

**LEASE AGREEMENT**

**LIBERTY PROPERTY LIMITED PARTNERSHIP**  
**Landlord**

**AND**

**TREE OF LIFE, INC.**  
**Tenant**

**AT**

**860 Nestle Way, Suite 250**  
**Breinigsville, Pennsylvania 18031**

## LEASE AGREEMENT

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**THIS LEASE AGREEMENT** is made by and between **LIBERTY PROPERTY LIMITED PARTNERSHIP**, a Pennsylvania limited partnership ("Landlord"), and **TREE OF LIFE, INC.**, a corporation organized under the laws of Delaware ("Tenant"), and is dated as of the date on which this Lease has been fully executed by Landlord and Tenant.

**1. Basic Lease Terms and Definitions.**

- (a) **Premises:** Suite 250, consisting of approximately 311,928 rentable square feet as shown on **Exhibit "A"**.
- (b) **Building:** Approximate rentable square feet: 607,608.  
Address: 860 Nestle Way, Breinigsville, Pennsylvania 18031.
- (c) **Term:** One Hundred Fifty-Two (152) months (plus any partial month from the Commencement Date until the first day of the next full calendar month during the Term).
- (d) **Commencement Date:** The earlier of (i) August 1, 2009, or (ii) the date Tenant takes occupancy of the Premises for the conduct of its business. (For example, shipping products from the Premises shall constitute Tenant taking occupancy of the Premises for the conduct of its business.)
- (e) **Expiration Date:** The last day of the Term.
- (f) **Minimum Annual Rent:** Payable in monthly installments as follows:

<u>Month of Term</u>	<u>Annual</u>	<u>Monthly</u>	<u>Month of Term</u>	<u>Annual</u>	<u>Monthly</u>
*1-8	-----	\$0.00	81-92	\$1,313,216.88	\$109,434.74
9-20	\$972,664.00	\$81,055.33	93-104	\$1,331,932.56	\$110,994.38
21-32	\$987,822.40	\$82,318.53	105-116	\$1,353,767.52	\$112,813.96
33-44	\$1,159,875.20	\$96,656.27	117-128	\$1,372,483.20	\$114,373.60
45-56	\$1,177,404.80	\$98,117.07	129-140	\$1,394,318.16	\$116,193.18
57-68	\$1,275,785.52	\$106,315.46	141-152	\$1,416,153.12	\$118,012.76
69-80	\$1,294,501.20	\$107,875.10			

\*Monthly installments of Annual Operating Expenses shall be payable by Tenant in these months notwithstanding that no installments of Minimum Annual Rent are then due and payable.

- (g) **Annual Operating Expenses:** \$411,744.96, payable in monthly installments of \$34,312.08, subject to adjustment as provided in this Lease.
- (h) **Tenant's Share:** 51.34% (also see Definitions).
- (i) **Use:** Warehouse/Distribution, with appurtenant offices.
- (j) **Security Deposit:** \$0.00.
- (k) **Addresses For Notices:**

<b>Landlord:</b> Liberty Property Limited Partnership 1510 Valley Center Parkway, Suite 240 Bethlehem, PA 18017 Attn: Senior Vice President/City Manager	<b>Tenant:</b> Tree of Life, Inc. 405 Golfway West Drive St. Augustine, FL 32095-8836 Attn: Senior VP Operations Attn: General Counsel
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- (l) **Guarantor:** Royal Wessanen, N.V., a Netherlands company.
- (m) **Additional Defined Terms:** See Rider 1 for the definitions of other capitalized terms.
- (n) **Contents:** The following are attached to and made a part of this Lease:  
Rider 1 – Additional Definitions

- Exhibits:
- "A" – Plan showing Premises (including Office Space) and Additional Space
  - "B" – Building Rules
  - "C" – Estoppel Certificate Form
  - "D" – Landlord Improvement Plans
  - "E" – Landlord Improvement Specifications
  - "F" – Additional Improvement Plans
  - "G" – Additional Improvement Specifications
  - "H" – Tenant Improvement Plans
  - "I" – Tenant Improvement Specifications
  - "J" – Form of Guaranty
  - "K" – Tenant's Exclusive Parking Area

2. **Premises.** Landlord leases to Tenant and Tenant leases from Landlord the Premises, together with the right in common with others to use the Common Areas. Tenant accepts the Premises, Building and Common Areas "AS IS", without relying on any representation, covenant or warranty by Landlord other than as expressly set forth in this Lease. Landlord and Tenant stipulate and agree to the rentable square footage set forth in Section 1(a) above without regard to actual measurement.

3. **Use.** Tenant shall occupy and use the Premises only for the Use specified in Section 1 above. Tenant shall not permit any conduct or condition which may endanger, disturb or otherwise interfere with any other Building occupant's normal operations or with the management of the Building. Tenant shall not use or permit the use of any portion of the Property for outdoor storage or installations outside of the Premises. Tenant may use all Common Areas only for their intended purposes. Landlord shall have exclusive control of all Common Areas at all times. Tenant shall have access to the Building, Premises and Common Areas 24 hours per day, 7 days per week, 365 days per year during the Term, except and to the extent of an emergency or any required repair or maintenance activities which reasonably require the temporary shutdown of utilities or Building Systems.

4. **Term; Possession.** The Term of this Lease shall commence on the Commencement Date and shall end on the Expiration Date, unless sooner terminated in accordance with this Lease. If Landlord is delayed in delivering possession of all or any portion of the Premises to Tenant as of the Commencement Date, Tenant will take possession on the date Landlord delivers possession, which date will then become the Commencement Date (and the Expiration Date will be extended so that the length of the Term remains unaffected by such delay). Landlord shall not be liable for any loss or damage to Tenant resulting from any delay in delivering possession due to the holdover of any existing tenant or other circumstances outside of Landlord's reasonable control. Notwithstanding the foregoing, in the event that Landlord shall not deliver possession of the Premises to Tenant, with the Landlord Improvements substantially complete and Tenant's freezer/cooler unit (the "Freezer") installed in the Premises in accordance with the Additional Improvement Specifications (as defined below), on or before October 15, 2009, as such date shall be extended for delays caused by Tenant or its Agents and delays beyond the reasonable control of Landlord or its Agents (such date, as extended, the "Penalty Date"), Tenant shall receive a credit of one day's Minimum Annual Rent at the rate applicable to the ninth full month of the Term for each day after the Penalty Date until substantial completion of the Landlord Improvements is achieved, which credit shall be applied against Minimum Annual Rent first due and owing under this Lease.

5. **Rent; Taxes.** Tenant agrees to pay to Landlord, without demand, deduction or offset, Minimum Annual Rent and Annual Operating Expenses for the Term. Tenant shall pay the Monthly Rent, in advance, on the first day of each calendar month during the Term, at Landlord's address designated in Section 1 above unless Landlord designates otherwise; provided that the monthly installment of Annual Operating Expenses for the first full month shall be paid at the signing of this Lease. If the Commencement Date is not the first day of the month, the Monthly Rent for that partial month shall be apportioned on a per diem basis at the rate of \$3,845.58 per day and shall be paid on or before the Commencement Date. Tenant shall pay Landlord a service and handling charge equal to 5% of any Rent not paid within 5 days after the date due, provided that such charge shall not be due with respect to the first late payment in any 12 consecutive month period, unless Landlord fails to receive such late payment within 5 days after Tenant's receipt of written notice from Landlord that such payment has not been received. In addition, any Rent, including such charge, not paid within 5 days after the due date will bear interest at the Interest Rate from the date due to the date paid. Tenant shall pay before delinquent all taxes levied or assessed upon, measured by, or arising from: (a) the conduct of Tenant's business; (b) Tenant's leasehold estate; or (c) Tenant's property. Additionally, Tenant shall pay to Landlord all sales, use, transaction privilege, or other excise tax that may at any time be levied or imposed upon, or measured by, any amount payable by Tenant under this Lease.

6. **Operating Expenses.** The amount of the Annual Operating Expenses set forth in Section 1(g) above represents Tenant's Share of the estimated Operating Expenses for the calendar year in which the Term commences, excluding the cost of electricity and gas that is separately metered to the Premises which shall be paid by Tenant directly to the respective utility

provider, as set forth in Section 7 below. Landlord may adjust such amount from time to time if the estimated Annual Operating Expenses increase or decrease, so long as such adjustment is reasonably determined by Landlord and Tenant is notified in writing by Landlord with supporting evidence of such increase or decrease; Landlord may also invoice Tenant separately from time to time for Tenant's Share of any extraordinary or unanticipated Operating Expenses, so long as such is reasonably determined by Landlord and Tenant is notified in writing by Landlord with supporting evidence of such expenses. By April 30<sup>th</sup> of each year (and as soon as practical after the expiration or termination of this Lease or, at Landlord's option, after a sale of the Property), Landlord shall provide Tenant with a statement of Operating Expenses for the preceding calendar year or part thereof in reasonable detail by general category of Operating Expenses. Within 30 days after delivery of the statement to Tenant, Landlord or Tenant shall pay to the other the amount of any overpayment or deficiency then due from one to the other or, at Landlord's option, Landlord may credit Tenant's account for any overpayment. If Tenant does not give Landlord notice within 30 days after receiving Landlord's statement that Tenant disagrees with the statement and specifying the items and amounts in dispute, Tenant shall be deemed to have waived the right to contest the statement. During such 30 day period, Tenant shall be entitled, during regular business hours, after giving to Landlord at least 5 business days prior written notice, to inspect in Landlord's business office all Landlord's records necessary to satisfy itself that all charges set forth in the statement have been correctly allocated to Tenant. Landlord's and Tenant's obligation to pay any overpayment or deficiency due the other pursuant to this Section shall survive the expiration or termination of this Lease. Notwithstanding any other provision of this Lease to the contrary, Landlord may, in its commercially reasonable discretion, determine from time to time the method of computing and allocating Operating Expenses, including the method of allocating Operating Expenses to various types of space within the Building to reflect any disparate levels of services provided to different types of space, so long as such method is fair and equitable to Tenant in relationship to all tenants and Landlord provides written notice of the change and a basis for the change to Tenant. If the Building is not fully occupied during any period, Landlord may make a reasonable adjustment based on occupancy in computing the Operating Expenses for such period so that those Operating Expenses that vary based on level of occupancy (including, without limitation, water and sewer) are computed as though the Building had been fully occupied. Notwithstanding the foregoing, those Operating Expenses that do not vary based upon level of occupancy (such as taxes, insurance, landscaping and snow removal) will not be adjusted. Notwithstanding anything to the contrary herein contained, commencing in calendar year 2010 and in any calendar year thereafter, Tenant's Share of controllable Operating Expenses (collectively, "Controllable Operating Expenses"), which are defined herein to include all Operating Expenses, except for taxes, insurance, utilities and snow removal expenses, shall not exceed 105% of the Controllable Operating Expenses properly charged to Tenant during the immediately preceding calendar year on an annualized basis. Upon Tenant's written request, from time to time during the Term, Landlord shall consult with Tenant as to the status of Controllable Operating Expenses.

**7. Utilities.** Tenant shall pay for water, sewer, gas, electricity, heat, power, telephone and other communication services and any other utilities supplied to the Premises. The Premises will be separately metered for electricity and gas and Tenant shall obtain electric and gas service in its own name and timely pay all charges therefor directly to the utility company providing such services. Except to the extent Landlord elects to provide any such services and invoice Tenant for the cost or include the cost in Operating Expenses, Tenant shall obtain service in its own name and timely pay all charges directly to the provider. Landlord shall not be responsible or liable for any interruption in such services, nor shall such interruption affect the continuation or validity of this Lease. Landlord shall have the exclusive right to select, and to change, the companies providing such services to the Building or Premises, except that Tenant may select its own telecommunication services provider. Any wiring, cabling or other equipment necessary to connect Tenant's telecommunications equipment shall be Tenant's responsibility, and shall be installed in a manner approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. In the event Tenant's consumption of any utility or other service included in Operating Expenses is excessive when compared with other occupants of the Property, Landlord may invoice Tenant separately for, and Tenant shall pay on demand, the cost of Tenant's excessive consumption, as reasonably determined by Landlord. Notwithstanding anything contained herein to the contrary, if an upgrade of the Building's power supply is required due to the anticipated power supply demands of Tenant's business operations at the Premises, as determined by Tenant's load requirements received by Landlord no later than four (4) weeks after Tenant's execution of this Lease, then Landlord shall upgrade the Building's power supply from 3000 amp to 4000 amp, at Landlord's sole cost and expense.

**8. Insurance; Waivers; Indemnification.**

(a) Landlord shall maintain insurance against loss or damage to the Building or the Property with coverage for perils as set forth under the "Causes of Loss-Special Form" or equivalent property insurance policy in an amount equal to the full insurable replacement cost of the Building (excluding coverage of Tenant's personal property and any Alterations by Tenant), and such other insurance, including rent loss coverage, as Landlord may reasonably deem appropriate or as any Mortgagee may require.

(b) Tenant, at its expense, shall keep in effect commercial general liability insurance, including blanket contractual liability insurance, covering Tenant's use of the Property, with such coverages and limits of liability as Landlord may reasonably require, but not less than a \$1,000,000 combined single limit with a \$5,000,000 general aggregate limit (which general aggregate limit may be satisfied by an umbrella liability policy) for bodily injury or property damage; however, such limits shall not limit Tenant's liability hereunder. The policy shall name Landlord, Liberty Property Trust and any other associated or affiliated entity as their interests may appear and at Landlord's request, any Mortgagee(s), as additional insureds, shall be written on an "occurrence" basis and not on a "claims made" basis and shall be endorsed to provide that it is primary to and not contributory to any policies carried by Landlord and to provide that it shall not be cancelable or reduced without at least 30 days prior notice to Landlord. The insurer shall be authorized to issue such insurance, licensed to do business and admitted in the state in which the Property is located and rated at least A VII in the most current edition of *Best's Insurance Reports*. Tenant shall deliver to Landlord on or before the Commencement Date or any earlier date on which Tenant accesses the Premises, and at least 30 days prior to the date of each policy renewal, a certificate of insurance evidencing such coverage.

(c) Landlord and Tenant each waive, and release each other from and against, all claims for recovery against the other for any loss or damage to the property of such party arising out of fire or other casualty coverable by a standard "Causes of Loss-Special Form" property insurance policy with, in the case of Tenant, such endorsements and additional coverages as are considered good business practice in Tenant's business, even if such loss or damage shall be brought about by the fault or negligence of the other party or its Agents; provided, however, such waiver by Landlord shall not be effective with respect to Tenant's liability described in Sections 9(b) and 10(d) below. This waiver and release is effective regardless of whether the releasing party actually maintains the insurance described above in this subsection and is not limited to the amount of insurance actually carried, or to the actual proceeds received after a loss. Each party shall have its insurance company that issues its property coverage waive any rights of subrogation, and shall have the insurance company include an endorsement acknowledging this waiver, if necessary. Tenant assumes all risk of damage of Tenant's property within the Property, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, act of any other tenant, or other cause.

(d) Tenant shall not be permitted to satisfy any of its insurance obligations set forth in this Lease through any self-insurance or self-insured retention in excess of \$250,000.00.

(e) Subject to subsection (c) above, and except to the extent caused by the negligence or willful misconduct of Landlord or its Agents, Tenant will indemnify, defend, and hold harmless Landlord and its Agents from and against any and all claims, actions, damages, liability and expense (including fees of attorneys, investigators and experts) which may be asserted against, imposed upon, or incurred by Landlord or its Agents and arising out of or in connection with loss of life, personal injury or damage to property in or about the Premises or arising out of the occupancy or use of the Property by Tenant or its Agents or occasioned wholly or in part by any act or omission of Tenant or its Agents, whether prior to, during or after the Term. Tenant's obligations pursuant to this subsection shall survive the expiration or termination of this Lease.

## **9. Maintenance and Repairs.**

(a) Landlord shall Maintain the: (i) Building footings, foundations, structural steel columns and girders at Landlord's sole expense; (ii) Building roof and exterior walls; (iii) Building Systems; and (iv) Common Areas. Costs incurred by Landlord under the foregoing subsections (ii), (iii) and (iv) will be included in Operating Expenses, provided that to the extent any heating, ventilation and air conditioning system, or other Building System, equipment or fixture exclusively serves the Premises, Landlord may elect either to Maintain the same at Tenant's sole expense and bill Tenant directly or by notice to Tenant require Tenant to Maintain the same at Tenant's expense. Notwithstanding anything contained herein to the contrary, any costs incurred for necessary replacement of (i) the Building roof and structural components of the exterior walls, (ii) the exterior utility connections into the Building, and (iii) the parking lot immediately servicing the Building, shall be borne solely by Landlord and shall not be included in Operating Expenses. If Tenant becomes aware of any condition that is Landlord's responsibility to repair, Tenant shall promptly notify Landlord of the condition.

(b) Except as provided in subsection (a) above, Tenant at its sole expense shall Maintain the Premises and all fixtures and equipment in the Premises. All repairs and replacements by Tenant shall utilize materials and equipment which are comparable to those originally used in constructing the Building and Premises. Alterations, repairs and replacements to the Property, including the Premises, made necessary because of Tenant's Alterations or installations, any use or circumstances special or particular to Tenant, or any act or omission of Tenant or its Agents shall be made by Landlord or Tenant as set forth above, but at the sole expense of Tenant to the extent not covered by any applicable insurance proceeds paid to Landlord (but not in excess of Landlord's commercially reasonable deductible).

**10. Compliance.**

(a) Tenant will, at its expense, promptly comply with all Laws now or subsequently pertaining to the Premises or Tenant's use or occupancy. Tenant will pay any taxes or other charges by any authority on Tenant's property or trade fixtures or relating to Tenant's use of the Premises. Neither Tenant nor its Agents shall use the Premises in any manner that under any Law would require Landlord to make any Alteration to or in the Building or Common Areas (without limiting the foregoing, Tenant shall not use the Premises in any manner that would cause the Premises or the Property to be deemed a "place of public accommodation" under the ADA if such use would require any such Alteration). Tenant shall be responsible for compliance with the ADA, and any other Laws regarding accessibility, with respect to the Premises.

(b) Tenant will comply, and will cause its Agents to comply, with the Building Rules.

(c) Tenant agrees not to do anything or fail to do anything beyond Tenant's prudent use of the Premises in the usual and regular course of Tenant's business for the Use set forth in Section 1(i) of this Lease which will increase the cost of Landlord's insurance or which will prevent Landlord from procuring policies (including public liability) from companies and in a form satisfactory to Landlord. If any breach of the preceding sentence by Tenant causes the rate of fire or other insurance to be increased, Tenant shall pay the amount of such increase as additional Rent within 30 days after being billed, and such bill shall be accompanied by a letter from Landlord's insurance carrier stating that such increase in the cost of Landlord's insurance is solely attributable to an act or omission of Tenant.

(d) Tenant agrees that (i) no activity will be conducted on the Premises that will use or produce any Hazardous Materials, except for activities which are part of the ordinary course of Tenant's business and are conducted in accordance with all Environmental Laws ("Permitted Activities"); (ii) the Premises will not be used for storage of any Hazardous Materials, except for materials used in the Permitted Activities which are properly stored in a manner and location complying with all Environmental Laws; (iii) no portion of the Premises or Property will be used by Tenant or Tenant's Agents for disposal of Hazardous Materials; (iv) Tenant will deliver to Landlord copies of all Material Safety Data Sheets and other written information prepared by manufacturers, importers or suppliers of any chemical; and (v) Tenant will immediately notify Landlord of any violation by Tenant or Tenant's Agents of any Environmental Laws or the release or suspected release of Hazardous Materials in, under or about the Premises, and Tenant shall immediately deliver to Landlord a copy of any notice, filing or permit sent or received by Tenant with respect to the foregoing. If at any time prior to, during or after the Term, any portion of the Property is found to be contaminated by Tenant or Tenant's Agents or subject to conditions prohibited in this Lease caused by Tenant or Tenant's Agents, Tenant will indemnify, defend and hold Landlord harmless from all claims, demands, actions, liabilities, costs, expenses, attorneys' fees, damages and obligations of any nature arising from or as a result thereof, and Landlord shall have the right to direct remediation activities, all of which shall be performed at Tenant's cost. Tenant's obligations pursuant to this subsection shall survive the expiration or termination of this Lease.

(e) Landlord represents and warrants to Tenant that, to its actual knowledge based solely on a Phase I Environmental Site Assessment of the Property, a copy of which shall be made available to Tenant on request, the Property does not contain Hazardous Materials (as defined by applicable Laws) in amounts exceeding legally established maximum thresholds. If at any time during or after the Term, any portion of the Property is found to be contaminated (i) from or as a result of any activity which occurred in or about the Property prior to the Commencement Date, unless and to the extent caused by the acts or omissions of Tenant or its Agents, or (ii) by Landlord or Landlord's Agents, Landlord will indemnify, defend and hold Tenant harmless from all claims, demands, actions, liabilities, costs, expenses, attorneys' fees, damages and obligations of any nature arising from or as a result thereof and Landlord shall, at its sole cost and expense, perform all necessary remediation activities. Landlord's obligations pursuant to this subsection shall survive the expiration or termination of this Lease. If at any time during the Term of this Lease, any portion of the Property is found to be contaminated as a result of the acts or omissions of any other tenant in the Building, Landlord will perform all necessary remediation activities, at no cost to Tenant, unless and to the extent caused by the acts or omissions of Tenant or its Agents.

**11. Signs.** Landlord will furnish Tenant Building standard identification signage on or beside the main entrance door to the Premises and Building standard, shared signage on the existing Building monument sign located on the Property, in common with other tenants of the Building. Tenant shall not place any signs on the Property without the prior consent of Landlord, other than signs that are located wholly within the interior of the Premises and not visible from the exterior of the Premises. Tenant shall maintain all signs installed by Tenant in good condition. Tenant shall remove its signs at the termination of this Lease, shall repair any resulting damage, and shall restore the Property to its condition existing prior to the installation of Tenant's signs.

**12. Alterations.** Except for non-structural Alterations that (i) do not exceed \$25,000 in the aggregate, (ii) are not visible from the exterior of the Premises, (iii) do not affect any Building System or the structural strength of the Building, (iv) do not

require penetrations into the floor, ceiling or walls (other than for the installation of decorations in the Premises), and (v) do not require work within the walls, below the floor or above the ceiling, Tenant shall not make or permit any Alterations in or to the Premises without first obtaining Landlord's consent, which consent shall not be unreasonably withheld. With respect to any Alterations made by or on behalf of Tenant (whether or not the Alteration requires Landlord's consent): (i) not less than 10 days prior to commencing any Alteration, Tenant shall deliver to Landlord the plans, specifications and necessary permits for the Alteration, together with certificates evidencing that Tenant's contractors and subcontractors have adequate insurance coverage naming Landlord, Liberty Property Trust and any other associated or affiliated entity as their interests may appear as additional insureds, (ii) Tenant shall obtain Landlord's prior written approval of any contractor or subcontractor, (iii) the Alteration shall be constructed with new materials, in a good and workmanlike manner, and in compliance with all Laws and the plans and specifications delivered to, and, if required above, approved by Landlord, (iv) Tenant shall pay Landlord all reasonable costs and expenses in connection with Landlord's review of Tenant's plans and specifications, and of any supervision or inspection of the construction Landlord deems necessary, and (v) upon Landlord's request Tenant shall, prior to commencing any Alteration, provide Landlord reasonable security against liens arising out of such construction. Any Alteration by Tenant shall be the property of Tenant until the expiration or termination of this Lease; at that time without payment by Landlord the Alteration shall remain on the Property and become the property of Landlord unless Landlord gives notice to Tenant to remove it, in which event Tenant will remove it, will repair any resulting damage and will restore the Premises to the condition existing prior to Tenant's Alteration. At Tenant's request prior to Tenant making any Alterations, Landlord will notify Tenant whether Tenant is required to remove the Alterations at the expiration or termination of this Lease. Without Landlord's approval, Tenant may install its trade fixtures, furniture and equipment in the Premises (including, without limitation, the installation of Tenant's carousel and racking systems in the Premises by bolting same into the floor of the Premises, provided, however, that Tenant agrees to remove such carousel and racking system at the expiration or earlier termination of this Lease, and to grind all bolts to below floor level and appropriately fill all holes to floor level), provided that the installation and removal of them will not affect any structural portion of the Property, any Building System or any other equipment or facilities serving the Building or any occupant.

**13. Mechanics' Liens.** Tenant promptly shall pay for any labor, services, materials, supplies or equipment furnished to Tenant in or about the Premises. Tenant shall keep the Premises and the Property free from any liens arising out of any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to Tenant. Tenant shall take all steps permitted by law in order to avoid the imposition of any such lien. Should any such lien or notice of such lien be filed against the Premises or the Property, Tenant shall discharge the same by bonding or otherwise within 15 days after Tenant has notice that the lien or claim is filed regardless of the validity of such lien or claim.

**14. Landlord's Right of Entry.** Tenant shall permit Landlord and its Agents to enter the Premises at all reasonable times following reasonable notice (except in an emergency) to inspect, Maintain, or make Alterations to the Premises or Property, to exhibit the Premises for the purpose of sale or financing, and, during the last 9 months of the Term, to exhibit the Premises to any prospective tenant. Landlord will make reasonable efforts not to inconvenience Tenant in exercising such rights, but Landlord shall not be liable for any interference with Tenant's occupancy resulting from Landlord's entry.

**15. Damage by Fire or Other Casualty.** If the Premises or Common Areas shall be damaged or destroyed by fire or other casualty, Tenant shall promptly notify Landlord, and Landlord, subject to the conditions set forth in this Section, shall repair such damage and restore the Premises or Common Areas to substantially the same condition in which they were immediately prior to such damage or destruction, but not including the repair, restoration or replacement of the fixtures, equipment, or Alterations installed by or on behalf of Tenant. Landlord shall notify Tenant, within 30 days after the date of the casualty, if Landlord anticipates that the restoration will take more than 180 days from the date of the casualty to complete; in such event, either Landlord or Tenant (unless the damage was caused by Tenant) may terminate this Lease effective as of the date of casualty by giving notice to the other within 10 days after Landlord's notice. If a casualty occurs during the last 12 months of the Term, Landlord may terminate this Lease unless Tenant has the right to extend the Term for at least 3 more years and does so within 30 days after the date of the casualty. Moreover, Landlord may terminate this Lease if the loss is not covered by the insurance required to be maintained by Landlord under this Lease. In any event, Tenant will receive an abatement of Minimum Annual Rent and Annual Operating Expenses to the extent the Premises are rendered untenable as a result of the casualty.

**16. Condemnation.** If (a) all of the Premises are Taken, (b) any part of the Premises is Taken and the remainder is insufficient in Landlord's opinion for the reasonable operation of Tenant's business, or (c) any of the Property is Taken, and, in Landlord's opinion, it would be impractical or the condemnation proceeds are insufficient to restore the remainder, then this Lease shall terminate as of the date the condemning authority takes possession. If this Lease is not terminated, Landlord shall restore the Building to a condition as near as reasonably possible to the condition prior to the Taking, the Minimum Annual Rent shall be abated for the period of time all or a part of the Premises is untenable in proportion to the square foot area untenable, and this Lease shall be amended appropriately. The compensation awarded for a Taking shall belong to Landlord.



Except for any relocation benefits to which Tenant may be entitled, Tenant hereby assigns all claims against the condemning authority to Landlord, including, but not limited to, any claim relating to Tenant's leasehold estate.

**17. Quiet Enjoyment.** Landlord covenants that Tenant, upon performing all of its covenants, agreements and conditions of this Lease, shall have quiet and peaceful possession of the Premises as against anyone claiming by or through Landlord, subject, however, to the terms of this Lease.

**18. Assignment and Subletting.**

(a) Except as provided in Section (b) below, Tenant shall not enter into nor permit any Transfer voluntarily or by operation of law, without the prior consent of Landlord, which consent shall not be unreasonably withheld. Without limitation, Tenant agrees that Landlord's consent shall not be considered unreasonably withheld if (i) the proposed transferee is an existing tenant of Landlord or an affiliate of Landlord, (ii) the business, business reputation or creditworthiness of the proposed transferee is unacceptable to Landlord, or (iii) Tenant is in default under this Lease or any act or omission has occurred which would constitute a default with the giving of notice and/or the passage of time. A consent to one Transfer shall not be deemed to be a consent to any subsequent Transfer. In no event shall any Transfer relieve Tenant from any obligation under this Lease, unless otherwise expressly agreed to in writing by Landlord. Landlord's acceptance of Rent from any person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any Transfer. Any Transfer not in conformity with this Section 18 shall be void at the option of Landlord.

(b) Landlord's consent shall not be required in the event of any Transfer by Tenant to an Affiliate provided that (i) the Affiliate has a tangible net worth at least equal to that of Tenant as of the date of this Lease, (ii) Tenant provides Landlord notice of the Transfer at least 15 days prior to the effective date, together with current financial statements of the Affiliate certified by an executive officer of the Affiliate, and (iii) in the case of an assignment or sublease, Tenant delivers to Landlord an assumption agreement reasonably acceptable to Landlord executed by Tenant and the Affiliate, together with a certificate of insurance evidencing the Affiliate's compliance with the insurance requirements of Tenant under this Lease.

(c) The provisions of subsection (a) above notwithstanding, if Tenant proposes to Transfer all of the Premises (other than to an Affiliate), Landlord may terminate this Lease, either conditioned on execution of a new lease between Landlord and the proposed transferee or without that condition. If Tenant proposes to enter into a Transfer of less than all of the Premises (other than to an Affiliate), Landlord may amend this Lease to remove the portion of the Premises to be transferred, either conditioned on execution of a new lease between Landlord and the proposed transferee or without that condition. If this Lease is not so terminated or amended, Tenant shall pay to Landlord, immediately upon receipt, 50% of the excess of (i) all compensation received by Tenant for the Transfer, less the commercially reasonable costs incurred by Tenant in connection with such Transfer, over (ii) the Rent allocable to the Premises transferred.

(d) If Tenant requests Landlord's consent to a Transfer, Tenant shall provide Landlord, at least 15 days prior to the proposed Transfer, current financial statements of the transferee certified by an executive officer of the transferee, a complete copy of the proposed Transfer documents, and any other information Landlord reasonably requests. Immediately following any approved assignment or sublease, Tenant shall deliver to Landlord an assumption agreement reasonably acceptable to Landlord executed by Tenant and the transferee, together with a certificate of insurance evidencing the transferee's compliance with the insurance requirements of Tenant under this Lease. Tenant agrees to reimburse Landlord for reasonable administrative and attorneys' fees in connection with the processing and documentation of any Transfer for which Landlord's consent is requested.

**19. Subordination; Mortgagee's Rights.**

(a) Tenant accepts this Lease subject and subordinate to any Mortgage now or in the future affecting the Premises, provided that Tenant's right of possession of the Premises shall not be disturbed by the Mortgagee so long as Tenant is not in default under this Lease. This clause shall be self-operative, but within 10 days after request, Tenant shall execute and deliver any further instruments confirming the subordination of this Lease and any further instruments of attornment that the Mortgagee may reasonably request. However, any Mortgagee may at any time subordinate its Mortgage to this Lease, without Tenant's consent, by giving notice to Tenant, and this Lease shall then be deemed prior to such Mortgage without regard to their respective dates of execution and delivery; provided that such subordination shall not affect any Mortgagee's rights with respect to condemnation awards, casualty insurance proceeds, intervening liens or any right which shall arise between the recording of such Mortgage and the execution of this Lease.

(b) No Mortgagee shall be (i) liable for any act or omission of a prior landlord, (ii) subject to any rental offsets or defenses against a prior landlord, (iii) bound by any amendment of this Lease made without its written consent, or (iv) bound by payment of Monthly Rent more than one month in advance or liable for any other funds paid by Tenant to Landlord unless such funds actually have been transferred to the Mortgagee by Landlord.

(c) The provisions of Sections 15 and 16 above notwithstanding, Landlord's obligation to restore the Premises after a casualty or condemnation shall be subject to the consent and prior rights of any Mortgagee.

**20. Tenant's Certificate; Financial Information.** Within 10 days after Landlord's request from time to time, but not more frequently than twice in any 12 consecutive month period, (a) Tenant shall execute, acknowledge and deliver to Landlord, for the benefit of Landlord, Mortgagee, any prospective Mortgagee, and any prospective purchaser of Landlord's interest in the Property, an estoppel certificate in the form of attached **Exhibit "C"** (or other form requested by Landlord), modified as necessary to accurately state the facts represented, and (b) Tenant shall furnish to Landlord, Landlord's Mortgagee, prospective Mortgagee and/or prospective purchaser reasonably requested financial information.

**21. Surrender.**

(a) On the date on which this Lease expires or terminates, Tenant shall return possession of the Premises to Landlord in good condition, except for ordinary wear and tear, and except for casualty damage or other conditions that Tenant is not required to remedy under this Lease. Prior to the expiration or termination of this Lease, Tenant shall remove from the Property all furniture, trade fixtures, equipment, wiring and cabling (unless Landlord directs Tenant otherwise), and all other personal property installed by Tenant or its assignees or subtenants. Notwithstanding anything contained in this Lease to the contrary, at the expiration or termination of this Lease, Tenant shall not be obligated to remove the Freezer to be installed by Landlord in the Premises in accordance with the Additional Improvement Specifications. Tenant shall repair any damage resulting from such removal and shall restore the Property to good order and condition. Any of Tenant's personal property not removed as required shall be deemed abandoned, and Landlord, at Tenant's expense, may remove, store, sell or otherwise dispose of such property in such manner as Landlord may see fit and/or Landlord may retain such property or sale proceeds as its property. If Tenant does not return possession of the Premises to Landlord in the condition required under this Lease, Tenant shall pay Landlord all resulting damages Landlord may suffer.

(b) If Tenant remains in possession of the Premises after the expiration or termination of this Lease, Tenant's occupancy of the Premises shall be that of a tenancy at will. Tenant's occupancy during any holdover period shall otherwise be subject to the provisions of this Lease (unless clearly inapplicable), except that the Monthly Rent for each of the first, second and third months of any holdover period shall be 150% of the Monthly Rent payable for the last full month immediately preceding the holdover, and the Monthly Rent for every month of the holdover period thereafter shall be 200% of the Monthly Rent payable for the last full month immediately preceding the holdover. No holdover or payment by Tenant after the expiration or termination of this Lease shall operate to extend the Term or prevent Landlord from immediate recovery of possession of the Premises by summary proceedings or otherwise. Any provision in this Lease to the contrary notwithstanding, any holdover by Tenant shall constitute a default on the part of Tenant under this Lease entitling Landlord to exercise, without obligation to provide Tenant any notice or cure period, all of the remedies available to Landlord in the event of a Tenant default, and Tenant shall be liable for all damages, including consequential damages, that Landlord suffers as a result of the holdover.

**22. Defaults - Remedies.**

(a) It shall be an Event of Default:

(i) If Tenant does not pay in full when due any and all Rent and, except as provided in Section 22(d) below, Tenant fails to cure such default on or before the date that is 5 days after Landlord gives Tenant notice of default;

(ii) If Tenant enters into or permits any Transfer in violation of Section 18 above;

(iii) If Tenant fails to observe and perform or otherwise breaches any other provision of this Lease, and, except as provided in Section 22(d) below, Tenant fails to cure the default on or before the date that is 10 days after Landlord gives Tenant notice of default; provided, however, if the default cannot reasonably be cured within 10 days following Landlord's giving of notice, Tenant shall be afforded additional reasonable time (not to exceed 30 days following Landlord's notice) to cure the default if Tenant begins to cure the default within 10 days following Landlord's notice and continues diligently in good faith to completely cure the default; or

(iv) If Tenant becomes insolvent or makes a general assignment for the benefit of creditors or offers a settlement to creditors, or if a petition in bankruptcy or for reorganization or for an arrangement with creditors under any federal or state law is filed by or against Tenant, or a bill in equity or other proceeding for the appointment of a receiver for any of Tenant's assets is commenced, or if any of the real or personal property of Tenant shall be levied upon; provided that any proceeding brought by anyone other than Landlord or Tenant under any bankruptcy, insolvency, receivership or similar law shall not constitute an Event of Default until such proceeding has continued unstayed for more than 60 consecutive days.

(b) If an Event of Default occurs, Landlord shall have the following rights and remedies:

(i) Landlord, without any obligation to do so, may elect to cure the default on behalf of Tenant, in which event Tenant shall reimburse Landlord upon demand for any sums paid or costs incurred by Landlord (together with an administrative fee of 15% thereof) in curing the default, plus interest at the Interest Rate from the respective dates of Landlord's incurring such costs, which sums and costs together with interest at the Interest Rate shall be deemed additional Rent;

(ii) To enter and repossess the Premises lawfully, by breaking open locked doors if necessary and lawful, and remove all persons and all or any property, by action at law or otherwise in accordance with law, without being liable for prosecution or damages. Landlord may, at Landlord's option, make Alterations and repairs in order to relet the Premises and relet all or any part(s) of the Premises for Tenant's account. Tenant agrees to pay to Landlord on demand any deficiency (taking into account all costs incurred by Landlord) that may arise by reason of such reletting. In the event of reletting without termination of this Lease, Landlord may at any time thereafter elect to terminate this Lease for such previous breach;

(iii) To accelerate the whole or any part of the Rent for the balance of the Term, and declare the same to be immediately due and payable. The accelerated amount determined to be payable to Landlord hereunder shall be reduced to present value at the rate of 6% per annum at the time of actual payment;

(iv) To terminate this Lease and the Term without any right on the part of Tenant to save the forfeiture by payment of any sum due or by other performance of any condition, term or covenant broken;

(v) Notwithstanding anything to the contrary in this Lease, Landlord shall use commercially reasonable efforts to relet the Premises in order to mitigate its damages hereunder, but Landlord shall not be required to prefer the Premises over other space available for lease in the Building or in other buildings owned by Landlord or its Affiliates in the Lehigh Valley, Pennsylvania market area.

(c) Intentionally Omitted.

(d) Any provision to the contrary in this Section 22 notwithstanding, (i) Landlord shall not be required to give Tenant the notice and opportunity to cure provided in Section 22(a) above more than twice in any consecutive 12-month period, and thereafter Landlord may declare an Event of Default without affording Tenant any of the notice and cure rights provided under this Lease, (ii) Landlord shall not be required to give such notice prior to exercising its rights if Tenant fails to comply with the provisions of Sections 13 or 20, and (iii) Landlord shall not be required to give such notice prior to exercising its rights under Section 22(b)(i) in the event of an emergency that constitutes an imminent danger to persons or property or which requires emergency repairs to the Premises or the Property.

(e) No waiver by Landlord of any breach by Tenant shall be a waiver of any subsequent breach, nor shall any forbearance by Landlord to seek a remedy for any breach by Tenant be a waiver by Landlord of any rights and remedies with respect to such or any subsequent breach. Efforts by Landlord to mitigate the damages caused by Tenant's default shall not constitute a waiver of Landlord's right to recover damages hereunder. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy provided herein or by law, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the total amount due Landlord under this Lease shall be deemed to be other than on account, nor shall any endorsement or statement on any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of Rent due, or Landlord's right to pursue any other available remedy.

(f) If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the other party attorneys' fees, costs of suit, investigation expenses and discovery costs, including costs of appeal.

(g) Landlord and Tenant waive the right to a trial by jury in any action or proceeding based upon or related to, the subject matter of this Lease.

(h) When this Lease and the Term or any extension thereof shall have been terminated on account of any default by Tenant, or when the Term or any extension thereof shall have expired, Tenant hereby authorizes any attorney of any court of record of the Commonwealth of Pennsylvania, upon an additional 5 business days prior written notice to Tenant, to appear for Tenant and for anyone claiming by, through or under Tenant and to confess judgment against all such parties, and in favor of Landlord, in ejectment and for the recovery of possession of the Premises, for which this Lease or a true and correct copy hereof shall be good and sufficient warrant. **AFTER THE ENTRY OF ANY SUCH JUDGMENT A WRIT OF POSSESSION MAY BE ISSUED THEREON WITHOUT FURTHER NOTICE TO TENANT AND WITHOUT A HEARING.** If for any reason after such action shall have been commenced it shall be determined and possession of the Premises remain in or be restored to Tenant, Landlord shall have the right for the same default and upon any subsequent default(s) or upon the termination of this Lease or Tenant's right of possession as herein set forth, to again confess judgment as herein provided, for which this Lease or a true and correct copy hereof shall be good and sufficient warrant.

Initials on behalf of Tenant 

(i) The warrant to confess judgment set forth above shall continue in full force and effect and be unaffected by amendments to this Lease or other agreements between Landlord and Tenant even if any such amendments or other agreements increase Tenant's obligations or expand the size of the Premises.

(j) **TENANT EXPRESSLY AND ABSOLUTELY KNOWINGLY AND EXPRESSLY WAIVES AND RELEASES (i) ANY RIGHT, INCLUDING, WITHOUT LIMITATION, UNDER ANY APPLICABLE STATUTE, WHICH TENANT MAY HAVE TO RECEIVE A NOTICE TO QUIT PRIOR TO LANDLORD COMMENCING AN ACTION FOR REPOSSESSION OF THE PREMISES AND (ii) ANY PROCEDURAL ERRORS IN CONNECTION WITH THE ENTRY OF ANY SUCH JUDGMENT OR IN THE ISSUANCE OF ANY ONE OR MORE WRITS OF POSSESSION THEREON.**

Initials on behalf of Tenant 

**23. Tenant's Authority.** Tenant represents and warrants to Landlord that: (a) Tenant is duly formed, validly existing and in good standing under the laws of the state under which Tenant is organized, and qualified to do business in the state in which the Property is located, and (b) the person(s) signing this Lease are duly authorized to execute and deliver this Lease on behalf of Tenant.

**24. Liability of Landlord.** The word "Landlord" in this Lease includes the Landlord executing this Lease as well as its successors and assigns, each of which shall have the same rights, remedies, powers, authorities and privileges as it would have had it originally signed this Lease as Landlord. Any such person or entity, whether or not named in this Lease, shall have no liability under this Lease after it ceases to hold title to the Premises except for obligations already accrued (and, as to any unapplied portion of Tenant's Security Deposit, Landlord shall be relieved of all liability upon transfer of such portion to its successor in interest). Tenant shall look solely to Landlord's successor in interest for the performance of the covenants and obligations of the Landlord hereunder which subsequently accrue. Landlord shall not be deemed to be in default under this Lease unless Tenant gives Landlord notice specifying the default and Landlord fails to cure the default within a reasonable period following Tenant's notice. In no event shall Landlord be liable to Tenant for any loss of business or profits of Tenant or for consequential, punitive or special damages of any kind. Neither Landlord nor any principal of Landlord nor any owner of the Property, whether disclosed or undisclosed, shall have any personal liability with respect to any of the provisions of this Lease or the Premises; Tenant shall look solely to the equity of Landlord in the Property for the satisfaction of any claim by Tenant against Landlord.

**25. Miscellaneous.**

(a) The captions in this Lease are for convenience only, are not a part of this Lease and do not in any way define, limit, describe or amplify the terms of this Lease.

(b) This Lease represents the entire agreement between the parties hereto and there are no collateral or oral agreements or understandings between Landlord and Tenant with respect to the Premises or the Property. No rights, easements or licenses are acquired in the Property or any land adjacent to the Property by Tenant by implication or otherwise except as

expressly set forth in this Lease. This Lease shall not be modified in any manner except by an instrument in writing executed by the parties. The masculine (or neuter) pronoun and the singular number shall include the masculine, feminine and neuter genders and the singular and plural number. The word "including" followed by any specific item(s) is deemed to refer to examples rather than to be words of limitation. The word "person" includes a natural person, a partnership, a corporation, a limited liability company, an association and any other form of business association or entity. Both parties having participated fully and equally in the negotiation and preparation of this Lease, this Lease shall not be more strictly construed, nor any ambiguities in this Lease resolved, against either Landlord or Tenant.

(c) Each covenant, agreement, obligation, term, condition or other provision contained in this Lease shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making the same, not dependent on any other provision of this Lease unless otherwise expressly provided. All of the terms and conditions set forth in this Lease shall apply throughout the Term unless otherwise expressly set forth herein.

(d) If any provisions of this Lease shall be declared unenforceable in any respect, such unenforceability shall not affect any other provision of this Lease, and each such provision shall be deemed to be modified, if possible, in such a manner as to render it enforceable and to preserve to the extent possible the intent of the parties as set forth herein. This Lease shall be construed and enforced in accordance with the laws of the state in which the Property is located.

(e) This Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives and permitted successors and assigns. All persons liable for the obligations of Tenant under this Lease shall be jointly and severally liable for such obligations.

(f) Tenant shall not record this Lease or any memorandum without Landlord's prior consent.

**26. Notices.** Any notice, consent or other communication under this Lease shall be in writing and addressed to Landlord or Tenant at their respective addresses specified in Section 1 above (or to such other address as either may designate by notice to the other) with a copy to any Mortgagee or other party designated by Landlord. Each notice or other communication shall be deemed given if sent by prepaid overnight delivery service or by certified mail, return receipt requested, postage prepaid or in any other manner, with delivery in any case evidenced by a receipt, and shall be deemed to have been given on the day of actual delivery to the intended recipient or on the business day delivery is refused. The giving of notice by Landlord's attorneys, representatives and agents under this Section shall be deemed to be the acts of Landlord.

**27. Intentionally Omitted.**

**28. Landlord Improvements; Completion by Landlord; Office Space Allowance.**

(a) Except as set forth in Section 28(d) below, Landlord, at Landlord's sole cost and expense, shall complete the Landlord Improvements in accordance with the plans or the description of improvements attached hereto as **Exhibit "D"** (the "Landlord Improvement Plans") and the specifications attached hereto as **Exhibit "E"** (the "Landlord Improvement Specifications"). All construction shall be done in a good and workmanlike manner and shall comply at the time of completion with all applicable Laws (including, without limitation, the ADA) of the governmental authorities having jurisdiction. Landlord and Tenant acknowledge and agree that although Landlord shall commence the construction of the Landlord Improvements promptly after the full execution of this Lease by Landlord and Tenant, the Landlord Improvements may not be substantially completed by the Commencement Date. The Commencement Date is not contingent upon the substantial completion of the Landlord Improvements. In the event that the Landlord Improvements are not substantially completed by the Commencement Date, then (i) Landlord shall not be liable for any loss or damage to Tenant resulting therefrom, and (ii) Landlord will proceed with diligence to substantially complete the Landlord Improvements promptly after the Commencement Date.

(b) Landlord shall cause its architect to prepare "Construction Drawings" consistent with the Landlord Improvement Plans and Landlord Improvement Specifications. Upon completion of the Construction Drawings, Landlord shall deliver the Construction Drawings to Tenant. Tenant shall have three (3) business days in which to review the Construction Drawings and to give to Landlord written notice ("Tenant's Notice") of Tenant's approval of the Construction Drawings or its approval noted with any reasonable comments and revisions, such approval not to be unreasonably withheld, conditioned or delayed. Upon Landlord's receipt of Tenant's Notice, if Tenant has not approved the Construction Drawings, Landlord shall promptly provide Tenant with a written response addressing such items which are reasonably requested by Tenant and Landlord shall resubmit the revised portion of the Construction Drawings, if any, to Tenant for review, within three (3) business days after Landlord's receipt of Tenant's Notice. Tenant shall have three (3) business days after receipt of the revised portions of the

Construction Drawings to reasonably review such revisions. This process shall continue until the Construction Drawings have been approved by both parties, provided, however, that Landlord and Tenant shall expeditiously, diligently and in good faith use their best efforts to cause the Construction Drawings to be mutually agreed upon in a prompt manner.

(c) At the time of substantial completion of the Landlord Improvements, Landlord, in consultation with Tenant, shall generate a punch list of all asserted incomplete work items in the Landlord Improvements (the "Landlord Improvement Punch List"). Landlord shall complete all items on the Landlord Improvement Punch List within a commercially reasonable time following the date of the generation of the Landlord Improvement Punch List, unless the nature of the incomplete work item listed therein is such that a longer period of time is required to repair or correct the same or unless due to delays caused by Tenant or its Agents or delays beyond the reasonable control of Landlord or its agents, employees or representatives.

(d) Landlord shall complete that portion of the Landlord Improvements being performed by Landlord to the portion of the Premises containing approximately 13,500 rentable square feet and shown as "Office Space" on **Exhibit "A"** attached hereto, at Tenant's sole cost and expense, equal to the aggregate of all costs, expenses and fees incurred by or on behalf of Landlord in connection therewith (the "Office Space Cost"), including, without limitation, (i) third party architectural, engineering and design costs of the Office Space, (ii) the cost charged to Landlord by Landlord's general contractor and all subcontractors for performing Landlord Improvements to the Office Space, and (iii) the cost to Landlord of performing directly any portion of Landlord Improvements to the Office Space. Landlord agrees to credit Tenant with an allowance (the "Office Space Allowance") equal to \$1,012,500.00. Tenant agrees to pay to Landlord, within 10 days of being billed therefor, the excess (if any) of the Office Space Cost above the Office Space Allowance, or Tenant, at its option, may use the Additional Improvement Allowance (as hereinafter defined) to satisfy such excess, subject to the last two (2) sentences of Section 29(c). Notwithstanding the foregoing, Landlord shall complete that portion of the Landlord Improvements being performed by Landlord to the warehouse portion of the Premises, at Landlord's sole cost and expense. In the event that the Office Space Cost is less than \$1,012,500.00, then the difference thereof shall be used to pay for the Additional Improvements prior to the application of the Additional Improvement Allowance.

(e) Notwithstanding anything contained herein to the contrary, Landlord shall not charge Tenant a construction management fee for Landlord's construction of the Landlord Improvements.

**29. Additional Improvements; Completion by Landlord; Additional Improvement Allowance.**

(a) Landlord shall complete the Additional Improvements in accordance with the plans or the description of improvements to be attached hereto as **Exhibit "F"** (the "Additional Improvement Plans") and the specifications attached hereto as **Exhibit "G"** (the "Additional Improvement Specifications"). Subject to Landlord's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed, Tenant may update the Additional Improvements from time to time. All construction shall be done in a good and workmanlike manner and shall comply at the time of completion with all applicable Laws (including, without limitation, the ADA) of the governmental authorities having jurisdiction.

(b) At the time of substantial completion of the Additional Improvements, Landlord, in consultation with Tenant, shall generate a punch list of all asserted incomplete work items in the Additional Improvements (the "Additional Improvement Punch List"). Landlord shall complete all items on the Additional Improvement Punch List within a commercially reasonable time following the date of the generation of the Additional Improvement Punch List, unless the nature of the incomplete work item listed therein is such that a longer period of time is required to repair or correct the same or unless due to delays caused by Tenant or its Agents or delays beyond the reasonable control of Landlord or its agents, employees or representatives.

(c) Landlord agrees to complete the Additional Improvements, at Tenant's sole cost and expense, equal to the aggregate of all costs, expenses and fees incurred by or on behalf of Landlord in connection therewith (the "Additional Improvement Cost"), including, without limitation, (i) architectural, engineering and design costs, (ii) the cost charged to Landlord by Landlord's general contractor and all subcontractors for performing the Additional Improvements, and (iii) the cost to Landlord of performing directly any portion of the Additional Improvements. Landlord agrees to credit Tenant with an allowance (the "Additional Improvement Allowance") equal to the lesser of the Additional Improvement Cost or \$4,000,000.00. Tenant, in its sole discretion, may use the Additional Improvement Allowance to satisfy any portion or all of the Additional Improvements and/or real estate broker or agent commission or fee payable by Tenant with respect to this Lease. Tenant agrees to pay to Landlord, within 10 days of being billed therefor, the excess (if any) of the Additional Improvement Cost above the Additional Improvement Allowance. Notwithstanding anything contained herein to the contrary, the Additional Improvement Allowance must be used (that is, the satisfaction by Tenant of any real estate broker or agent commission or fee payable by Tenant with respect to this Lease and/or the Additional Improvements and/or the Tenant Improvements must be fully completed and the Additional Improvement Allowance disbursed) within eight (8) months after the Commencement Date or the Additional

Improvement Allowance (or any remaining portion thereof) shall be deemed terminated with no further obligation by Landlord with respect thereto. The Additional Improvement Allowance, together with interest thereon at the rate of 8% per annum, shall be amortized over the remainder of the initial Term of this Lease and Minimum Annual Rent and the monthly installments thereof shall be increased accordingly by amendment to this Lease to reflect such amortization (such amendment to be entered into by Landlord and Tenant promptly after the total amount of the Additional Improvement Allowance utilized by Tenant is determined).

(d) Notwithstanding anything contained herein to the contrary, Landlord shall not charge Tenant a construction management fee for Landlord's construction of the Additional Improvements.

### **30. Tenant Improvements; Completion by Tenant; Additional Improvement Allowance.**

(a) The Tenant Improvements shall be completed by Tenant and its contractor(s), at Tenant's sole cost and expense, in accordance with the plan of improvements to be prepared by Tenant (which plan may be amended and/or supplemented by Tenant from time to time), approved by Landlord and attached hereto as **Exhibit "H"** (the "Tenant Improvement Plans") and the specifications attached hereto as **Exhibit "I"** (the "Tenant Improvement Specifications"). Subject to Landlord's approval of the Tenant Improvement Plans, Landlord hereby consents to the Tenant Improvements, provided that Tenant complies with Sections 12 and 13 of this Lease and the following conditions.

(i) At least five (5) days prior to commencement of construction, Tenant shall deliver to Landlord a certificate of insurance for each of Tenant's contractors evidencing adequate insurance coverage naming Landlord and Landlord's agent as additional insureds.

(ii) In addition to the right of Landlord and its Agents to inspect the Premises set forth in Section 14 of this Lease, Landlord and its Agents shall have the right to conduct a walk-through inspection of the Premises as completed by Tenant.

(iii) The warranties from Tenant's contractor(s) shall be for the benefit of Landlord as well as Tenant and Tenant shall deliver such warranties to Landlord upon receipt.

(iv) All construction shall be done in a good and workmanlike manner and shall comply at the time of completion with all Laws. Tenant shall deliver to Landlord copies of all certificates of occupancy, permits and licenses required to be issued by any authority in connection with Tenant's construction.

(v) Tenant shall obtain Landlord's prior written approval of any contractor or subcontractor completing the Tenant Improvements.

(b) Tenant shall have the right, at its option, to use all or any portion of the Additional Improvement Allowance to pay for the bona-fide, documented, out-of-pocket and actual cost of completing the Tenant Improvements to the Premises, subject to the last two (2) sentences of Section 29(c) above. Provided Tenant is not then in default under this Lease, within 30 days after the date of Landlord's receipt of bona fide, third party invoices for the actual, out-of-pocket costs of the Tenant Improvements, and evidence of completion thereof and payment therefor by Tenant, Landlord shall reimburse Tenant for the cost therefor from the Additional Improvement Allowance. Landlord shall have no further obligations to pay for any costs incurred in connection with the Tenant Improvements.

(c) Any change in the Tenant Improvement Plans and/or Tenant Improvement Specifications shall be subject to Landlord's prior review and written approval of construction documentation describing in detail the requirements of construction of the proposed change.

(d) Notwithstanding anything contained herein to the contrary, Landlord shall not charge Tenant a construction management fee for Landlord's supervision of Tenant's construction of the Tenant Improvements.

**31. Early Occupancy.** Tenant and its authorized agents, employees and contractors shall have the right, at all reasonable times on or after the date of this Lease and prior to the Commencement Date, at Tenant's own risk, expense and responsibility, to occupy the Premises for the purpose of completing the Tenant Improvements, as set forth in subsection 30(a) of this Lease, and installing Tenant's equipment and fixtures and receiving inventory, provided that (i) Tenant does not interfere with or delay the Landlord Improvements and the Additional Improvements, (ii) Tenant uses contractors and workers compatible with the contractors and workers engaged by Landlord to complete the Landlord Improvements and the Additional Improvements, and (iii)

Tenant agrees to consult with Landlord's contractors prior to commencement of construction and to reasonably comply with such contractors' reasonable recommendations and requirements in order to avoid interference with the performance and the completion of the Landlord Improvements and the Additional Improvements. If Tenant occupies the Premises prior to the Commencement Date for the purpose of completing the Tenant Improvements, Tenant shall abide by the terms and conditions of this Lease as if the term of this Lease had already commenced, except that Tenant shall have no obligation to pay (i) the Minimum Annual Rent until the first day of the ninth full month of the Term, or (ii) the Annual Operating Expenses until the Commencement Date.

Landlord's approval:

\_\_\_\_\_  
Regional Director

  
\_\_\_\_\_  
City Manager

**32. Option to Renew.**

(a) Provided that Landlord has not given Tenant notice of default more than two (2) times, that there then exists no Event of Default by Tenant under this Lease, nor any event that with the giving of notice and/or the passage of time would constitute an Event of Default, and that Tenant is the sole occupant of the Premises, Tenant shall have the right and option to extend the Term of this Lease for two (2) additional periods of sixty (60) months each, exercisable by giving Landlord prior written notice, on or before that date that is nine (9) months prior to the then current Expiration Date, of Tenant's election to extend the Term of this Lease; it being agreed that time is of the essence and that this option is personal to Tenant and any assignee or sublessee to whom Tenant is permitted to transfer this Lease without Landlord's consent pursuant to Section 18(b), and is non-transferable to any other assignee or sublessee (regardless of whether any such assignment or sublease was made with or without Landlord's consent) or other party.

(b) Such extensions shall be under the same terms and conditions as provided in this Lease except as follows:

(i) each additional term shall begin on the day after the then current Expiration Date and thereafter the Expiration Date shall be deemed to be the date that is five (5) years after the then current Expiration Date;

(ii) there shall be only one (1) further option to extend, following the first renewal, and no further options to extend after the second renewal; and

(iii) the Minimum Annual Rent for each year of the additional period shall be equal to the greater of (i) the Minimum Annual Rent payable in the immediately preceding Lease Year, or (ii) the fair market rental value of the Premises and annual increases in fair market rental value (but in no event shall annual increases in fair market rental value exceed 2% of the Minimum Annual Rent payable in the immediately preceding Lease Year) (collectively, the "FMR") applicable at the time Tenant exercises such option (but in no event prior to the date that is nine (9) months before the then current Expiration Date).

(c) Unless Landlord accepts as Tenant's Minimum Annual Rent obligation for each year of an additional period an amount equal to the Minimum Annual Rent payable in the immediately preceding Lease Year (but in no event shall such amount include any amounts amortized under Section 29(c) of this Lease) (the "Prior Rent Alternative"), within fifteen (15) days after Landlord receives notice of Tenant's exercise of the option to extend the Term of this Lease, but in no event prior to the date that is nine (9) months before the then current Expiration Date, Landlord will give notice to Tenant (the "Rent Notice") of Landlord's opinion of the FMR and comparing the FMR to the Minimum Annual Rent payable in the immediately preceding Lease Year. If Tenant does not respond to the Rent Notice within fifteen (15) days after receiving it, Landlord's opinion of the FMR shall be deemed accepted as the Minimum Annual Rent due for each Lease Year of the additional period. If, during such fifteen (15) day period, Tenant gives Landlord notice that Tenant contests Landlord's determination of the FMR (an "Objection Notice"), which notice must contain therein Tenant's opinion of the FMR, the parties will attempt to arrive at a mutually agreeable Minimum Annual Rent for each Lease Year of the additional period, which, in no event, shall be less than the Prior Rent Alternative. When the parties come to an agreement, they will both execute an amendment to this Lease establishing the Minimum Annual Rent for each Lease Year of the additional period.

(d) If Landlord and Tenant cannot agree as to the FMR within fifteen (15) days after Landlord's receipt of the Objection Notice, the FMR shall be determined by appraisal. Within ten (10) days after the expiration of such fifteen (15) day period, Landlord and Tenant shall give written notice to the other setting forth the name and address of an appraiser designated by the party giving notice. All appraisers selected shall be members of the American Institute of Real Estate Appraisers and shall



have had at least ten (10) years continuous experience in the business of appraising industrial buildings in the Lehigh Valley, Pennsylvania market area. If either party shall fail to give notice of such designation within the time period provided, then the party who has designated its appraiser (the "Designating Party") shall notify the other party (the "Non-Designating Party") in writing that the Non-Designating Party has an additional ten (10) days to give notice of its designation, otherwise the appraiser, if any, designated by the Designating Party shall conclusively determine the FMR. If two appraisers have been designated, such appraisers shall attempt to agree upon the FMR. If the two appraisers do not agree on the FMR within twenty (20) days of their designation, the two appraisers shall designate a third appraiser. If the two appraisers shall fail to agree upon the identity of a third appraiser within five (5) business days following the end of such twenty (20) day period, then either Landlord or Tenant may apply to the American Arbitration Association, or any successor thereto having jurisdiction, for the settlement of the dispute as to the designation of the third appraiser and the American Arbitration Association shall designate a third appraiser in accordance with the Real Estate Valuation Arbitration Rules of the American Arbitration Association. The three appraisers shall conduct such hearings as they may deem appropriate, shall make their determination of the FMR in writing and shall give notice to Landlord and Tenant of such determination within twenty (20) days after the appointment of the third appraiser. If the three appraisers cannot agree upon the FMR, each appraiser shall submit in writing to Landlord and Tenant the FMR as determined by such appraiser. The FMR for the purposes of this paragraph shall be equal to the arithmetic average of the two closest determinations of FMR submitted by the appraisers. Each party shall pay its own fees and expenses in connection with any appraiser selected by such party under this paragraph, and the parties shall share equally all other expenses and fees of the arbitration, including the fees and expenses charged by the third appraiser. The FMR as determined in accordance with the provisions of this Section shall be final and binding upon Landlord and Tenant.

**33. Right of First Offer.** Subject to prior rights of any existing tenant in occupancy of any Additional Space (as defined below) and to the prior rights of any other tenants in the Building, if and when space in the Building immediately contiguous and adjacent to the Premises and shown as "Additional Space" on **Exhibit "A"** attached hereto (individually, the "Additional Space") first becomes available for rental during the Term of this Lease and provided that Landlord has not given Tenant notice of default more than two (2) times, that there then exists no Event of Default by Tenant under this Lease, nor any event that with the giving of notice and/or the passage of time would constitute an Event of Default, and that Tenant is the sole occupant of the Premises, Tenant shall have the right of first offer to lease all of the Additional Space, subject to the following:

(a) Landlord shall notify Tenant when the Additional Space first becomes available for rental by any party other than the tenant then in occupancy of the Additional Space and Tenant shall have 5 business days following receipt of such notice within which to notify Landlord in writing that Tenant is interested in negotiating terms for leasing the Additional Space and to have its offer considered by Landlord prior to the leasing by Landlord of the Additional Space to a third party. If Tenant notifies Landlord within such time period that Tenant is so interested, then Landlord and Tenant shall have 10 business days following Landlord's receipt of such notice from Tenant within which to negotiate mutually satisfactory terms for the leasing of the Additional Space by Tenant and to execute an amendment to this Lease incorporating such terms or a new lease for the Additional Space.

(b) If Tenant does not notify Landlord within such 5 business days of its interest in leasing the Additional Space or if Tenant does not execute such amendment or lease within such 10 business days, if applicable, then this right of first offer to lease the Additional Space will lapse and be of no further force or effect and Landlord shall have the right to lease all or part of the Additional Space to any other party at any time on any terms and conditions acceptable to Landlord.

(c) This right of first offer to lease the Additional Space is a one-time right if and when each Additional Space first becomes available, is personal to Tenant and any assignee or sublessee to whom Tenant is permitted to transfer this Lease without Landlord's consent pursuant to Section 18(b), and is non-transferable to any other assignee or sublessee (regardless of whether any such assignment or sublease was made with or without Landlord's consent) or other party.

Landlord's approval

\_\_\_\_\_  
Regional Director

  
\_\_\_\_\_  
City Manager

**34. Moving Expenses.** Provided Tenant is not then in default under this Lease, within 15 days after the Commencement Date, Landlord shall pay Tenant the sum of \$750,000.00.

**35. Guaranty.** To induce Landlord to execute this Lease, Royal Wessanen, N.V., a Netherlands company ("Guarantor"), shall deliver to Landlord a guaranty, in the form attached hereto as **Exhibit "J"**, of Tenant's obligations under this Lease. If Guarantor fails to deliver such guaranty to Landlord, simultaneously with delivery of this Lease to Landlord as executed by

Tenant, Landlord shall have no obligation to enter into this Lease and Tenant shall have no rights or interests in the Premises or under this Lease. It shall be an event of default under this Lease if any of the events enumerated in Section 22(a)(iv) of this Lease shall happen to Guarantor or any other guarantor of Tenant's obligations under this Lease.

36. **Parking.** Tenant shall have the exclusive right to use, at Tenant's sole risk and responsibility, the parking spaces and areas shown on attached **Exhibit "K"** as "Tenant's Exclusive Parking Area". Tenant shall be permitted to park/store its trucks/trailers in Tenant's Exclusive Parking Area overnight in accordance with the terms of this Lease. Landlord shall have no obligation to police usage of Tenant's exclusive parking area or to enforce Tenant's exclusive rights with respect thereto. Tenant acknowledges and agrees that neither Tenant nor its Agents shall have the right to use any other parking areas on the Property.

37. **Brokers.** The parties agree that they have dealt with no brokers in connection with this Lease, except for Jones Lang LaSalle, whose commission shall be paid by Landlord pursuant to separate agreement. Each party agrees to indemnify and hold the other harmless from any and all claims for commissions or fees in connection with the Premises and this Lease from any other real estate brokers or agents with whom they may have dealt.

Landlord and Tenant have executed this Lease on the respective date(s) set forth below.

**Landlord:**

**LIBERTY PROPERTY LIMITED PARTNERSHIP**

By: Liberty Property Trust, Sole General Partner

Date signed:

6/3/09

By:

Name: Robert L. Kiel

Title: Senior Vice President, City Manager

Date signed:

6/4/09.

By:

Name:

Title: JAMES J. MAZZARELLI, JR.

Senior Vice President &

Regional Director

Date signed:

6-2-09

Tenant:

**TREE OF LIFE, INC.**

Attest/Witness:

Mary M Mullins

Name:

Title:

MARY M MULLINS

By:

Name:

Title:

Gene Carter

SVP LOGISTICS