

**EXHIBIT "A"**

MADISON AVENUE APA

**AGREEMENT OF SALE AND PURCHASE**

**between**

**ROCK NEW YORK (183 MADISON AVENUE) LLC**

**as Seller**

**and**

**RIGBY 183 LLC**

**as Purchaser**

**Premises:**

183 Madison Avenue

New York, New York

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## TABLE OF CONTENTS

		Page
Article I	DEFINITIONS.....	1
	Section 1.1 Definitions.....	1
	Section 1.2 References, Exhibits and Schedules .....	10
Article II	AGREEMENT OF SALE AND PURCHASE .....	11
	Section 2.1 Agreement of Sale and Purchase .....	11
	Section 2.2 Excluded Assets .....	11
	Section 2.3 Purchaser’s Acknowledgment .....	12
	Section 2.4 Bankruptcy Filing, Bankruptcy Court Approvals and Purchaser Protections.....	12
	Section 2.5 Further Assurances.....	13
Article III	CONSIDERATION .....	13
	Section 3.1 Purchase Price .....	13
	Section 3.2 Assumption of Liabilities.....	14
	Section 3.3 Method of Payment of Purchase Price.....	15
	Section 3.4 Employees.....	15
	Section 3.5 Indivisible Economic Package .....	15
Article IV	THE DOWN PAYMENT AND ESCROW INSTRUCTIONS.....	16
	Section 4.1 The Down Payment.....	16
	Section 4.2 Escrow Instructions.....	16
	Section 4.3 Designation of Certifying Person.....	16
Article V	TITLE MATTERS.....	17
	Section 5.1 Title.....	17
Article VI	“AS IS” TRANSACTION .....	20
	Section 6.1 SALE “AS IS” .....	20
Article VII	SELLER’S COVENANTS .....	24
	Section 7.1 Interim Operating Covenants.....	24
	Section 7.2 Site Visits.....	27
	Section 7.3 Bankruptcy Filing and Bankruptcy Court Approvals .....	28
Article VIII	REPRESENTATIONS AND WARRANTIES.....	28
	Section 8.1 Seller’s Representations and Warranties .....	28
	Section 8.2 Purchaser’s Representations and Warranties .....	31

**TABLE OF CONTENTS**

(continued)

		Page
	Section 8.3 Survival of Representations, Warranties and Covenants.....	32
	Section 8.4 Pre-Closing Breaches.....	33
	Section 8.5 Supplemental Disclosure .....	34
Article IX	CONDITIONS PRECEDENT TO THE CLOSING.....	34
	Section 9.1 Conditions Precedent to Closing Obligations of Purchaser.....	34
	Section 9.2 Conditions Precedent to Closing Obligations of Seller .....	35
	Section 9.3 Waiver by Purchaser.....	36
Article X	THE CLOSING .....	36
	Section 10.1 The Closing.....	36
	Section 10.2 Purchaser's Closing Obligations.....	37
	Section 10.3 Seller's Closing Obligations .....	38
	Section 10.4 Prorations .....	40
	Section 10.5 Tax Certiorari.....	44
	Section 10.6 Costs of the Title Company and Closing Costs .....	45
Article XI	CONDEMNATION AND CASUALTY.....	46
	Section 11.1 Condemnation and Casualty .....	46
	Section 11.2 Survival.....	48
Article XII	CONFIDENTIALITY.....	48
	Section 12.1 Confidentiality .....	48
Article XIII	TERMINATION.....	48
	Section 13.1 Termination of Agreement.....	48
	Section 13.2 Procedure Upon Termination.....	49
Article XIV	REMEDIES.....	49
	Section 14.1 Default by Seller .....	49
	Section 14.2 Limitations on Seller's Liability .....	49
	Section 14.3 Default by Purchaser.....	51
	Section 14.4 No Consequential Damages.....	51
Article XV	NOTICES.....	51
	Section 15.1 Notices .....	51
Article XVI	ASSIGNMENT AND BINDING EFFECT.....	53

## TABLE OF CONTENTS

(continued)

	Page
Section 16.1 Assignment; Binding Effect.....	53
Article XVII BROKERAGE.....	53
Section 17.1 Brokers.....	53
Article XVIII ESCROW AGENT.....	54
Section 18.1 Escrow.....	54
Article XIX BANKRUPTCY.....	55
Section 19.1 Payment of Assumed Contract Cure Amounts.....	55
Section 19.2 Adequate Assurance of Future Performance.....	55
Article XX MISCELLANEOUS.....	56
Section 20.1 Waivers.....	56
Section 20.2 TIME OF THE ESSENCE.....	56
Section 20.3 Construction.....	56
Section 20.4 Counterparts.....	56
Section 20.5 Severability.....	56
Section 20.6 Entire Agreement.....	56
Section 20.7 Liability of Individuals Named as Having Knowledge.....	57
Section 20.8 GOVERNING LAW.....	57
Section 20.9 SUBMISSION TO JURISDICTION; CONSENT TO SERVICE OF PROCESS.....	57
Section 20.10 No Recording.....	57
Section 20.11 Further Actions.....	58
Section 20.12 No Partnership.....	58
Section 20.13 No Third-Party Beneficiaries.....	58
Section 20.14 Days.....	58
Section 20.15 Schedules and Data-room Website.....	58
Section 20.16 Drafts Not an Offer; Counterparts.....	58
Section 20.17 WAIVER OF JURY TRIAL.....	58
Section 20.18 Prevailing Parties.....	59
Section 20.19 Exhibits and Schedules.....	59
Section 20.20 Exculpation.....	59

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
Section 20.21    Section 1031 Like Kind Exchange .....	59
Section 20.22    Survival .....	60

## SCHEDULES AND EXHIBITS

- Schedule 3.4 – Non-Union Employees
  - Schedule 5.1 – Certain Permitted Encumbrances
  - Schedule 7.1(c) – Form of Estoppel Certificate
  - Schedule 8.1(e) – Suits and Proceedings against Seller
  - Schedule 8.1(g)(i) – Leases and Prospective Leases
  - Schedule 8.1(g)(iii) – Lease Default Notices and Pending Landlord Tenant Litigation
  - Schedule 8.1(g)(iv) – Tenant Arrears
  - Schedule 8.1(g)(vi) – Advance Rent Payments
  - Schedule 8.1(g)(viii) – Security Deposits
  - Schedule 8.1(h) – Purchased Contracts
  - Schedule 8.1(l) – Notices of Material Violations
  - Schedule 8.1(m) – Collective Bargaining Agreements
  - Schedule 8.1(p)(i) – Leasing Commission Agreements
  - Schedule 8.1(r) – Employment Claims
  - Schedule 10.4(b)(i) – Capital Improvement Contract
  - Schedule 10.4(b)(ii) – Certain Tenant Improvement Costs, Tenant Allowance Costs and Leasing Brokerage Commissions
  - Schedule 10.5 – Pending Tax Certiorari Proceedings
- 
- Exhibit A – Legal Description
  - Exhibit B – Form of Deed
  - Exhibit C – Form of Bill of Sale
  - Exhibit D – Form of Assignment of Collective Bargaining Agreement
  - Exhibit E – Form of Assignment of Capital Improvement Contract, Leasing Commission Agreements, Leasing Brokerage Commissions, Licenses and Permits
  - Exhibit F – Form of Certificate of Non-Foreign Status
  - Exhibit G – Form of Assignment of Leases
  - Exhibit H – Form of Holdback Agreement

## AGREEMENT OF SALE AND PURCHASE

THIS AGREEMENT OF SALE AND PURCHASE (this "**Agreement**") is made as of the 26th day of August, 2010 (the "**Effective Date**") between ROCK NEW YORK (183 MADISON AVENUE) LLC, having an address at 183 Madison Avenue, New York, NY 10016 ("**Seller**"), and RIGBY 183 LLC, a New York limited liability company, having an address at c/o Rigby Management LLC, 589 Fifth Avenue, Suite 600, New York, NY 10017 ("**Purchaser**").

### RECITALS

A. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Land and the Improvements (collectively, the "**Property**") commonly known as 183 Madison 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.

**“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 will be commenced 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.

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

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

**“Confidentiality Agreement”** means that certain Confidentiality Agreement, dated June 16, 2010, between Purchaser (or an Affiliate of 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.

**“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.

**“Earnest Money Deposit”** 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 Royal Abstract of New York LLC.

**“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, 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, and commonly known as 183 Madison Avenue, New York, NY, 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, and development rights.

**“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.

**“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”** shall mean Domus Design Center, Inc., Westport Corporation, Charles Komar & Sons, Inc. and Everlast Worldwide Inc.

**“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 percent (1%) of the Purchase Price.

**“OFAC”** has the meaning set forth in the definition of Restricted Person.

**“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 later 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.

**"ROFR Contract"** means that purported letter agreement, dated October 16, 2008, between Seller and Scott Pudalov, pursuant to which Seller purportedly granted Scott Pudalov a right of first refusal to purchase the Property.

**"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 twenty-five percent (25%) 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 One Hundred Thousand Dollars (\$100,000).

“**Title Commitment**” has the meaning set forth in Section 5.1(a).

“**Title Company**” means Royal Abstract of New York LLC or any reputable title company licensed to do business in the State of New York.

“**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, matters shown on the Survey and exceptions to title shown in the Title Commitment).

“**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;
  - (vii) to the extent assignable or transferable, the Licenses and Permits;
- and
- (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 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, knowingly 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 the Purchase Price or the amount of any prior improvement thereto in accordance with the provisions of this Section 2.4(c), 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 the terms offered in the Qualified Competing Transaction Proposal, including, without limitation, matching 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 Seventy-Five Million, Two Hundred Forty-Four Thousand, One

Hundred Fourteen and NO/100 DOLLARS (\$75,244,114.00), 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 on or subsequent to the Closing Date, (iii) the Leasing Commission Agreements and the Leasing Brokerage Commissions, to the extent arising, or with respect to payments coming due, on or subsequent to the Closing Date, (iv) the Capital Improvement Contracts 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. The provisions of this Section 3.2 shall survive the Closing without limitation.

(b) Without limiting the foregoing or any other provision 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 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 11:00 a.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. Seller has provided Purchaser with the information set forth in Schedule 3.4 with respect to those Employees that are not covered by the Collective Bargaining Agreements. 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 (i) with Seller, simultaneously with the execution and delivery of this Agreement by Purchaser, by certified or cashier's check payable to Seller, an amount equal to Five Hundred Thousand and NO/100 DOLLARS (\$500,000) (the "**Earnest Money Deposit**") and, (ii) no later than two (2) Business Days following notification from Seller of acceptance of this Agreement from Purchaser, by wire transfer of immediately available federal funds to the Escrow Agent, an amount equal to Eleven Million Dollars (\$11,000,000) (the "**Down Payment**"). The Earnest Money Deposit shall be returned to Purchaser by Seller (i) if this Agreement has been accepted by Seller, within one (1) Business Day of receipt of the Down Payment, and (ii) if this Agreement is not accepted by Seller, within ten (10) Business Days of receipt of the Earnest Money Deposit. If Purchaser shall fail to timely deliver the Down Payment in accordance with this Section 4.1, then Seller, as its sole remedy, shall be entitled to retain the Earnest Money Deposit as liquidated damages for such failure and this Agreement shall be null and void. The payment of the amounts contemplated under this Section 4.1 as liquidated damages is not intended as a forfeiture or penalty but is intended to constitute liquidated damages to Seller.

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. 832148 dated March 25, 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, except with respect to the following items: Schedule "B" 2, 4 (other than Tenants pursuant to the Leases) 6, 9, 10, 11, and 12 (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, but subject to Section 9.1(d), 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. 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 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 (including without limitation, the items described in Schedule B #11 of the Title Commitment), (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. 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 (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 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).

(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) the 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 twenty percent (20%) 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.

(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 nothing contained in this Section 7.1(d), elsewhere in this Agreement or otherwise, 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. In addition, Seller shall use commercially reasonable efforts to (i) commence and complete certain work to conform the Improvements to the applicable requirements for issuance of a renewal of the temporary certificate of occupancy or issuance of a permanent certificate of occupancy for the Improvements, and shall post any plans, specifications or contracts regarding such work on the Data-room Website in a timely fashion after completion or execution thereof, and (ii) obtain a renewal of the temporary certificate of occupancy or issuance of a permanent certificate of occupancy from the applicable Authorities. Purchaser agrees that, Seller shall have the right, but shall have no obligation (except as set forth in the preceding sentence), 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. 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, including a failure to obtain a temporary or permanent certificate of occupancy for the Improvements, 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.

(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, 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, 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.

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. 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 is two (2) days prior to 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.

**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, 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 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; and (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).

(h) Contracts. Schedule 8.1(h) lists each Purchased Contract and Seller has delivered to Purchaser a true, complete and correct copy of each. 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) Intentionally Omitted.

(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).

(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 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.

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 New York.

(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 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.

(i) Landmark Status of Improvements. Purchaser acknowledges that the Improvements have been designated to become a landmark by the Landmarks Preservation Commission (“LPC”), that Seller and the LPC have entered into a settlement agreement, a copy of which has been delivered to Purchaser, and Purchaser agrees to be bound by the terms of such settlement agreement with the LPC, and that such designation will not give rise to any credit or other offset against the Purchase Price, or otherwise grant Purchaser the right to terminate this Agreement.

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.

Section 8.5 Supplemental Disclosure. Seller shall have the obligation until Closing to supplement or amend the schedules hereto with respect to any matter hereafter arising or discovered that is required to be disclosed in order to cause Seller's representations and warranties under this Agreement to be true and correct when made. Seller shall be obligated to deliver to Purchaser at Closing a certificate restating such representations and warranties as of the Closing Date and listing any exceptions to such representations and warranties and incorporating the Schedules as updated (the "Seller Closing Certificate"). Seller shall not take any voluntary action or omission in violation of this Agreement which will result in any exception in Seller's Closing Certificate.

## ARTICLE IX CONDITIONS PRECEDENT TO THE CLOSING

Section 9.1 Conditions Precedent to Closing Obligations of Purchaser. The obligation of Purchaser to consummate the transactions hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion (other than the condition set forth in Section 9.1(e) below):

(a) Seller shall have delivered to Purchaser all of the items required to be delivered to Purchaser pursuant to the terms of this Agreement, including, but not limited to, those provided for in Section 10.3.

(b) Subject to the provisions of Sections 8.3, 8.4, 9.3 and 14.2, all of the representations and warranties of Seller contained in Section 8.1 (after giving effect to supplements and modifications thereto in accordance with Section 8.5) shall be true and correct in all material respects as of the Closing Date.

(c) Subject to the provisions of Sections 8.4, 9.3 and 14.2, Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date. Seller shall have performed and complied in all material respects with any Order of the Bankruptcy Court relating to this Agreement to be performed by it at or prior to the Closing.

(d) Subject to Section 5.1 above, the Title Company, or any other reputable title insurance company licensed to do business in the State of New York, shall be ready and willing (subject to the payment of the applicable title premium and related costs) to issue a Title Policy with respect to fee title to the Property (or a "marked-up" title commitment unconditionally committing the Title Company, or any other reputable title company licensed to do business in the State of New York at regular rates, to issue the Title Policy with respect to such title) insuring good, marketable title to the Property free and clear of all Liens and Liabilities (other than Permitted Encumbrances). Notwithstanding anything to the contrary in this Agreement, under no circumstances shall the ROFR Contract be a Permitted Encumbrance.

(e) The Bankruptcy Court shall have entered the Confirmation Order which, among other things, approves this Agreement and which order shall not be stayed or reversed. Notwithstanding the foregoing or anything to the contrary in this Agreement, Purchaser acknowledges and agrees that if the provisions of Section 14.2(c) hereof shall be rejected or modified by the Bankruptcy Court, Purchaser shall nevertheless be obligated to proceed to the Closing and the same shall not afford Purchaser the right to terminate this Agreement nor shall Purchaser be granted any claim or right of offset, credit or deduction in the Purchase Price due to such rejection or modification.

(f) The Bankruptcy Court shall have entered an order approving the rejection of the ROFR Contract and which order shall not be stayed or reversed.

(g) Seller shall have delivered to Purchaser Acceptable Estoppel Certificates meeting the Estoppel Percentage Threshold, giving effect, to the extent applicable, to any Seller estoppel referred to in Section 7.1(c).

(h) Each of the suits and proceedings against Seller set forth on Schedule 8.1(e) shall be terminated and removed from the record on or before the Closing Date and Purchaser shall have no liability with respect thereto, which liability, if any, shall be retained by Seller; provided, however, that Seller may discharge its obligations hereunder by causing each such suit or proceeding to be satisfied pursuant to the Bankruptcy Plan and/or the Confirmation Order or by holding escrow satisfactory to the Title Company to satisfy any such claims.

Section 9.2 Conditions Precedent to Closing Obligations of Seller. The obligation of Seller to consummate the transactions hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

(a) Seller shall have received the Purchase Price (as adjusted pursuant to Section 10.4) paid in the manner provided for in this Agreement, and Purchaser shall have provided written authority to Escrow Agent to release the Down Payment, with all interest earned thereon, to Seller, and the Escrow Agent shall have advised Seller and Purchaser, in writing, of the amount of the interest earned on the Down Payment as of the Closing Date.

(b) Purchaser shall have delivered to Seller all of the items required to be delivered to Seller pursuant to the terms of this Agreement, including, but not limited to, those provided for in Section 10.2.

(c) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing Date.

(d) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the Closing Date.

(e) The Bankruptcy Court shall have entered the Confirmation Order which, among other things, approves this Agreement and which order shall not be stayed or reversed.

(f) The Bankruptcy Court shall have entered an order approving the rejection of the ROFR Contract which order shall not be stayed or reversed.

Section 9.3 Waiver by Purchaser. Notwithstanding anything to the contrary contained or implied in any other provision of this Agreement, Purchaser agrees that if Purchaser has knowledge of any inaccuracy or breach by Seller of any of its representations, warranties, covenants or obligations hereunder (which knowledge may be obtained, without limitation, by notice from Seller), and nonetheless elects to proceed to the Closing, upon the consummation of the Closing, Purchaser shall be deemed to have waived any such breach or breaches and shall have no claim against Seller (or any other Seller Indemnified Party) with respect thereto. Purchaser further waives any conflicts between this Agreement and the Bankruptcy Plan and acknowledges the Confirmation Order shall control; provided, that (except in accordance with Section 2.4 hereof) in no event shall such Bankruptcy Plan and/or Confirmation Order increase the Purchase Price or Purchaser's obligations hereunder and/or modify the conditions precedent to Purchaser's obligations to Closing provided hereunder. The provisions of this Section 9.3 shall survive the Closing.

## **ARTICLE X THE CLOSING**

Section 10.1 The Closing. Subject to the satisfaction of the conditions set forth in Sections 9.1 and 9.2 (or the waiver thereof by the party entitled to waive that condition), and subject to the rights of Seller to additional time as provided in Article V and Section 7.1(c) to extend the closing to cure defaults as provided in Section 14.1, the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities (the "Closing") contemplated by this Agreement by delivery of documents and payments of money shall take place at 11:00 a.m. Eastern Standard Time on the Scheduled Closing Date at the offices of Jones Day, 222 East 41<sup>st</sup> Street, New York, New York, unless another time or date, or both, are agreed to in writing by Seller and Purchaser. It is expressly acknowledged and agreed by Purchaser that its obligations under this Agreement are not contingent upon it obtaining financing, in whole or in part, to fulfill its obligations under this Agreement; provided that Seller acknowledges that Purchaser may elect to use financing to acquire the Property and shall reasonably cooperate (at no cost or liability to Seller) and coordinate, subject to the terms of this Agreement, the Closing with Purchaser and Purchaser's lender, if any. At the Closing, the events set forth in this Article X will occur, it being understood that the performance or tender of performance of all matters set forth in this Article X are mutually concurrent conditions, any of which (other than execution and delivery of the Deed) may be waived by the party or parties for whose benefit they are

intended. The acceptance of the Deed for the Property by Purchaser (or its permitted assignee), shall be deemed to be full performance and discharge of each and every agreement and obligation on the part of Seller to be performed hereunder with respect to the Property, unless and to the extent otherwise specifically provided herein.

Section 10.2 Purchaser's Closing Obligations. On the Closing Date, Purchaser, at its sole cost and expense, will pay or deliver the following items to Seller at the Closing as provided herein:

(a) The Purchase Price (less the amount of the Down Payment and any interest earned thereon through, but not including, the Closing Date), after all adjustments are made as herein provided, by wire transfer of immediately available funds, in accordance with the requirements of Article III; and Purchaser shall have delivered written authorization to Escrow Agent to pay the Down Payment, together with all interest earned thereon, to Seller on the Closing date, in accordance with wire transfer instructions provided by Seller.

(b) Counterpart originals of the Assignment, duly executed by the Purchaser.

(c) Counterpart originals of the Assignment of Collective Bargaining Agreements, duly executed by Purchaser or, at Purchaser's election, managing agents, management companies, or vendors, of Purchaser.

(d) Counterpart originals of the Assignment of Leases duly executed by Purchaser.

(e) Evidence reasonably satisfactory to the title company delivering the Title Policy and Seller that the person or persons and, if applicable, the entity or entities, executing this Agreement and the Closing Documents on behalf of Purchaser (or its permitted assignee), and the person or persons and, if applicable, entity or entities, executing any assignment and assumption of this Agreement on behalf of Purchaser and its permitted assignee, have the full power and authority to do so, that any and all such entities are validly formed, and that the execution and delivery of such documents have been duly authorized.

(f) Copies of such due formation, good standing, and authority documents as the title company delivering the Title Policy may require and Seller may reasonably require.

(g) Written notices to be prepared by Seller and co-executed by Purchaser and Seller, and to be addressed and mailed to the Tenants on the Closing Date by Purchaser under the Leases, (i) advising of the sale of the Property to Purchaser, (ii) acknowledging that the applicable Tenant's Lease has been assigned to Purchaser and that Purchaser has assumed the obligations of the landlord under such Lease, (iii) acknowledging that Purchaser has received and is responsible for the Security Deposit, if any, under such Lease (specifying the exact amount of the Security Deposit transferred to Purchaser with respect to such tenant) and (iv) indicating that rent should thereafter be paid to Purchaser and giving instructions therefor (the "Tenant Notice Letters").

(h) Counterpart originals of the Closing Statement, duly executed by Purchaser.

(i) The Closing Notices duly executed by Purchaser.

(j) Originals of all real property transfer tax returns, tax reports and other documents (including, without limitation, Form NYS TP-584 and Form RP-5217) as and to the extent required by New York law to be executed by Purchaser in connection with the New York City and New York State Real Property Transfer Taxes.

(k) Any other documents as may be reasonably necessary or appropriate to effect the transactions which are the subject of this Agreement, provided no such document shall impose an obligation to which Purchaser is not otherwise subject under this Agreement or any Closing Document or increase any obligation of Purchaser under this Agreement or any Closing Document.

(l) Affidavits and other documents as may be required for the Deed to be recorded.

All Closing Documents delivered by Purchaser shall be conformed to the requirements of the laws of the State of New York.

The provisions of this Section 10.2 shall survive the Closing without limitation.

Section 10.3 Seller's Closing Obligations. At the Closing, Seller will deliver to Purchaser the following documents:

(a) A deed, without covenants or warranties against grantor's acts or any other matter, express or implied, for the Property, in recordable form, substantially in the form attached hereto as Exhibit B (the "Deed"), duly executed and acknowledged by Seller, conveying to Purchaser such title of Seller, in and to the Property as the Title Company or any other reputable title company licensed to do business in the State of New York is willing to approve and insure, subject only to the Permitted Encumbrances and the other matters subject to which Purchaser expressly is or becomes required to accept title pursuant to the provisions of this Agreement.

(b) At Purchaser's election, a blanket bill of sale for the Property, substantially in the form attached hereto as Exhibit C or a general assignment of intangibles in a form to be mutually agreed upon by Purchaser and Seller (the "Bill of Sale"), duly executed by Seller, conveying to Purchaser, Seller's right, title and interest in and to the Personal Property included in the sale, without representation, warranty or recourse of any kind or nature.

(c) Counterpart originals of an assignment and assumption of the interests and obligations of Colliers International NY LLC and Quality Building Services (the "Assignors") in the Collective Bargaining Agreements, substantially in the form attached hereto as Exhibit D (the "Assignment of Collective Bargaining Agreements"), duly executed by the appropriate Assignors, conveying and assigning to Purchaser or Purchaser's agent or vendor, as applicable, all of Assignors' right, title, and interest, if any, in the Collective Bargaining Agreements.

(d) Counterpart originals of an assignment and assumption of Seller's interest in each Capital Improvement Contract, the Leasing Commission Agreements, the Leasing

Brokerage Commissions and the Licenses and Permits, substantially in the form attached hereto as Exhibit E (the "Assignment"), duly executed by Seller, conveying and assigning to Purchaser all of Seller's right, title and interest, if any, in each Capital Improvement Contract, the Leasing Commission Agreements, the Leasing Brokerage Commissions, and the Licenses and Permits, without any representations, warranties or recourse of any kind or nature.

(e) Counterpart originals of an assignment and assumption of Seller's interest in the Leases and Security Deposits, substantially in the form attached hereto as Exhibit G (the "Assignment of Leases"), duly executed by Seller, assigning to Purchaser all of Seller's right, title and interest in the Leases and Security Deposits, without any representations, warranties or recourse of any kind or nature.

(f) A certificate in the form attached hereto as Exhibit F ("Certificate as to Foreign Status") from Seller certifying that it is not a "foreign person" or "foreign corporation" as defined in the Code.

(g) Utility or other similar notices, duly executed by Seller (collectively, the "Closing Notices").

(h) Counterpart originals of the Tenant Notice Letters, duly executed by Seller.

(i) Counterpart originals of the Closing Statement, duly executed by Seller.

(j) Original Leases, Licenses and Permits and Leasing Commission Agreements (or copies where originals are not available), to the extent in Seller's possession, all of which may remain on site (provided receipt on site is acknowledged by Purchaser) at the Property and need not be delivered to the location of the Closing, a then current rent roll and copies of the last two (2) months' rent bills sent to all Tenants for the period preceding the Closing Date.

(k) Evidence reasonably satisfactory to the title company issuing the Title Policy and Purchaser that the person or persons executing this Agreement and the Closing Documents (including, without limitation, the Deed) on behalf of the Seller have the full power and authority to do so and that the execution and delivery of such documents has been duly authorized.

(l) Original executed copies of the real property transfer tax returns, tax reports and any other documents (including, but not limited to, Forms NYS TP-584 and Form RP-5217), as and to the extent required by New York law to be delivered by Seller in connection with the New York City and New York State Real Property Transfer Taxes.

(m) Affidavits and other documents as may be required for the Deed and any other recordable closing documents, as applicable, to be recorded.

(n) For convenience, Seller may exclude a recitation of the Permitted Encumbrances from the Deed, but the Deed shall be deemed to include and incorporate by reference a recitation of the Permitted Encumbrances and any other matters subject to which

Purchaser expressly is or becomes obligated to accept title pursuant to the provisions of this Agreement.

(o) The Seller Closing Certificate.

(p) To the extent not already delivered, Acceptable Estoppel Certificates meeting the Estoppel Certificate Threshold, including, to the extent applicable, the delivery of a Seller estoppel as referred to in Section 7.1(c).

(q) All other documents as may be reasonably necessary or appropriate to effect the transactions which are the subject of this Agreement and the Bankruptcy Plan, provided such documents shall not in any material respect impose any obligation on Seller to which Seller is not otherwise subject under this Agreement or any Closing Document or the Bankruptcy Plan or increase any obligation under this Agreement or any Closing Document or the Bankruptcy Plan.

All Closing Documents delivered by Seller shall be conformed to the requirements of the laws of the State of New York.

#### Section 10.4 Prorations.

(a) Seller and Purchaser agree to adjust, as of 11:59 p.m. Eastern Time on the day immediately preceding the Closing Date (the "**Proration Time**"), the following (collectively, the "**Proration Items**"):

(i) Gas, steam, electricity, water and sewer, and other utility charges payable by Seller.

(ii) Rentals, in accordance with Section 10.4(c) below.

(iii) Operating Expenses, in accordance with Section 10.4(d) below.

(iv) Security Deposits, in accordance with Section 10.4(f) below (Seller shall reasonably cooperate with any reasonable request of Purchaser, at Purchaser's expense, for ninety (90) days after the Closing Date with respect to the transfer of any Security Deposit and any letters of credit delivered as and for a Security Deposit under the Leases).

(v) Amounts payable with respect to Licenses and Permits.

(vi) Taxes, if any, due and payable for the fiscal year of each applicable Authority in which the Closing occurs. If the Closing Date shall occur before the tax rate is fixed or current year's assessment has been made, the apportionment of Taxes shall be upon the basis of the tax rate for the preceding fiscal year applied to the latest assessed valuation. If, subsequent to the Closing Date, Taxes (by reason of change in either assessment or rate or for any other reason) should be determined to be higher or lower than those that are apportioned, a new computation shall be made, and Purchaser agrees to pay Seller any decrease shown by such recomputation and vice versa. If, at the time of Closing, the Property or any portions thereof shall be or shall have been affected by an assessment or assessments or any similar charge by

any Authorities which are or may become payable in installments, then for purposes of this Agreement, unpaid installments due on or after the Closing Date shall be deemed to be due after the Closing Date and shall not be deemed to be liens upon the Property or a Title Defect and Purchaser shall be responsible for all such installments due after the Closing Date, subject to the appropriate apportionment of any such installment.

(vii) The value of fuel stored at the Property, at Seller's most recent cost as evidenced by the most recent bill, including taxes, on the basis of a reading made within ten (10) days prior to the Closing by Seller's suppliers.

(viii) Wages and amounts payable with respect to employee benefits

(ix) Such other matters as are customarily prorated in transactions similar to the transaction contemplated by this Agreement in New York City.

Seller will be charged and credited for the amounts of all of the Proration Items relating to the period up to and including the Proration Time, and Purchaser will be charged and credited for all of the Proration Items relating to the period after the Proration Time. The estimated closing proration shall be set forth on a preliminary closing statement to be prepared by Seller and submitted to Purchaser at or prior to the Closing Date (the "**Closing Statement**"). The Closing Statement, once agreed upon, shall be signed by Purchaser and Seller for purposes of making the preliminary proration adjustment at the Closing subject to the final cash settlement provided for below. The preliminary proration shall be paid at the Closing by Purchaser to Seller (if the preliminary proration result in a net credit to Seller) or by Seller to Purchaser (if the preliminary proration result in a net credit to Purchaser) by increasing or reducing the cash to be delivered by Purchaser in payment of the Purchase Price at the Closing. If the actual amounts of the Proration Items are not known as of the Closing Date, the proration will be made at the Closing on the basis of the best evidence then available and when actual figures are received (not to exceed 180 days after the Closing Date), re-proration will be made on the basis of the actual figures, and a final cash settlement will be made between Seller and Purchaser. No proration will be made in relation to insurance premiums, and Seller's insurance policies will not be assigned to Purchaser. Final readings and final billings for utilities will be made if possible as of the Closing Date, in which event no proration will be made at the Closing with respect to utility bills for which there are final readings as of the Closing Date. Seller will be entitled to any and all deposits in effect with the utility providers, and Purchaser will be obligated to make its own arrangements, if required, for any deposits with the utility providers. Any deposits or bonds posted with any Authorities relating to the Property shall not be assigned or prorated and shall be and remain the sole property of Seller after the Closing.

(b) (i) Schedule 10.4(b)(i) sets forth each contract (each a "**Capital Improvement Contract**") for work to be performed at the Property. At the Closing, Seller shall assign to Purchaser, without any representation, warranty or recourse (other than the representation set forth in Section 8.1(n), which representation is subject to the limitations set forth in Sections 8.3, 8.4, 9.3 and 14.2) and Purchaser shall assume, each Capital Improvement Contract. After Closing, Purchaser shall cause the work under each Capital Improvement Contract to be completed in accordance with each Capital Improvement Contract with reasonable diligence. Purchaser shall not modify any Capital Improvement Contract after Closing without



Seller's written consent if such modification could impose any cost or liability on Seller. Seller shall be responsible for payments required to be made under each Capital Improvement Contract, as and when due, up to the Closing Date and Purchaser shall be entitled to a credit against the Purchase Price for any payments required to be made under each Capital Improvement Contract subsequent to the Closing Date, subject to the terms and limitations set forth in this Section 10.4(b). However, it is expressly agreed that Seller shall not have any liability to Purchaser for any increases in the cost to complete the work under any of the Capital Improvement Contracts, whether costs in excess of such amounts become due as a result of unknown field conditions or any other matters, and any such increases in costs shall be borne solely by Purchaser; provided, that Seller shall be responsible for any change orders to the Capital Improvement Contracts approved by Seller and existing at or prior to Closing, which amounts shall be credited against the Purchase Price as a payment required to be made subsequent to the Closing Date. Seller shall have no liability of any kind or nature to Purchaser on account of any condition or state of facts with respect to the Property to be remedied by each Capital Improvement Contract, as Purchaser is acquiring the Property in its condition "as is, with all faults," as more particularly set forth in Section 6.1.

(ii) Schedule 10.4(b)(ii) sets forth tenant improvement costs, tenant allowance costs and Leasing Brokerage Commissions relating to certain Leases. Except for Purchaser's obligations for brokerage commissions expressly described in Section 3.2(b) above, Seller shall be responsible for (and Purchaser shall have no responsibility for) the following landlord obligations with respect to the initial occupancy of the Tenants under all Leases executed as of the Effective Date (other than the prospective Leases set forth on Schedule 8.1(g)(i), with respect to which the Purchaser shall be responsible for the following obligations, and adjustment at Closing shall be made therefor): (1) payments for tenant improvement work to prepare the premises for initial occupancy, (2) any out of pocket payments to a Tenant in lieu of tenant improvement work or to enable the tenant to perform tenant improvement work, (3) any payments to the prior third party landlords of such Tenants, and (4) all brokerage commission amounts in respect of the initial term of the Lease, provided in no event shall Seller be responsible to Purchaser for any amount of free rent.

(c) Purchaser will receive a credit on the Closing Statement for the prorated amount (as of the Proration Time) of all Rentals paid to or actually collected by Seller on or prior to the Closing Date and attributable to any period following the Proration Time. After the Closing, Seller will pay or turn over or cause to be paid or turned over to Purchaser all Rentals, if any, received by Seller after the Closing and attributable to any period following the Proration Time. "Rentals" as used herein includes fixed monthly rentals, additional rentals, percentage rentals, escalation rentals (which include each Tenant's pro rata share of building operation and maintenance costs and expenses as provided for under the Lease, to the extent the same exceeds any expense stop specified in such Lease), retroactive rentals, all administrative charges, utility charges, Tenant or real property association dues, storage rentals, special event proceeds, temporary rents, telephone receipts, locker rentals, vending machine receipts and other sums and charges payable by Tenants under the Leases or from other occupants or users of the Property, but excluding amounts received for Operating Expenses, which are to be governed by Section 10.4(d) below. Rentals are "Delinquent" when they were due prior to the Closing Date, and payment thereof has not been made on or before the Proration Time. Delinquent Rentals will not otherwise be prorated at Closing, but shall be subject to the provisions of this Section 10.4(c).

With respect to Tenants still in occupancy, Purchaser agrees to use commercially reasonable efforts with respect to the collection of any Delinquent Rentals for the benefit of Seller. Any such Delinquent Rentals attributed to the time prior to Closing shall be paid to Seller upon receipt by Purchaser and shall be and remain the property of Seller upon such payment to Seller. Seller reserves the right to pursue or cause the pursuit of the collection of Delinquent Rentals from Tenants no longer in occupancy and not previously credited to Seller by appropriate legal proceedings or otherwise, and any sums recovered thereby shall be the property of Seller; provided Seller shall not have the right to institute any claims or pursue any recourse against any Tenant in occupancy at the Property without the consent of Purchaser, in Purchaser's sole discretion. At Purchaser's request, Seller shall assign all rights and interests in and to, and control of, any lawsuits for Delinquent Rentals and any operating expense audits instituted by Tenants relating to the period prior to Closing, provided that Purchaser shall diligently pursue the claims and remit any payments received, net of Purchaser's cost of collection, to Seller in accordance with the terms of this paragraph. If Purchaser shall elect to allow Seller to retain control of such actions, then Purchaser shall reasonably cooperate with Seller in connection with any such lawsuits and audits, and any settlement or other resolution with respect to any such audits made by Seller shall require the prior written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that no such consent shall be required if the settlement or other resolution of any such audit shall stipulate in writing that it is without prejudice to, and shall not be binding upon, the landlord under the Lease which is the subject of the audit, with respect to any period after the Closing Date. Any sums owing to tenants under the Leases as a consequence of any such audits with respect to the period prior to the Closing Date shall be payable by Seller. Any sums owing to the landlord as a consequence of such audit relating to the period prior to the Closing Date shall be Delinquent Rentals, as such term is used hereunder, collectible by and payable in the manner described by this paragraph. All sums collected by Purchaser from and after the Closing from each Tenant (excluding amounts relating to the year-end reconciliation of Operating Expenses, which are governed by Section 10.4(d) below, and tenant specific billings for tenant work orders and other specific services as described in and governed by Section 10.4(e) below) will be applied to rental then owing in the following order: (i) first to Seller for its prorated portion of Rentals for the month in which the Closing occurs; (ii) then to Purchaser for its prorated portion of Rentals for the month in which the Closing occurs; (iii) then to Purchaser for any month or months following the month in which the Closing occurs; and (iv) finally to Seller for any month or months preceding the month in which the Closing occurs, provided that if Seller received a credit for Delinquent Rentals with respect to any Tenant, then such final payment to Seller pursuant to this clause (iv) shall be with respect to Delinquent Rentals from such Tenant not previously credited to Seller. Any sums due Seller will be promptly remitted to Seller. At Closing, Seller shall deliver to Purchaser a list of Delinquent Rentals.

(d) At the Closing, Seller shall deliver to Purchaser a list of additional rent, however characterized, under each Lease, including, without limitation, real estate taxes, electrical charges, utility costs and operating expenses (collectively, "Operating Expenses") billed to Tenants for the calendar year in which the Closing occurs (both on a monthly basis and in the aggregate), the basis on which the monthly amounts are being billed and the amounts incurred by Seller on account of the components of Operating Expenses for such calendar year. Upon the reconciliation by Purchaser of the Operating Expenses billed to Tenants, and the amounts actually incurred for such calendar year, Seller and Purchaser shall be liable for

overpayments of Operating Expenses, and shall be entitled to payments from Tenants with respect to underpayments of Operating Expenses, as the case may be, on a pro-rata basis based upon each party's period of ownership during such calendar year.

(e) With respect to specific tenant billings for work orders, special items performed or provided at the request of a Tenant or other specific services, or other items of additional rent owed by Tenants which are collected by Purchaser after the Closing Date but relate to the foregoing specific services rendered by Seller prior to the Proration Time, Purchaser shall cause any amounts collected from such Tenant to be paid to Seller on account thereof.

(f) Purchaser shall receive a credit against the Purchase Price at the Closing for all cash Security Deposits then outstanding under the Leases and any non-cash security deposits will be assigned to Purchaser at the Closing without representation, warranty or recourse of any kind or nature and otherwise in accordance with the assignment provisions of the relevant instrument.

(g) The provisions of Section 10.4(a) and (d) shall survive Closing for one hundred eighty (180) days after the Closing Date, and the provisions of Sections 10.4(b), 10.4(c), 10.4(e) and the rights of Seller with respect to Delinquent Rentals and post-closing obligations and operating expense audits under Leases relating to any period prior to the Closing Date shall survive the Closing for a period of eighteen (18) months after Closing.

#### Section 10.5 Tax Certiorari.

(a) From the Effective Date until the Closing, Seller may initiate proceedings for tax certiorari or other proceedings to determine the assessed value of the Property or the Taxes payable with respect to the Property. Seller represents and Purchaser acknowledges that Schedule 10.5 sets forth the proceedings for tax certiorari or other proceedings to determine the assessed value of the Property or the Taxes payable with respect to the Property which have (i) been commenced prior to the Effective Date, (ii) may be continuing as of the Closing Date and (iii) relate to all or any part of an applicable taxing Authority's fiscal year during which Purchaser shall own the Property. Seller will be entitled to control to completion the prosecution of any tax certiorari proceeding or proceedings relating to the Property for the years prior to and including the fiscal year of the applicable taxing Authority in which the Closing occurs and to settle or compromise any claim therein, except any settlement or compromise of any such claim for the fiscal year of the applicable taxing Authority in which the Closing occurs shall be made with Purchaser's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Seller will keep Purchaser informed on a timely basis on all matters with respect to the proceeding for the fiscal year of the applicable taxing Authority in which the Closing occurs. Purchaser agrees to cooperate with Seller and to execute any and all documents reasonably requested by Seller in furtherance thereof. Seller shall be entitled to any and all awards and costs relating thereto from any tax certiorari proceeding relating to the fiscal years of any applicable taxing Authority prior to the year in which the Closing occurs. With respect to any awards for the fiscal year of any applicable taxing Authority in which the Closing occurs, Seller will be entitled to first recover the reasonable costs it has expended in obtaining such award, and thereafter, Seller and Purchaser will apportion the remainder of any awards between the period before the Closing and the period following the Closing. If required to continue any

certiorari proceedings after the Closing which Seller is entitled to control under this Agreement, such proceeding must be prosecuted by Purchaser, then Seller shall assign to Purchaser the right, title and interest to such tax certiorari proceedings, Seller shall prosecute such proceedings in Purchaser's name, at Seller's cost and expense (without limiting Seller's right to recover its costs from any award received as set forth above), and Purchaser will cooperate with Seller with respect thereto. Purchaser will promptly remit to Seller any monies received which are to be paid to and/or shared by Seller as provided herein. Purchaser will not be permitted to prosecute, settle or compromise any proceeding that involves a fiscal year prior to or including the year in which the Closing occurs.

(b) The provisions of this Section 10.5 will survive the Closing until all proceedings with respect to the fiscal year of the Closing and prior years are conclusively resolved and the applicable sums are paid to the party who is entitled to payment hereunder.

Section 10.6 Costs of the Title Company and Closing Costs. Costs of the Title Company and Escrow Agent and other closing costs incurred in connection with the Closing will be allocated as follows:

(a) Seller shall pay (i) Seller's attorneys' fees (subject to Section 20.18), (ii) one-half (1/2) of any escrow fees charged by the Escrow Agent; (iii) one hundred percent (100%) of any transfer taxes in connection with the transfer of the Property unless not required to be paid pursuant to the Confirmation Order; and (iv) one half of the of the cost of the Survey and its certification and if applicable, recertification and elevation certificate issued by the Federal Emergency Management Agency.

(b) Purchaser shall pay (i) the premium for the Title Policy (whether issued by the Title Company or any other title insurance company) and the costs of any additional coverage, endorsements or deletions relating to the Title Policy and all costs, charges and fees of the Title Company or any other title insurance company relating thereto; (ii) the premium and other costs, charges and fees for any mortgagee policy or policies of title insurance, if any, including, but not limited to the costs, charges and fees for any endorsements or deletions and searches; (iii) Purchaser's attorneys' fees; (iv) one-half (1/2) of any escrow fees charged by the Escrow Agent; (v) the cost to record the Deed and any other documents to be recorded; and (vi) one-half (1/2) of the cost of the Survey and its certification and if applicable, recertification and elevation certificate issued by the Federal Emergency Management Agency.

(c) Any other costs and expenses incurred in connection with the Closing that are not provided for in this Section 10.6 shall be allocated between Purchaser and Seller in accordance with New York custom and practice for commercial real estate.

(d) Although no sales taxes are expected to be due with respect to the sale hereunder, if any Authority shall assert that any sales or similar taxes are due on any portion of the Purchase Price as a consequence of the sale of the Personal Property included in the sale pursuant to this Agreement, Purchaser shall be obligated to pay all such sales taxes. Purchaser agrees to 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 costs)