

FORM 10A.28A DEED IN LIEU OF FORECLOSURE AGREEMENT

THIS DEED IN LIEU OF FORECLOSURE AGREEMENT is made as of the ____ day of _____, (this "Agreement") by, between, and among _____, a _____ ("Borrower"), _____, a _____ ("Guarantor"), and _____, a _____ ("Lender").

WITNESSETH:

- A. Borrower owns fee simple title to the following real estate:
- B. Borrower is indebted to Lender pursuant to certain loan documents described as follows (the "Loan Documents"):
 - a. Mortgage Note, dated _____, for the original principal amount of \$ _____ ("Note");
 - b. Deed of Trust, Assignment of Leases and Rents and Security Agreement, dated _____ and recorded _____ at Book _____ Page _____ in records of the _____ Recorder of Deeds ("Deed of Trust");
 - c. Assignment of Leases and Rents dated as of _____ and recorded _____ at Book _____ Page _____ in records of the _____ County Recorder of Deeds;
 - d. Assignment of Agreements, Permits and Contracts dated _____ ("Assignment of Permits");
 - e. Indemnification Agreement dated _____ between Borrower, Guarantor and Lender regarding, among other things environmental indemnities ("Indemnification Agreement"); and,
 - f. Guaranty Agreement dated _____ between Guarantor and Lender ("Guaranty").
- C. Guarantor is obligated for Guaranteed Obligations as defined in the Guaranty.
- D. As of _____, the total outstanding principal balance under the Note was \$ _____.
- E. Borrower is in default under the Loan Documents by failing to pay the installment payment due on the Note on _____ ("Borrower's Default").
- F. The subject loan has been accelerated and the entire principal amount of Loan together with all accrued interest thereon is now due and owing.
- G. In order to avoid the financial hardship and damage to reputation that would result from the Borrower's Default, Borrower has requested that the parties resolve Borrower's Default by Borrower's conveyance of the subject real and personal property into escrow, or to a person or other entity designated by Lender ("Buyer"), in exchange for the Covenant Not to Sue (as hereafter defined) and the Release (as hereinafter defined).
- H. Borrower hereby confirms to Lender that to the best of its knowledge that the fair market value of the subject real and personal property does not exceed the total outstanding unpaid principal of \$ _____, interest accrued and unpaid on, and other outstanding indebtedness due and owing under the Loan Documents.
- I. Lender wishes to accept the conveyance of the subject real and personal property into escrow as further described below pursuant to this Agreement and to provide the Covenant Not to Sue and the Release to avoid the necessity of litigation, foreclosure, the costs, expenses and delays associated therewith and Lender, Borrower and Guarantor each acknowledge that the provisions of this Agreement directly benefit Lender, Borrower and Guarantor in this regard.
- J. It is Lender's intent to market the Loan Documents for sale and to transfer the Loan Documents, or the Deed, Bill of Sale, Assignment and Assumption Agreement (of Leases), Assignment and Assumption Agreement (of Contracts and Other Property) and Power of Attorney being escrowed pursuant to this Agreement (collectively the "Primary Transfer Documents"), to a Buyer.
- K. It is the Lender's intent to not take title, but to keep the Primary Transfer Documents in escrow until such time as Lender locates a Buyer (although Lender has the option to take title at any time).
- L. The Primary Transfer Documents shall not be deemed delivered to Lender until such time as they are delivered by the escrow agent to Lender or Lender's designee at Lender's direction.

- M. It is not the Lender's intent to take possession of the subject real and personal property (although Lender has the option to take possession at any time).
- N. The subject property is being operated by a receiver, Gateway Commercial (the "Receiver") pursuant to an ORDER FOR EX PARTE APPOINTMENT OF A RECEIVER in Case No. _____, Circuit Court of _____, State of _____, dated _____ (the "Order").
- O. It is the intent of the Lender for possession of the subject real and personal property to stay with the Receiver for so long as the Deed being escrowed pursuant to this Agreement stays in escrow.
- P. This Agreement is not intended as a mortgage and it is not the intent of the parties that Borrower will have any future rights in the Property whatsoever. Any previous debtor-creditor relationship between the parties with respect to the Property and the Loan Documents shall cease at Closing (except to the extent necessary to allow foreclosure of the Property as set forth herein). It is Borrower's intent that it is delivering any and all right it has in the Property into escrow. Borrower wishes to relinquish any and all rights to the Property of any nature whatsoever.
- Q. While foreclosure of the subject real and personal property may never be necessary, the Loan Documents (except the Guaranty) shall remain in full force and effect and Lender or its assignee may commence a non-judicial foreclosure or UCC sale of the subject real and personal property under the Loan Documents if it later chooses to do so.

NOW, THEREFORE, for and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Guarantor, and Lender do hereby agree as follows:

1. Incorporation. The recitals to this Agreement are fully incorporated herein by this reference thereto with the same force and effect as though restated herein.
2. Transfer of Property. Subject to the terms, provisions, conditions, covenants, and agreements herein contained, including without limitation the provisions providing that the Deed and Bill of Sale shall remain in escrow until a Buyer is located or the Lender later chooses to have the Deed and Bill of Sale taken out of escrow, and subject to, among other things, the matters set forth on Exhibit A hereto (the "Permitted Exceptions"), Borrower agrees to sell, grant, transfer, assign and convey by special warranty deed into escrow (or to Buyer) and Borrower agrees to allow transfer into escrow absolutely and free of any right of redemption or other right or interest of Borrower or anyone claiming by, through, or under Borrower, the following real and personal property (collectively, the "Property"): (a) fee simple title to the Land, all buildings, fixtures, and other improvements situated on the Land (all said buildings and other improvements hereinafter called the "Improvements"), all of Borrower's right, title, and interest in and to all easements, rights, tenements, and appurtenances thereunto belonging or appertaining to the Land and Improvements, and all of Borrower right, title, and interest in and to any and all streets, alleys, or public ways adjacent thereto, before or after vacation thereof ("Real Estate"); (b) all of Borrower's right, title, and interest as lessor or lessee in all leases, licenses, and other agreements to occupy all or any part of the Real Estate, if any, together with all rents and other sums due, accrued or to become due under each such lease, license, and agreement, all rents that are received and allocable to periods following the "Closing Date" (as hereinafter defined) and all guarantees by third parties of the tenants' obligations under said leases, if any, and all lease security and other deposits, if any (together, the "Leases"); (c) all right, title, and interest of Borrower in and to all plans and specifications relating to Improvements (the "Plans and Specifications") and all unexpired claims, warranties, and guarantees, if any, received in connection with the construction or equipping of the Real Estate, if and to the extent assignable (the "Warranties"); (d) all of Borrower's right, title, and interest in and to the service, supply, and maintenance contracts and equipment leases, if any, listed on Exhibit B attached hereto and incorporated herein (the "Assigned Contracts"); (e) all licenses, permits, certificates of occupancy, and franchises (including, without limitation, those listed on Exhibit C attached hereto) issued by any federal, state, county, or other governmental authority relating to the use, maintenance, or operation of the Real Estate (the "Licenses and Permits"), running to, or in favor of, Borrower and/or the Real Estate, if and to the extent assignable; and (f) all other tangible and intangible personal property, intellectual property, equipment, and supplies located at or used in connection with the Real Estate, including without limitation, the items listed on Exhibit D attached hereto now owned or hereafter acquired by the Borrower in connection with the development, leasing, management, use, and/or operation of the Real Estate including, but not limited to, logos, trade styles, and trade names, brochures, manuals, lists of prospective tenants, advertising material, assignable utility contracts, and assignable telephone numbers.
3. Covenant Not to Sue Borrower/Release of Guarantor.
 - 3.1 Covenant Not to Sue. In consideration for the transfer by Borrower of the Property in escrow for the Lender and/or Buyer, and subject to the terms, provisions, and conditions herein contained, at the "Closing" (as hereinafter defined), Lender shall deliver a covenant not to sue ("Covenant Not to Sue") Borrower, which Covenant Not to Sue shall be in the form of Exhibit E attached hereto. Nothing in the Covenant Not to Sue shall be construed as a release of the obligation under the Note or in any way to limit Lender's right to commence a non-judicial foreclosure or UCC sale of the Property under the Loan Documents.

3.2 Release. At the Closing, Lender shall deliver a release of the Guarantor in the form of Exhibit E-1 attached hereto. This release ("Release") is limited to the Guarantor and has no affect in any manner whatsoever on any of the other Loan Documents and shall be not construed as a release of the obligation under the Note or in any way a limitation to Lender's right to commence a non-judicial foreclosure or UCC sale of the Property under the Loan Documents (other than the Guaranty).

4. Owners Title Policy. As a condition to Lender's obligation to close on this Agreement, Borrower must, at Closing, obtain from _____ Title Insurance Company ("Title Company") a Title Insurance Commitment to issue an Owner's Title Insurance Policy acceptable to Lender and/or Buyer's (and Buyer's lender) ("Title Policy"), dated as of the Closing Date, leaving blank the name of the insured, which Title Policy shall show fee simple title to the Real Estate vested in the unnamed grantee subject only to the Permitted Exceptions. The Lender (or Buyer) will be responsible for paying the title insurance premium for the Title Policy and all endorsements described in this paragraph and described in paragraph 5 below. The Title Policy must (a) insure as separate parcels any easements appurtenant to the Real Estate, (b) be in the amount of the indebtedness evidenced by the Note which is outstanding on the Closing Date (or such lesser amount as Lender shall accept), (c) contain full extended coverage insurance over all general exceptions set forth in such policy (provided that Lender shall obtain any updated survey required to delete any standard exception related to a current survey of the Property), and (d) if available delete any so-called "creditors" rights exclusion or exceptions.
5. Loan Title Policy. As an additional condition to Lender's obligation to close, Lender shall receive, at Closing, a commitment in the Title Insurance Commitment to issue the following endorsements to the Title Policy issued by Title Company ("Loan Policy"): (a) a date-down endorsement showing fee simple title in the unnamed grantee, and insuring the Deed of Trust as a first priority encumbrance on the Real Estate, subject only to the Permitted Exceptions, and (b), at Lender's and/or Buyer's (and Buyer's lender) option, a non-merger endorsement acceptable to Lender and/or Buyer's (and Buyer's lender) (collectively, the "Loan Policy Endorsements").
6. Borrower Cooperation. Borrower shall cooperate with Lender to permit Lender and/or Buyer to obtain the Title Policy and the Loan Policy Endorsements and to execute necessary Affidavits and documents reasonably necessary to obtain a commitment from the title company to issue the Title Policy and the Loan Policy Endorsements according to the terms set forth above.
7. Closing. Provided all terms, provisions, and conditions contained in this Agreement to be satisfied on or before Closing have been timely satisfied so as to provide for the closing of the transaction contemplated hereby, including without limitation, the placing in escrow of the Primary Transfer Documents, closing of the transaction contemplated hereby ("Closing"), shall take place at the office of _____, in _____, at _____:00 _____M. (_____, _____ time) on _____, 201____ ("Closing Date") through an escrow with the Title Company, or on such other date or such other place as may be mutually agreed upon in writing by Borrower and Lender. The agreement ("Escrow Agreement") for such escrow shall in the form of Exhibit F attached hereto. Each party shall have the right to inspect all documents prior to, at the time of, and after their deposit in escrow.
8. Deed and Bill of Sale in Escrow. To accommodate the Closing into escrow, the parties will enter into the Escrow Agreement with Title Company concurrently with their execution and delivery of this Agreement. This Agreement shall not be merged into the Escrow Agreement, but the Escrow Agreement shall be deemed auxiliary to this Agreement, and as between the parties hereto, upon failure of the escrow or otherwise, the provisions of this Agreement shall be controlling. The Primary Transfer Documents shall remain in escrow after the Closing for so long as Lender desires, but in no event longer than one (1) year from the date of Closing. The Deed shall only be delivered to Lender and recorded in the real property records at such time as Lender directs the escrow agent to do so. The Primary Transfer Documents shall not be deemed to be delivered to Lender until such time as they are delivered by the escrow agent to Lender at Lender's direction. For the avoidance of doubt, the Covenant Not to Sue and the Release shall be effective from and after their delivery to the Borrower and Guarantor at Closing.
9. Closing Deliveries, etc. The following deliveries and/or actions shall constitute the Closing, and, to the extent provided in the Escrow Agreement, shall be effected through the Escrow Agreement and, if not specified in the Escrow Agreement to be deposited in, and delivered under, the Escrow Agreement, shall be delivered at the Closing. Such deliveries, showings, and actions shall be deemed to be taken simultaneously and no one of which shall be deemed completed until all of such deliveries, showings, and actions have been completed.

9.1 Title Documents. The following title, transfer, and original documentation and other matters shall be duly authorized, properly executed, acknowledged (if applicable) and/or delivered:

- (a) The Title Policy. A "marked-up" title commitment to issue the Title Policy.
- (b) Endorsements to the Loan Policy. A "marked-up" commitment to issue the Loan Policy Endorsements shall be delivered to Lender.

- (c) ALTA Statement Owner's Affidavit. Borrower shall deliver to Lender and Title Company its duly executed Owner's Affidavit (in a form acceptable to Title Company) through and including the earlier of the date the Receiver was appointed or the Closing Date.
- (d) GAP Affidavit. Borrower shall execute and deliver to Title Company, a GAP Undertaking and Affidavit through and including the earlier of the date the Receiver was appointed or the Closing Date satisfactory to Title Company so as to permit issuance of the Title Policy and Loan Policy Endorsements on the Closing Date.

9.2 Transfer Documents. The following Property transfer documentation shall be duly authorized, properly executed, acknowledged (if applicable), and delivered to escrow agent:

- (a) Deed. Borrower's duly executed and acknowledged recordable special warranty deed in form and substance as set forth on Exhibit G attached hereto (the "Deed"). The name of the grantee on the Deed will not be completed. Borrower will execute a Power of Attorney in the form attached as Exhibit G-1 which will give the Lender the authority on behalf of the Borrower to complete the name of the grantee on the Deed.
- (b) Bill of Sale. Borrower's duly executed special warranty bill of sale in form and substance as set forth on Exhibit H attached hereto ("Bill of Sale"). The name of the grantee on the Bill of Sale will not be completed. Borrower will execute a Power of Attorney in the form attached as Exhibit G-1 which will give the Lender the authority on behalf of the Borrower to complete the name of the grantee on the Bill of Sale.
- (c) Assignment of Leases, Rents, and Security Deposits. Not Applicable
- (d) Assignment. Borrower's duly executed Assignment and Assumption Agreement (of Contracts and Other Property) in the form of Exhibit I attached hereto. Lender will execute and deliver (or cause Buyer to execute and deliver) to Borrower an acceptance of such assignment at such time as the assignment is released from escrow at Lender's discretion. Borrower will execute a Power of Attorney in the form attached as Exhibit G-1 which will give the Lender the authority on behalf of the Borrower to complete the name of the grantee on the Assignment and Assumption Agreement (of Contracts and Other Property).
- (e) Non-Foreign Status Certificate Statement. An affidavit pursuant to the Foreign Investment and Real Property Tax Act in the form of Exhibit J attached hereto.
- (f) Deed in Lieu Certificate. Borrower's Deed in Lieu of Foreclosure Certificate dated the Closing Date in the form of Exhibit K attached hereto.
- (g) Power of Attorney. Borrower will execute a Power of Attorney in the form attached as Exhibit G-1 which will give Lender the authority on behalf of Borrower to complete the name of the Grantee of each of the Title Documents.

Such Property documents shall be delivered to Lender no later than _____ 201__.

9.3 Original Documents. The following documentation shall be delivered to the Receiver if not already delivered:

- (a) Leases/Contracts. Leases and Assigned Contracts, if any.
- (b) Licenses and Permits. Licenses and Permits, if any.
- (c) Warranties. Original Warranties, if any.
- (d) Plans and Specifications. Original Plans and Specifications.
- (e) Property Records. Copies of all books, records, invoices and other documents related to the operation and maintenance of the Property.

9.4 Additional Borrower Deliveries. The following documents of Borrower shall be delivered to Lender on or before Closing:

- (a) Limited Liability Agreement and Certificates. Certified copy of Borrower's Limited Liability Company Operating Agreement together with Borrower's Certificate of Organization issued by the Secretary of State of _____ (dated not earlier than _____) and a Certificate of Good Standing for Borrower from the Secretary of State of _____ dated not earlier than _____, 20__.
- (b) Consents. Consents of all the members of Borrower, and such percentage of the members as may be required by the organizational document, authorizing the execution of this Agreement and the execution and delivery of all documents required pursuant hereto.

9.5 Other Deliveries. The following deliveries, showings, and occurrences shall be delivered on or before Closing:

- (a) \$ _____ Payment. Borrower shall deliver to Lender a cash payment of \$ _____ at Closing which Lender or Receiver may spend to maintain the Real Estate during the term of the receivership, any unused balance of which shall be the property of Lender to be applied against the amounts due under the Note. Guarantor will not be responsible for any further cash payments with respect to the Note or the other Loan Documents.

- (b) \$ _____ Prior Payment. The parties acknowledge that in response to a default letter dated _____, Borrower delivered to Lender a \$ _____ Unleased Space Reserve payment. Borrower understands that it has no further rights and hereby disclaims any further rights with respect to said \$ _____ payment. Borrower understands that Lender will use such amount as Lender deems appropriate, in its sole discretion, including transferring or not transferring said amount to a new potential Buyer or applying it to the Note or other Loan Documents.
 - (c) Possession. Possession is currently held by the Receiver. Possession will remain with the Receiver while the Deed remains in escrow.
 - (d) Keys to Premises. To the extent not already done, Borrower shall deliver to Receiver, a key code inventory and all keys to the Real Estate in Borrower's possession or control or, with Lender's permission, a letter executed by Borrower and the Borrower's managing agents addressed to the person(s) or entities possessing the keys directing such persons or entities to deliver the keys to Receiver.
 - (e) Evidence of Termination. Borrower shall deliver to Lender, evidence of termination (at no cost to Lender and/or Buyer and free of all liens or claims for liens by reason of the terminated agreements) of all (i) management, brokerage, and leasing commission agreements, and (ii) service and maintenance contracts that are not Assigned Contracts. Borrower shall also deliver to Title Company a recordable affidavit of termination of the Sara Lee Lease respecting the Property.
 - (f) Property Manager's Waiver. Borrower shall deliver to Lender and Receiver, a lien waiver from each property manager and leasing broker or agent for the Property and waiver of any and all rights or claims to real estate brokerage, leasing or management fees, and commissions with respect to any sale, lease, or the operation of the Property or any part of the Property.
 - (g) Release of Lender by Borrower, et al. Borrower and Guarantor shall deliver to Lender, a release of Lender and its respective affiliates, successors and assigns and other parties reasonably designated by Lender, in the form of Exhibit L attached hereto.
 - (h) Covenant Not to Sue Borrower and Release of Guarantor. Lender shall deliver the Covenant Not to Sue to Borrower. Lender shall deliver the Release to the Guarantor.
 - (i) Additional Consents. Borrower shall deliver to Lender, any and all consents from persons whose consent is required by Borrower for the closing of this transaction.
 - (j) Settlement Statement. Borrower and Lender shall jointly execute and deliver a settlement statement to each other.
10. Approvals and Monetary Deposits. All items to be delivered pursuant to the provisions of Paragraphs 7, 8 and 9 shall be subject to the approval of the parties. All deliveries and deposits of funds described in Paragraph 9 shall be in good immediately available funds.
11. Expenses of Closing. Except as set forth on Expenses statement attached as Exhibit M, each party shall pay its own expenses in connection with the Closing.
12. Cooperation. The Property is being operated by the Receiver. Borrower consents to Receiver and will cooperate with the Receiver appointed in the Order in all respects. For the avoidance of doubt, all costs and expenses associated with or related to the Receiver shall be the responsibility of Lender.
13. Audit. Commencing on the date of this Agreement, Borrower will permit Lender and/or Lender's designated representative and/or Buyer (and Buyer's designated representative) to audit and review Borrower's records related to the physical condition of the Property to the extent not already turned over to the receiver.
14. Rent Collections. Borrower agrees that in the event that Borrower or any affiliate of Borrower receives any rental payment or other payment from any tenant or other occupant or user of the Property following Closing, Borrower will deliver to Lender or Lender's designee, with proper endorsements, such funds not later than two (2) business days following receipt of such funds.
15. Representations and Warranties of Lender. Lender represents and warrants to Borrower and Guarantor as follows:
- (a) Lender is an organized and existing corporation in good standing under the laws of the State of _____ and Lender is authorized to do business in the State of _____.
 - (b) Lender has the right, power, and authority to execute this Agreement and to perform its obligations under this Agreement. The execution and delivery of this Agreement by Lender and the performance by Lender under this Agreement has been authorized by all necessary corporate action of Lender.
16. Representations and Warranties of Borrower. Borrower represents and warrants to Lender as follows:
- (a) Organization and Authority. Borrower is a limited liability company, and duly formed, organized, validly existing, and, as applicable, in good standing under the laws of the State of _____. Borrower agrees to maintain its good standing under the laws of the State of _____ for so long as the Deed is held in

escrow. Borrower has the capacity, right, power, and authority to execute this Agreement and to perform its obligations hereunder and to consummate the transaction described herein contemplated by this Agreement including the execution and delivery of all documentation required by this Agreement. The execution of this Agreement and the related documents as applicable have been authorized by all necessary company authorizations of Borrower. The execution, delivery, and performance of this Agreement and the related documents by Borrower do not breach, conflict with, or contravene: (i) Borrower's operating agreement or certificate or articles of organization; (ii) any agreement, instrument, document, or indenture to which Borrower is a party or by which it or the Property is bound; (iii) to Borrower's knowledge, any applicable law; or (iv) any judgment, writ, or order directed to Borrower or by which Borrower may be bound.

- (b) Bankruptcy. Borrower has not filed a petition in any case, action, or proceeding under the United States Bankruptcy laws or any similar state law; no petition in any case, action, or proceeding under the Bankruptcy Code or any similar state law has been filed against Borrower that has not been dismissed or vacated; and Borrower has not filed an answer or otherwise admitted in writing insolvency or inability to pay its debts or made an assignment for the benefit of creditors or consented to an appointment of a receiver or trustee of all or a material part of its property (excluding the Receiver). The transaction contemplated herein is not a preference, voidable transfer, fraudulent conveyance, or otherwise in violation of the United States Bankruptcy laws or any other similar state or federal law.
- (c) Absence of Litigation. Borrower has not received any written notice of any, nor is there any, pending or, to the best of Borrower's knowledge any threatened, litigation or administrative proceeding involving in any manner the Property or the ownership, leasing, operation, management, use, or maintenance thereof or this transaction, excluding proceedings threatened or initiated by Lender.
- (d) Arm's-Length Transaction. Borrower has requested conveyance of title to the Property in lieu of the exercise of Lender's remedies pursuant to the Loan Documents and throughout the negotiation, preparation, and execution of this Agreement has been, and will through the Closing be represented by competent legal counsel of its own choosing. This Agreement was entered into out of the free will of Borrower pursuant to arm's-length negotiations and Borrower believes this Agreement is fair. Lender has not taken advantage of Borrower by threats, intimidation, overreaching, unconscionable conduct, or otherwise and Borrower is proceeding in this transaction as a volunteer in what it perceives to be its own best interest.
- (e) No authorization or approval of any governmental authority is required to be obtained by Borrower or in connection with their execution, delivery, and performance of this Agreement or the other Borrower Documents that have not been obtained.
- (f) To Borrower's knowledge, Borrower is not in default or breach in any respect under any applicable law or order of any court, administrative agency, or other governmental entity, or any agreement or document (except for the Loan Documents), to which Borrower is a party, or by which Borrower may be bound or to which the Property or any portion of their properties or assets may be subject.
- (g) Borrower has filed all tax returns that are required by federal, state or other law to be filed prior to the Closing Date and has paid all income, franchise, sales, use and employment taxes (except property taxes) that have become due.
- (h) To Borrower's knowledge, other than the Permitted Exceptions and the List of Contracts set forth in Exhibit N attached hereto and made a part hereof for all purposes (being herein sometimes referred to collectively as the "Contracts"), there is not any contract or agreement, oral or written, or any amendment or supplement to any such contract or agreement, to which Borrower is a party or that affects the Property.
- (i) Borrower has not received any notice of, and have no knowledge of, any pending condemnation proceeding or conveyance in lieu thereof, or threatened rezoning, of the Real Estate or any portion thereof.
- (j) To the best of Borrower's knowledge, the Property is in compliance with all applicable governmental laws and Borrower has not received notice and do not have knowledge that the Property does not comply therewith.
- (k) To the Borrower's knowledge, there are no unpaid bills or invoices for labor, services, or work performed upon the Real Estate or within the improvements thereon, or for materials or supplies furnished or delivered to, or in connection with, the Real Estate, that could result in the filing of mechanic's, materialmen's, or laborer's liens on the Property except as disclosed on Exhibit N.
- (l) Borrower has not engaged any broker or finder as leasing agent for the Real Estate other than _____. Borrower shall immediately terminate its listing agreement with _____ and deliver to Lender a written acknowledgement from _____ that it is owed no money nor will it make any claims with respect to the Real Estate or Lender. No brokers' commissions or finder's fees are owing, or may be owed, to any person or entity on account of any actual or prospective Lease (or extension, renewal, or expansion thereof).
- (m) To the best of Borrower's knowledge, there has been no presence, use, generation, release, production, disposal, migration, or storage on the Property of any Hazardous Materials or any other activity that could have toxic results, and there is no proceeding or inquiry by any Authority with respect thereto. For purposes of this Agreement, the term "Hazardous Materials" shall have the meaning ascribed to it in the Loan Documents.

- (n) No personal property comprising the Property is registered under any so-called certificate of title.
 - (o) Borrower is a single asset entity which does not own anything other than the Property.
 - (p) Borrower represents that this Agreement is not intended as a mortgage and it is not the intent that Borrower will have any future rights in the property whatsoever. It is Borrower's intent that it is delivering any and all right it has in the Property into escrow. Borrower wishes to relinquish any and all rights to the Property of any nature whatsoever in exchange for the Covenant Not to Sue and the Release.
 - (q) There are no leases, rights of first refusal or options relating to the Property granted to third parties by Borrower to which Borrower is a party.
17. Representations and Warranties of Guarantor. Guarantor represents and warrants to Lender as follows:
- (a) The Guarantor is competent, and has sufficient legal capacity to enter into, deliver, and perform its obligations under this Agreement and the documents to be executed and delivered by Guarantor pursuant to this Agreement. The execution, delivery, and performance of this Agreement and the related documents by Guarantor do not breach, conflict with, or contravene: (i) Guarantor's limited partnership agreement or certificate or articles of limited partnership; (ii) any agreement, instrument, document, or indenture to which Guarantor is a party; (iii) to Guarantor's knowledge, any applicable law; or (iv) any judgment, writ, or order directed to Guarantor or by which Guarantor may be bound.
 - (b) Guarantor has not filed a petition in any case, action, or proceeding pursuant to the Bankruptcy Code or any similar state law; no petition, in any case, action, or proceeding under the Bankruptcy Code or any similar state law has been filed against Guarantor that has not been dismissed or vacated; and Guarantor has not filed an answer or otherwise admitted in writing insolvency or inability to pay Guarantor's debts or made an assignment for the benefit of creditors nor consented to an appointment of a receiver or trustee of all or any material part of their property.
 - (c) Guarantor has requested Lender to enter into this Agreement by Guarantor's own free will and has been represented by competent legal counsel of their own choosing. Guarantor agrees that this Agreement is fair. Lender has not taken advantage of Guarantor by threats, intimidation, overreaching unconscionable conduct or otherwise. Guarantor is proceeding in this transaction as a volunteer in what it perceives to be Guarantor's own best interest.
 - (d) No authorization or approval of any governmental authority is required to be obtained by Guarantor or in connection with their execution, delivery, and performance of this Agreement or the other Borrower Documents that have not been obtained.
 - (e) The best of Guarantor's knowledge, the representations and warranties of Borrower herein are true and correct in all material respects. Guarantor's knowledge as referenced in the preceding sentence shall be limited to the knowledge of _____.
18. Indemnity.
- 18.1 Borrower's Indemnity. Borrower agrees to defend, indemnify, and hold Lender and/or Buyer, and their respective partners, successors, assigns, members, officers, participants, shareholders, directors, and personal representatives (collectively, the "Lender-Connected Parties") harmless from and against any losses, damages, costs (including, without limitation, attorneys' fees, court costs, and costs of appeal), expenses, judgments, liens, decrees, fines, penalties, liabilities, claims, actions, suits, and causes of action arising, directly or indirectly, from (a) any breach by Borrower or Guarantor of any warranty or representation contained in this Agreement or in the documents executed and delivered by Borrower pursuant to this Agreement (with this Agreement, sometimes collectively referred to as the "Borrower Documents"); (b) any breach, default, or violation by Borrower or Guarantor of any covenant, agreement, or provision of the Borrower Documents; and (c) any claims or liabilities pertaining to the Property arising prior to the appointment of the Receiver.
- 18.2 Lender's Indemnity. Lender agrees to defend, indemnify, and hold Borrower, and its members, and their respective successors, assigns, heirs and personal representatives harmless from and against any losses, damages, costs (including, without limitation, attorneys' fees, court costs, and costs of appeal), expenses, judgments, liens, decrees, fines, penalties, liabilities, claims, actions, suits, and causes of action arising, directly or indirectly, from operations of the Property after the Closing into escrow until such time as the Property is sold, conveyed or transferred to Buyer. Nothing in this paragraph is intended to relieve the Receiver from its obligations for the Property or to impose obligations for management or control of the Property which is under the management and control of the Receiver.
19. No Third-Party Beneficiary. Borrower acknowledges and agrees that the transfer to Lender and/or Buyer of title to the Property pursuant to the terms of this Agreement shall not create any obligations on the part of Lender to third parties that have claims of any kind whatsoever against Borrower with respect to the Property, and Lender does not assume or agree to discharge any liabilities pertaining to the Property except as otherwise expressly provided in this Agreement.
20. Conveyance. The conveyance of the Property to Lender and/or Buyer according to the terms of this Agreement is an absolute conveyance of all of its right, title, and interest in and to the Property in fact as well as form and was

not and is not now intended as a mortgage, trust conveyance, deed of trust, or security instrument of any kind, and that the consideration for such conveyance is exactly as recited herein and Borrower has no further interest (including rights of redemption) or claims in and to the Property or to the rents, proceeds, and profits that may be derived thereof, of any kind whatsoever.

21. Merger. Notwithstanding Lender's and/or Buyer's acquisition of the Property, the indebtedness evidenced by the Note shall not be cancelled, shall survive the Closing and delivery of any deeds and/or releases, and all of the Loan Documents (except for the Guaranty) shall remain in full force and effect after the transaction contemplated by this Agreement has been consummated. The parties further agree that the interest of Lender in the Property after Lender's acquisition of the Property shall not merge with the interest of Lender in the Property under the Loan Documents. It is the express intention of each of the parties hereto (and all of the conveyances provided for in this Agreement shall so recite) that such interests of Lender and/or Buyer in the Property shall not merge, but be and remain at all times separate and distinct, notwithstanding any union of said interest in Lender at any time by purchase, termination, or otherwise and that the lien of the Deed of Trust in the Property shall be and remains at all times a valid and continuous lien on the Property until and unless released of record by Lender or its successors and assigns.
22. Notice. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) legible facsimile transmission sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile transmission, as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended addressee by means described in clauses (a), (b), or (c) above. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

To Borrower and Guarantor:

with a copy by pdf e-mail to:

To Lender:

with a copy by pdf e-mail to:

All notices shall be deemed effectively given on the date that such notice is received or refused.

23. Entire Agreement. This Agreement, and the exhibits attached hereto, and all other instruments and documents executed and delivered at Closing by either party hereto, embody the entire agreement between the parties in connection with the transaction contemplated hereby and there are no oral or parol agreements, representations, or inducements existing between the parties relating to the transaction contemplated hereby that are not expressly set forth herein and covered hereby. This Agreement may not be modified except in writing signed by the party against whom enforcement is sought.
24. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and/or Buyer and the respective heirs, administrators, executors, personal representatives, successors, and assigns of the parties hereto and/or Buyer.
25. Waivers. No written waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision herein or consent to any subsequent breach of the same or any other provision. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion.
26. Captions. The captions, section numbers, and article numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of such paragraphs or articles of this Agreement nor in any way affect this Agreement.
27. Time is of Essence; Counterparts; Governing Law. All parties hereto agree that time is of the essence in this transaction and that this Agreement may be executed in counterparts and shall be governed by and interpreted in accordance with the laws of the State of _____.

28. Appointment of Designee. Lender does hereby reserve the right to appoint a Buyer to accept title to the Property at the time of the Closing.
29. Brokers. Lender and Borrower represent and warrant to the other that it has had no direct dealings with any real estate brokers, salesmen, agents, finders, or consultants in connection with the conveyance of the Property to Lender or Buyer.
30. Lender's Liability. In no event shall Lender and/or Buyer be personally or individually liable for any obligation set forth in this Agreement. Except to the extent expressly provided in the Borrower Documents, neither Lender nor Buyer is assuming any obligations or liabilities of Borrower or Guarantor. Each party shall pay its own attorneys' fees in connection with negotiating and executing this Agreement.
31. Borrower's and Guarantor's Liability. Notwithstanding any provision contained in this Agreement to the contrary, or in any agreement to be delivered pursuant to this Agreement, it is agreed that (i) the members and officers of Borrower shall not be individually or personally liable to Lender or Buyer by reason of a breach of any representation, warranty, covenant or obligation of Borrower contained in or pursuant to this Agreement or the Borrower Documents, (ii) all recourse of Lender and/or Buyer against Borrower by reason of a breach of any representation, warranty, covenant or obligation of Borrower contained in or pursuant to this Agreement or the Borrower Documents, if any, shall be satisfied solely from the assets of Borrower (it being agreed that any obligation of a member or officer to contribute funds or loan funds to Borrower and any negative capital account on the part of a member of Borrower shall not be deemed an asset of Borrower for the purposes of this Agreement) and (iii) the Guarantor shall not be liable to Lender or Buyer by reason of a breach of any representation, warranty, covenant or obligation of Borrower contained in or pursuant to this Agreement or the Borrower Documents.
32. Value. Borrower hereby confirms to Lender that to the best of its knowledge the value of the Property does not exceed the indebtedness owing to Lender pursuant to the Loan Documents. Borrower hereby confirms that it has the right to obtain an appraisal on the Property prior to closing on this Agreement but hereby waives the right to do so.
33. Survival. The terms and provisions of this Agreement shall survive the Closing and delivery of the Deed into escrow and other documents to be delivered to Lender pursuant to this Agreement, provided however, that the representations and warranties of the parties contained in this Agreement shall only survive the Closing for a period of twelve (12) months.
34. No Implied Forbearance; No Course of Dealing; No Accord and Satisfaction. Borrower hereby acknowledges and agrees that (a) Lender is under no obligation to forbear from the exercise of any remedies available under the Loan Documents or applicable law; (b) Lender's execution of this Agreement shall not be construed as a waiver or relinquishment of, or an estoppel to assert, any of Lender's rights or remedies under the Loan Documents or applicable law, except as expressly provided herein, (c) no course of dealing or course of performance shall be deemed to have occurred or is capable of being inferred as a result of this Agreement; and (d) the execution and performance of this Agreement does not in any way release or constitute an accord and satisfaction or novation of any of the Loan Documents, all of which shall remain in full force and effect except as specifically and expressly modified herein or the documents to be delivered at Closing.
35. Further Assurances. Subject to the reasonable approval of each party's counsel, each party agrees that it will without further consideration execute and deliver such other documents and take such other action, subsequent to Closing into escrow, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Borrower and Lender shall, if requested by the other, cooperate with each other for the expeditious filing of any and all documents and the fulfillment of the terms of this Agreement.
36. Jury Trial Waiver. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING UNDER THIS AGREEMENT.

[Signature page follows]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed this Agreement as of the day and year first above written.

By _____,
[name] [title]

By _____,
[name] [title]

LIST OF EXHIBITS

Exhibit A – Permitted Exceptions – as listed on _____ Title Commitment
_____ dated _____, Schedule _____ items _____

Exhibit B – Assigned Contracts

Exhibit C – Licenses and Permits

Exhibit D – Tangible and Intangible Personal Property

Exhibit E – Covenant Not to Sue

Exhibit E-1 – Release of Guarantor

Exhibit F – Escrow Agreement

Exhibit G – Special Warranty Deed

Exhibit G-1 – Power of Attorney

Exhibit H – Bill of Sale

Exhibit I – Assignment and Assumption Agreement

Exhibit J – Non-Foreign Status Certificate Statement

Exhibit K – Deed in Lieu of Foreclosure Certificate

Exhibit L – Release of Lender

Exhibit M – Expenses of Closing

Exhibit N – List of Contracts – same as Exhibit B

EXHIBIT A
PERMITTED EXCEPTIONS

EXHIBIT B
ASSIGNED CONTRACTS

EXHIBIT C
LICENSES AND PERMITS

EXHIBIT D
TANGIBLE AND INTANGIBLE PROPERTY

EXHIBIT E
COVENANT NOT TO SUE

_____, a _____ ("Lender"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, pursuant to that certain Deed in Lieu of Foreclosure Agreement, dated effective as of _____ (the "Deed in Lieu Agreement"), between Lender, _____, a _____ ("Borrower"), and _____ ("Guarantor"), does hereby covenant and agree not to sue Borrower or its successors, assigns, officers, directors, employees, and members, on account of any and all liabilities, duties, responsibilities, obligations, claims, demands, actions, damages, costs, losses, and expenses now existing or hereafter arising out of or in any way relating to or connected with, directly or indirectly, the Property (as defined in the Deed in Lieu Agreement) and the Loan Documents (as defined in the Deed in Lieu Agreement) excluding, however, those specific matters or obligations of Borrower arising under the specific terms of the Deed in Lieu Agreement and the Borrower Documents (as defined in the Deed in Lieu Agreement).

Notwithstanding the foregoing, Lender reserves, on its own behalf and on behalf of Buyer (as defined in the Deed in Lieu Agreement), the right to sue (including, without limitation, the right to counterclaim against) and obtain and satisfy a judgment against, Borrower to the full extent of any indemnification obligations of Borrower under the Deed in Lieu Agreement or by reason of claims of causes or action arising out of (a) any breach of the covenants, representations, warranties, and agreements by Borrower set forth in the Deed in Lieu Agreement, or (b) fraud. The foregoing covenant not to sue will be null, void, and of no force and effect, if (x) Borrower or Guarantor commences any action, suit, or proceeding against Lender, Buyer, or any other "Lender-Connected Party" (as defined in the Deed in Lieu Agreement) in connection with the Deed in Lieu Agreement seeking to rescind the transaction contemplated thereby (in whole or in part) or attacking the validity thereof (in whole or in part), or (y) if on or before the 367th day following the Closing Date, Borrower files a petition under any chapter or section of Title 11 of the United States Code, as amended. Nothing contained herein shall affect, and Lender hereby expressly reserves, the right to foreclose the Deed of Trust (as defined in the Deed in Lieu Agreement) by non-judicial foreclosure or judicial foreclosure, to the extent permitted by applicable law, and, in connection with any such foreclosure, Borrower may, in Lender's sole discretion, be named as a party defendant, and Lender will be permitted to seek, obtain, and satisfy a judgment in any such foreclosure proceedings; provided, however, that Borrower shall not be personally liable for satisfaction of such judgment.

This Covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Dated this ____ day of _____, _____.

By _____,
[name] [title]

By _____,
[name] [title]

EXHIBIT E-1
RELEASE OF GUARANTOR

_____, a _____ ("Lender"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, pursuant to that certain Deed in Lieu of Foreclosure Agreement dated effective on _____ (the "Deed in Lieu Agreement") between Lender and _____, a _____ ("Borrower"), and _____, a _____ with a mailing address of _____ ("Guarantor"), does hereby forever release and discharge Guarantor, and its successors and assigns, from any and all liabilities, duties, responsibilities, obligations, claims, demands, actions, causes of action, cases, controversies, damages, costs, losses, and expenses now existing or hereafter arising out of or in any way relating to or in connection with that certain mortgage loan advanced by Lender to Borrower in the original principal amount of \$ _____, including without limitation any liability, claim or obligation under that certain Guaranty Agreement, dated _____, between Lender and Guarantor ("Guaranty Agreement") and that certain Indemnification Agreement, dated _____, between Lender, Borrower and Guarantor (the "Indemnification Agreement"), excepting only those obligations, warranties and representations which are given by Guarantor pursuant to the Deed in Lieu Agreement. For the avoidance of doubt, the Guaranty Agreement and Indemnification Agreement (but only as to Guarantor) are hereby terminated and from and after the date hereof and shall be of no further force or effect. THIS RELEASE IS EXPRESSLY LIMITED TO THE GUARANTOR, GUARANTY AGREEMENT AND INDEMNIFICATION AGREEMENT AND IS NOT INTENDED TO HAVE ANY EFFECT ON ANY OF THE OTHER LOAN DOCUMENTS.

Notwithstanding the foregoing, Lender reserves, on its own behalf and on behalf of Buyer (as defined in the Deed in Lieu Agreement), the right to sue (including, without limitation, the right to counterclaim against) and obtain and satisfy a judgment against, Guarantor to the full extent of any indemnification obligations of Guarantor under the Deed in Lieu Agreement or by reason of claims of causes of action arising out of (a) any breach of the covenants, representations, warranties, and agreements by Guarantor set forth in the Deed in Lieu Agreement, or (b) fraud. The foregoing release will be null, void, and of no force and effect, if (x) Borrower or Guarantor commences any action, suit, or proceeding against Lender, Buyer, or any other Lender-Connected Party (as defined in the Deed in Lieu Agreement) in connection with the Deed in Lieu Agreement seeking to rescind the transaction contemplated thereby (in whole or in part) or attacking the validity thereof (in whole or in part), or (y) if on or before the 367th day following the Closing Date (as defined in the Deed in Lieu Agreement) Borrower files a petition under any chapter or section of Title 11 of the United States Code, as amended.

Nothing contained herein shall affect, and Lender hereby expressly reserves, the right to foreclose the Deed of Trust (as defined in the Deed in Lieu Agreement) by non-judicial foreclosure or judicial foreclosure, to the extent permitted by applicable law.

This Release shall be binding upon Lender and its successors, and assigns.

Dated this _____ day of _____, _____.

By _____,
[name] [title]

EXHIBIT F
ESCROW AGREEMENT

This ESCROW AGREEMENT ("Escrow Agreement"), by and among _____, a _____, with a mailing address of _____ ("Borrower"), _____, a _____ ("Lender"), and _____ ("Escrow Agent").

RECITALS

A. Borrower and Lender have entered into that certain Deed in Lieu of Foreclosure Agreement of even date herewith (the "Deed in Lieu Agreement"), subject to the terms and conditions of which, among other things, Borrower has agreed to transfer into escrow for the benefit of Lender fee simple title to the real estate and the improvements thereon for the property described as:

B. Pursuant to the Deed in Lieu Agreement, Borrower has agreed (i) to deposit the Primary Transfer Documents (as defined in the Deed in Lieu Agreement) with Escrow Agent, to be held by Escrow Agent, in escrow, pursuant to the terms of this Escrow Agreement and (ii) to enter into this Escrow Agreement with Escrow Agent and Lender.

C. Lender wishes to accept the conveyance of the subject real and personal property into escrow as further described below pursuant to this Agreement to avoid the necessity of litigation, foreclosure, the costs, expenses and delays associated therewith and Lender, Borrower and Limited Guarantors (as defined in the Deed in Lieu Agreement) each acknowledge that the provisions of this Agreement directly benefit Lender, Borrower and Limited Guarantors in this regard.

D. It is Lender's intent to market the Loan Documents (other than the Guaranty Agreement) (as defined in the Deed in Lieu Agreement) for sale and to transfer the Loan Documents (other than the Guaranty Agreement), or the Primary Transfer Documents being escrowed pursuant to this Agreement, to a Buyer.

E. It is the Lender's intent to not take title, but to keep the Primary Transfer Documents being escrowed pursuant to this Agreement in escrow until such time as Lender locates a Buyer (although Lender has the option to take title at any time).

F. The subject Primary Transfer Documents shall not be deemed delivered to Lender until such time as they are delivered by the escrow agent to Lender at Lender's direction.

G. It is not the Lender's intent to take possession of the subject real and personal property (although Lender has the option to take possession at any time).

H. The subject property is being operated by a receiver (the "Receiver") pursuant to an ORDER FOR EX PARTE APPOINTMENT OF A RECEIVER in Case No. _____, _____, State of _____, dated _____ (the "Order").

I. It is the intent of the Lender for possession of the subject real and personal property to stay with the Receiver for so long as the Deed being escrowed pursuant to this Agreement stays in escrow.

J. The Deed in Lieu Agreement is not intended as a mortgage and it is not the intent of the parties that Borrower will have any future rights in the property whatsoever. Any previous debtor-creditor relationship between the parties shall cease at Closing (except to the extent necessary to allow foreclosure of the Property as set forth herein). It is Borrower's intent that it is delivering any and all right it has in the Property into escrow. Borrower wishes to relinquish any and all rights to the Property of any nature whatsoever.

K. While foreclosure of the subject real and personal property may never be necessary, the Loan Documents shall remain in full force and effect and Lender or its assignee may commence a Public Trustee, judicial foreclosure or UCC sale of the subject real and personal property under the Loan Documents if it later chooses to do so.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing Recitals hereby are affirmed by the parties hereto, and are acknowledged by Lender and Borrower to be true and correct and are incorporated into the body of this Escrow Agreement by this reference as if fully set forth herein.

2. Borrower's Escrow Deposits. Borrower hereby deposits with Escrow Agent the documents referenced in Schedule 1 of this Escrow Agreement. Escrow Agent hereby acknowledges receipt of such items and agrees to hold and dispose of same in accordance with the terms of this Escrow Agreement.

3. Instructions to Escrow Agent. Provided Escrow Agent (a) has received funds sufficient to pay all title, recording, and escrow charges and title premiums payable in connection with the actions to be taken by Escrow Agent described below; and (b) has received written notice from Lender that all conditions to Borrower's and Lender's obligations under the Deed in Lieu Agreement have been satisfied or waived (other than those to be satisfied pursuant to this Escrow Agreement) and that it or its buyer is prepared to accept delivery of the escrowed documents; and (c) is irrevocably committed to issue the owners title insurance policy in the form of the specimen policy attached hereto as Schedule 2 and the endorsements to its loan policy number _____ in the form attached hereto as Schedule 3, Escrow Agent is then authorized and directed to proceed as follows:

- (a) purchase all necessary state, county, and municipal transfer stamps and/or taxes and affix same to the deed;
- (b) record the Special Warranty Deed once the name of the Grantee has been completed pursuant to the escrowed Power of Attorney;
- (c) pay all title and escrow trust charges and title premiums; and
- (d) deliver all of Borrower's deposits to Lender or the Buyer;

In the event that on or before one year from the date of this Agreement, Escrow Agent has not received (a) funds sufficient to pay all title, recording, and escrow charges and title premiums payable in connection with the actions to be taken by Escrow Agent described above; (b) all deposits specified on Schedule 1; and (c) written notice from Lender that all

conditions to Borrower's and Lender's obligations under the Deed in Lieu Agreement have been satisfied or waived (other than those to be satisfied pursuant to this Escrow Agreement) and that it or its Buyer is prepared to accept delivery of the escrowed documents, or in the event that Escrow Agent is not committed to proceed as provided in items (a)-(e) of Paragraph 4 of this Escrow Agreement, then Escrow Agent shall deliver the Primary Transfer Documents to Lender and Lender shall proceed to take title in its own name.

4. Notices. Any notice pursuant to this Escrow Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) legible facsimile transmission sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile transmission, as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended addressee by means described in clauses (a), (b), or (c) above. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

To Borrower:

with a copy to:

To Lender:

with a copy to:

To Escrow Agent:

5. Time. Whenever under the terms and provisions of this Escrow Agreement the time for performance of an obligation falls on a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day.

6. Further Assurances. Subject to the reasonable approval of each party's counsel, each party agrees that it will without further consideration execute and deliver such other documents and take such other action as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement.

7. No Modification. This Escrow Agreement may not be modified except in writing signed by all of the parties hereto.

8. Certain Provisions Regarding Escrow Agent.

- (a) Escrow Agent shall have no duties or responsibilities other than those expressly set forth herein. Escrow Agent shall have no duty to enforce any obligation of any other person to make any delivery or to enforce any obligation of any other person to perform any other act. Escrow Agent shall have no liability to the other parties hereto or to anyone else by reason of any failure on the part of any other party hereto or any maker, guarantor, endorser or other signatory of any document or any other person to perform such other person's obligations under any such document. Except for amendments to this Agreement made as hereinafter provided, and except for joint instructions given to Escrow Agent by Lender and Borrower relating to the Transfer Documents, Escrow Agent shall not be obligated to recognize any agreement between any or all of the persons referred to herein, notwithstanding that references thereto may be made herein and whether or not it has knowledge thereof.
- (b) Except for, or in connection with, Escrow Agent's willful misconduct or gross negligence, Escrow Agent shall be indemnified and held harmless jointly by the other parties hereto from and against any and all expenses or loss suffered by Escrow Agent, including reasonable attorneys' fees, in connection with any action, suit or other proceeding involving any claim which arises out of or relates to this Agreement, the services of Escrow Agent hereunder or the documents and instruments held by it hereunder; but as among the parties hereto other

than Escrow Agent, if any of them shall be primarily responsible for the bringing, assertion, prosecution or maintenance of any such action, suit, proceeding or claim, such party shall reimburse and indemnify all such other parties for any amounts such other parties may be required to pay or reimburse to Escrow Agent pursuant to this paragraph. Promptly after Escrow Agent's receipt of notice of any demand or claim or the commencement of any action, suit or proceeding as to which Escrow Agent may desire to assert a claim against any of the other parties hereto, Escrow Agent shall notify such other parties hereto in writing, and its failure to give such notice shall relieve any party not receiving such notice from liability to Escrow Agent hereunder with respect thereto.

- (c) From time to time on and after the date hereof, the other parties hereto shall deliver or cause to be delivered to Escrow Agent such further documents and instruments, and shall do and cause to be done such further acts, as Escrow Agent may reasonably request (it being understood that Escrow Agent shall have no obligation to make any such request and the parties hereto shall have no obligation to incur any cost or expense or any additional liability with respect to any such request) to carry out more effectively the provisions and purposes of this Agreement, to evidence compliance herewith or to assure itself that it is protected in acting hereunder.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed this Agreement this ____ day of _____, _____.

By _____,
[name] [title]

By _____,
[name] [title]

By _____,
[name] [title]

SCHEDULE 1
TO
ESCROW AGREEMENT

Borrower's Deposits
Special Warranty Deed
Power of Attorney
Bill of Sale
Assignment (of Lease)
Assignment (of Contracts and Other Property)
Title premium payment
Title Commitment

EXHIBIT G
SPECIAL WARRANTY DEED

_____, _____ ("_____"), does hereby make, constitute and appoint _____, a _____ ("_____"), to act as _____'s true and lawful attorney and in its name, place and stead, and for its sole use and benefit, with full power and authority to do and perform each and every act necessary, as fully as _____ might do if personally present, to accomplish and complete the following act or transaction to wit:

Documents:

[SEAL]

EXHIBIT H
BILL OF SALE

EXHIBIT I
ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT J
NON-FOREIGN STATUS CERTIFICATE STATEMENT

EXHIBIT K
DEED IN LIEU OF FORECLOSURE CERTIFICATE

EXHIBIT L
RELEASE OF LENDER

KNOW ALL MEN BY THESE PRESENTS that, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, each of _____, a _____ ("Borrower"), and its member and guarantor, _____, a _____, hereby releases _____, a _____ ("Lender"), and Lender's officers, agents, employees, predecessors-in-interest, successors and assigns, from any and all claims of Borrower arising out of or relating to the relationship between Borrower and Lender on or before the date hereof relating to that certain mortgage loan advanced by Lender to Borrower in the original principal amount of \$_____, including, without limitation, any lender liability claims, excepting only those obligations, warranties and representations (a) which are given by Lender pursuant to the Deed in Lieu of Foreclosure Agreement dated as of _____ (the "Deed in Lieu Agreement"), which Deed in Lieu Agreement is hereby incorporated herein by reference, and (b) set forth in the documents executed by Lender pursuant thereto or in connection therewith.

Borrower and Lender acknowledge that the consideration for this Release is actual and adequate, as set forth in the Deed in Lieu Agreement.

This Release shall be construed under the laws of the State of _____.

IN WITNESS WHEREOF, Borrower and Lender have executed this Release as of _____.

By _____,
[name] [title]

By _____,
[name] [title]

Acknowledged and accepted:

By: _____
Printed name: _____
Its: _____

EXHIBIT M
EXPENSES OF CLOSING

EXHIBIT N
LIST OF CONTRACTS (SAME AS EXHIBIT F)