are reasonably necessary to fix a flat tire or start an engine enabling the vehicle to be driven from the Real Estate. No vehicle shall be towed from the Real Estate by Tenant, its or its visitors, except after Tenant informs Landlord or the Managing Agent of such removal. Any vehicle parked on the Real Estate without proper registration and inspection or for longer than seven (7) continuous days may be removed by Landlord, which removal shall be at Tenant's expense if the property owned or used by of Tenant, or its visitors or invitees and is not removed within five (5) business days after notice to Tenant to do so.

**FIRST AMENDMENT TO LEASE**

THIS FIRST AMENDMENT TO LEASE (“First Amendment” or “Amendment”) is executed on the dates set forth below to be effective on the first day of the month following the month in which this Amendment is executed (the “Amendment Effective Date”) by and between DSM NUTRITIONAL PRODUCTS, INC. (“*Tenant*”) and FALK US PROPERTY INCOME FUND, L.P. (“*Landlord*”).

**WITNESSETH**

WHEREAS, Bellemead Development Corporation (“*Original Landlord*”) and Hoffman-LaRoche Inc. (“*Original Tenant*”) entered into that certain Standard Form of Net Office Lease, dated November 6, 1996 (the “*Lease*”) whereby Original Landlord leased to Original Tenant a building (the “*Building*”) consisting of approximately 106,680 rentable square feet located at 45 Waterview Boulevard, Parsippany, New Jersey (“*Demised Premises*”); and

WHEREAS, Original Tenant assigned its rights under the Lease to Roche Vitamins, Inc. (“*Roche Vitamins*”) by assignment dated effective as of January 1, 1997; and

WHEREAS, Landlord purchased the Demised Premises from Original Landlord, and Original Landlord assigned its rights under the Lease to Landlord by Assignment and Assumption Agreement, dated as of December 15, 1997; and

WHEREAS, Original Tenant, Roche Vitamins, and Tenant entered into a Assignment and Assumption of Lease, effective as of September 30, 2003 whereby Roche Vitamins and Original Tenant assigned their rights under the Lease to Tenant, who purchased all or substantially all of Roche Vitamin’s assets and assumed the obligations of Roche Vitamins and Original Tenant under the Lease; and

WHEREAS, the Initial Term of the Lease will expire as of the 31<sup>st</sup> day of August, 2007, but Landlord and Tenant have agreed to extend the Initial Term for an additional ten (10) years, and amend the Lease as more particularly described below.

NOW THEREFORE, the parties hereto agree to modify the terms of the Lease as follows, to be effective as of the Amendment Effective Date:

1. This Amendment shall be subject at all times to all of the covenants, agreements, terms, provisions and conditions of the Lease, and any amendments and supplements thereto, except as specifically set forth below.

2. Section (k) of the Basic Definitions captioned "Term of Lease" shall be amended by deleting "10 years" therein and inserting in lieu thereof "through August 31, 2017".

3. Section (m) of the Basic Definitions captioned "Minimum Rent" shall be amended by deleting any reference to the period 4/1/2005 through 8/31/2007 and adding the following:

<u>PERIOD</u>	<u>ANNUAL MINIMUM RENT</u>	<u>MONTHLY MINIMUM RENT</u>
4/1/2005 to 3/31/2006	\$ 1,781,556.00	\$ 148,463.00
4/1/2006 to 3/31/2007	\$ 1,834,896.00	\$ 152,908.00
4/1/2007 to 3/31/2008	\$ 1,888,236.00	\$ 157,353.00
4/1/2008 to 3/31/2009	\$ 1,941,576.00	\$ 161,798.00
4/1/2009 to 3/31/2010	\$ 1,994,916.00	\$ 166,243.00
4/1/2010 to 3/31/2011	\$ 2,048,256.00	\$ 170,688.00
4/1/2011 to 3/31/2012	\$ 2,101,596.00	\$ 175,133.00
4/1/2012 to 3/31/2013	\$ 2,154,936.00	\$ 179,578.00
4/1/2013 to 3/31/2014	\$ 2,208,276.00	\$ 184,023.00
4/1/2014 to 3/31/2015	\$ 2,261,616.00	\$ 188,468.00
4/1/2015 to 3/31/2016	\$ 2,314,956.00	\$ 192,913.00
4/1/2016 to 3/31/2016	\$ 2,368,296.00	\$ 197,358.00
4/1/2017 to 8/31/2017	\$ 2,378,964.00	\$ 198,247.00

4. Section (p) of the Basic Definitions captioned "Permitted Use" shall be amended by deleting the language therein and inserting the following in lieu thereof: "General office and other lawful purposes incidental to general office use, subject to the express use limitations set forth in Section 9.2, Section 11 and elsewhere in this Lease".

5. Section (r) of the Basic Definitions captioned "Broker" shall be amended by deleting the language therein and inserting the following in lieu thereof:

CB Richard Ellis  
Park 80 West, Plaza Two  
6<sup>th</sup> Floor  
Saddle Brook, New Jersey 07663

6. Provided Tenant is not in default under the Lease (beyond any applicable grace or cure period), Landlord shall pay to Tenant the sum of \$853,440.00 (calculated on the basis of \$8.00 per square foot of the Demised Premises) ("**Renewal Allowance**") not later than thirty (30) days after the date on which this Amendment is signed by Landlord. The Renewal Allowance shall be used by Tenant in its discretion for the design and construction of the Demised Premises, consultant fees and commissions incurred by Tenant in connection with this First Amendment, and any additional design and construction within the Demised Premises.

7. Section 6.2(c)(II)(1) of the Lease captioned "Taxes: Operating Costs: Reimbursements" shall be amended by deleting "(as determined by Landlord)" and inserting in lieu thereof "(as reasonably determined by Landlord in accordance with generally accepted accounting principles consistently applied)."

8. Section 13 of the Lease captioned "Tenant's Work and Installations" shall be amended as follows:

(a) Section 13.1(b)(ii) shall not apply as long as Tenant leases 100% of the Building.

(b) Notwithstanding anything set forth in Section 13 to the contrary, in connection with Tenant's performance of permitted alterations to the Demised Premises, (1) Landlord shall reasonably cooperate with Tenant as reasonably necessary in order for Tenant to submit for and obtain all necessary permits, at no cost to Landlord, and (2) any plan review, construction management or construction supervisory fee (if any) charged by Landlord shall be competitive with such reasonable fees typically charged by others for similar services for comparable office buildings in the Parsippany, New Jersey area.

9. Section 16 of the Lease captioned "Assignment and Subletting" shall be amended as follows:

(a) Section 16.5(c) and Section 16.5 (f) of the Lease shall not apply as long as Tenant leases 100% of the Building;

(b) the sentence following Section 16.5(f) shall not apply as long as Tenant leases 100% of the Building; and

(c) Section 16.6 shall be amended by deleting "sixty (60%) percent" therein and inserting in lieu thereof "fifty percent (50%)", and by adding the following at the end of said section: ", provided, any reasonable consideration attributable solely to, and received by Tenant from any sublessee or assignee for, personal property of Tenant shall not be included in determining the amount of consideration received by Tenant to be shared between Landlord and Tenant as set forth herein".

10. Notwithstanding anything set forth in the Lease to the contrary, including, without limitation Section 23, Tenant may, in Tenant's reasonable discretion, select any and all properly licensed contractors to complete any improvements to be performed on the Demised Premises by or on behalf of Tenant, subject to Landlord's prior written consent, such consent not to be unreasonably withheld, provided (i) such work performed is so done in accordance with all applicable laws, rules, regulations, ordinances, and statutes, as well as plans and specifications reasonably approved by Landlord prior to the commencement of any such Tenant improvements, and (ii) Tenant receives all required permits and licenses in connection therewith. In the event Tenant elects to have Landlord, including Landlord's designated representative, as its construction manager, or, in the event Tenant selects another firm to acts as its construction

manager, then Landlord's construction management or supervisory fee, as applicable, shall be reasonably competitive with such fees typically charged by others for similar construction management or supervisory work with respect to comparable buildings in the Parsippany, New Jersey area.

11. Section 34.1(b) of the Lease is hereby deleted in its entirety; provided, that, if Tenant (including its permitted subtenants and its assignee) ceases to continuously conduct business in at least twenty-five percent (25%) of the Demised Premises for a period of more than sixty (60) continuous days for any reason other than a casualty or national emergency and fails to resume operations in more than twenty-five percent (25%) of the Demised Premises within sixty (60) days after Tenant's receipt of written notice from Landlord, then Landlord may terminate this Lease upon written notice to Tenant, to be effective not later one hundred twenty (120) days from the date of Landlord's termination notice but such failure to operate shall not constitute a default or Event of Default under this Lease as long as Tenant otherwise complies with the Lease.

12. Section 45 of the Lease captioned "Managing Agent" shall be amended as follows:

(a) Section 45.1 is hereby deleted and the following shall be substituted in lieu thereof: "The Gale Company, formerly known as Gale & Wentworth, LLC (the "**Current Property Manager**") has been managing the Demised Premises since the date of Landlord's purchase of the Demised Premises.

(b) Sections 45.2 and 45.3 are hereby deleted.

(c) A new Section 45.5 shall be added as follows:

45.5 Notwithstanding anything set forth therein to the contrary, as long as Tenant leases 100% of the Building, Tenant may elect to serve as "Managing Agent" by "self managing" the Demised Premises as long as the following conditions and requirements are satisfied at all times:

(i) Tenant shall give to Landlord a written notice that Tenant desires to self-manage the Demised Premises, accompanied by (1) information to indicate that Tenant is prepared to assume and has on its staff qualified and trained personnel to fulfill the responsibilities associated with managing the Building consistent with first class building standards in the Parsippany, New Jersey area (or intends to engage a qualified, experienced independent property management company to perform the duties of the Managing Agent) ("**Tenant's Manager**"), and (2) an Annual Business Plan (as defined below) for the then current calendar year (collectively, a "**Self Management Notice**");

(ii) Landlord shall approve the Self Management Notice (including the independent property management company, if applicable), such approval not to be unreasonably withheld;



- (iii) Within three (3) business days after Landlord's approval of the Self Management Notice in all respects, Landlord shall terminate its Property Management Agreement with the Current Property Manager without charge to Tenant, to be effective on the date (the "**Self Management Effective Date**") that is sixty (60) days after the Current Property Manager's receipt of written notice of termination from Landlord;
- (iv) Effective as of the Self Management Commencement Date, Landlord shall assign to Tenant, and Tenant shall assume Landlord's obligations under, all assignable service and supplier contracts relating to the Demised Premises;
- (v) On and after the Self Management Commencement Date, Tenant shall (i) perform or cause to be performed all duties of Landlord relating to services provided by Landlord under the Lease and relating to the condition, operation, maintenance and security of the Building, other than replacement of those portions of the Building described in Section 6.2(c)(I) of the Lease, and (ii) pay all Operating Costs directly, excluding Taxes and Landlord's insurance premiums that Landlord shall continue to pay and seek reimbursement from Tenant as provided in the Lease. Tenant shall discharge such duties under this Lease as Managing Agent with the care, skill, prudence and diligence customarily exercised by reputable real estate managers and owners acting in a like capacity and with familiarity with such matters as would customarily be used in the conduct of an enterprise of a like character and with like aims for Class A office buildings in Parsippany, New Jersey (the "**Performance Standard**");
- (vi) Tenant shall select, arrange for, monitor and replace independent contractors with respect to the Demised Premises as necessary or desirable to provide for the proper management, maintenance, repair and operation of the Demised Premises pursuant to contracts ("**Service Contracts**") containing such terms as are commercially reasonable for the operation and proper maintenance of the Demised Premises consistent with the Performance Standard. Unless otherwise approved by Landlord, all new Service Contracts shall be terminable upon no less than thirty (30) days' notice. Tenant shall use commercially reasonable efforts to cause all service providers to adhere to the terms and conditions of their respective Service Contracts and shall report known material deviations to Landlord;
- (vii) On or before December 1 of each calendar year after the Self Management Commencement Date (for the period January 1 - December 31 of the next succeeding year, i.e., the Fiscal Year), prepare an annual business plan with respect to the Demised Premises for approval by Landlord ("**Annual Business Plan**"), such approval not to be

unreasonably withheld, delayed or conditioned. The Annual Business Plan shall include (i) recommendations with respect to operation, maintenance and repair of the Building and, as necessary, replacement of Building components, including capital items, if any, and (ii) an operating budget and capital budget for the Demised Premises. Notwithstanding anything contained in the Lease to the contrary, Tenant shall make and implement all changes to the Annual Business Plan that may be reasonably requested by Landlord from time to time, including completion of capital improvements reasonably required by Landlord, such capital improvements to be handled in accordance with Section 6.2(c)(II) of the Lease;

(viii) Tenant shall provide Landlord with (a) quarterly financial statements showing all expenditures by Tenant in performing the duties assumed by Tenant in connection with self-management; and (b) annual reports with respect to the operation and performance of the Demised Premises, including a description of the operation of the Demised Premises, an analysis of any material variances from the applicable Annual Business Plan, and any suggested modifications to the applicable Annual Business Plan (including the budgets comprising a part thereof);

(ix) At Landlord's request, Tenant shall meet with Landlord at the Building to discuss the general operation of the Demised Premises and the reports described above;

(x) Landlord shall have the right to inspect the Building on a quarterly basis, by appointment upon at least forty-eight (48) hours prior written notice, except in the case of an emergency. After each inspection, Landlord shall notify Tenant in writing in the event Landlord observes any failure to meet the Performance Standard and Tenant shall promptly correct any deficiency identified by Landlord;

(xi) Tenant shall, promptly after becoming aware of same, notify Landlord of any event, respecting the Demised Premises, which shall involve (a) material damage to the Demised Premises, (b) criminal activity at the Demised Premises, (c) litigation against Landlord or Tenant relating to the ownership or management of the Demised Premises, and (d) an event adversely affecting the Demised Premises which in Tenant's opinion will result in material reduction or increase in aggregate expenditures relating to the operation, maintenance or repair of the Building;

(xii) Tenant shall maintain a complete and accurate set of files, books and records of all business activities and operations conducted by Tenant in connection with Tenant's performance as Managing Agent under the Lease. All such books and records shall be open to inspection and photocopying by Landlord and its designees at the office of the Tenant

during normal business hours at all times during the Term hereof and for a period of three (3) years following the Termination. In addition, Tenant shall be afforded access to the books and records of the business activities and operations relating to Tenant's serving as Managing Agent and such books and records shall be open to inspection and photocopying by Tenant at the office of Landlord during normal business hours at all times during the term of the Lease and for a period of three (3) years following the termination of the Lease;

(xiii) Without limitation of other remedies available to Landlord under Section 35 and 36 of this Lease, Landlord may terminate Tenant's right to self-manage during the remainder of the term and any renewal term if Tenant shall fail to perform its obligations under this Section 45.5 and such failure is not cured within the Cure Period (as defined in Section 34.2 of the Lease) including any extension of the Cure Period to which Tenant is entitled under said Section 34.2. On the effective date of termination, Tenant promptly shall deliver to Landlord a full accounting showing all expenses paid on account of the Demised Premises. All books and records as pertain to the Demised Premises (other than confidential information or information or materials proprietary to Tenant) shall be delivered to Landlord upon or within a reasonable period of time after the effective date of termination;

(xiv) In the performance of its duties as Managing Agent hereunder, Tenant shall be an independent contractor and not an employee, partner or joint venturer of Landlord. Tenant is, and shall remain at all times during the term of the Lease with no power or authority to bind or contract for Landlord unless Landlord specifically grants such authority in writing; and

(xv) As an Operating Cost, Tenant currently reimburses Landlord for an annual asset management fee equal to one percent (1%) of the Minimum Rent and Additional Rent paid by Tenant (the "**Asset Management Fee**"). If Tenant shall elect to self-manage in accordance with this Section 45.5, no Asset Management Fee shall be payable.

13. In accordance with Section 46 captioned "Broker", Tenant represents that only CB Richard Ellis, Inc. ("**Tenant's Broker**") has acted as its exclusive representative for this transaction. Tenant, at its sole cost and expense, shall pay Tenant's Broker a brokerage commission in connection with the negotiation and execution of this Amendment, and that the terms and conditions set forth in Section 46 shall be in effect as to the foregoing Tenant Broker.

14. Tenant shall have two (2) successive options (each a “**Renewal Option**”) to renew the term of the Lease for a period of five (5) years each in accordance with and subject to the conditions and requirements set forth in Section 51 of the Lease captioned “Renewal Option” except for the following:

(a) The Minimum Rent applicable to each renewal period shall be determined in accordance with Section 51.3, provided that Section 51.4(a) shall be deleted and the following shall be inserted in lieu thereof: “The Minimum Rent during each Renewal Term shall be the fair market rental value of the Building prevailing six (6) months prior to the commencement of any such renewal term determined by reference to comparable office buildings of similar age, style and use within the Parsippany, New Jersey competitive market area”.

(b) In Section 51.2(b), the phrase “and the Tenant named in Section 1.1 hereof shall be in occupancy of the entire Demised Premises” shall be deleted.

(c) The text of Section 51.2(d) shall be deleted and the following shall be substituted in lieu thereof: “The Renewal Options shall inure to the benefit of Tenant and its permitted successors and assigns in accordance with Section 16 of this Lease; provided, that the foregoing shall not be construed to grant to any subtenant or licensee the right to exercise any Renewal Option, it being agreed that such right shall reside solely the person or entity that has direct privity of contract with Landlord and holds the rights of the Tenant under this Lease.”

15. The Lease shall be amended to add a new Section 54 as follows:

Section 54. **Financial Reporting**. If shares in Tenant or Koninklijke DSM, N.V. (“Guarantor”) are publicly traded on a United States national stock exchange or on the Amsterdam stock exchange such that either Tenant or Guarantor is subject to securities disclosure and financial reporting requirements pursuant to which quarterly and annual financial reports are available on line via EDGAR or via Tenant’s or Guarantor’s website, Tenant shall not be obligated to furnish financial statements to Landlord. If, however, neither Tenant nor Guarantor is publicly traded such that financial reports are not available for review online, the following financial reporting requirements shall apply:

(i) On or before the 30th day of each calendar quarter during the term of the Lease, Tenant submit to Landlord a current financial statement indicating Tenant’s current net worth and general financial condition, including balance sheets and statements of income and expenses for the preceding calendar quarter, certified as true and correct by Tenant’s chief financial officer.

(ii) Within ninety (90) days following the expiration of Tenant's fiscal year, and no less frequently than once every twelve (12) calendar months, Tenant shall submit to Landlord annual financial statements prepared in accordance with generally accepted accounting principles consistently applied and certified as true and correct by Tenant's chief financial officer.

16. Nothing contained herein shall be deemed to release Original Tenant or its subsidiary Roche Vitamins, Inc. from primary liability for payment and performance due with through the Initial Term that would have expired as of the 31<sup>st</sup> day of August, 2007. After August 31, 2007, Original Tenant and its subsidiary Roche Vitamins, Inc. shall be liable under the Lease only to the extent the liability in question relates to obligations incurred or accruing on or before August 31, 2007.

17. Concurrent with the execution of the Amendment and as a condition to Landlord executing the Amendment, Tenant shall deliver to Landlord a Guaranty, in the form attached hereto as Exhibit A, executed by Guarantor. Any default by Guarantor under such Guaranty that is not cured within any applicable Cure Period shall constitute and Event of Default under the Lease.

18. This Amendment may be executed in counterparts each of which shall constitute an original and which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and effective as of the day and year first above written.

LANDLORD:

FALK US PROPERTY INCOME FUND, L.P.

By: Falk U.S. Investments, Inc.  
General Partner

By: /s/ John R. Haynes

\_\_\_\_\_  
John R. Haynes  
Assistant Secretary

WITNESS NO. 1: J. Greer Cummings, Jr.  
\_\_\_\_\_

Printed Name of Witness: J. Greer Cummings, Jr.  
Address of Witness: 1600 DIVISION ST. STE 700  
NASHVILLE, TN 37203

WITNESS NO. 2: \_\_\_\_\_

Printed Name of Witness: \_\_\_\_\_

Address of Witness: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Executed on April 11, 2005 [ILLEGIBLE]

TENANT:

DSM NUTRITIONAL PRODUCTS, INC.

By: /s/ [ILLEGIBLE]  
\_\_\_\_\_

[ILLEGIBLE]  
Title: Chief Executive Officer, DSM Nutritional Products

DSM NUTRITIONAL PRODUCTS, INC.

By: /s/ Patrick Weinberg  
\_\_\_\_\_

Patrick Weinberg  
Title: Vice-President, Chief Financial Officer  
DSM Nutritional Products, Inc.

Signature Received by Fax on April 5, 2005  
[ILLEGIBLE]

LEASE GUARANTY

THIS LEASE GUARANTY (the "Guaranty") is made as of the \_\_\_\_ day of March, 2005, by **Koninklijke DSM, N.V.**, a Dutch corporation, whose mailing address is Post Bus 6500, 6401 JH Heerlen, The Netherlands (the "**Guarantor**"), in favor of **FALK US PROPERTY INCOME FUND, L.P.**, whose mailing address is c/o Falk of North America, Inc., 6 Adelaide Street East, Suite 310, Toronto, Ontario, Canada M5C 1H6 (the "**Landlord**").

## WITNESSETH:

WHEREAS, Bellemead Development Corporation ("**Original Landlord**") and Hoffman-LaRoche Inc. ("**Original Tenant**") entered into that certain Standard Form of Net Office Lease, dated November 6, 1996 (the "**Lease**") whereby Original Landlord leased to Original Tenant a building consisting of approximately 106,680 rentable square feet located at 45 Waterview Boulevard, Parsippany, New Jersey; and

WHEREAS, Original Tenant assigned its rights under the Lease to Roche Vitamins, Inc. ("**Roche Vitamins**") by assignment dated effective as of January 1, 1997;

WHEREAS, Landlord purchased the Demised Premises from Original Landlord, and Original Landlord assigned its rights under the Lease to Landlord by Assignment and Assumption Agreement, dated as of December 15, 1997; and

WHEREAS, Original Tenant, Roche Vitamins, and DSM Nutritional Products, Inc. ("**Tenant**") entered into a Lease Assignment and Assumption effective as of September 30, 2003 whereby Roche Vitamins and Original Tenant assigned their rights under the Lease to Tenant, who purchased all or substantially all of Roche Vitamin's assets and assumed the obligations of Original Tenant and Roche under the Lease; and

WHEREAS, the Initial Term of the Lease will expire as of the 31<sup>st</sup> day of August, 2007, and Landlord and Tenant have agreed to extend the Initial Term for an additional ten (10) years, and amend the Lease as more particularly described below; and

WHEREAS, the Guarantor desires to induce Landlord to enter into an amend to the Lease and to extend the term of the Lease through August 31, 2017; and

WHEREAS, the entering into of the amendment to Lease by Landlord and Tenant will be of direct pecuniary advantage to Guarantor as the direct or indirect owner of one hundred percent (100%) of the stock of Tenant;

NOW, THEREFORE, in consideration of One Dollar (\$1.00) paid by Landlord to Guarantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby covenants and agrees with the Landlord, as follows:

1. Unconditional Guarantee. The Guarantor, as primary obligor, hereby (a) unconditionally guarantees the prompt, punctual and full payment of the rent and all other sums due under the Lease in accordance with the terms and tenor thereof (including, but not limited to, any damages incurred by Landlord as a result of any payment, performance or other default by Tenant under the Lease to the extent such damages are payable pursuant to the Lease) as completely and effectually as if such guarantee had been made by Guarantor on the face of the Lease; and (b) unconditionally covenants and agrees that in the event of default in payments under any of the terms, covenants or conditions thereof, the Guarantor will promptly make or cause such payment to be made consistent with all such terms, covenants and conditions, notwithstanding the invalidity or lack of enforceability thereof due to the lack or power or authority of Tenant (or the person executing the Lease on behalf of Tenant) to execute, deliver or perform this Lease or due to any other action or omission of Tenant or its agents, officers, employees or representatives.

2. Nature of Guaranty. This Guaranty is and shall be construed to be an unconditional, irrevocable, absolute, unlimited and continuing guaranty of payment and performance.

3. Primary Liability of Guarantor. The Landlord shall have the right to proceed against Guarantor immediately upon any default by the Tenant in payment or performance of any obligation under the Lease, and Landlord shall not be required to take any action or proceedings of any kind against the Tenant or any other party liable for the Tenant's debts or obligations or to look to any other collateral Landlord may have for the obligations of Tenant under the Lease. Should Landlord desire to proceed against Guarantor and Tenant in the same action, Guarantor agrees that Guarantor may be joined in any such action against Tenant and that recovery may be had against Guarantor to the extent of Guarantor's liability in such action.

4. No Impairment. Guarantor's liability hereunder shall not be prejudiced, impaired or affected by any of the following, whether with or without Guarantor's knowledge or consent: (a) any renewal or extension of the time of payment of the rent or other sums due under the Lease or of the time for performance by any party obligated under the Lease; (b) any indulgence, forbearance or delay in enforcing the payment of the rent or other sums due under the Lease or enforcing the obligations of any party to the Lease; (c) any modification, addition or alteration of the terms, tenor or provisions of the Lease; (d) any assignment of the Landlord's or Tenant's interest under the Lease; (e) the release of any other collateral Landlord may hold for the obligations of Tenant; (f) Landlord's failure to file suit against Tenant (regardless of whether Tenant is becoming insolvent, is believed to be about to leave the state or any other circumstance); (g) Landlord's failure to give Guarantor notice of default by Tenant, (h) the availability to Tenant of any setoff, counterclaim or defense against Landlord unless based solely upon Landlord's failure to perform its obligations under the Lease after requisite notice of default and reasonable opportunity to cure as provided under the Lease; (i) Landlord's failure to exercise diligence in collection; (j) the merger, consolidation, cessation of business, dissolution or liquidation of Tenant, (k) the termination of any relationship of Guarantor with Tenant, or (l) Tenant's change of name or use of any name other than the name used to identify Tenant in this Guaranty.



5. Financial Condition of Guarantor. If shares in Guarantor are publicly traded on a United States national stock exchange or on the Amsterdam stock exchange such that Guarantor is subject to securities disclosure and financial reporting requirements pursuant to which quarterly and annual financial reports are available on line via EDGAR or via Guarantor's website, Guarantor shall not be obligated to furnish financial statements to Landlord. If, however, Guarantor is not publicly traded such that financial reports are not available for review online, the following financial reporting requirements shall apply:

(i) On or before the 30th day of each calendar quarter during the term of the Lease, Guarantor shall submit to Landlord a current financial statement indicating Guarantor's current net worth and general financial condition, including balance sheets and statements of income and expenses for the preceding calendar quarter, certified as true and correct by Guarantor's chief financial officer.

(ii) Within ninety (90) days following the expiration of Guarantor's fiscal year, and no less frequently than once every twelve (12) calendar months, Guarantor shall submit to Landlord annual financial statements prepared in accordance with generally accepted accounting principles consistently applied and certified as true and correct by Guarantor's chief financial officer.

6. Compliance with Law. Guarantor represents and warrants that Guarantor's business activities are conducted in accordance with all applicable laws and regulations, and Guarantor covenants that such activities shall continue to be so conducted.

7. Amendment of Lease. Landlord may, without notice to or the joinder of Guarantor and with affecting Guarantor's liability hereunder, modify, extend, accelerate, reinstate, extend or renew the Lease (with or without the execution of new Lease) and grant any consent or indulgence with respect the Lease.

8. Bankruptcy of Tenant. The liability of Guarantor hereunder and Landlord's right to pursue Guarantor shall not be affected, delayed, limited, impaired or discharged, in whole or in part, by reason of any stay, extension or discharge that may be granted to the Tenant by any court in proceedings under the Bankruptcy Code, or any amendments thereof, or under any other state or other federal statutes. The Guarantor expressly waives the benefits of any extension or discharge granted to Tenant. This Guaranty shall survive notwithstanding the expiration or termination of the Lease with respect to any sums previously received from Tenant or from Guarantor that Landlord may be required to repay in such proceeding. If proceedings are instituted by Tenant under any state insolvency law or under any federal bankruptcy law, or if such proceedings are instituted against Tenant and are not dismissed within thirty (30) days, Landlord may, at its option, without notice, notwithstanding any limitation on Landlord's ability to use such proceedings as the basis of a default against Tenant, declare all sums due under the Lease to be presently due and payable by Guarantor.

9. Recovery of Avoided Payments. If any amount applied by Landlord to the obligations of Tenant or Guarantor is subsequently challenged by a bankruptcy trustee or debtor-in-possession as an avoidable transfer on the grounds that the payment constituted a preferential payment or a fraudulent conveyance under state law or the Bankruptcy Code or any successor statute thereto or on any other grounds, Landlord may, at its option and in its sole discretion, elect whether to contest such challenge. If Landlord contests the avoidance action, all costs of the proceeding, including Landlord's attorneys fees, will become part of the obligations guaranteed by Guarantor. If the contested amount is successfully avoided, the avoided amount will become part of the obligations guaranteed by Guarantor. If Landlord elects not to contest the avoidance action, Landlord may tender the amount subject to the avoidance action to the bankruptcy court, trustee or debtor-in-possession and the amount so advanced shall become part of the obligations guaranteed by Guarantor hereunder. Guarantor's obligation to reimburse Landlord for amounts due under this Section 9 shall survive the purported cancellation of this Guaranty.

10. Enforcement. If Landlord calls upon Guarantor to honor, pay or perform all or part of any obligation of the Tenant, and Guarantor fails to honor such demand, the debt or obligation owed the Landlord pursuant to this Guaranty shall bear interest at the lesser of eighteen percent (18%) per annum or the highest rate permitted under applicable law. In case Guarantor fails or refuses to honor this Guaranty, the Landlord is hereby authorized to utilize such legal means as Landlord deems proper to enforce this Guaranty, through the efforts of its employees, agents or attorneys, and Guarantor shall pay all costs of enforcement and collection, including but not limited to court costs, reasonable attorneys' fees, depositions and expert witnesses.

11. Assistance in Litigation. Guarantor covenants to, upon request, cooperatively participate in any proceeding in which Guarantor is not an adverse party to Landlord and which concerns Landlord's rights regarding the Lease or the obligations guaranteed hereby.

12. Solvency of Guarantor. Guarantor represents and warrants to Landlord that Guarantor is not insolvent and that Guarantor's execution hereof does not render Guarantor insolvent.

13. Subordination. Guarantor agrees that any existing or future loan made by Guarantor to Tenant and any other existing or future obligation of Tenant to Guarantor shall be subordinate to the obligations evidenced by the Lease and this Guaranty as to both payment and collection.

14. Authority of Guarantor. The Guarantor represents and warrants that execution and delivery hereof and the assumption of liability hereunder have been in all respects authorized and approved by proper action on the part of the Guarantor, that the Guarantor has full authority and power to execute this Guaranty.

15. No Burdensome Agreements. Guarantor represents and warrants that the execution and performance of this Guaranty will not cause a default under any other contract or agreement to which Guarantor or any property of Guarantor is subject.

16. Legal and Binding Agreement. Guarantor represents and warrants that the execution and performance of this Guaranty will not violate any judicial or administrative order or governmental law or regulation, and that this Guaranty is valid and binding in every respect according to its terms.

17. No Consent Required. Guarantor represents and warrants that Guarantor's execution and performance of this Guaranty do not require the consent of or the giving of notice to any third party including, but not limited to, any other lender, governmental body or regulatory authority.

18. Not Partners; No Third Party Beneficiaries. Nothing contained herein or in any related document shall be deemed to render Landlord a partner of Tenant or Guarantor for any purpose. This Guaranty has been executed for the sole benefit of Landlord as an inducement to cause Landlord to purchase the property subject to the Lease and to enter into the Lease with Tenant, and neither Guarantor nor any other third party is authorized to rely upon Landlord's rights hereunder or to rely upon an assumption that Landlord has or will exercise its rights under any document.

19. Successors and Assigns. The Guaranty shall be binding upon and inure to the benefit of the heirs, personal and legal representatives, successors and assigns of Guarantor and the Landlord. The Landlord shall have the right to assign and transfer this Guaranty to any assignee of the Lease (including assignments for collateral purposes). Landlord shall notify Guarantor upon any assignment or transfer of this Guaranty, but Landlord's failure to so notify Guarantor shall not affect Guarantor's obligations under this Guaranty or impair Landlord's rights under this Guaranty. Notwithstanding the foregoing, Landlord shall, upon receipt of written request by Guarantor, advise Guarantor in writing of the name and address of any party to whom this Guaranty has been assigned. The Landlord's successors and assigns shall have the rights, elections, remedies, and privileges, discretions and powers granted hereunder to the Landlord and shall have the right to rely upon this Guaranty and to enter into and continue other and additional transactions with the Tenant in reliance hereon, in the same manner and with the same force and effect as if they were specifically named as the Landlord herein.

20. Statute of Limitations. Guarantor acknowledges that the statute of limitation applicable to this Guaranty shall begin to run only upon Landlord's accrual of a cause of action against Guarantor hereunder caused by Guarantor's refusal to honor a demand for performance hereunder made by Landlord in writing; provided, however, if, subsequent to the demand upon Guarantor, Landlord reaches an agreement with Tenant on any terms causing Landlord to forbear in the enforcement of its demand upon Guarantor, the statute of limitation shall be reinstated for its full duration until Landlord subsequently again makes demand upon Guarantor.

21. Governing Law. This Guaranty shall constitute a New Jersey contract, and be governed by the laws of the State of New Jersey. The undersigned hereby voluntarily submits to the jurisdiction of any court in the State of New Jersey having jurisdiction over the subject matter of this instrument, and hereby constitutes the Secretary of State of New Jersey as its agent for service of process in connection with any suit or proceeding arising hereunder.

22. No Waiver. Failure of the Landlord to insist in any one or more instances upon strict performance of any one or more of the provisions of this Guaranty or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

23. Action Against Tenant. The Landlord shall have the right, without affecting Guarantor's obligations hereunder, and without demand or notice, to collect first from the Tenant, and to exercise its rights of setoff against any asset of the Tenant, and to otherwise pursue and collect from the Tenant any other indebtedness of the Tenant to the Landlord not covered by this Guaranty, and any sums received from the Tenant, whether by voluntary payment, offset, or collection efforts, may be applied by the Landlord as it sees fit, including the application of all such amounts to other debts not guaranteed by Guarantor.

24. Subrogation. Subrogation rights or any other rights of any kind of Guarantor against the Tenant, if any, shall not become available until all indebtednesses and obligations of the Tenant to the Landlord under the Lease are paid and satisfied in full.

25. Survival. This Guaranty shall survive the expiration or termination of the Lease to the extent the obligations of the Tenant thereunder likewise survive and to the extent set forth in Section 12 of this Guaranty.

26. Entire Agreement. This Guaranty contains the final, complete and entire agreement of the parties hereto with respect to the matters contained herein, and no prior agreement or understanding pertaining to any of the matters connected with this transaction shall be effective for any purpose. Any prior oral statements or agreements are deemed merged herein. Without limiting the foregoing, Guarantor acknowledges Landlord's intention to enforce this Guaranty to the fullest extent possible, and Guarantor acknowledges that Landlord has made no oral statements to Guarantor that could be construed as a waiver of Landlord's right to enforce this Guaranty by all available legal means.

27. Further Assurances. Guarantor agrees to execute and deliver to Landlord such further documents or instruments as may be reasonable and necessary in furtherance of the performance of the terms, covenants and conditions of this Guaranty.

28. Cumulative Remedies. The remedies provided Landlord in this Guaranty are not exclusive of any other remedies that may be available to Landlord under any other document or at law or equity.

29. Amendment and Waiver in Writing. No provision of this Guaranty can be amended or waived, except by a statement in writing signed by the party against which enforcement of the amendment or waiver is sought.

30. Interpretation. Time is of the essence in the performance of this Guaranty. The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this Guaranty or any provision hereof. This Guaranty shall be construed without regard to any presumption or other rule requiring construction against the party causing this Guaranty to be drafted. If any words or phrases in this Guaranty shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Guaranty shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Guaranty and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

31. Severability. This Guaranty is intended to be performed in accordance with and only to the extent permitted by applicable law. If any provisions of this Guaranty or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy the basis of the bargain between the parties as contained herein, the remainder of this Guaranty and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

32. Waiver of Jury Trial. GUARANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS GUARANTY OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO GUARANTOR'S DEALINGS WITH LANDLORD RESPECT TO THIS GUARANTY OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND GUARANTOR HEREBY AGREES AND CONSENTS THAT, AT LANDLORD'S ELECTION, ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT LANDLORD MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE GUARANTOR TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

[REMAINDER OF PAGE INTENTIONALLY BLANK]  
[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first set forth above.

GUARANTOR:  
KONINKLIJKE DSM N.V.

By: /s/ [ILLEGIBLE]

\_\_\_\_\_

[ILLEGIBLE]

WITNESS: /s/ [ILLEGIBLE]

\_\_\_\_\_

Printed Name of Witness: [ILLEGIBLE]  
Address of Witness: Het Overloon 1, Heerlen  
0411 TE, Netherlands

ACKNOWLEDGED BY:

TENANT:

DSM NUTRITIONAL PRODUCTS, INC.

By: /s/ Patrick Weinberg

\_\_\_\_\_

Patrick Weinberg  
Title: Vice-President, Chief Financial Officer

WITNESS: /s/ Hugh C. Welsh

\_\_\_\_\_

Printed Name of Witness: Hugh C. Welsh  
Address of Witness: 45 Waterview Blvd.,  
Parsippany, New Jersey,  
07054.

WITNESS NO. 1: /s/ [ILLEGIBLE]

---

Printed Name of Witness: [ILLEGIBLE]  
Het Overloon 1, Heerlen  
6411TE, Netherlands

WITNESS NO. 2: /s/ Hugh C. Welsh,

---

Printed Name of Witness: Hugh C. Welsh,  
45 Waterview Blvd.,  
Parsippany, New Jersey,  
07054