

DB 4224-624

Approved by [Signature] 20A

133841

THIS AMENDED EASEMENT AGREEMENT dated this 7<sup>th</sup> day of March, 1995 between ARTKEN REALTY, L.L.C., a New Jersey limited liability company, with an office at c/o Silverline Building Products Corp., 207 Pond Avenue, Middlesex, New Jersey 08846 ("Artken") and DKM PROPERTIES CORP., a New Jersey corporation, with an office at 1009 Lenox Drive, P.O. Box 6540, Lawrenceville, New Jersey 08648 ("DKM").

WITNESSETH:

WHEREAS, on December 20, 1994 Artken purchased Lot 6.1 in Block 252, which Lot was created pursuant to a subdivision plat dated September 9, 1994, as amended through September 28, 1994, which was approved by the Planning Board of the Township of North Brunswick ("Artken Property"); and

WHEREAS, on April 15, 1987 Johnson & Johnson, Artken's predecessor-in-interest, and DKM entered into an easement agreement which was recorded on that day in the Middlesex County Clerk's Office in Deed Book 3608, Page 534 ("Stormwater Easement Agreement"), which granted to DKM an easement across Lot 6.1 for the benefit of the DKM Property located on New Lot 1.1, New Lot 1.2 and New Lot 1.3 (formerly Lot 1) in Block 252 as shown on the Tax Map of the Township of North Brunswick ("DKM Property"); and

WHEREAS, in order for DKM to secure the full and complete enjoyment of its rights and privileges under the Stormwater Easement Agreement, DKM has requested and Artken has agreed to amend and supplement the Stormwater Easement Agreement as it relates to Lot 6.1 in Block 252 to confirm their understanding with respect to the location of any appurtenant outfall and piping crossing over, under, in or upon Lot 6.1 so that storm water from a detention pond or ponds to be located on the DKM Property may flow into Mill Brook and to further confirm the respective rights and obligations of DKM and Artken.

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars, each in hand paid to the other and in consideration of the mutual covenants and easements herein contained, it is agreed as follows:

1. Artken hereby grants to DKM and its successors and assigns, a 20' non-exclusive perpetual easement or easements in, upon, on, under and through the Artken Property for the purpose of permitting DKM to construct, install, repair, reconstruct, maintain and replace pipes across the Artken Property so that storm water from a detention pond or ponds to be located on the DKM Property may flow into Mill Brook ("Stormwater Easement").

2. DKM represents and agrees that it shall construct the Stormwater Easement in accordance with a certain plan entitled "DeVry Technical Institute of New Jersey, grading, drainage and utilities plan, dated June 13, 1994, revised through February 15, 1995 (Drawing No. 21.01)" portions of which are attached hereto and incorporated herein as Exhibit A and described on Exhibit B attached hereto and incorporated herein. Artken approves the location of the pertinent outfall and piping in connection with the Stormwater Easement as shown on said plans. It is agreed that the location of the easements shall not interfere with the use of the Artken Property.

3. DKM shall have the right to enter and re-enter from time to time by its agents, servants and contractors on foot and with vehicles and machinery upon the Artken Property for the purpose of inspecting, maintaining, repairing and replacing the pipes in, over, under and upon the Stormwater Easement granted herein; provided, however, that DKM, its successors and assigns agree that by the acceptance of the easements granted hereunder, that it shall use reasonable efforts to avoid any unnecessary damage or disturbance to Artken's Property in the exercise of its rights hereunder and that any damage or disturbance to such property caused by DKM in the exercise of its rights shall be promptly repaired (reasonable wear and tear excepted) and such property shall be restored as nearly as possible to its prior condition, at the sole cost and expense of the party causing such damage or disturbance. For example, in the event any opening is made in the ground in connection with any of the purposes hereunder, said opening shall be backfilled and resurfaced to as nearly as possible the same condition as existed when said opening was made. Any party causing such damage or disturbance shall be obligated to restore landscaping, as nearly as possible to its original condition, including resodding any grass or landscaping which was removed upon entry.

4. The Grantor does further grant and convey unto DKM during the period of initial construction for the Stormwater Easement as aforesaid and, if necessary to DKM for accomplishing any further construction, reconstruction, repair, maintenance, inspection, replacement or removal, during such further and future work, a temporary construction

Recorded 3-10-95

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easement extending 10 feet on either side of the Stormwater Easement with unobstructed right of entry from men, machinery, materials and equipment ("Temporary Easement Area"), and identified thereon as a temporary construction easement which property adjoins and is parallel and contiguous to the Stormwater Easement hereinabove described. DKM shall take such steps as may be reasonably necessary to insure the continued flow of traffic to Artken's Property during any construction. All work shall be completed with due diligence and without any undue delay after its commencement.

5. All work performed by any party hereunder, its employees, agents or contractors hereunder shall be done in a workmanlike and diligent manner and shall be performed at reasonable times. All such work shall be completed within a reasonable period of time after commencement thereof, subject to such delays as may arise due to causes within the definition of force majeure. All such work shall be performed in compliance with all applicable governmental statutes, ordinances and regulations at the sole cost and expenses of such party. Except in the case of an emergency, any party performing work hereunder shall provide reasonable advance notice in writing to any affected party as to all such work to be performed. Upon completion of any such work, the party performing such work shall provide to any affected party a revised survey of such portion of the party's property showing the exact locations of any such work.

6. Each of the easements granted herein shall be subject to minor relocation as may be requested by the party upon whose property the easement area is located and shall be reasonably acceptable to all parties affected thereby. Any relocated easements shall provide substantially the same benefits as provided for herein and shall not interfere with the use, from time to time, of any portions of the Artken Property.

7. The parties hereto agree not to obstruct, impede or interfere, one with the other, in the reasonable use of the easements granted herein and Artken shall have the right to grant other easements across, over or through the easements granted herein provided same does not interfere with the rights granted herein to DKM.

8. Each party covenants to indemnify, hold harmless and to defend the other from any liability, claim, damage, loss, matter or suit whatsoever arising from the indemnifying party's use or the use by such party's successors, assigns, employees, agents, servants, tenants, guests, invitees and licensees of the Stormwater Easement or construction activities occurring in connection with the permanent or temporary construction easements granted herein.

9. DKM shall carry public liability insurance naming Artken as additional insured and insuring against personal injury and property damage in the amount of \$3,000,000 for personal injury to one or more persons arising out of a single incident and \$3,000,000 for property damage within the Stormwater Easement and any other easement areas created hereby, which injury or damage shall occur in connection with the construction of the Stormwater Easement. The amount of public liability insurance maintained by DKM may be changed from time to time by written agreement of the parties. DKM shall provide certificates to Artken, evidencing the insurance coverage required herein, prior to the commencement of any activities by DKM or its respective employees, agents or contractors therein.

10. DKM's use of the easement or easements granted herein is subject to all applicable laws, ordinances, regulations and existing matters of record.

11. Each party shall do, execute, acknowledge and deliver all and every such other or further act, instrument, or document as any other party to this Easement Agreement may reasonably request in order to carry out the intent or purposes of this Easement Agreement.

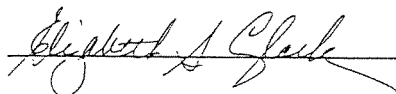
12. The easement granted herein shall run with the land and this Easement Agreement shall be binding upon the parties hereto and their respective successors and assigns.

13. This document shall supersede the Stormwater Easement Agreement.

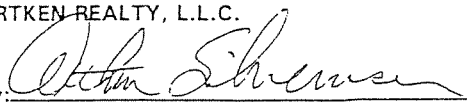
IN WITNESS WHEREOF, the parties have caused this Easement Agreement to be executed as of the day and year first above written.

WITNESS:

ARTKEN REALTY, L.L.C.



By:



Arthur Silverman, Member

WITNESS:

Elizabeth A. Gush

ARTKEN REALTY, L.L.C.

By: Kenneth Silverman  
Kenneth Silverman, Member

ATTEST:

Garey N. Maietta  
Garey N. Maietta, Assistant Secretary

DKM PROPERTIES CORP.

By: Donald M. Slaght  
Donald M. Slaght, Vice President

STATE OF NEW JERSEY )  
 ) ss:  
COUNTY OF MERCER )

Be it remembered, that on this 7<sup>th</sup> day of March, 1995, in the County and State aforesaid, before me, the subscriber, a Notary Public authorized to take acknowledgments and proofs in said County and State, personally appeared Donald M. Slaght, the Vice President of DKM PROPERTIES CORP., who I am satisfied is the person named in and who executed the foregoing instrument, and he did acknowledge that he was at the time of the execution thereof the Vice President of DKM PROPERTIES CORP. and that he signed and delivered the same as the voluntary act and deed of the said corporation, by virtue of authority from the Board of Directors, for the uses and purposes therein expressed.

Signed and sworn to before me  
March 7, 1995.

Janet D. Persons  
Notary Public

JANET D. PERSONS  
A Notary Public of New Jersey  
My Commission Expires 12/17/96

STATE OF NEW JERSEY )  
 ) ss: 137-40-4135  
COUNTY OF MIDDLESEX )

On the 3<sup>RD</sup> day of March, 1995 before me personally came Arthur Silverman and Kenneth Silverman to me known, who, being by me duly sworn, did depose and say that they are members of ARTKEN REALTY, L.L.C., a New Jersey limited liability company, the company described in and which executed the foregoing instrument; that the foregoing instrument was executed with full authority of the company and that they signed their names thereto by like order.

Signed and sworn to before me  
March 3<sup>RD</sup>, 1995.

Joel Rubenstein  
Notary Public

JOEL RUBENSTEIN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 3, 1999