

EXHIBIT "B"

FIFTH AVENUE APA

EXECUTION VERSION

AGREEMENT OF SALE AND PURCHASE

between

ROCK NEW YORK (100-104 FIFTH AVENUE) LLC

as Seller

and

100-104 FIFTH, LLC

as Purchaser

Premises:

100-104 Fifth Avenue Office Unit Condominium
100-104 Fifth Avenue
New York, New York 10011

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AGREEMENT OF SALE AND PURCHASE

THIS AGREEMENT OF SALE AND PURCHASE (this "Agreement") is made as of the 14th day of September, 2010 (the "Effective Date") between ROCK NEW YORK (100-104 FIFTH AVENUE) LLC, having an address at 183 Madison Avenue, New York, NY 10016 ("Seller"), and 100-104 FIFTH, LLC, a Delaware limited liability company having an address at 500 Three Galleria Tower, 13155 Noel Road, Dallas, TX 75240 ("Purchaser").

RECITALS

A. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Office Unit in the Building known as 100-104 Fifth Avenue Condominium, together with an 88% interest in the Common Elements (as defined herein) (collectively, the "Property") commonly known as 100-104 Fifth Avenue, New York, New York, on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, the following capitalized terms have the meanings set forth in this Section 1.1:

"Acceptable Estoppel Certificate" has the meaning set forth in Section 7.1(c).

"Affiliate" means any entity directly or indirectly controlling, controlled by or under common control with, the entity in question.

"Agreement" has the meaning set forth in the Preamble to this Agreement.

"Assignment" has the meaning set forth in Section 10.3(d).

"Assignment of Collective Bargaining Agreements" has the meaning set forth in Section 10.3(c).

"Assumed Contract Cure Amount" means, with respect to each of the Leases, Purchased Contracts or Licenses and Permits, any amounts required to be paid by Seller pursuant to Section 365(b) of the Bankruptcy Code or otherwise in order to cure any Seller defaults existing as of the date of assignment or assumption and assignment in respect of such Lease or Purchased Contract or Licenses and Permits.

"Assignment of Leases" has the meaning set forth in Section 10.3(e).

"Assumed Liabilities" has the meaning set forth in Section 3.2(a).

“Authorities” means the various federal, state, county, parish, administrative and municipal governmental and quasi-governmental bodies or agencies having jurisdiction over all or any portion of the Land, the Improvements or the Personal Property.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as applicable to the Chapter 11 Case.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware, having jurisdiction over the Chapter 11 Case and, to the extent the United States District Court for the District of Delaware withdraws the reference to any of the Chapter 11 Cases under 28 U.S.C. § 157 and/or enters an order pursuant to 28 U.S.C. § 157(a), the United States District Court for the District of Delaware.

“Bankruptcy Plan” means the Joint Prepackaged Plan of Reorganization of Rock US Holdings Inc. Rock US Investments LLC, Rock New York (100-104 Fifth Avenue) LLC, and Rock New York (183 Madison Avenue) LLC Under Chapter 11 of the Bankruptcy Code which will be filed in the Chapter 11 Case, as the same may be amended, modified or supplemented from time to time.

“Bill of Sale” has the meaning set forth in Section 10.2(b).

“Break Up Fee” means an amount equal to one percent (1%) of the Purchase Price.

“Business Day” means any day other than a Saturday, Sunday or a day on which the Federal Reserve Bank in New York, New York is closed for business.

“By-Laws” means the By-Laws of the Condominium, attached as an Exhibit to the Declaration.

“Capital Improvement Contract” has the meaning set forth in Section 10.4(b).

“Certificate as to Foreign Status” has the meaning set forth in Section 10.3(f).

“Certifying Person” has the meaning set forth in Section 4.3(a).

“Chapter 11 Case” means the chapter 11 case of Seller under chapter 11 of the Bankruptcy Code in the Bankruptcy Court which may be jointly administered with chapter 11 cases of certain Affiliates of Seller and which shall be commenced by Seller within ten (10) days subsequent to the Effective Date.

“Claim” means a claim against Seller as such term is defined in Section 101(5) of the Bankruptcy Code.

“Closing” has the meaning set forth in Article X.

“Closing Date” means the date on which the Closing of the transaction contemplated by this Agreement actually occurs.

“Closing Documents” means the documents executed and delivered at or in connection with the Closing, including, without limitation, any documents described in Article X and any documents executed and delivered after the Closing relating to the sale of the Property pursuant to the provisions of this Agreement.

“Closing Notices” has the meaning set forth in Section 10.3(g).

“Closing Statement” has the meaning set forth in Section 10.4(a).

“Closing Surviving Obligations” means the rights, liabilities, obligations, representations, warranties and covenants set forth in Sections 3.2, 3.4, 4.3, 8.1(g), (h), (n), and (p), 8.2, 8.3, 8.4, 10.4, 10.5 and 10.6, and Articles VI, XII, XIV, XV, XVI, XVII, XVIII, XIX, and XX and in any other provisions of this Agreement which pursuant to their terms survive the Closing hereunder and, in each case, subject to any time period and (v) other limitations thereon set forth in this Agreement.

“Code” has the meaning set forth in Section 4.3.

“Collective Bargaining Agreements” mean, collectively, the Collective Bargaining Agreements described on Schedule 8.1(m), any successor agreements (subject to the terms and provisions of this Agreement), and each and every employee benefit plan, program or arrangement relating to the foregoing collective bargaining agreements.

“Common Elements” has the meaning set forth in the Declaration.

“Competing Transaction” has the meaning set forth in Section 14.2(c).

“Condominium” means the 100-104 Fifth Avenue Condominium.

“Condominium Documents” means the Declaration and By-Laws of the Condominium.

“Condominium Expenses” has the meaning set forth in Section 10.4(a)(viii).

“Confidential Materials” has the meaning set forth in the Confidentiality Agreement.

“Confidentiality Agreement” means, collectively, those certain Confidentiality Agreements, dated June 17, 2010 and August 27, 2010, between certain parties related to Purchaser, and Seller.

“Confirmation Hearing Date” means the first date scheduled by the Bankruptcy Court to consider confirmation of the Bankruptcy Plan, without regard as to whether such hearing is adjourned or continued.

“Confirmation Order” means an order of the Bankruptcy Court confirming the Bankruptcy Plan pursuant to Section 1129 of the Bankruptcy Code which, among other things, approves this Agreement and the conveyance of the Purchased Assets to Purchaser free and clear of Liens (other than the Permitted Encumbrances) and Liabilities (other than the Assumed Liabilities).

“Contracts” means any contract, commitment, indenture, note, bond, lease, license or other agreement, written or oral, relating to the assets of Seller or the operation of Seller’s business to which Seller is a party or by which any of Seller’s assets are bound.

“Data-room Website” means the internet website created by or on behalf of Seller for posting the Title Commitment, the Survey, the Leases, each Capital Improvement Contract and other materials relating to the Property and the transaction contemplated by this Agreement.

“Declaration” means that declaration establishing a plan for condominium ownership of said premises under Article 9-B of the Real Property Law of the State of New York (the “Condominium Act”), dated August 13, 2007, and recorded in the New York County office of the Register of The City of New York (the “City Register’s Office”) on October 9, 2007, as CRFN No. 2007000511373, and also designated as Tax Lot 1102 in Block 817 of Section 03 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York and on the Floor Plans of said building, certified by Peter F. Farinella, Registered Architect, on September 5, 2007, and filed in the Real Property Assessment Department of the City of New York on September 27, 2007 as Condominium Plan No. 1774, also filed in the City Register’s Office on October 9, 2007, in CRFN No. 2007000511374.

“Deed” has the meaning set forth in Section 10.3(a).

“Disclosure Statement” has the meaning set forth in Section 7.3(a).

“Down Payment” has the meaning set forth in Section 4.1.

“Effective Date” has the meaning set forth in the Preamble to this Agreement.

“Employees” means any and all persons who are or were at any time before Closing employed in connection with the operation, cleaning or maintenance of the Property, whether by Seller, Seller’s managing agent or a management company, or other agent with whom Seller has contracted including, without limitation, any contractor or service provider of an owner of the Property.

“Employment Claims” means any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs, and expenses (including without limitation, reasonable attorneys’ fees and costs) arising out of the employment of, or relating to Employees, including, without limitation, claims (i) for severance or termination pay or otherwise arising out of any termination of employment of Employees, (ii) for withdrawal liability under the Multiemployer Pension Plan Amendments Act relating to or arising in connection with the Collective Bargaining Agreements or otherwise relating to the Property (“**Withdrawal Liability**”), (iii) for compensation or benefits, (iv) for violation of any of the Collective Bargaining Agreements or any other collective bargaining agreements relating to Employees, (v) relating to a violation of any Governmental Regulations concerning Employees, and (vi) under any federal, state or local laws or regulations respecting employment and employment practices, terms and conditions of employment, benefits, collective bargaining, and any and all similar applicable federal, state and local laws and regulations.

“Environmental Laws” means all Governmental Regulations now or hereafter in effect pertaining to Hazardous Substances, protection of the environment, or human health and safety with respect to exposure to any Hazardous Substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), as amended by the Hazardous and Solid Wastes Amendments of 1984, the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Water Act (33 U.S.C. § 1321 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon Gas and Indoor Air Quality Research Act of 1986 (42 U.S.C. § 7401 et seq.), the National Environmental Policy Act (42 U.S.C. § 4321 et seq.), the Superfund Amendment Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.) and any similar state or local Governmental Regulations.

“ERISA” has the meaning set forth in Section 8.2(h).

“Escrow Agent” means Stewart Title Insurance Company.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, as entered on the docket in the Chapter 11 Case or the docket of any court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument or rehearing has expired (other than pursuant to Bankruptcy Rule 9024) and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice.

“Governmental Regulations” means all statutes, ordinances, rules, agreements, judgments, decrees, regulations, codes, directives and laws of any of the Authorities, including common law, and any binding written interpretations, binding written policies and binding written decisions relating thereto, and any amendments, modifications and supplements thereof, including, without limitation, any and all zoning ordinances and statutes, building codes, rules and regulations, and Environmental Laws, now or hereafter applicable to the Land, the Improvements, the Leases, the Personal Property or any portions thereof, or the use, ownership, occupancy or operation of the Land, the Improvements, the Personal Property or any portions thereof.

“Hazardous Substances” means (a) asbestos, radon gas and urea formaldehyde foam insulation, (b) any solid, liquid, gaseous or thermal contaminant, including, without limitation, smoke, vapor, soot, molds, fumes, acids, alkalis, chemicals, solvents, petroleum products or

byproducts, natural gas, natural gas liquids and liquefied natural gas and synthetic gas, polychlorinated biphenyls, phosphates, lead or other heavy metals and chlorine, (c) any solid or liquid waste (including, without limitation, hazardous waste), hazardous air pollutant, hazardous substance, hazardous chemical, hazardous mixture, toxic substance, pollutant, pollution and regulated substance, and (d) any other chemical, material or substance, in each case to the extent regulated by any Environmental Laws, whether on or after the Effective Date.

"Holdback Agreement" has the meaning set forth in Section 14.2(b).

"Improvements" means all buildings, structures, parking area surfaces, sidewalks, landscaping, and other improvements of every kind situated on, under and/or above the Land, together with the Property's plumbing, air conditioning, heating, ventilating, life safety, utility and mechanical systems and fixtures, including rights to use of common areas but specifically excluding the Personal Property and items specifically excluded from the definition of Personal Property in this Section 1.1.

"Indemnity Fund" has the meaning set forth in Section 14.2(b).

"Land" means the parcel or parcels of land more particularly described on Exhibit A, together with Seller's right, title and interest, if any, in and to adjacent streets and alleys, strips and gores, and any appurtenances relating to such parcels of land, including without limitation, any right-of-ways, easements, rights and privileges appurtenant thereto, air rights, development rights and rights under the Condominium Documents.

"Leases" means all of the unexpired written leases and other written occupancy or written license agreements entered into by Seller (or a predecessor-in-interest to Seller), as landlord, with respect to the use or occupancy of the Property or any portion or portions thereof, together with all amendments, renewals and modifications thereof, if any, all guaranties thereof, if any, and any new leases and other occupancy or license agreements, and any amendments and guaranties relating thereto, entered into after the Effective Date by Seller, to the extent permitted by this Agreement.

"Leasing Brokerage Commissions" has the meaning set forth in Section 3.2(b).

"Leasing Commission Agreements" means any and all leasing commission agreements relating to the Property in effect on the Effective Date, including, without limitation, (a) any leasing commission agreements relating to the Property which were terminated on or prior to the Effective Date but remain in effect with respect to renewals, extensions, expansions and other tenant rights under the Leases and (b) any leasing commission agreements pursuant to which leasing brokerage commissions set forth on Schedule 10.4(b)(ii) shall become due, together with any and all amendments, renewals, and modifications of any leasing commission agreements.

"Liability" means any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due), and including all costs and expenses relating thereto.

"Licenses and Permits" means, collectively, any and all of Seller's right, title and interest, to the extent assignable, in and to licenses, permits, and certificates of occupancy, now

or hereafter issued, or granted by any of the Authorities exclusively in connection with the use, ownership, operation or maintenance of the Property, or any portions thereof or by private parties in connection with the use of utilities or ingress and egress from the Property, or any portions thereof, together with any and all amendments, renewals and modifications thereof (if and to the extent such amendments, renewals and modifications are permitted under the terms of this Agreement).

"Lien" means any mortgage, lien (as such term is defined in Section 101(37) of the Bankruptcy Code including any mechanic's, materialmen's, statutory and any other consensual or non-consensual lien), security interest, charge, hypothecation, deed of trust, pledge, right of use, first offer or refusal, easement, servitude, restrictive covenant, lease, sublease, covenant, right of way, option, Claim, restriction on transfer or otherwise, interest, encroachment or encumbrance of any kind.

"Local Law 11 Contract" has the meaning set forth in Section 10.4(b)(i).

"LKE" has the meaning set forth in Section 20.21(a).

"Major Loss" has the meaning set forth in Section 11.1(c).

"Major Tenants" means Leadership Directories, WB Wood, DeVito Verdi, ICON Capital, Academy of Educational Development and Dimension Capital Partners.

"Managers" shall mean George Bibb and Harry Blair, Seller's facility manager and asset manager, respectively, for the Property on the Effective Date.

"Maximum Liability Amount" shall mean one and one-half percent (1.5%) of the Purchase Price.

"OFAC" has the meaning set forth in the definition of Restricted Person.

"Office Unit" has the meaning set forth in Exhibit B to the Declaration including floors 2 through 20 (there is no floor 13) of the Building.

"Operating Expenses" has the meaning set forth in Section 10.4(d).

"Other Party" has the meaning set forth in Section 20.19.

"Outside Date" means December 31, 2010 or, if either party elects, such later date that is no more than fifteen (15) days following the entry of the Confirmation Order, but in no event later than January 31, 2011.

"Permitted Encumbrances" means (a) the matters set forth on Schedule 5.1, (b) any and all matters which are deemed to constitute Permitted Encumbrances pursuant to any provision of this Agreement, including Taxes, which are a lien but not yet due and payable, building and zoning regulations, roads, highways, and other public rights-of-way and any matters that could be ascertained by an adequate inspection of the Property, (c) any and all encumbrances caused by

Purchaser, and (d) any and all other matters subject to which Purchaser is or becomes obligated to accept title to the Property pursuant to any express provision of this Agreement.

“Personal Property” means Seller’s right, title and interest in and to all equipment, appliances, devices, machinery, furnishings, plans, drawings, manuals, warranties and guaranties and other personal property attached to, appurtenant to, or situated at the Property on the Effective Date and used exclusively in connection with the operation, maintenance and cleaning exclusively of the Property (but with respect to furnishings, tools, supplies, and spare parts, only to the extent located at the Property on the date hereof), without limiting the generality of the foregoing, Personal Property shall include furniture located in the Property together with any replacements of the foregoing items situated at the Property on the date hereof, provided Seller shall have no obligation to make any such replacements after the Effective Date. Notwithstanding the foregoing or any other provision of this Agreement, the term **“Personal Property”** and the term **“Purchased Assets”** shall not include, and the transaction consummated pursuant to this Agreement shall not include the sale to Purchaser of, (a) any proprietary materials or items (relating to Seller or its Affiliates as opposed to the Property), including, without limitation, the name “Rock New York”, or the name of any Affiliate of Seller (or any names containing derivations of any of the foregoing names or of the names of any Affiliate of Seller), (b) any manuals, personal signage or other items containing the Rock New York logo or name or the logo or name of any Affiliate of Seller (or any names containing derivations of any of the foregoing names or of the name of any Affiliate of Seller), (c) any property owned or leased by a managing agent or management company, contractor, service provider or other party (other than Seller), (d) any personal effects of Seller, any Affiliate of Seller and any employees of Seller or any Affiliate of Seller, (e) any Confidential Materials, and (f) any attorney work product or any attorney-client privileged documents of Seller or any Affiliate of Seller, other than the Leases, Leasing Commission Agreements and other Contracts.

“Pre-Closing Breaches” has the meaning set forth in Section 8.4.

“Property” has the meaning set forth in Recital A.

“Proration Items” has the meaning set forth in Section 10.4(a).

“Proration Time” has the meaning set forth in Section 10.4(a).

“Purchase Price” has the meaning set forth in Section 3.1.

“Purchased Assets” has the meaning set forth in Section 2.1(a).

“Purchased Contracts” means those Contracts set forth on Schedule 8.1(h), as the same may be updated from time to time upon written agreement between Seller and Purchaser.

“Purchaser” has the meaning set forth in the Preamble to this Agreement.

“Purchaser Indemnified Party” means Purchaser, each Affiliate of Purchaser, and each of their respective officers, directors, employees, shareholders, members, partners, principals, managing and other agents, management companies, contractors, advisors, consultants, service

providers, representatives, and the respective successors and assigns of each of the foregoing parties.

“Purchaser Protection Approval Motion” has the meaning set forth in Section 2.4.

“Purchaser Protection Order” has the meaning set forth in Section 2.4.

“Purchaser’s Costs” has the meaning set forth in Section 3.3.

“Qualified Competing Transaction Proposal” has the meaning set forth in Section 2.4(c).

“Rentals” has the meaning set forth in Section 10.4(c), and Rentals are **“Delinquent”** in accordance with the meaning set forth in Section 10.4(c).

“Requesting Party” has the meaning set forth in Section 20.21(a).

“Restricted Person” means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, or other entity which (a) is included on the List of Specially Designated Nationals and Blocked Persons maintained by the United States Treasury Department’s Office of Foreign Assets Control (**“OFAC”**), (b) resides or has a place of business in a country or territory named on an OFAC list or which is designated as a Non-Cooperative Jurisdiction by the Financial Action Task Force on Money Laundering or transfers its funds from or through such a jurisdiction, (c) resides in or is organized under the laws of a jurisdiction designated by the Secretary of the Treasury of the United States as warranting special measures due to money laundering concerns, (d) is a senior foreign political figure, member of a senior foreign political figure’s immediate family or close associate of a senior foreign political figure (as each is defined below), or (e) is a foreign shell bank (as defined below). For purposes of this definition, “senior foreign political figure” means a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation. In addition, a senior foreign political figure includes any corporation, business or other entity that has been formed by, or for the benefit of, a senior foreign political figure. The immediate family of a senior foreign political figure includes the senior foreign political figure’s parents, siblings, spouse, children and in-laws. A close associate of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure. For purposes of this definition, “foreign shell bank” means a foreign bank that does not have a physical presence in any country and that is not affiliated with a bank that has a physical presence and an acceptable level of regulation and supervision.

“Retail Unit” has the meaning set forth in Exhibit B to the Declaration.

“ROFO” means that certain right of first offer in favor of the owner of the Retail Unit, as provided in Exhibit L of the Declaration.

"Scheduled Closing Date" means the date that is fifteen (15) days following the entry of the Confirmation Order by the Bankruptcy Court, but in no event later than the Outside Date.

"Security Deposits" means all cash and non-cash security deposits under Leases, to the extent unapplied (together with any unapplied interest accrued thereon, but only to the extent such interest has accrued for the account of the applicable tenant).

"Seller" has the meaning set forth in the Preamble to this Agreement.

"Seller Closing Certificate" has the meaning set forth in Section 8.5.

"Seller Indemnified Party" means Seller, each Affiliate of Seller, and each of their respective officers, directors, employees, shareholders, members, partners, principals, managing and other agents, management companies, contractors, advisors, attorneys, consultants, service providers, representatives, and the respective successors and/or assigns of each of the foregoing parties.

"Seller's Advisor" has the meaning set forth in Section 17.1.

"Seller's Knowledge" means the actual (as opposed to constructive, imputed or implied) knowledge at the time in question of either Manager, without any duty of investigation or inquiry.

"Significant Portion" means, with respect to the Property, any taking by condemnation or any destruction or damage by fire or other casualty where the reasonably estimated proceeds from such condemnation or the cost to repair such damage or destruction exceeds ten percent (10%) of the Purchase Price.

"Survey" means the most recent survey of the Property posted on the Data-room Website on the Effective Date.

"Taxes" has the meaning set forth in Schedule 5.1.

"Tenants" means the tenants or other occupants pursuant to the Leases.

"Tenant Notice Letters" has the meaning set forth in Section 10.2(h).

"Termination Date" has the meaning set forth in Section 14.2(b).

"Termination Surviving Obligations" means the rights, liabilities, obligations and covenants set forth in Sections 4.3 and 17.1, and Articles XII, XIII, XIV, XV, XVII and XX, and any other provisions which pursuant to their terms survive any termination of this Agreement, in each case, subject to any limitations on such obligations set forth in this Agreement.

"Threshold Liability Amount" shall mean Fifty Thousand Dollars (\$50,000).

"Title Commitment" has the meaning set forth in Section 5.1(a).

“Title Company” means Royal Abstract of New York LLC on behalf of Stewart Title Insurance Company.

“Title Defect” means, except as otherwise set forth in Section 5.1(b), each matter affecting title to the Property as to which Purchaser is not obligated to accept title pursuant to the terms of this Agreement (provided, however, that such matters shall in no event include any of the Permitted Encumbrances).

“Title Objections Threshold Amount” means One Hundred Thousand Dollars (\$100,000).

“Title Objections” has the meaning set forth in Section 5.1(b).

“Title Policy” means a fee title policy issued by the Title Company, or any other reputable title insurance company licensed to do business in the State of New York, insuring fee simple title in the Property, subject only to the Permitted Encumbrances.

“Updated Title Commitment” has the meaning set forth in Section 5.1(b).

“Voluntary Liens” has the meaning set forth in Section 5.1(f).

“Withdrawal Liability” has the meaning set forth in the definition of Employment Claims.

Section 1.2 References, Exhibits and Schedules. Except as otherwise specifically indicated, all references in this Agreement to Articles, Sections or clauses shall refer, respectively, to Articles, Sections or clauses of this Agreement, and all references in this Agreement to Exhibits or Schedules shall refer, respectively, to the Exhibits and Schedules attached hereto, all of which Exhibits and Schedules are incorporated into and made a part of this Agreement by reference. The words “herein,” “hereof,” “hereinafter,” “hereunder” and words and phrases of similar import shall refer to this Agreement as a whole and not to any particular Article, Section or clause. The term “including” shall mean “including, without limitation” and the singular of any term shall mean the plural, and the plural of any term shall mean the singular, as and to the extent the context shall imply.

ARTICLE II AGREEMENT OF SALE AND PURCHASE

Section 2.1 Agreement of Sale and Purchase. Subject to the terms and conditions of this Agreement, including, without limitation, Section 8.4, Article XI, Article XIII and Article XVI, and entry of the Confirmation Order (which has not been stayed or reversed), on the Closing Date:

(a) Seller shall sell, convey and assign, to Purchaser and Purchaser shall purchase, accept and assume from Seller, at Closing, Seller’s right, title and interest in and to the following (collectively, the **“Purchased Assets”**) free and clear of all Liens and all Liabilities (other than Permitted Encumbrances and Assumed Liabilities):

- (i) the Land;
 - (ii) the Improvements;
 - (iii) the Leases, including any Security Deposits;
 - (iv) the Purchased Contracts;
 - (v) the Personal Property;
 - (vi) the Leasing Commission Agreements and the Leasing Brokerage Commissions;
- and
- (vii) to the extent assignable or transferable, the Licenses and Permits;
 - (viii) air and development rights, if any.

Section 2.2 Excluded Assets. Notwithstanding anything to the contrary which may be set forth in Section 2.1 or any other section of this Agreement, it is expressly understood and agreed that the sale and purchase pursuant to this Agreement shall not include Seller's rights, title and interests to, in and under the Excluded Assets. "Excluded Assets" shall mean any assets of Seller other than the Purchased Assets, including all interests and rights of Seller in and to the following: (i) any Confidential Materials (other than to the extent the same, if any, are specified deliveries under this Agreement) or other materials or items which are proprietary to Seller or any Affiliate of Seller (as opposed to the Property) including, without limitation, the name "Rock New York," or the name of any Affiliate of Seller (or any names containing derivations of any of the foregoing names or of the names of any Affiliate of Seller), (ii) any property that serves or is used in connection with any property other than the Property, (iii) any items specifically excluded from the definition of "Personal Property," and (iv) any manuals, personal signage or other items containing the Rock New York logo or name or the logo or name of any Affiliate of Seller (or any names containing derivations of any of the foregoing names or of the name of any Affiliate of Seller), (v) any property owned or leased by a managing agent or management company, contractor, service provider or other party (other than Seller), (vi) any personal effects of Seller, any Affiliate of Seller and any employees of Seller or any Affiliate of Seller, (vii) any attorney work product or any attorney-client privileged documents of Seller or any Affiliate of Seller, (viii) any cash, cash equivalents, bank deposits or similar cash items of Seller and its subsidiaries, but specifically excluding any Security Deposits, (ix) any Contracts other than the Purchased Contracts, (x) any leases other than the Leases, (xi) any tax receivable, tax refund, tax deposit or other tax asset pertaining to the period prior to the Closing Date, (xii) any Claims or causes of action under chapter 5 of the Bankruptcy Code and, in addition thereto, any rights, Claims or causes of action, rights of indemnity, warranty, contribution or reimbursement of Seller not related to or arising out of the Purchased Assets, (xiii) all rights of Seller under this Agreement and the other documents contemplated hereby, and all consideration receivable pursuant thereto, and (xiv) to the extent not covered in items (i) through (xiii) above, any assets that are not Purchased Assets.

Section 2.3 Purchaser's Acknowledgment. Subject to Purchaser's rights under Articles V, VII, VIII and IX Purchaser hereby acknowledges that it has completed its due diligence of the Purchased Assets prior to the execution of this Agreement and that it is satisfied with its findings. Furthermore, Purchaser acknowledges that (a) there is no further due diligence period available, (b) Purchaser is obligated to close under this Agreement subject to the terms of the Bankruptcy Plan and the satisfaction of the conditions set forth herein, and (c) the Down Payment is non-refundable, except as expressly stated herein.

Section 2.4 Bankruptcy Filing, Bankruptcy Court Approvals and Purchaser Protections.

(a) Within five (5) days after the Seller commences the Chapter 11 Case, Seller shall file or cause to be filed a motion (the "Purchaser Protection Approval Motion") seeking entry of an order (the "Purchaser Protection Order") approving the Break-Up Fee and the matters specified in this Section 2.4. Seller shall request that the Bankruptcy Court schedule a hearing on the Purchaser Protection Approval Motion as soon as reasonably practicable following the commencement of the Chapter 11 Case. Seller shall provide copies of the Purchaser Protection Approval Motion and the proposed Purchaser Protection Order to Purchaser at least one (1) day prior to such documents being filed with the Bankruptcy Court. Purchaser shall reasonably cooperate with Seller in providing any information or documentation that the Bankruptcy Court might reasonably request or require in connection with Seller's efforts to obtain the Purchaser Protection Order.

(b) Unless and until this Agreement is terminated in accordance with Article XIII, except as Seller may reasonably determine in good faith to be otherwise required in connection with applicable fiduciary duties after consultation with counsel, Seller shall not, except as otherwise required by the Bankruptcy Court, take any action, directly or indirectly, to cause, promote, authorize, or result in a Competing Transaction, including, without limitation, granting access to any third parties to Seller's assets, business, records, officers, directors, or employees, which access, to Seller's knowledge, relates to, or is reasonably expected to lead to, a Competing Transaction or a potential Competing Transaction.

(c) Unless and until this Agreement is terminated in accordance with Article XIII, if any person or entity offers to enter into a Competing Transaction with Seller, except as Seller may reasonably determine in good faith to be otherwise required in connection with its applicable fiduciary duties (after consultation with counsel) or as otherwise required by the Bankruptcy Court, Seller shall not (i) enter into any agreement relating to such Competing Transaction, or (ii) file any plan of reorganization proposed or supported by Seller that seeks approval of such Competing Transaction, unless (x) the consideration to be paid by such person or entity in connection with the Competing Transaction (and, for purposes of the foregoing and Section 2.4(d) below, consideration paid by such person or entity shall include any Liabilities assumed and/or payments made to creditors by such person or entity in connection with such Competing Transaction) is at least \$1,000,000 greater than an amount equal to the sum of (i) the Purchase Price or the amount of any prior improvement thereto in accordance with the provisions of this Section 2.4(c) and (ii) the Break-Up Fee, and (y) the offer is in writing, binding on the offeror, and, in Seller's reasonable judgment, contains closing contingencies not materially

different than those contained in this Agreement (a "Qualified Competing Transaction Proposal").

(d) Unless and until this Agreement is terminated in accordance with Article XIII, if any person or entity submits a Qualified Competing Transaction Proposal to Seller, and Seller has made a determination that such offer is more beneficial to Seller than the transactions contemplated by this Agreement, Seller shall promptly notify Purchaser of such offer and provide Purchaser with a copy of the offer. Purchaser shall have five (5) days after such notification and receipt of the offer to modify the terms of this Agreement so as to, in Seller's reasonable judgment, match or improve the terms offered in the Qualified Competing Transaction Proposal, including, without limitation, matching or increasing the consideration offered to be paid by the person or entity submitting the Qualified Competing Transaction Proposal to Seller. If Purchaser timely makes such modification, Seller shall recommend to the Bankruptcy Court that this Agreement, as so modified by Purchaser, be approved by the Bankruptcy Court and shall continue to perform its obligations under this Agreement. Purchaser shall have the same rights provided in this Section 2.4(d) with respect to any offers made subsequent to any such modification of this Agreement, provided with respect to any subsequent offers the five (5) day period shall be reduced to one (1) day.

Section 2.5 Further Assurances. At any time and from time to time after the Closing, at the request of Purchaser and without further consideration, Seller shall execute and deliver such other instruments of sale, transfer, conveyance and assignment and take such action as Purchaser may reasonably request in order to transfer, convey and assign to Purchaser and to confirm Purchaser's rights to, title in and ownership of the Purchased Assets and to place Purchaser in actual possession and operating control thereof.

ARTICLE III CONSIDERATION

Section 3.1 Purchase Price. The purchase price for the Purchased Assets (the "Purchase Price") shall be NINETY THREE MILLION FIVE HUNDRED THOUSAND and NO/100 DOLLARS (\$93,500,000.00), payable in the lawful currency of the United States. The Purchase Price shall be payable as provided in Section 3.3. No portion of the Purchase Price shall be allocated to the Personal Property included in the sale.

Section 3.2 Assumption of Liabilities. (a) As additional consideration for the transaction contemplated by this Agreement, from and after the Closing, and without limiting any document delivered at Closing, Purchaser will assume and shall be deemed to assume, without delivery of any additional document at the Closing, all of the covenants and Liabilities of Seller which are to be performed, are incurred pursuant to, or arise in connection with (collectively the "Assumed Liabilities"): (i) the Licenses and Permits, including the Assumed Contract Cure Amounts but otherwise only to the extent arising on or accruing subsequent to the Closing Date, (ii) the Leases and the Purchased Contracts including the Assumed Contract Cure Amounts but otherwise only to the extent arising or accruing subsequent to the Closing Date, (iii) the Leasing Commission Agreements and the Leasing Brokerage Commissions, to the extent accruing, arising, or with respect to payments coming due, on or subsequent to the Closing Date, (iv) the Capital Improvement Contracts (including, without limitation, the Local Law 11

Contract) in accordance with Section 10.4(b)(i) and (v) Environmental Laws relating to the Property, the existence of Hazardous Substances on, in, under or about, or migrating onto or from the Property, regardless of whether the conditions giving rise to such obligations and liabilities under Environmental Laws or relating to such Hazardous Substances existed or came into existence prior to, on or subsequent to the Closing Date, or any other matters relating to the physical or environmental condition of the Property, whether or not such conditions existed or come into existence prior to, on or after the Effective Date and whether or not such conditions violate any Governmental Regulations. Purchaser shall indemnify, defend, and hold each Seller Indemnified Party harmless from and against any and all claims, losses, Liabilities, actions, demands, judgments, proceedings, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) arising as a consequence of a breach by Purchaser of its obligations pursuant to this Section 3.2. Without limiting the provisions of Section 6.1 or any other provision of this Agreement relating to Seller's liability with respect to the physical or environmental condition of the Property but subject to Seller's representations in Section 8.1, in no event shall Seller (or any other Seller Indemnified Party) have any liability to Purchaser with respect to the physical or environmental condition of the Property, including, without limitation, liabilities arising in connection with any Environmental Laws, the existence of Hazardous Substances on, in, under, or about, or migrating onto or from the Property, whether or not such conditions existed or come into existence prior to, on or subsequent to the Closing Date, and whether or not such conditions violate any Governmental Regulations.

(b) Without limiting the foregoing or any other provision of this Agreement, subject to the terms of this Agreement, Purchaser shall pay, and hereby assumes, without receiving any payment or credit therefor from Seller (other than the credits and prorations expressly set forth in this Agreement), the obligations to pay leasing brokerage commissions (collectively, "Leasing Brokerage Commissions") that become due with respect to (i) any Leasing Commission Agreement listed on Schedule 8.1(p)(i), (ii) Leases entered into after the Effective Date in accordance with the terms hereof but on terms reasonably approved by Purchaser or otherwise after the Closing, (iii) subject to the provisions of Section 7.1 hereof, commissions required to be paid in connection with the exercise after the Effective Date of any expansion, extension or renewal options or any other rights of Tenants, whether or not arising pursuant to any one or more Leasing Commission Agreements, and (iv) any other commissions Purchaser is obligated to pay pursuant to Section 7.1(a), 8.1(p) or 10.4(b)(ii), but excluding any commissions Seller may be specifically obligated to pay as set forth on Schedule 10.4(b)(ii), and Purchaser shall indemnify, defend and hold each Seller Indemnified Party harmless from and against any and all claims, losses, liabilities, actions, demands, judgments, proceedings, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) arising as a consequence of a breach by Purchaser of its obligations pursuant to this Section 3.2(b).

(c) The provisions of this Section 3.2 shall survive Closing without limitation.

Section 3.3 Method of Payment of Purchase Price. No later than 2:00 p.m. Eastern Standard time on the Closing Date, Purchaser shall deliver the Purchase Price (less the Down Payment and the interest accrued thereon), together with all other costs and amounts to be paid by Purchaser at the Closing pursuant to the terms of this Agreement ("Purchaser's Costs") and subject to the credits and prorations expressly set forth in this Agreement, in cash, by wire

transfer of immediately available funds to Seller and to such other parties (including without limitation, Seller's current mortgagee in connection with an assignment of Seller's current mortgage, to the extent provided herein), if any, as may be designated in writing by Seller, in accordance with wiring instructions provided to Purchaser by Seller.

Section 3.4 Employees. Purchaser shall assume or cause its managing agent, or other agent, or vendor for the Property to assume, as of the Closing Date, the Collective Bargaining Agreements, including without limitation, any and all obligations under employee benefit plans and any and all Withdrawal Liability arising on or after the Closing Date as a consequence of or related to the sale of the Property pursuant to this Agreement. Purchaser shall not assume any obligations under employee benefit plans or any Withdrawal Liability arising prior to the Closing Date. Without limiting the foregoing, Purchaser shall indemnify, defend and hold each Seller Indemnified Party harmless from and against all claims, losses, liabilities, actions, demands, judgments, proceedings, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) arising as a consequence of or in connection with (i) any Employment Claims which relate to events occurring on or after the Closing Date, (ii) a breach by Purchaser of its obligations under this Section 3.4, (iii) a breach of the Collective Bargaining Agreements on or after the Closing Date with respect to Employees at the Property, and (iv) claims asserted on or after the Closing Date relating to Withdrawal Liability arising as a consequence of or related to the sale of the Property pursuant to this Agreement. The parties acknowledge the enactment of the Displaced Building Service Workers Protection Act, §22-505 of the Administrative Code of the City of New York ("**DBSWPA**"). By this Agreement, including, without limitation, Purchaser's assumption of the Collective Bargaining Agreements, the parties have availed themselves of the opt-out provision of §22-505(d) of DBSWPA with respect to all Employees covered by a Collective Bargaining Agreement, to which the DBSWPA applies. The provisions of this Section 3.4 shall survive the Closing without limitation.

Section 3.5 Indivisible Economic Package. Except as may otherwise be expressly provided in this Agreement, Purchaser has no right to purchase or assume, and Seller has no obligation to sell or assign less than all of the Purchased Assets, it being the express agreement and understanding of Purchaser that, as a material inducement to Seller to enter into this Agreement, Purchaser has agreed to purchase all of the Purchased Assets and assume all of the Assumed Liabilities, subject to and in accordance with the terms and conditions of this Agreement.

ARTICLE IV THE DOWN PAYMENT AND ESCROW INSTRUCTIONS

Section 4.1 The Down Payment. Purchaser shall deposit no later than two (2) Business Days following written notification from Seller of acceptance of this Agreement and delivery of a fully-executed copy of this Agreement to Purchaser, by wire transfer of immediately available federal funds to the Escrow Agent, an amount equal to FOURTEEN MILLION AND NO/100's (\$14,000,000.00) DOLLARS (the "**Down Payment**"). If Purchaser shall fail to timely deliver the Down Payment in accordance with this Section 4.1, this Agreement shall be null and void.

Section 4.2 Escrow Instructions. The Down Payment shall be held in escrow by the Escrow Agent in an interest bearing account in accordance with the provisions of Article XVIII.

Section 4.3 Designation of Certifying Person. In order to assure compliance with the requirements of Section 6045 of the Internal Revenue Code of 1986, as amended (the "Code"), and any related reporting requirements of the Code, the parties hereto agree as follows:

(a) The Escrow Agent agrees to assume all responsibilities for information reporting required under Section 6045(e) of the Code, and Seller and Purchaser hereby designate the Escrow Agent as the person to be responsible for all information reporting under Section 6045(e) of the Code (the "Certifying Person").

(b) Seller and Purchaser each hereby agree:

(i) to provide to the Certifying Person all information and certifications regarding such party, as reasonably requested by the Certifying Person or otherwise required to be provided by a party to the transaction described herein under Section 6045 of the Code; and

(ii) to provide to the Certifying Person such party's taxpayer identification number and a statement in such form as may be reasonably requested by the Certifying Person, signed under penalties of perjury, stating that the taxpayer identification number supplied by such party to the Certifying Person is correct.

ARTICLE V TITLE MATTERS

Section 5.1 Title. (a) Purchaser has reviewed, accepts and shall acquire the Property subject to, (i) all exceptions to title set forth in the Title Commitment No. 832149 dated August 1, 2010 (or any update thereof delivered to Seller prior to the Effective Date) or pro forma title insurance policy issued by the Title Company for the Property posted on the Data-room Website on the Effective Date (the "Title Commitment"), including, without limitation, all documents referred to in the Title Commitment as being exceptions to title, (ii) all matters shown on the Survey, and (iii) all other Permitted Encumbrances, including without limitation, the Permitted Encumbrances set forth on Schedule 5.1, but specifically excluding those Liens, if any, that Seller is obligated to pay or discharge under Section 5.1(f), which matters shall not be Permitted Encumbrances. At Closing, notwithstanding anything to the contrary which may be contained or implied elsewhere in this Agreement, Purchaser shall accept title to the Property as the Title Company is willing to approve and insure title to the Property in accordance with the Title Policy, subject only to the Permitted Encumbrances. If Purchaser elects to use a Title Company other than Royal Abstract of New York LLC, and such other title company is not willing to approve and insure as required under this Agreement, but Royal Abstract of New York LLC is willing to so approve and insure at standard rates, then Purchaser may not raise the Title Company's refusal to so approve and insure as an objection or failure of a condition, breach by Seller or other basis on which Purchaser may refuse to close under this Agreement.

(b) Purchaser shall have the right, at any time between the Effective Date and the date which is 10 days prior to the Confirmation Hearing Date to obtain an updated Title

Commitment at Purchaser's sole cost and expense (the "Updated Title Commitment"). If the Updated Title Commitment by the Title Company for the Property includes any additional matters with respect to title which, in the opinion of Purchaser, are Title Defects, Purchaser shall have the right to object to such matters only by delivering a written statement advising Seller thereof by the earlier to occur of (i) five (5) Business Days from Purchaser's receipt of the Updated Title Commitment and (ii) the date which is 5 days prior to the Confirmation Hearing Date in which event each such matter shall be a Title Defect. Unless Purchaser shall so timely object to a matter of title in accordance with this Section 5.1(b), each matter of title not so timely objected to shall be and become a Permitted Encumbrance. Title Defects timely objected to by Purchaser in accordance with this Section 5.1(b) shall collectively be referred to herein as the "Title Objections," provided, however, that notwithstanding anything in this Agreement to the contrary, Title Defects and Title Objections shall not include any Lien, Claim or encumbrance to the extent that Purchaser shall acquire the Property free and clear of any such Lien, Claim or encumbrance pursuant to the terms of the Bankruptcy Plan and/or the Confirmation Order. Any notice from Purchaser setting forth Title Defects shall specify, in the reasonable opinion of Purchaser, the Title Defect or Title Defects which can be discharged by its or their respective terms by the payment of a specified sum of money, and which Title Defect or Title Defects cannot be discharged in accordance with its terms by the payment of a specified sum of money.

(c) If there are one or more Title Objections which can be discharged, by its or their respective terms, by the payment of a specified sum of money equal to or less than, in the aggregate, the Title Objection Threshold Amount, Seller may elect, in its sole and absolute discretion, to (i) decrease the Purchase Price by the cost to release, remove, cure, discharge or otherwise satisfy such Title Objections, or (ii) release, remove, cure, discharge, or otherwise satisfy such Title Objections. In the event Seller elects to decrease the Purchase Price by the cost to release, remove, cure, discharge or otherwise satisfy such Title Objections, Purchaser shall be deemed to have waived such Title Objections and shall accept title to the Property subject to such Title Objections (which shall be and become Permitted Encumbrances), and Seller shall have no further obligation to Purchaser as a consequence of the existence of such Title Objections. In the event Seller elects to release, remove, cure, discharge, or otherwise satisfy such Title Objections, Seller shall be permitted to adjourn the Scheduled Closing Date for a period not to exceed sixty (60) days for such purpose but not later than the Outside Date. Seller shall advise Purchaser of its election to either decrease the Purchase Price, or release, remove, cure, discharge, or otherwise satisfy such Title Objections, and whether it has elected to adjourn the Scheduled Closing Date in connection with its release, removal, cure, discharge, or other satisfaction of such Title Objections, on or before the date which is two (2) Business Days prior to the Scheduled Closing Date. If Seller fails to deliver such notice within such time period, Seller shall be deemed to have elected to decrease the Purchase Price by the amount of such Title Objections.

(d) If there are one or more Title Objections which can be discharged, by its or their respective terms, by the payment of a specified sum of money equal to, in the aggregate, more than the Title Objection Threshold Amount, Seller may elect, in its sole and absolute discretion, to either (i) decrease the Purchase Price by the cost to release, remove, cure, discharge or otherwise satisfy such Title Objections, (ii) release, remove, cure, discharge, or otherwise satisfy such Title Objections, or (iii) terminate this Agreement in accordance with Article XIII. In the event Seller elects to decrease the Purchase Price by the cost to release, remove, cure,

discharge or otherwise satisfy such Title Objections, Purchaser shall be deemed to have waived such Title Objections and shall accept title to the Property subject to such Title Objections (which shall be and become Permitted Encumbrances), and Seller shall have no further obligation to Purchaser as a consequence of the existence of such Title Objections. In the event Seller elects to release, remove, cure, discharge, transfer to bond or otherwise satisfy such Title Objections, Seller shall be permitted to adjourn the Scheduled Closing Date for a period not to exceed sixty (60) days for such purpose but not beyond the Outside Date, provided, however, that Seller's election to so adjourn the Scheduled Closing Date shall not obligate Seller to cause the release, removal, cure, discharge, or other satisfaction of such Title Objections, and if Seller shall not have caused the release, removal, cure, discharge, or other satisfaction of such Title Objections, by the Scheduled Closing Date as so adjourned by Seller, Seller may elect, in its sole and absolute discretion, to (i) decrease the Purchase Price by the cost to release, remove, cure, discharge or otherwise satisfy such Title Objections, or (ii) terminate this Agreement in accordance with Article XIII. Seller shall notify Purchaser of its election with respect to this clause (d), including any election Seller may make to adjourn the Scheduled Closing Date, on or before the date which is two (2) Business Days prior to the Scheduled Closing Date. If Seller fails to deliver such notice within such period, Seller shall be deemed to have elected to terminate this Agreement. If Seller elects to terminate this Agreement, or is deemed to have elected to terminate this Agreement, Purchaser may elect, in its sole and absolute discretion, by notice to Seller delivered within five (5) Business Days after (X) Seller's notice to Purchaser of its decision to terminate this Agreement or (Y) Seller is deemed to have terminated this Agreement (or at least one (1) Business Day prior to the Scheduled Closing Date if less than five (5) Business Days remain to the Scheduled Closing Date), to waive such Title Objections and purchase the Property in accordance with the terms of this Agreement with a reduction in the Purchase Price equal to the Title Objection Threshold Amount and Purchaser shall be deemed to have accepted title to the Property subject to such Title Objections (which shall become Permitted Encumbrances), and Seller shall have no further obligation to Purchaser as a consequence of the existence of such Title Objections.

(e) If any Title Objection or Title Objections cannot be released, removed, cured, discharged or otherwise satisfied, by its or their respective terms, by the payment of a specified sum of money, and Seller is unable to cure the same after reasonable efforts without expenditure of funds and Purchaser does not waive such Title Objection or Title Objections, Seller may (i) terminate this Agreement in accordance with Article XIII, or (ii) attempt to release, remove, cure, discharge or otherwise satisfy such Title Objection or Title Objections. If Seller elects to attempt to release, remove, cure, discharge or otherwise satisfy any Title Objection or Title Objections which cannot be discharged by its terms by payment of a specified sum of money, the Scheduled Closing Date may be adjourned by Seller for a period not to exceed sixty (60) days for such purpose but not beyond the Outside Date, provided, however, that Seller's election to so adjourn the Scheduled Closing Date shall not obligate Seller to cause the release, removal, cure, discharge or other satisfaction of any such Title Objections. If such Title Objection or Objections have not been removed, discharged or satisfied by the end of such period of adjournment, the Agreement shall terminate in accordance with the provisions of Article XIII; provided, however, that Purchaser may elect, on five (5) days' written notice to Seller, to accept the Property with such Title Defects or Title Objections, without any reduction of the Purchase Price, in which event the Property shall be conveyed to Purchaser in accordance with the provisions hereof without any reduction of the Purchase Price, such Title Objection or

Objections shall be deemed waived by Purchaser and shall become Permitted Encumbrances, and Seller shall have no further obligation to Purchaser as a consequence of the existence of such Title Objections.

(f) Notwithstanding anything to the contrary which may be contained in or implied by any other provision of this Agreement, or whether such matters exceed the Title Objection Threshold Amount, prior to or at the Closing Seller shall cause the release, removal, discharge or other satisfaction of (i) any Liens on or against the Property securing any indebtedness of Seller or any Affiliate of Seller, (ii) any mechanics' or materialman's Liens placed upon the Property in connection with work performed by or on behalf of Seller or any Affiliate of Seller, (iii) any Liens on or against the Property for Taxes which are due and payable (subject to proration in accordance with Section 10.4), and (iv) any Liens or encumbrances that are filed against the Property after the date of this Agreement to the extent voluntarily recorded by Seller or caused by the voluntary action or agreement of Seller (whether such action of Seller takes place before or after such mutual execution and delivery) (collectively, the "Voluntary Liens"). Taxes not yet due and payable shall be Permitted Encumbrances. The matters described in this paragraph (f) shall not be credited towards the Title Objection Threshold Amount.

(g) Except as specifically set forth in clause (c) and clause (f) of this Section 5.1 and notwithstanding anything to the contrary which may be contained in or implied by any other provision of this Agreement, in no event shall Seller or any Affiliate of Seller, be obligated, and nothing herein shall be construed to require Seller or any Affiliate of Seller, to incur any cost or expense, make any payment, take any action, provide any indemnity, or commence or prosecute any action or proceeding, to cause the release, removal, cure, discharge, or other satisfaction of any Title Defect, or any Title Objection, or to otherwise render Seller's title to the Property, marketable or insurable.

(h) Seller may release, remove, cure, discharge or otherwise satisfy or be deemed to have released, removed, cured, discharged or otherwise satisfied any Title Defect or Title Objection, by (i) causing the Title Company, or any other reputable title company licensed to do business in the State of New York, at Seller's expense, to insure over the Title Defect or Title Objection or to remove, delete or omit such Title Defect or Title Objection from the Title Commitment, whether such action by the Title Company or such other title company is taken due to a payment, bonding, an indemnity or any other reason or no reason, or (ii) causing same to be released, removed, cured, discharged or otherwise satisfied pursuant to the Bankruptcy Plan and/or the Confirmation Order. In either such event, such Title Defect, Title Objection or other matter of title shall be deemed released, removed, cured, discharged and satisfied for all purposes under this Agreement. If Purchaser elects to use a Title Company other than Royal Abstract of New York LLC, and such other title company is not willing to insure over or remove, delete or omit such Title Defect, Title Objection or other matter of title, but Royal Abstract of New York LLC is willing to do so at regular rates, Purchaser may not raise such Title Defect, Title Objection or other matter of title as an objection, failure of condition, breach by Seller or other basis on which Purchaser may refuse to close under this Agreement.

(i) Seller shall not be obligated to cure any Title Defect or Title Objection asserted by Purchaser if such Title Defect or Title Objection is otherwise a matter subject to

which Purchaser is or becomes obligated to accept title pursuant to the express provisions of this Agreement, or Purchaser agrees it shall accept title subject to such matters.

**ARTICLE VI
"AS IS" TRANSACTION**

Section 6.1 **SALE "AS IS".** THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT HAS BEEN FULLY NEGOTIATED BETWEEN SELLER AND PURCHASER AND THEIR RESPECTIVE COUNSEL AND THIS AGREEMENT REFLECTS THE ENTIRE MUTUAL AGREEMENT OF SELLER AND PURCHASER. PURCHASER HAS PREVIOUSLY CONDUCTED ITS OWN INDEPENDENT EXAMINATION OF THE PROPERTY, ALL OTHER PURCHASED ASSETS AND ALL MATTERS RELATING THERETO AS PURCHASER DEEMED NECESSARY OR DESIRABLE. EXCEPT FOR THE MATTERS REPRESENTED IN SECTION 8.1 HEREOF, OR AS MAY BE EXPRESSLY REPRESENTED ELSEWHERE IN THIS AGREEMENT OR IN ANY OF THE CLOSING DOCUMENTS WHICH FOREGOING EXCEPTION SHALL QUALIFY ALL PROVISIONS OF THIS SECTION 6.1, PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION, WARRANTY, STATEMENT OR ASSURANCE OF ANY SELLER INDEMNIFIED PARTY OR ANY BROKER OR ATTORNEY OF ANY SELLER INDEMNIFIED PARTY, AND PURCHASER HEREBY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS, WARRANTIES, STATEMENTS OR ASSURANCES HAVE BEEN MADE, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ANY OF THE INFORMATION, MATERIALS, DOCUMENTS OR OTHER ITEMS MADE AVAILABLE TO ANY PURCHASER INDEMNIFIED PARTY OR THEIR ATTORNEYS, IN CONNECTION WITH THIS SALE, INCLUDING, BUT NOT LIMITED TO, ENGINEERING AND BUILDING CONDITION REPORTS, ENVIRONMENTAL AUDITS AND REPORTS, ZONING REPORTS, LEASES, LEASING COMMISSION AGREEMENTS, THE SURVEY, THE TITLE COMMITMENT, DOCUMENTS REFERRED TO IN THE TITLE COMMITMENT, RENT ROLLS, TAX BILLS, COST AND EXPENSE REPORTS, LICENSES AND PERMITS, AND VIOLATION AND OTHER PROPERTY RELATED SEARCHES, UNLESS AND TO THE EXTENT SPECIFICALLY SET FORTH IN SECTION 8.1 OR ELSEWHERE IN THIS AGREEMENT, AND THEN SUBJECT TO THE LIMITATIONS SET FORTH IN THIS AGREEMENT RELATING TO THE REPRESENTATIONS AND WARRANTIES IN SECTION 8.1, ELSEWHERE IN THIS AGREEMENT OR IN THE CLOSING DOCUMENTS.

EXCEPT AS MAY OTHERWISE EXPRESSLY BE PROVIDED HEREIN OR IN THE CLOSING DOCUMENTS, SELLER SPECIFICALLY DISCLAIMS, AND NEITHER ANY SELLER INDEMNIFIED PARTY, NOR ANY OTHER PARTY, INCLUDING, WITHOUT LIMITATION, ANY PERSON, IS MAKING, ANY REPRESENTATION, WARRANTY, STATEMENT OR ASSURANCE WHATSOEVER TO PURCHASER, AND NO WARRANTIES, REPRESENTATIONS, STATEMENTS OR ASSURANCES OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, ARE RELIED UPON BY PURCHASER, WITH RESPECT TO (A) THE STATUS OF TITLE TO, OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR

MARKETABILITY OF, THE PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER ASSETS INCLUDED IN THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT, (B) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (C) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (D) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (E) ANY RIGHTS OF PURCHASER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (F) ANY CLAIM BY PURCHASER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN, WITH RESPECT TO THE IMPROVEMENTS OR ANY OTHER PURCHASED ASSETS, (G) THE FINANCIAL CONDITION, INCOME OR PROSPECTS OF THE PROPERTY AND ALL OTHER PURCHASED ASSETS INCLUDED IN THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT, (H) THE COST TO OPERATE THE PROPERTY, (I) THE EXISTENCE OF ANY HAZARDOUS SUBSTANCES AT, IN, UNDER, MIGRATING ONTO OR FROM THE REAL PROPERTY OR THE IMPROVEMENTS OR ANY PORTIONS THEREOF, AND (J) THE COMPLIANCE OR LACK THEREOF OF THE REAL PROPERTY OR THE IMPROVEMENTS WITH GOVERNMENTAL REGULATIONS (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL LAWS), NOW EXISTING OR HEREAFTER ENACTED OR PROMULGATED, IT BEING THE EXPRESS INTENTION OF SELLER AND PURCHASER THAT THE PROPERTY AND ALL OTHER ASSETS INCLUDED IN THE TRANSACTION EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED HEREIN CONTEMPLATED BY THIS AGREEMENT WILL BE CONVEYED AND TRANSFERRED TO PURCHASER IN THEIR PRESENT CONDITION AND STATE OF REPAIR, "AS IS, WHERE IS, WITH ALL FAULTS."

PURCHASER REPRESENTS THAT IT IS A KNOWLEDGEABLE, EXPERIENCED AND SOPHISTICATED PURCHASER OF REAL ESTATE, AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF PURCHASER'S CONSULTANTS IN PURCHASING THE PROPERTY AND ALL OTHER ASSETS INCLUDED IN THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. PURCHASER HAS BEEN GIVEN A SUFFICIENT OPPORTUNITY TO CONDUCT AND HAS CONDUCTED SUCH INSPECTIONS, INVESTIGATIONS AND OTHER INDEPENDENT EXAMINATIONS OF THE PROPERTY AND ALL OTHER PURCHASED ASSETS INCLUDED IN THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT AND SUCH RELATED MATTERS AS PURCHASER DEEMS NECESSARY OR ADVISABLE, INCLUDING, WITHOUT LIMITATION, THE FINANCIAL, PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND WILL RELY UPON SUCH INSPECTIONS, INVESTIGATIONS, AND OTHER INDEPENDENT EXAMINATIONS AND, EXCLUDING THE LIMITED MATTERS REPRESENTED AND WARRANTED BY SELLER IN SECTION 8.1, ELSEWHERE EXPRESSLY IN THIS AGREEMENT AND THE CLOSING DOCUMENTS (SUBJECT TO THE LIMITATIONS RELATING THERETO IN THIS AGREEMENT), NOT UPON ANY REPRESENTATIONS, WARRANTIES, STATEMENTS OR ASSURANCES OF ANY SELLER INDEMNIFIED PARTY, OR ANY BROKER, ADVISOR, OR ATTORNEY OF ANY SELLER INDEMNIFIED PARTY, OR ANY OTHER PARTY, INCLUDING, WITHOUT LIMITATION, ANY PERSON. PURCHASER

ACKNOWLEDGES THAT ALL INFORMATION PERTAINING TO THE PROPERTY AND ALL OTHER PURCHASED ASSETS WAS OBTAINED BY PURCHASER FROM A VARIETY OF SOURCES, AND SELLER WILL NOT BE DEEMED TO HAVE REPRESENTED OR WARRANTED THE COMPLETENESS, TRUTH OR ACCURACY OF ANY DOCUMENT OR OTHER INFORMATION HERETOFORE OR HEREAFTER FURNISHED TO PURCHASER, INCLUDING, WITHOUT LIMITATION, ALL DOCUMENTS AND OTHER ITEMS MADE AVAILABLE TO PURCHASER IN CONNECTION WITH THIS TRANSACTION, WHICH INCLUDE, WITHOUT LIMITATION, THE ITEMS REFERRED TO IN THE FIRST PARAGRAPH OF THIS SECTION 6.1. UPON THE CLOSING, PURCHASER WILL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, WITHOUT LIMITATION, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INSPECTIONS AND INVESTIGATIONS OR ANY ENVIRONMENTAL AUDITS OR REPORTS, OR ANY ENGINEERING OR BUILDING CONDITION REPORTS, WHETHER MADE AVAILABLE TO PURCHASER BY SELLER OR OTHERWISE OBTAINED BY PURCHASER. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS COLLATERAL TO OR AFFECTING THE PROPERTY OR ANY OTHER ASSETS INCLUDED IN THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT BY ANY SELLER INDEMNIFIED PARTY, ANY BROKER OR ATTORNEY OF ANY SELLER INDEMNIFIED PARTY, OR ANY OTHER PARTY, WHETHER OR NOT A PERSON. OTHER THAN AS MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY AND ALL OTHER ASSETS INCLUDED IN THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT, WHETHER FURNISHED BY ANY SELLER INDEMNIFIED PARTY, ANY BROKER OR ATTORNEY OF ANY SELLER INDEMNIFIED PARTY, OR ANY OTHER PARTY, INCLUDING, WITHOUT LIMITATION, ANY PERSON (EXCLUDING THE LIMITED MATTERS REPRESENTED AND WARRANTED BY SELLER IN SECTION 8.1 HEREOF, ELSEWHERE EXPRESSLY IN THIS AGREEMENT AND THE CLOSING DOCUMENTS, AND THEN SUBJECT TO THE LIMITATIONS RELATING THERETO IN THIS AGREEMENT). PURCHASER ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS THE "AS IS, WHERE IS, WITH ALL FAULTS" NATURE OF THIS SALE AND ANY FAULTS, LIABILITIES, DEFECTS OR OTHER ADVERSE MATTERS THAT MAY BE ASSOCIATED WITH THE PROPERTY AND ALL OTHER ASSETS INCLUDED IN THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER, WITH PURCHASER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS, WAIVERS AND AGREEMENTS SET FORTH IN THIS AGREEMENT AND UNDERSTANDS THE SIGNIFICANCE OF EACH AND AGREES THAT THE DISCLAIMERS, WAIVERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS AGREEMENT, AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY AND ALL OTHER ASSETS INCLUDED IN THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT TO PURCHASER FOR THE PURCHASE

PRICE WITHOUT THE DISCLAIMERS, WAIVERS AND AGREEMENTS SET FORTH IN THIS AGREEMENT.

PURCHASER FURTHER COVENANTS AND AGREES NOT TO SUE ANY SELLER INDEMNIFIED PARTY, AND RELEASES EACH SELLER INDEMNIFIED PARTY OF AND FROM AND WAIVES ANY CLAIM OR CAUSE OF ACTION, AGAINST EACH SELLER INDEMNIFIED PARTY, INCLUDING, WITHOUT LIMITATION, ANY STRICT LIABILITY CLAIM OR CAUSE OF ACTION, THAT PURCHASER MAY HAVE AGAINST ANY SELLER INDEMNIFIED PARTY, RELATING TO ENVIRONMENTAL LAWS, ENVIRONMENTAL MATTERS, ENVIRONMENTAL CONDITIONS OR THE EXISTENCE OF HAZARDOUS SUBSTANCES, IN, ON, AT, UNDER, ABOUT OR MIGRATING FROM OR ONTO ANY OF THE REAL PROPERTY OR ANY OF THE IMPROVEMENTS, WHETHER THE CONDITIONS GIVING RISE THERETO EXISTED OR CAME INTO EXISTENCE PRIOR TO, ON OR AFTER THE EFFECTIVE DATE, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS OR CAUSES OF ACTION ARISING UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, OR BY VIRTUE OF ANY OTHER ENVIRONMENTAL LAWS OR ANY COMMON LAW RIGHT, NOW EXISTING OR HEREAFTER CREATED, RELATED TO ENVIRONMENTAL CONDITIONS, ENVIRONMENTAL MATTERS OR HAZARDOUS SUBSTANCES IN, ON, AT, UNDER, ABOUT OR MIGRATING FROM OR ONTO THE REAL PROPERTY OR ANY OF THE IMPROVEMENTS. WITHOUT LIMITING ANY OTHER PROVISIONS OF THIS AGREEMENT RELATING TO THE SURVIVAL OF PROVISIONS UNDER THIS AGREEMENT, THE TERMS AND CONDITIONS OF THIS SECTION 6.1 EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT OR THE CLOSING, AS THE CASE MAY BE, WITHOUT LIMITATION, WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENT AND ARE HEREBY DEEMED INCORPORATED INTO THE DEED AS FULLY AS IF SET FORTH AT LENGTH THEREIN.

ARTICLE VII SELLER'S COVENANTS

Section 7.1 Interim Operating Covenants. Seller covenants to Purchaser that Seller will cause the following to occur:

(a) Operations. From the Effective Date until the Closing, except for the Commencement of the Chapter 11 Case and proceedings conducted pursuant to the bankruptcy process, Seller shall operate and manage the Property in the ordinary course of Seller's business and substantially in accordance with Seller's and its managing agent's present practice for this Property, subject to ordinary wear and tear, clauses (d) and (e) of this Section 7.1 and Article XI. Seller shall not have any obligation under this Section 7.1(a) or otherwise pursuant to this Agreement to perform or make (i) any repairs, replacements or improvements to the Property in excess of routine day-to-day maintenance and any other repair or replacement which (1) Seller is not obligated under any Lease to perform and (2) which is not reasonably required in order to comply with Seller's obligations as the landlord under the Leases, (ii) any capital repairs, improvements or expenditures, or (iii) any other expenditure not in Seller's ordinary day-to-day

course of business for the operation of the Property or which would not be necessary to avoid waste or to maintain building systems and equipment; provided that, with the exception of the violations set forth on Schedule 8.1(l), Seller shall be required to remain in material compliance with all Governmental Regulations applicable to Seller (as distinguished from Tenants) with respect to the operation of the Property through the Closing Date. Nothing herein, however, shall preclude Seller or its managing agent from performing or causing to perform any other capital improvements or repairs it elects to perform or cause to be performed in connection with a Capital Improvement Contract, an emergency or which are otherwise expressly permitted by the terms of this Agreement and any such repairs shall be performed in good and workmanlike manner in accordance with applicable laws. From the Effective Date until the Closing, Seller shall continue to operate the Property substantially in accordance with the standards and customs with respect to which it was operated prior to the Effective Date. From the Effective Date until the Closing Seller shall not amend or terminate any Lease, Purchased Contract or Leasing Commission Agreement (except to the extent such amendment or termination is pursuant to a right exercised by the other party thereto and for which consent by Seller is not required), or accept the surrender of any existing Lease or approve any subleases (except to the extent Seller is required to consent to any such subleases pursuant to the terms of the applicable Lease), or enter into new Leases, without Purchaser's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, except that Seller may, but shall not be obligated to, enter into the prospective Leases described on Schedule 8.1(g)(i) without Purchaser's consent, provided that the forms of such new Leases (i.e. meaning all terms other than those described in Schedule 8.1(g)(i)) are approved by Purchaser, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be deemed granted with respect to renewals of existing Leases, if a new Lease is substantially in the form of the Lease being renewed (i.e., meaning no change in any terms other than those described on Schedule 8.1(g)(i) or in the form of an amendment which does not modify the existing form of the Lease) and such renewal is at then prevailing market terms or at such terms as are required pursuant to any rights of renewal granted to the Tenant under such Lease; provided further that Seller may only amend or extend such Leases which would otherwise expire on or prior to the date which is sixty (60) days following the Scheduled Closing Date (except to the extent such amendment or extension is pursuant to a right exercised by the other party thereto and for which consent by Seller is not required). Notwithstanding anything to the contrary in this Agreement, from and after the Effective Date, Purchaser shall, for itself, and not on behalf of Seller, be permitted to negotiate leases for vacant space at the Property provided that (i) Purchaser shall first notify Seller of its intention to do so (including in such notification, the proposed space to be leased) and Seller shall have consented thereto, which consent shall not be unreasonably withheld conditioned or delayed, and (ii) Purchaser shall indemnify and hold Seller harmless from and against any and all liability, claims, suits, demands, damages, judgments, costs and expenses (including reasonable attorney's fees, disbursements and court costs) arising out of any claim by any prospective tenant or by any third party including, without limitation, any broker alleging the right to payment of commission or other compensation in connection with such lease negotiations.

(b) Lease Enforcement. Prior to the Closing Date, Seller shall have the right, but not the obligation, to enforce the rights and remedies of the landlord under any Lease by summary proceedings or otherwise (except that Seller shall not terminate any Lease, other than those listed as being the subject of existing litigation on Schedule 8.1(g)(iii) nor commence any new litigation or summary proceeding, without the prior written consent of Purchaser, which

consent shall not be unreasonably withheld, conditioned or delayed), and to reasonably apply all or any portion of any of the Security Deposits toward any loss or damage incurred by Seller or by reason of any defaults by tenants under the Leases, and the exercise of any such rights or remedies shall not affect the obligations of Purchaser under this Agreement in any manner or entitle Purchaser to a reduction in, or credit or allowance against, the Purchase Price, or give rise to any other claim on the part of Purchaser.

(c) Estoppels. Seller shall use commercially reasonable efforts to receive prior to Closing estoppel certificates from (i) five (5) out of the six (6) Major Tenants, and (ii) seventy-five percent (75%) of all Tenants (including the Major Tenants), based on square footage leased (the "Estoppel Percentage Threshold") in a form substantially similar to that set forth on Schedule 7.1(c); provided that "commercially reasonable efforts" shall not require Seller to spend any sums (other than the commercially reasonable cost of requesting the estoppels and follow-up requests, including requests from Seller's attorney if a Tenant fails to timely deliver an estoppel certificate which is required to be delivered under its Lease), or commence any action or proceeding, or declare any Lease in default. After using commercially reasonable efforts to obtain estoppel certificates meeting the Estoppel Percentage Threshold, Seller may provide its own estoppel for up to ten percent (10%) of Tenants (other than Major Tenants and based on square footage) necessary to meet the Estoppel Percentage Threshold. Seller may adjourn Closing up to twenty (20) days on no less than two (2) Business Days' notice in order to achieve the Estoppel Percentage Threshold, but in no event later than the Outside Date. Seller shall deliver to Purchaser all completed estoppel certificates received from the Tenants within two (2) Business Days following receipt thereof by Seller. The term "Acceptable Estoppel Certificate" means an estoppel certificate that is consistent in form with that required by the applicable Tenant's Lease, does not raise a claim that Landlord is in material default or otherwise materially and adversely qualifies the statements contained in such certificate and is dated no more than seventy-five (75) days prior to the Closing Date.

Pursuant to Section 6.6.7 of the By-Laws (as defined in the Condominium Documents), Seller shall use commercially reasonable efforts to receive prior to Closing an estoppel certificate and/or statement of common charges (the "Condominium Estoppel") from the Board of Managers (as defined in the Condominium Documents) of the Condominium under Sections 2.2.2.20 of the Declaration and 5.16 of the By-Laws; provided that "commercially reasonable efforts" shall not require Seller to spend any sums (other than the commercially reasonable cost of requesting the Condominium Estoppel and follow-up requests, including requests from Seller's attorney if the Board fails to timely deliver the Condominium Estoppel which is required to be delivered under the Condominium Documents), or commence any action or proceeding, or declare any Unit Owner (as defined in the Condominium Documents) in default. After using commercially reasonable efforts to obtain the Condominium Estoppel, Seller may provide its own Condominium Estoppel. Seller may adjourn Closing up to twenty (20) days on no less than two (2) Business Days' notice in order to obtain the Condominium Estoppel, but in no event later than the Outside Date. Seller shall deliver to Purchaser the Condominium Estoppel within two (2) Business Days following receipt thereof by Seller. The term "Acceptable Condominium Estoppel" means a Condominium Estoppel that is consistent in form with that required by the Condominium Documents, does not raise a claim that Seller is in material default or otherwise materially and adversely qualifies the statements contained in such certificate, is dated no more

than seventy-five (75) days prior to the Closing Date and is executed by the Retail Unit Owner or a duly appointed third party management agent of the Board.

(d) Compliance with Governmental Regulations. From the Effective Date until the Closing, provided that to the extent any such contest is not concluded by the Closing Date, Seller shall have posted adequate security to the Indemnity Fund to cover all amounts due, penalties and interest to the extent exceeding the amounts otherwise in the Indemnity Fund, Seller shall have the right to contest any Governmental Regulations or any alleged noncompliance with Governmental Regulations, provided that, subject to Seller's obligations set forth in Section 7.1(a), nothing contained in this Section 7.1(d) shall require or be deemed to require Seller to perform any work, make any improvements or otherwise take any actions in order to comply with, or as a consequence of the existence of, any Governmental Regulations, including, without limitation, any Environmental Laws, whether pursuant to notes, notices of violations or claims issued by any Authorities or any other parties prior to, on or after the Effective Date, pursuant to Governmental Regulations, including, without limitation any Environmental Laws, promulgated prior to, on or after the Effective Date, or with respect to conditions existing at the Property prior to, on or after the Effective Date.

(e) Notices of Violations. From the Effective Date until the Closing, Seller shall deliver to Purchaser copies of all written notices of violations of any Governmental Regulations relating to the Property received by Seller from any Authorities. Purchaser agrees that Seller shall have the right, but shall have no obligation, to cure of record, or cure the condition giving rise to, any existing or future notice or notices of violations of any Governmental Regulations, including, without limitation, Environmental Laws, and Seller's failure to cure of record, or cure the condition giving rise to, any existing or future notes or notices of violations of any Governmental Regulations received from any Authorities shall not give rise to a right of Purchaser not to close the transaction contemplated by this Agreement, or to a right to a reduction of, or credit or allowance against, the Purchase Price, or give rise to any other claim on the part of Purchaser; provided that Seller shall pay all fines, penalties and Liens or violations arising prior to Closing.

(f) Insurance. From the Effective Date until the Closing Date, Seller shall maintain in uninterrupted full force and effect, at its election, either (a) the fire and other casualty insurance coverage existing on the Property on the Effective Date or (b) fire and other casualty insurance coverage for full replacement cost with a deductible no larger than the deductible for insurance currently in place and by a carrier with a credit rating equal or better than the current carrier's credit rating; provided that, in either case, terrorism coverage shall not be required, but in any case the fire and other casualty insurance coverage shall be maintained to the full extent required by Seller's existing financing.

(g) Encroachments, Easements. From the Effective Date until the Closing, unless required by any Authorities or Governmental Regulations, Seller shall not (i) enter into, record, or consent to any encroachment, encumbrance, easement, lien or change in zoning classification that will be binding on Purchaser or the Property after the Closing, without Purchaser's prior written consent, which consent may be withheld in Purchaser's sole discretion or (ii) cause or permit any Voluntary Liens.

(h) Reports. Seller shall, on or before the Closing, use commercially reasonable efforts to cause the preparers of the property condition assessment and Phase I environmental site assessment made available to Purchaser for review on the Data-room Website, to address such reports to Purchaser and one other party reasonably designated by Purchaser (which may be Purchaser's mortgage lender), to reissue such reports with a reliance provision for the benefit of Purchaser and one other party reasonably designated by Purchaser, or to execute reliance letters relating to such reports to Purchaser and one other party reasonably designated by Purchaser (which may be Purchaser's mortgage lender), in each case at Purchaser's expense.

(i) Taxes. From the Effective Date to the Closing, subject to the provisions of Section 10.5, Seller shall be permitted to contest any Taxes and in such event, Seller shall notify Purchaser as to the nature of the contest.

(j) Condominium. From the Effective Date until the Closing, Seller shall operate and manage the Property and shall perform all of Seller's obligations pursuant to and in accordance with the terms of the Condominium Documents, including, without limitation, the obligation of Seller to promptly pay, when due, all Condominium Expenses, dues and assessments imposed pursuant to the Condominium Documents, all in the ordinary course of Seller's business and substantially in accordance with Seller's and its managing agent's present practice for this Property. From the Effective Date until the Closing, Seller shall not modify the Condominium Documents without Purchaser's written consent.

Section 7.2 Site Visits. Purchaser has already had the opportunity to visit the Property and conduct its inspections under the Confidentiality Agreement. In order to facilitate an orderly transition of the Property, with the accompaniment of Seller or an agent or representative of Seller, Purchaser and its authorized agents and representatives shall have reasonable access to the Property from time to time from the Effective Date to and including the Closing Date, on at least one (1) Business Days' prior written notice to Seller during normal business hours or such other reasonable times as may be mutually agreed upon by Seller and Purchaser, for the sole purpose of conducting visual, non-invasive inspections of the physical condition of the Property, provided such inspections shall not unreasonably disrupt or disturb (a) the ongoing operations of the Property, (b) the Seller's business activities at the Property, (c) the activity of Tenants or any persons occupying the Property or (d) the delivery of any services at the Property, provided that should Purchaser desire access to any space occupied by a Tenant, then Seller shall use commercially reasonable efforts, subject to the rights of such Tenant pursuant to its Lease, to seek to arrange such entry. Purchaser shall not contact or have any discussions with any of Seller's employees, agents or representatives, or with any tenants at, or contractors providing services to the Property, unless in each case Purchaser obtains the prior written consent of Seller, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any rights to inspection set forth in this Section, or anything herein to the contrary contained, Purchaser's obligations hereunder shall not be limited or otherwise affected as a result of any fact, circumstance or other matter of any kind discovered following the date hereof in connection with any such inspection and access is a courtesy to Purchaser in its preparation for taking title to the Property. Without limiting the generality of the foregoing, (x) Purchaser agrees that it shall not have any so-called "due diligence period" and that it shall have no right to terminate this Agreement or obtain a reduction of the Purchase Price as a result of any such fact, circumstance

or other matter so discovered (including, without limitation, relating to the physical condition of the Premises, the operations of the Premises or otherwise), unless the same reveals an express misrepresentation or covenant breach that independently gives rise to a right or remedy hereunder and (y) Purchaser shall have no right to terminate this Agreement or obtain a return of the Deposit except as expressly provided in Article XIII. Purchaser shall indemnify, defend and hold harmless the Seller Indemnified Parties from and against any and all liens, claims, causes of action, damages, liabilities, demands, suits, obligations losses, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), arising out of any inspections, investigations, examinations, tests conducted at the Property by Purchaser or any agent contractor, consultant, or representative of Purchaser. At Seller's election, prior to any such entry onto the Property, Purchaser shall provide Seller with evidence reasonably satisfactory to Seller that Purchaser (and any agent, representative, consultants or contractors of Purchaser) maintains commercial general liability insurance with coverage in an amount of not less than \$1,000,000 per occurrence combined single limit and \$5,000,000 in the aggregate and that Seller has been named as an additional insured under such insurance which shall also include a waiver of subrogation against all parties named as additional insureds. Such insurance of Purchaser shall be primary, and all insurance carried by the Seller shall be strictly excess and secondary and shall not contribute with or to Purchaser's insurance. Seller agrees to promptly sign any application for the approval of the New York City Department of Buildings (the "DOB") for work that Purchaser proposes to perform after the Closing Date, provided that such application is in a form reasonably acceptable to Seller and does not require Seller to certify to any factual or legal matters.

Section 7.3 Bankruptcy Filing and Bankruptcy Court Approvals.

(a) No later than five (5) days after the commencement of the Chapter 11 Case, Seller shall file, or cause to be filed, a disclosure statement in respect of the Bankruptcy Plan (the "Disclosure Statement") and the Bankruptcy Plan. Seller shall provide copies of the Disclosure Statement and Bankruptcy Plan to Purchaser, for its information only (as opposed to its review and comment) on, or at Seller's option, before, the date that the Disclosure Statement and Bankruptcy Plan are filed with the Bankruptcy Court. Seller shall request that the Bankruptcy Court set a hearing for approval of the Disclosure Statement on not more than sixty (60) days' notice.

(b) Purchaser agrees to cooperate with Seller in providing any information and evidence that may be required to demonstrate to the Bankruptcy Court's satisfaction adequate assurance of future performance of all Purchased Contracts.

(c) Seller agrees that in the event there are any delays to the schedule for obtaining a confirmation hearing and Confirmation Order from the Bankruptcy Court because of issues affecting the confirmation of Rock New York (183 Madison Avenue) LLC which would prevent a Closing on the Property from occurring on or prior to December 31, 2010, then, provided the same would reasonably result in allowing the Closing on the Property to occur on or prior to December 31, 2010, Seller shall exercise its option under the Bankruptcy Plan to bifurcate the confirmation of the cases relating to the Property, and to proceed with confirmation ahead of the confirmation process for Rock New York (183 Madison Avenue) LLC.

**ARTICLE VIII
REPRESENTATIONS AND WARRANTIES**

Section 8.1 Seller's Representations and Warranties. The following constitute the sole representations and warranties of Seller, except for express representations contained elsewhere in this Agreement. Subject to the limitations set forth in Sections 8.3 and 8.4 of this Agreement, Seller represents and warrants to Purchaser, as of the Effective Date, as follows:

(a) Status. Seller is a limited liability company, duly organized and validly existing under the laws of the State of Delaware.

(b) Authority. Upon entry of the Confirmation Order which has not been stayed or reversed prior to the Closing, the execution and delivery of this Agreement and the performance of Seller's obligations hereunder have been or prior to the Closing will be duly authorized by all necessary action on the part of Seller, and this Agreement constitutes the legal, valid and binding obligation of Seller.

(c) Non-Contravention. The execution and delivery of this Agreement by Seller does not, and the consummation by Seller of the transaction contemplated hereby will not, (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority by which Seller is bound, (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Seller or any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or, upon entry of the Confirmation Order which has not been stayed or reversed prior to Closing, any material agreement or instrument to which Seller is a party or by which it is bound, or (iii) upon entry of the Confirmation Order which has not been stayed or reversed prior to the Closing, violate any law, statute, rule or regulation by which Seller is bound.

(d) Consents. Any banking or corporate consent, waiver, approval or authorization required from any party in connection with the execution and delivery of this Agreement by Seller or the consummation by Seller of the transaction contemplated hereby has been obtained or will be obtained prior to the Closing or will be deemed granted in accordance with the Bankruptcy Plan and/or the Confirmation Order.

(e) Suits and Proceedings Against Seller. To Seller's Knowledge, except as set forth on Schedule 8.1(e), there are no legal actions, suits or proceedings pending and served or threatened in writing against Seller relating to the Property or the Purchased Assets.

(f) Non-Foreign Entity. Seller is not a "foreign person" or "foreign corporation" pursuant to Section 1445 of the Code and the regulations promulgated thereunder.

(g) Tenant Leases. To Seller's Knowledge, (i) the Leases are in full force and effect and the names of the tenants under the Leases, and a description of prospective Leases, are set forth on Schedule 8.1(g)(i) and Schedule 8.1(g)(i) is true, correct and complete in all material respects; (ii) except for the prospective Leases described on Schedule 8.1(g)(i) (if executed prior to the Closing in accordance with the provisions of this Agreement), true and correct copies of the Leases (including any amendments or modifications thereto), to the extent in Seller's possession or control, are located on the Data-room Website (and any prospective Leases will be

posted in the Data-room Website or delivered to Purchaser promptly after full execution and delivery); (iii) except as set forth on Schedule 8.1(g)(iii), no Tenant is currently in litigation with Seller and no written notice of default under a Lease has been sent to a Tenant by or on behalf of Seller or by a Tenant to Seller other than a default notice setting forth a default which, as of the Effective Date, has been cured and, to Seller's Knowledge, there are no conditions which, with notice and/or the passage of time would constitute a material default; (iv) except as set forth on Schedule 8.1(g)(iv), no Tenant is in arrears for rent for more than 30 days; (v) except as set forth on Schedule 8.1(g)(v), Seller, and/or its managing agents and management companies have not received any written notice that a tenant disputes the computation of additional or escalation rent or claims any set-offs or offsets against rent due under its Lease, or that any tenant alleges a dispute relating to the work required to be performed by the landlord to prepare its premises for occupancy or regarding the landlord's contribution towards its work allowance, except for any such notice pertaining to a dispute which has been resolved; (vi) except as set forth on Schedule 8.1(g)(vi), Seller and/or its managing agents and management companies have not received any advance payment of rent on account of any of the Leases (other than for the current month or as specifically set forth in the Leases relating to estimated rent); (vii) no Tenant is entitled to rental concessions or abatements for any period subsequent to the Closing Date, except as set forth in the Leases; (viii) the Security Deposits currently being held by Seller are set forth on Schedule 8.1(g)(viii), all of which Security Deposits are in cash transferable to Purchaser (by credit or otherwise) or in letters of credit transferable to Purchaser and none of which have been credited, applied or offset, except in each case as otherwise indicated on Schedule 8.1(g)(viii); and (ix) Seller has not wrongfully applied or misappropriated any security deposits.

(h) Contracts. Schedule 8.1(h) lists each Purchased Contract and Seller has delivered to Purchaser or will deliver within five (5) Business Days after the Effective Date a true, complete and correct copy of each (including any amendments or modifications thereof). To Seller's Knowledge, and except as disclosed on Schedule 8.1(h), the other parties to such Purchased Contracts are not in default or in breach thereunder and no condition exists which with notice and/or the passage of time would constitute a default thereunder.

(i) Condemnation. To Seller's Knowledge, Seller has not received any written notice of any pending or threatened eminent domain or condemnation proceeding from any Authority with respect to all or any part of the Property.

(j) Condominium Documents. To Seller's Knowledge, (i) the Condominium Documents are in full force and effect and have not been modified, amended or terminated, and (ii) Seller has not received or given any written notice of default under the Condominium Documents other than a default which, as of the Effective Date, has been cured.

(k) Insurance. To Seller's Knowledge, Seller has not received any written notice from any insurance company or board of fire underwriters of any defects or inadequacies in or at the Property that would adversely affect the insurability of the Property, or cause any increase in the premiums for insurance for the Property, which remains uncured, outstanding or in effect.

(l) Notice of Violations. To Seller's Knowledge, except as set forth on Schedule 8.1(l), in the property condition assessment and Phase I environmental site assessment

posted on the Data-room Website, or in the Title Commitment, whether set forth therein as an exception to title or for information purposes, (A) Seller has not received any written notice of a material violation of any Governmental Regulations from any Authority, including, without limitation, in connection with any Environmental Laws, which remain uncured, outstanding or in effect and (B) there is no violation by Seller of any Environmental Laws nor of any Hazardous Materials on or about the Property in violation of any Environmental Laws. Except as set forth on Schedule 8.1(l), to Seller's Knowledge, no pending or threatened material violation of any current Governmental Regulations exists and no Governmental Regulation is pending with which the Property would not be compliant or which would have a material adverse effect on the Property.

(m) Collective Bargaining Agreements. To Seller's Knowledge, the Collective Bargaining Agreements listed in Schedule 8.1(m) are the only collective bargaining agreements in effect with respect to the Employees engaged in building service work, as defined by the DBSWPA. To Seller's Knowledge, none of its agents with building service employees working at the Property are in default of their material obligations under the Collective Bargaining Agreements and Seller has not received any notice of default with respect thereto. To Seller's Knowledge, Schedule 8.1(m), sets forth a true, correct and complete list of all Employees.

(n) Capital Improvement Contract. To Seller's Knowledge, a true and correct copy of each Capital Improvement Contract, together with any amendments relating thereto are posted on the Data-room Website or have otherwise been delivered to Purchaser and a list of each Capital Improvement Contract is set forth in Schedule 10.4(b)(i). To Seller's Knowledge, the other parties to such Capital Improvement Contracts are not in default or in breach thereunder and no condition exists which with notice and/or the passage of time would constitute a default thereunder.

(o) Development Rights. To Seller's Knowledge, Seller has not conveyed or transferred any air and/or development rights that currently exist at the Property.

(p) Leasing Commission Agreements. To Seller's Knowledge, (i) the only Leasing Commission Agreements in effect are listed on Schedule 8.1(p)(i), true and correct copies of which (including any amendments or modifications thereof) have been made available to Purchaser on the Data-room Website; and (ii) Schedule 10.4(b)(ii) sets forth the Leasing Brokerage Commissions required to be paid by Purchaser pursuant to Section 10.4(b)(ii). Notwithstanding the foregoing, if a Leasing Brokerage Commission which is not set forth on Schedules 8.1(p)(i) or 10.4(b)(ii) becomes due pursuant to Sections 3.2(b)(iii) or 7.1(a), Seller shall have no liability to Purchaser thereunder except as specifically set forth in Sections 3.2(b)(iii) or 7.1(a), and Purchaser shall nevertheless be responsible for the payment thereof, such commissions shall be Leasing Brokerage Commissions, as such term is used in this Agreement and Purchaser shall indemnify, defend and hold each Seller Indemnified Party harmless from and against any claim therefor made by any broker or party acting as such as more particularly set forth in Sections 3.2(b) or 7.1(a). Nothing contained in this clause (p) shall be deemed to diminish Purchaser's obligations pursuant to any other provision of this Agreement with respect to the payment of Leasing Brokerage Commissions. The obligations of Purchaser pursuant to this clause (p) shall survive the Closing without limitation.

(q) Seller's Knowledge. Seller represents that Seller's Managers have direct day to day responsibility for all of the matters relating to the status of the Property and that are the subject of express warranties in this Agreement.

(r) Employment Claims. Other than as set forth on Schedule 8.1(r), there are to Seller's Knowledge, no threatened or pending Employment Claims against Seller.

(s) Landmarks Preservation Commission. To Seller's Knowledge, Seller has not received any notice of repairs or work required to be performed by the Landmarks Preservation Commission.

(t) ROFO. Seller has obtained a written acknowledgement from the owner of the Retail Unit pursuant to which the owner of the Retail Unit has waived its rights with respect to the Property pursuant to the ROFO in connection with the transactions contemplated by this Agreement (the "ROFO Waiver"), and Seller will deliver a copy of the ROFO Waiver to Purchaser (with the consideration therefor redacted) no later than two (2) Business Days following notification from Seller of acceptance of this Agreement from Purchaser.

Section 8.2 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller, as of the Effective Date, as follows:

(a) Status. Purchaser is a limited liability company validly existing under the laws of the State of Delaware.

(b) Authority. The execution and delivery of this Agreement and the performance of Purchaser's obligations hereunder have been or will be duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, on the part of Purchaser and this Agreement constitutes the legal, valid and binding obligation of Purchaser.

(c) Non-Contravention. The execution and delivery of this Agreement by Purchaser and the consummation by Purchaser of the transaction contemplated hereby do not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority by which Purchaser is bound, (ii) conflict with, result in a breach of or constitute a default under the organizational documents of Purchaser, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any material agreement or instrument to which Purchaser is a party or by which it is bound, or (iii) violate any law, statute, rule or regulation by which Purchaser is bound.

(d) Consents. No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Purchaser or (or will be obtained by Closing) the performance by Purchaser of the transaction contemplated hereby.

(e) Bankruptcy. Purchaser has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign

judicial or non-judicial proceedings, to hold, administer and/or liquidate all or substantially all of its property, or (iii) made an assignment for the benefit of creditors.

(f) Funding. At the Closing, Purchaser will have sufficient cash, financing and/or undrawn lines of credit to perform all of its reasonably anticipated obligations hereunder.

(g) Restricted Person. Neither Purchaser (nor any assignee of Purchaser, if this Agreement is assigned by Purchaser) nor any party having any interest in Purchaser (or in any such assignee) is a Restricted Person.

(h) Prohibited Transactions. Purchaser is not acquiring the Property with the assets of an employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), or, if plan assets will be used to acquire the Property, Purchaser will deliver to Seller at Closing a certificate containing such factual representations as shall permit Seller and its counsel to conclude that no prohibited transaction would result from the consummation of the transactions contemplated by this Agreement. Purchaser is not a "party in interest" within the meaning of Section 3(3) of ERISA with respect to any beneficial owner of Seller.

Section 8.3 Survival of Representations, Warranties and Covenants. (a) Subject to Section 8.3(b), Purchaser will not have any right to bring any action against any Seller Indemnified Party as a result of any untruth or inaccuracy of the representations or warranties of Seller in this Agreement, or any breach of such representations or warranties, or any breach of any covenants or other obligations of Seller hereunder or under any of the Closing Documents, unless and until (i) the aggregate amount of all liabilities and losses arising out of any such untruths, inaccuracies, and breaches, exceeds the Threshold Liability Amount, in which event, subject to the limitations on liability set forth in Section 14.2, only such excess amount of such valid claims shall be actionable, and (ii) written notice containing a description of the specific nature of such untruth, inaccuracy or breach shall have been given by Purchaser to Seller promptly after Purchaser has learned of such untruth, inaccuracy or breach, but in no event shall Purchaser be permitted to bring an action with respect thereto after the expiration of the applicable survival period described in this Agreement, except for items which were the subject of written notice to Seller from Purchaser prior to the expiration of the survival period referred to in Section 8.3(b). Seller shall have no liability with respect to a breach of any representation, warranty or certification, and Purchaser shall be required to proceed to the Closing notwithstanding anything to the contrary in Section 9.1(b) with respect to such breach if, prior to the Closing, Purchaser has knowledge of the breach of such representation, warranty or certification, or if any document made available for Purchaser's review, due diligence test, tenant estoppel certificate, investigation or inspection of the Property by Purchaser or any of its Affiliates, agents or employees, or any written disclosure by Seller or Seller's agents or employees discloses one or more facts that conflict with any such representation, warranty or certification, and Purchaser nevertheless consummates the transaction contemplated by this Agreement. Purchaser agrees to first seek recovery under any insurance policies and operating contracts prior to seeking recovery from Seller for any liability of Seller under this Agreement or any Closing Document, and Seller shall not be liable to Purchaser if Purchaser's claim is satisfied from such insurance policies or operating contracts. The provisions of this Section 8.3 are deemed to be incorporated by reference into all Closing Documents and, without limiting the

foregoing, qualify all Closing Surviving Obligations of Seller. In the event of any conflict between the provisions of this Section 8.3 and the provisions of any Closing Document or any other provision of this Agreement, the provisions of this Section 8.3 shall control. The provisions of this Section 8.3 shall survive the Closing without limitation.

(b) The Closing Surviving Obligations and the Termination Surviving Obligations of Purchaser and Seller will survive the Closing or termination of this Agreement, as applicable, without limitation, except for the survival of the representations and warranties of Seller set forth in Sections 8.1(g), (h), (n), and (p) which shall be Closing Surviving Obligations that survive for a period of only one hundred eighty (180) days. All other representations, warranties and covenants made or undertaken by Seller or Purchaser under this Agreement, unless otherwise specifically provided herein, will not survive the Closing.

Section 8.4 Pre-Closing Breaches. Purchaser shall promptly provide written notice to Seller upon learning of any material breach or breaches by Seller prior to the Closing Date of any of Seller's representations, warranties or covenants set forth in this Agreement (as may be supplemented or modified by Seller pursuant to Section 8.5)(collectively, the "Pre-Closing Breaches"). If the aggregate amount of Purchaser's losses attributable to the Pre-Closing Breaches is equal to or less than the Threshold Liability Amount, notwithstanding anything in this Agreement to the contrary, the parties shall proceed to the Closing without any reduction in or abatement of or credit against the Purchase Price on account of the Pre-Closing Breaches, but the losses related thereto shall be deducted from the Threshold Liability Amount of losses required pursuant to Section 8.3(a) with respect to any breaches not waived by Purchaser pursuant to Section 9.3 and discovered by Purchaser after the Closing. If the aggregate amount of Purchaser's losses attributable to the Pre-Closing Breaches exceeds the Threshold Liability Amount but is equal to or less than the Maximum Liability Amount, as reasonably determined by Seller, the parties shall proceed to the Closing and Seller shall grant Purchaser a credit against the Purchase Price equal to the excess of the aggregate amount of losses resulting from the Pre-Closing Breaches, as reasonably determined by Seller, over the Threshold Liability Amount. If the aggregate amount of Purchaser's losses attributable to the Pre-Closing Breaches exceeds the Maximum Liability Amount, Seller may, in its sole and absolute discretion, by giving written notice to Purchaser, elect to either (a) notwithstanding anything in this Agreement to the contrary, proceed to the Closing and grant Purchaser a credit against the Purchase Price equal to the excess of the aggregate amount of losses resulting from the Pre-Closing Breaches over the Threshold Liability Amount, or (b) terminate this Agreement in accordance with the provisions of Article XIII. Notwithstanding the foregoing, if Seller elects to terminate this Agreement in accordance with clause (b) above, Purchaser may elect, by written notice to Seller delivered within the earlier to occur of (i) five (5) Business Days after the date Seller notifies Purchaser of its election to so terminate this Agreement, and (ii) one (1) Business Day prior to the Scheduled Closing Date, to acquire the Purchased Assets, without any adjustment or reduction of the Purchase Price as a consequence thereof and without any deduction from the Threshold Liability Amount limitation on Purchaser's losses set forth in Section 8.3 relating to the Purchased Assets, whether arising as a consequence of any breaches relating to the Purchased Assets not waived by Purchaser pursuant to Section 9.3 and discovered by Purchaser after the Closing or relating to any Pre-Closing Breaches attributable to the Purchased Assets.