DEED IN LIEU OF
FORECLOSURE AGREEMENT

THIS DEED IN LIEU OF FORECLOSURE AGREEMENT (this “Agreement”) is made to be effective as of _____________, _____________, between _____________________, a ____________________, organized and existing under the laws of ____________________________ (the “Lender”), ____________, a ______ corporation (the “Borrower”), and ____________ (the “Key Principal”).

RECITALS:

[OBVIOUSLY, THE RECITALS ARE FACT SPECIFIC—THESE ARE VERY BARE BONE.]

This Agreement is based upon the following recitals:

A. On __________, __________, a _______ (the “Lender”), made a loan to Borrower (the “Loan”).

B. The Loan is evidenced by the documents described on the Schedule of Loan Documents attached hereto and incorporated herein, which schedule also defines certain terms hereinafter appearing in this Agreement.

C. The Loan is secured by the Deed of Trust which encumbers certain real and personal property more particularly described therein (the “Property”).

D. Lender is the holder of the Note and Loan.

E. Pursuant to its original terms, the Note was to mature and all principal and interest and other amounts owing pursuant to the Loan Documents (as hereinafter defined) were to become fully due and payable on _____, ____ (the “Maturity Date”).

F. The principal balance of the Note, all accrued but unpaid interest through the Maturity Date, all interest accrued and continuing to accrue after the Maturity Date and all other amounts owing pursuant to the Loan Documents, including applicable attorneys’ fees and costs, are collectively referred to herein as the “Indebtedness.”

G. Borrower has failed to pay principal, interest and certain other amounts due in respect of the Indebtedness (the “Payment Default”).

H. Lender has declared the entire balance of the Loan to be immediately due and payable, and is entitled to immediately commence any and all of its remedies for Borrower’s defaults.

I. Simultaneously with the execution of this Agreement, Borrower and Key Principal have deposited into escrow with __________________ (the “Escrow Agent”), the following executed documents in favor of Lender’s designee, _____, a _____ (the “Designee”) (collectively, the “Borrower Closing Documents”):
(i) A Warranty Deed for the real property comprising the Property (the “Real Property”) executed by Borrower to the Designee.¹

(ii) A Real Estate Transfer Tax Valuation Affidavit for the Real Property.

(iii) Non-Foreign Affidavit (Section 1445 IRC).

(iv) Bill of Sale and Assignment.

(v) Assignment of Leases, Rents and Profits (two counterparts).

(vi) Assignment and Assumption of Contracts, Permits, and Plans (two counterparts).

(vii) Assignment of Interest in Intangibles and Intellectual Property.

(viii) Loan Assignment and Assumption Agreement (three counterparts).

J. Simultaneously with the execution of this Agreement, the Designee has deposited into escrow with the Escrow Agent two counterparts of (i) an Assignment of Leases, Rents and Profits and (ii) an Assignment and Assumption of Contracts, Permits, and Plans and three counterparts of a Loan Assignment and Assumption Agreement (the “Lender Closing Documents”).

K. The Lender Closing Documents and the Borrower Closing Documents are referred to collectively herein as the “Closing Documents”.

L. The Borrower Closing Documents convey absolute title to the Property to the Designee.

NOW, THEREFORE, the parties agree as follows:

1. **Affirmation of Recitals; Defined Terms.** The recitals set forth above are true and correct and are incorporated herein by this reference. Capitalized terms used in this Agreement and not defined herein are defined in the Loan Documents.

2. **Acknowledgement of Indebtedness.** As of ______________, Borrower acknowledges and agrees that it is indebted to Lender for the following amounts:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Balance</td>
<td>$_______________</td>
</tr>
<tr>
<td>Interest</td>
<td>$_______________</td>
</tr>
</tbody>
</table>

¹The form of deed can be the subject of negotiation – General Warranty, Limited General Warranty (hybrid) or Special Warranty. It should not be a Quitclaim or Deed without Warranty. Regardless of form chosen, the deed should contain non-merger language.
Imposition Deposit Shortages:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes Shortage</td>
<td>$__________</td>
</tr>
<tr>
<td>Insurance Shortage</td>
<td>$__________</td>
</tr>
<tr>
<td>[other category]</td>
<td>$__________</td>
</tr>
<tr>
<td>Replacement Reserve Shortage</td>
<td>$__________</td>
</tr>
<tr>
<td>Default Interest</td>
<td>$__________</td>
</tr>
<tr>
<td>Late Fees</td>
<td>$__________</td>
</tr>
<tr>
<td>Costs, Fees &amp; Expenses</td>
<td>$__________</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$__________</td>
</tr>
</tbody>
</table>

Borrower further acknowledges that the foregoing does not take into account any other amounts, charges or other sums other than as enumerated above (including without limitation, attorneys’ fees and expenses and other amounts) that may be payable pursuant to the Loan Documents.

3. **Agreement to Convey Property.** On the Delivery Date, Borrower and Key Principal shall convey, respectively, to the Designee good and marketable² title to the Real Property subject only to the Permitted Encumbrances (as defined in Section 11 hereof), and all of their rights, title and interest in the personal property and all intangibles, trademarks, tradenames and intellectual property more particularly described in and pursuant to the Closing Documents. The conveyance of the Property by Borrower shall constitute an absolute, unconditional and irrevocable conveyance of the Property, and every part thereof and interest therein, to the Designee by which Borrower and Key Principal completely divest themselves of any and all right, title or interest, both legal and equitable, in and to the Property, including, but not limited to, any right of redemption or other right of any nature whatsoever to reacquire the Property, or any part thereof, or to set aside the conveyance thereof. Borrower and Key Principal further acknowledge and agree that after delivery of the Closing Documents to the Designee, Borrower and Key Principal will have no interest in any income, rentals, profits or other sums derived from or attributable to the Property, and that all such income, rentals, profits or other sums which come into the possession of Borrower, Key Principal, Lender or the Designee shall be the sole and exclusive property of the Designee, subject, however, to Lender’s rights under the Loan Documents. Without in any way limiting the generality of the foregoing, Borrower and Key Principal acknowledge that the conveyance of the Property to Designee is not intended to, and shall not constitute, a deed of trust, mortgage, trust conveyance or other security agreement of

² Issue of indefeasible vs marketable.
any kind or nature whatsoever nor were the Closing Documents given as security, and, upon
delivery to the Designee, the Closing Documents will not be subject to conditions of any kind;
provided, however, that neither Lender nor the Designee is assuming any of the obligations,
liabilities or indebtedness of the Property or Borrower except as specifically provided for herein
and in the Closing Documents.

(a) **No Assumption of Liabilities.** Notwithstanding any provision contained in
this Agreement to the contrary, this Agreement is intended as and shall be deemed to be an
agreement for the sale of assets and none of the provisions hereof shall be deemed to create any
obligation or liability of any party to any person or entity that is not a party to this Agreement,
whether under a third-party beneficiary theory, laws relating to transferee liabilities or otherwise.
Except as specifically provided otherwise in this Agreement or in a separate written document
executed by Lender after the effective date of this Agreement, Lender shall not assume and shall
not discharge or be liable for any debts, liabilities or obligations of Borrower including, but not
limited to, any (a) liabilities or obligations of Borrower to its creditors, shareholders or partners,
(b) liabilities or obligations of Borrower with respect to any acts, events or transactions occurring
prior to, on or after the Closing, (c) liabilities or obligations of Borrower for any federal, state,
county or local taxes, (d) any liabilities or obligations under any service contracts between
Borrower and third parties, including leasing agreements and management agreements other than
those on Exhibit “__” which Lender has, from and after the date hereof, assumed, or (e) any
contingent liabilities or obligations of Borrower, whether known or unknown by Borrower or
Lender. Except as otherwise provided in this Agreement, Lender shall have no duty whatsoever
to take any action or receive or make any payment or credit arising from or related to any
services provided or costs incurred in connection with the management and operation of the
Property or any business conducted on the Property prior to the Closing, including, but not
limited to, any matters relating to cost reports, collections, audits, hearings, or legal action
arising therefrom.

(b) **Proration.** Borrower shall be responsible for all expenses incurred arising
out of the ownership and operation of the Property through __________ other than ad
valorem taxes; Lender shall be responsible for (a) all expenses incurred arising out of the
ownership and operation of the Property beginning __________, and (b) all _____ ad valorem
taxes. Any bills received after Closing that covers days prior to ____________ shall be
prorated between Borrower and Lender based on the actual number of days of each party’s
respective period of responsibility. All Rents received for the period beginning ____________
shall be the property of Lender and Borrower, to the extent Borrower or its management
compny receives any payment for the period beginning ____________, Borrower shall, or
shall cause its management company, to pay such amounts to Borrower within 10 days of receipt
thereof by Borrower or its management company. Borrower will not be entitled to receive a
refund, credit or any other remittance relating to any prepaid expenses relating to the Property.
In regard to any amounts collected from a Tenant who has past due rents as of the date of this
Agreement, Lender shall first apply any payment received by such Tenant first to the amount of
rental due in the current month and then to past rents. The parties hereto covenant and agree that
Lender has no obligation to sue to collect past rents and Borrower has no right to bring suit for
past due rents as of Closing. The parties hereto shall reconcile all amounts received within 90
days of Closing in accordance with the proration of rent as provided herein. After the expiration of 90 days from the date of Closing, Borrower shall have no right to any past due rents. This Section 3 shall survive Closing.

(c) Additional Consideration. At Closing, 3.

4. Non-Merger of Estates. It is expressly understood and agreed by Borrower, Key Principal, Lender and the Designee that all of the liens and security interests in the Property created and evidenced by the Loan Documents, and all of Lender’s rights and remedies with respect thereto, including, but not limited to, the remedy of judicial or non-judicial foreclosure, and the equitable estate of Lender in the Property shall not merge with the legal estate and title in the Property to be conveyed by Borrower and Key Principal to the Designee pursuant to the Closing Documents. To the contrary, Lender’s liens and security interests under the Loan Documents and the beneficial estate of Lender in the Property shall be and remain separate and distinct from the legal estate and title in the Property to be acquired by the Designee from Borrower and Key Principal pursuant to the Closing Documents. The liens and the Loan Documents shall not be released or relinquished and are preserved and shall continue in full force and effect to protect Lender against any intervening lien, interest or title, or for other purposes of security. Further, the priority of the liens of the Loan Documents is not intended to be altered hereby, and nothing herein or in any document or instrument executed in connection herewith shall be construed to subordinate the priority of the liens of the Loan Documents to any other liens, encumbrances or interests whatsoever. The liens under the Loan Documents shall not merge with the fee or leasehold title to the Property unless and until Lender elects to do so in its sole and absolute discretion by separate document recorded hereafter or, if Lender so elects, by foreclosure of the Loan Documents. For the purposes of permitting Lender to exercise such rights and remedies, Borrower, Key Principals, Lender and the Designee agree that the statutes of limitation applicable with respect to the exercise of such rights and remedies under the Loan Documents are hereby tolled and extended so that the exercise of such rights and remedies shall not be limited under any applicable statutes of limitation, by laches or otherwise. The parties agree that neither Lender nor the Designee shall be deemed a mortgagee in possession, or be deemed in control of or a partner or joint venturer of Borrower or Key Principal by virtue of this Agreement or the dealings of the parties, and neither Borrower nor Key Principal shall hold themselves out as such or make claim against Lender or the Designee by virtue of any of the foregoing.

5. Escrow Period Covenants.

(a) Foreclosure. Borrower acknowledges that subsequent to the date of Closing, Lender may at any time exercise its rights of power of sale in the Deed of Trust to foreclose on the lien of the Deed of Trust or seek judicial action to foreclose on the lien of the Deed of Trust, if it so elects in its sole discretion (a “Foreclosure”). This Section 5 shall survive closing of this Agreement and acceptance of the Deed by Lender.

3 Concepts of Prorations and Payments of Additional Consideration are very fact specific and not universally applied.
(b) **No Contest.** Borrower hereby covenants and agrees that (i) neither Borrower nor the Key Principals will oppose, hinder, impede, obstruct, delay or in any manner or means interfere with the exercise by Lender or its agents of Lender’s judicial or nonjudicial foreclosure rights at law, in equity or under and pursuant to the Loan Documents and (ii) neither Borrower nor any Key Principal shall challenge at any time (1) the validity of any nonjudicial foreclosure sale conducted by Lender or its agents with respect to the Property, or any part thereof, or (2) the validity of any judicial foreclosure action brought by Lender or its agents or (3) the enforceability of any transfer of title to the Property, or any part thereof, resulting from any such nonjudicial foreclosure sale or judgment in judicial foreclosure action.

(c) **By Borrower.** During the Escrow Period (as that term is defined below), Borrower:

(i) shall keep the collateral for the Loan free of all liens, claims, title exceptions and encumbrances, other than (i) Permitted Exceptions, and (ii) the liens and interests arising under the Loan Documents;

(ii) shall execute and deliver or otherwise provide any documents or instruments relating to this Agreement or the Loan as Lender may reasonably request, including, without limitation, any assignments or other documents of conveyance, releases or discharges necessary to put title or possession of the Property in the Designee in the condition contemplated by this Agreement and the Closing Documents and any affidavits or certifications requested by Lender updating and confirming (i) any of the representations, warranties or statements made, or (ii) the performance of any of the obligations or agreements undertaken, by Borrower;

(iii) shall permit Lender (and Lender’s employees, agents, attorneys and accountants), at such times as Lender may request, to review and inspect the Property and all books and records regarding the Property and its operation;

(iv) shall manage and operate, and shall cause Key Principal to manage and operate, the Property in the ordinary course of business;

(v) shall use, and shall cause Key Principal to use, its best efforts to assist in the transfer to the Designee of each of the licenses, permits and certificates issued for the Property, which assistance shall include, without limitation, providing any information or documents necessary to obtain the proper consents and approvals from applicable governmental authorities;

(vi) shall promptly deliver, and shall cause Key Principal to promptly deliver, to Lender copies of any notices or communications received by Borrower or Key Principal regarding any claims, liens, encumbrances, assessments or levies claimed against any of the Property;

(vii) shall use its best efforts to arrange to have all utility and public service meters read as of the Delivery Date (hereinafter defined);
(viii) on the Delivery Date, shall arrange for the removal of its name as the Borrower of the Property on the records of the appropriate utility and public service companies, and shall assist and cooperate with the Designee in arranging for the commencement of service to the Designee on such date; and

(ix) shall provide such certifications or assurances as may be reasonably required by the title insurance companies for (A) the Designee to obtain Borrower’s title insurance coverage (in the amount of the current value of the Property) satisfactory to Lender or the Designee and (B) Lender to obtain Mortgagee’s title insurance coverage (in the amount of the Indebtedness) satisfactory to Lender, in each case with deletion of any exceptions for liens for services, labor or materials provided to the Property.

(d) By Key Principal. During the Escrow Period, Key Principal:

(i) shall keep the collateral for the Loan free of all liens, claims, title exceptions and encumbrances, other than (i) Permitted Exceptions, and (ii) the liens and interests arising under the Loan Documents;

(ii) shall execute and deliver or otherwise provide any documents or instruments relating to this Agreement or the Loan as Lender may reasonably request, including, without limitation, any assignments or other documents of conveyance, releases or discharges necessary to put title or possession of the Property in the Designee in the condition contemplated by this Agreement and the Closing Documents and any affidavits or certifications requested by Lender updating and confirming (i) any of the representations, warranties or statements made, or (ii) the performance of any of the obligations or agreements undertaken, by Key Principal;

(iii) shall permit Lender (and Lender’s employees, agents, attorneys and accountants), at such times as Lender may request, to review and inspect the Property and all books and records regarding the Property and its operation;

(iv) shall manage and operate the Property in the ordinary course of business;

(v) shall use its best efforts to assist in the transfer to the Designee of each of the licenses, permits and certificates issued for the Property, which assistance shall include, without limitation, providing any information or documents necessary to obtain the proper consents and approvals from applicable governmental authorities;

(vi) shall promptly deliver to Lender copies of any notices or communications received by Borrower or Key Principal regarding any claims, liens, encumbrances, assessments or levies claimed against any of the Property;

(vii) shall use its best efforts to arrange to have all utility and public service meters read as of the Delivery Date;
(viii) on the Delivery Date, shall arrange for the removal of its name as the Borrower of the Property on the records of the appropriate utility and public service companies, and shall assist and cooperate with the Designee in arranging for the commencement of service to the Designee on such date; and

(ix) shall provide such certifications or assurances as may be reasonably required by the title insurance companies for (A) the Designee to obtain Borrower’s title insurance coverage (in the amount of the current value of the Property) satisfactory to Lender or the Designee and (B) to enable Lender to obtain Mortgagee’s title insurance coverage (in the amount of the Indebtedness) satisfactory to Lender, in each case with deletion of any exceptions for liens for services, labor or materials provided to the Property.


(a) By Borrower. Borrower represents and warrants the following to Lender and the Designee, both as of the date of this Agreement and as of the Delivery Date:

(i) Borrower owns title to the Property, free and clear of liens, title exceptions, claims or encumbrances, other than (i) Permitted Exceptions, and (ii) the liens and interests created or perfected by the Loan Documents. There is no basis upon which a lien, title exception, claim or encumbrance could be justifiably asserted against any of the Property at any time in the future.

(ii) All representations, information and statements made, provided, or delivered to Lender by Borrower, or persons acting at its request or on its behalf, are complete and accurate in all material respects and are not misleading (by inclusion or omission) in any material respect.

(iii) Except the contracts identified on the Schedule of Existing Contracts attached hereto, Borrower has not entered into any contract or agreement, whether written or oral, relating to the Property or any part thereof that is not immediately terminable at the option of the Designee without expense or liability to the Designee, and Borrower has delivered complete copies of each such contract to Lender.

(iv) Except as set forth in the Schedule of Pending Litigation attached hereto, the Property is not subject to any litigation, suit, action, investigation, grievance, arbitration proceeding, or controversy or claim before any court, administrative agency or other governmental authority, and Borrower is not in violation of or in default with respect to any judgment, order, award, writ, injunction, decree or rule of any court, governmental authority, or any regulation of any administrative agency or governmental authority relating to or affecting the Property.

(v) Borrower has all requisite power and authority to execute this Agreement and the Closing Documents. The execution and delivery of this Agreement by Borrower and all agreements provided for herein, and the consummation of all transactions contemplated hereby, have been duly authorized by all requisite corporate action. This
Agreement and all such other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby to which Borrower is a party will constitute the valid and legally binding obligations of Borrower.

(vi) The execution, delivery and performance by Borrower of this Agreement and the agreements provided for herein, and the consummation by Borrower of the transactions contemplated hereby and thereby, will not, with or without the giving of notice, or the passage of time, or both, (i) violate the provisions of any law, rule or regulation applicable to Borrower; (ii) violate the provisions of the Articles of Incorporation or Bylaws of Borrower; (iii) violate any judgment, decree, order or award of any court, governmental body or arbitrator applicable to Borrower; or (iv) conflict with or result in the breach or termination of any term or provision of, or constitute a default under, or cause the creation of any lien upon the Property or assets of Borrower pursuant to any indenture, mortgage, deed of trust or other agreement or instrument to which Borrower is a party or by which Borrower or its assets are or may be bound.

(vii) Borrower has never received notice of any violations of any governmental regulation governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of hazardous materials at or from the Property.

(viii) Borrower has no unsatisfied judgments against it and no voluntary or involuntary proceedings in bankruptcy have been filed by or against Borrower.

(ix) The conveyance of the Property pursuant hereto will not violate any private restriction or agreement applicable to Borrower.

(x) To the best knowledge of Borrower, no violations of any federal, state, local or other governmental building, zoning, health, safety, platting, subdivision or other law, ordinance or regulation, or private restriction exists with respect to the Property.

(xi) There are no residents or occupants of the Property, other than the residents of the Property pursuant to the occupancy agreements identified on the Schedule of Occupancy Agreements attached hereto (the “Occupancy Agreements”), and Borrower has previously provided Lender with a copy of each such Occupancy Agreement.

(xii) To the best knowledge of Borrower, there are no defects in (A) the structural components of the Property, including but not limited to, the roofs and foundations, or (B) the systems serving the Property, including without limitation, mechanical, electrical, air-conditioning, ventilation, drainage, sewer, water and plumbing systems, and such systems are in good working order.

(xiii) The Borrower Closing Documents transfer all of the real and personal property used or necessary in connection with the ownership and operation of the Property.

(xiv) This Agreement and each of the Conveyance Documents to be executed at Closing and all information furnished pursuant to this Agreement, are made and
furnished in good faith, for value and valuable consideration, and have not been made under or induced by any fraud, duress or undue influence exercised by Lender or any other person.

(xv) No representation or warranty by Borrower or Key Principals contained in this Agreement, the Conveyance Documents or any other instrument in connection herewith, delivered on behalf of Borrower or Key Principals contains any materially untrue statement of a fact or materially omits any fact or statement necessary to make the facts or statements contained herein or therein materially false or materially misleading.

(xvi) From and after the date of this Agreement to the Closing, Borrower shall continue to provide Lender with such other information regarding the Property as Lender may reasonably request.

(xvii) There are no labor disputes, organizational campaigns, or union contracts existing or under negotiation as of the date hereof with respect to the Property or the operation thereof and there are no employees engaged in the operation or maintenance of the Property for whom Lender will be responsible after Closing.

(xviii) Borrower and Key Principals have requested conveyance of title to the Property in lieu of the exercise of Lender’s remedies under the Loan Documents and throughout the negotiation, preparation and execution of this Agreement have been, and will through the Closing be represented by competent legal counsel of their own choosing. This Agreement was entered into out of the free will of Borrower and Key Principals and pursuant to arm’s-length negotiations and Borrower and Key Principals believe this Agreement is fair. Lender has not taken advantage of Borrower or Key Principals by threats, intimidation, overreaching, unconscionable conduct, or otherwise, and Borrower and Key Principals are proceeding in this transaction as volunteers in what they perceive to be their own best interest.

(xix) Borrower is currently in compliance with, and shall at all times during the term of this Agreement (including any extension thereof) remain in compliance with, the regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated Nationals and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

(xx) Borrower has no actual knowledge that the Property has been the site of any activity that would violate any past or present environmental law or regulation of any governmental body or agency having jurisdiction over the Property. Specifically, but without limitation, Borrower has no actual knowledge that (i) solid waste, petroleum, or petroleum products have been handled on the Property such that they may have leaked or spilled onto the Property or contaminated the Property, (ii) there is on-site contamination resulting from activities on the Property or adjacent tracts, and (iii) the Property contains “hazardous materials,” which shall mean any flammables, explosives, radioactive materials, asbestos, or other hazardous waste including, without limitation, substances defined as “hazardous substances,” “hazardous materials,” or “toxic substances” in the Comprehensive Environmental Response, Compensation

(b) By Key Principal. Key Principal represents and warrants the following to Lender and the Designee, both as of the date of this Agreement and as of the Delivery Date:

(i) All representations, information and statements made, provided, or delivered to Lender by Key Principal, or persons acting at its request or on its behalf, are complete and accurate in all material respects and are not misleading (by inclusion or omission) in any material respect.

(ii) Except the contracts identified on the Schedule of Existing Contracts attached hereto, Key Principal has not entered into any contract or agreement, whether written or oral, relating to the Property or any part thereof that is not immediately terminable at the option of the Designee without expense or liability to the Designee, and Borrower has delivered complete copies of each such contract to Lender.

(iii) Except as set forth in the Schedule of Pending Litigation attached hereto, the Property is not subject to any litigation, suit, action, investigation, grievance, arbitration proceeding, or controversy or claim before any court, administrative agency or other governmental authority, and Key Principal is not in violation of or in default with respect to any judgment, order, award, writ, injunction, decree or rule of any court, governmental authority, or any regulation of any administrative agency or governmental authority relating to or affecting the Property.

(iv) Key Principal has all requisite power and authority to execute this Agreement and the Closing Documents. The execution and delivery of this Agreement by Key Principal and all agreements provided for herein, and the consummation of all transactions contemplated hereby, have been duly authorized by all requisite corporate action. This Agreement and all such other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby to which Key Principal is a party will constitute the valid and legally binding obligations of Key Principal.

(v) The execution, delivery and performance by Key Principal of this Agreement and the agreements provided for herein, and the consummation by Key Principal of the transactions contemplated hereby and thereby, will not, with or without the giving of notice, or the passage of time, or both, (i) violate the provisions of any law, rule or regulation applicable to Key Principal; (ii) violate the provisions of the Articles of Incorporation or Bylaws of Key Principal; (iii) violate any judgment, decree, order or award of any court, governmental body or arbitrator applicable to Key Principal; or (iv) conflict with or result in the breach or termination of any term or provision of, or constitute a default under, or cause the creation of any lien upon the Property or assets of Key Principal pursuant to any indenture, mortgage, deed of trust or other agreement or instrument to which Key Principal is a party or by which Key Principal or its assets are or may be bound.
(vi) Key Principal has never received notice of any violations of any governmental regulation governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of hazardous materials at or from the Property.

(vii) The conveyance of the Property pursuant hereto will not violate any private restriction or agreement applicable to Key Principal.

(viii) No representation or warranty by Borrower or Key Principals contained in this Agreement, the Conveyance Documents or any other instrument in connection herewith, delivered on behalf of Borrower or Key Principals contains any materially untrue statement of a fact or materially omits any fact or statement necessary to make the facts or statements contained herein or therein materially false or materially misleading.

(ix) This Agreement and each of the Conveyance Documents to be executed at Closing and all information furnished pursuant to this Agreement, are made and furnished in good faith, for value and valuable consideration, and have not been made under or induced by any fraud, duress or undue influence exercised by Lender or any other person.

(x) From and after the date of this Agreement to the Closing, Borrower shall continue to provide Lender with such other information regarding the Property as Lender may reasonably request.

(xi) Borrower and Key Principals have requested conveyance of title to the Property in lieu of the exercise of Lender’s remedies under the Loan Documents and throughout the negotiation, preparation and execution of this Agreement have been, and will through the Closing be represented by competent legal counsel of their own choosing. This Agreement was entered into out of the free will of Borrower and Key Principals and pursuant to arm’s-length negotiations and Borrower and Key Principals believe this Agreement is fair. Lender has not taken advantage of Borrower or Key Principals by threats, intimidation, overreaching, unconscionable conduct, or otherwise, and Borrower and Key Principals are proceeding in this transaction as volunteers in what they perceive to be their own best interest.

(xii) Borrower is currently in compliance with, and shall at all times during the term of this Agreement (including any extension thereof) remain in compliance with, the regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated Nationals and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

(xiii) To the best knowledge of Key Principal, no violations of any federal, state, local or other governmental building, zoning, health, safety, platting, subdivision or other law, ordinance or regulation, or private restriction exists with respect to the Property.
(xiv) There are no residents or occupants of the Property, other than the residents of the Property pursuant to the Occupancy Agreements, and Borrower has previously provided Lender with a copy of each such Occupancy Agreement.

(xv) The Property is served by the following public and private utility services: electric, trash removal, water, gas, sanitary sewer, storm sewer and telephone, all of which services may be continued after the Delivery Date.

(xvi) To the best knowledge of Key Principal, there are no defects in (A) the structural components of the Property, including but not limited to, the roofs and foundations, or (B) the systems serving the Property, including without limitation, mechanical, electrical, air-conditioning, ventilation, drainage, sewer, water and plumbing systems, and such systems are in good working order.

(xvii) The Borrower Closing Documents transfer all of the real and personal property used or necessary in connection with the ownership and operation of the Property.

The provisions of this Section 6 shall survive the Closing.

7. **Reinstatement.** If (a) any part of the transactions contemplated by this Agreement or the Closing Documents is avoided by a judgment or order entered by a court of competent jurisdiction or otherwise rendered void, (b) Lender, the Designee or either of their successors or assigns is required to convey any part of the Property to Borrower, Key Principal, or any of their respective creditors, or (c) any sum applied to reduce the Loan is recovered by any person or entity (including, without limitation, a trustee in bankruptcy for Borrower or Key Principal) from Lender, then Borrower’s obligations under the Loan Documents shall continue or be reinstated (as applicable) as if any sums or property recovered from Lender or the Designee had never been received by Lender or the Designee.

8. **Reporting Requirements.** Borrower and Key Principal each acknowledges that Lender intends to report this transaction to the Internal Revenue Service and other governmental agencies and regulatory bodies in the manner provided by law, and that Borrower and Key Principal has each had an opportunity to consult with their respective tax adviser(s) with respect to the income and other tax consequences of the transactions contemplated hereby.

9. **Future Claims, etc.** Borrower, Key Principal, and each of its shareholders, officers, directors, employees and agents, shall (a) upon request cooperate with Lender or the Designee in connection with any claim, demand, lawsuit or proceeding arising out of or in any way relating to the development, use, ownership or operation of the Property, including without limitation, providing and making available for inspection and copying any information that Lender deems useful in prosecuting or defending any such claim, demand, lawsuit or proceeding, and (b) not knowingly take or permit any act or omission to occur which would adversely affect the rights and interests of Lender or the Designee in and to the Property or under this Agreement or any of the Closing Documents, unless and to the extent that such action or omission is required by law.
10. **Indemnification of Lender.** Borrower and Key Principals (to the extent of their respective limitations of liability as originally set forth in the Guaranties, which limitations are carried forth herein), jointly and severally, hereby covenant and agree to indemnify, defend and hold Lender (together with its partners, members, shareholders, officers, directors, agents, contractors, employees and representatives and any partner, member, or shareholder of the foregoing) harmless from and against all claims, demands, causes of action, judgments, damages, costs and expenses (including attorneys’ fees), deficiencies, settlements and investigations to the extent that they relate to matters, actions or omissions arising or occurring on or before the Closing, which arise out of or are based upon any of the following:

(a) any obligation under any contracts, agreements and writings entered into by or on behalf of Borrower in respect of the use, operation, ownership, management, leasing, occupancy or maintenance of any portion of the Property;

(b) any and all labor or employment related liabilities, claims, demands, causes of action, judgments, damages, costs or expenses, grievances, unfair labor practices, violations of any applicable law which Lender may be subject to or incur by reason of any acts, omissions or matters relating to any employees of Borrower or any of Borrower’s agents, representatives or contractors, including the termination of any union employees, the termination or violation of any union contractor, any unfair labor practice or charge (including any such unfair labor practice or charges asserted under the Warn Act and the Labor-Management Relations Act of 1947, as each has been amended), any violation of OSHA, and any and all claims, liabilities or grievances that may have been asserted under any contract;

(c) any breach, violation or default on the part of Borrower or performance of any term, covenant, revision or agreement or other obligation on the part of Borrower to be performed which relates to the Property or which arises from any act, fault, misconduct, omission or negligence relating to the Property or by Borrower or any of Borrower’s agents, contractors, servants, employees, occupants, suboccupants or licensees;

(d) any accident, injury, death or damage whatsoever caused to any person or entity or loss of property occurring in or about the Property or any part thereof, or on any other property connected with the Property or adjacent thereto;

(e) a written notice to Borrower or its management company regarding any violation of any law, permit, statute, code, injunction, variance, order, judgment, license, ordinance, rule, ruling decree, regulation and/or other Laws (including any relating to fire, health, sanitation, ecological, historic landmark, handicap access, zoning, land use, environmental protection, hazardous waste, and wetlands) of each of the various governmental authorities having jurisdiction over the Property;

(f) all covenants, agreements, regulations, restrictions or other encumbrances contained in any instrument either of record or actually known to Borrower at any time in force affecting the Property or any part thereof or the ownership, use, occupancy, possession, operation, management, leasing, or maintenance thereof; and
(g) all actions, proceedings and other legal processes threatened or pending against Borrower and/or the Property which arise from actions or omissions by Borrower and its agents.

The provisions of this Section 10 shall survive the Closing.

11. **Title and Lender’s Policy Endorsements.**

(a) On the Delivery Date, title to the Property shall be marketable and good of record and in fact, insurable as such in an amount satisfactory to the Designee by such title insurance company as the Designee may choose (the “Title Company”), at regular rates, on a form Owner’s Policy, together with such endorsements as the Designee may request (the “Owner’s Title Policy”), and shall be free and clear of any liens, mortgages, security interests, leases, restrictions, easements, options, claims, unrecorded agreements, or other encumbrances of any kind or nature whatsoever, except for those items identified in the Schedule of Permitted Encumbrances attached hereto (the “Permitted Encumbrances”), and, at Designee’s option, Title Company shall issue the Owner’s Title Policy to the Designee at the Designee’s sole cost and expense.

(b) On the Delivery Date, Title Company shall issue at Lender’s sole cost and expense, such endorsements to Lender’s existing Mortgagee’s policy as Lender considers appropriate, including, but not limited to, a non-merger and continuation of mortgage endorsements in favor of Lender.

12. **The Delivery Date.**

(a) Subject to the terms of Section 12 below, the Borrower Closing Documents shall be unconditionally and absolutely delivered by the Escrow Agent to the Designee (and recorded, as instructed by Lender), and the Lender Closing Documents shall be delivered to Borrower, immediately upon Escrow Agent’s receipt of written notice (a “Delivery Notice”) from Lender instructing the Escrow Agent to deliver or record the Borrower Closing Documents (as set forth in the Delivery Notice) to, or for the benefit of, the Designee. For purposes of this Agreement and the Closing Documents, each of the Borrower Closing Documents shall be deemed to be delivered to the Designee upon the Escrow Agent’s receipt of the Delivery Notice or a Default Notice, as that term is defined below. The date that the Escrow Agent receives (A) a Delivery Notice, or (B) if earlier, a Default Notice, is referred to herein as the “Delivery Date”. The “Escrow Period” is the period beginning on the date of this Agreement and ending on the earlier to occur of (a) the Delivery Date, or (b) 5:00 p.m., __________.

(b) In the event the Escrow Agent has not received a Delivery Notice or a Default Notice before 5:00 p.m., __________, ______, all of the Borrower Closing Documents shall be returned to Borrower and the Lender Closing Documents shall be returned to Lender. The return of the Borrower Closing Documents to Borrower will not affect or impair Borrower’s obligations or Lender’s rights under the Loan Documents. Notwithstanding anything to the

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4 Same issue of indefeasible vs marketable.
contrary contained in this Agreement, Lender shall have the unilateral right to terminate this Agreement and instruct the Escrow Agent to return all of the Borrower Closing Documents to Borrower and the Lender Closing Documents to Lender by written notice delivered to the Escrow Agent any time after the date of this Agreement.

(c) The Borrower grants to Lender the unilateral right to amend or substitute any of the legal descriptions attached to any of the Closing Documents if any title searches or surveys obtained by Lender or the Designee disclose (i) any errors in the existing legal descriptions, or (ii) that the existing legal descriptions fail to include all of the real property constituting the Property. Further, the Borrower and Key Principal each authorizes Lender or the Designee to complete any items of information (including, without limitation, the effective date of the delivery of the Borrower Closing Documents) missing from the Borrower Closing Documents.

(d) On the Delivery Date, Borrower and Key Principal shall deliver to Lender and the Designee (A) a certificate in form and substance acceptable to Lender and the Designee confirming that the representations and warranties of Borrower and of Key Principal under Section 6 hereof are true and correct as of the Delivery Date and (B) such additional documents and instruments as may be necessary to consummate the transactions contemplated herein, including, but not limited to, any affidavits required by the Title Company for purposes of insuring the Designee’s ownership interest in the Property or Lender’s interest in the Property and specifically including affidavits regarding the absence of mechanics’ liens, absence of parties in possession of the Property (except pursuant to the Occupancy Agreements), absence of unrecorded easements, payment of taxes and any other additional items which may be required by the Title Company in connection with this transaction.

(e) All representations and warranties of Borrower and Key Principals contained in this Agreement shall be true and correct as of the Closing Date and, unless waived by Lender, each of Borrower and Key Principals shall have performed and satisfied all covenants contained herein or required to have been satisfied on or before the Closing Date, including the delivery of such information and documentation as required by this Agreement.

(f) Borrower shall have provided to Lender all written approvals necessary to consummation of the transaction covered by this Agreement from all governmental authorities which regulate the business affairs of Borrower, and which Lender, in its discretion, shall require.

(g) Lender has received evidence satisfactory to it in its sole discretion that the Property has not been the site of any activity that would violate any past or present environmental law or regulation of any governmental body or agency having jurisdiction over the Property.

(h) Borrower shall have delivered to Lender a duly executed agreement by Borrower and the management company for the Property that terminates the management agreement effective ________________ (the “Termination of Management Agreement”).
13. **Default.** Borrower shall be in default under this Agreement immediately upon the occurrence of any of the following events (each, an “Event of Default”):

(a) Any failure by Borrower or Key Principal to perform, on the day such performance was due, any obligation under this Agreement.

(b) The discovery by Lender of any material inaccuracy in any of the information, representations or warranties made or provided by, or on behalf of, Borrower or Key Principal.

14. **Remedies for Default.** Upon the occurrence of an Event of Default, Lender, in addition to and without waiving any other right or remedy available at law or in equity, shall have the right, in its sole discretion and without notice, to exercise one or more of the following remedies: (i) by providing written notice thereof to the Escrow Agent (a “Default Notice”), immediately terminate the Escrow Period, and require the Escrow Agent to deliver immediately the Borrower Closing Documents to the Designee and the Lender Closing Documents to Borrower, (ii) require the Escrow Agent to return the Borrower Closing Documents to Borrower and the Lender Closing Documents to Lender, (iii) proceed to exercise all of its rights and remedies under the Loan Documents, this Agreement, and at law and in equity, or (iv) cure such defaults and add the cost of such cure to the balance of the Loan.

15. **Default Under Loan Documents.** If Lender discovers any fact or circumstance (other than facts or circumstances about which Lender has actual knowledge on the date of this Agreement) that would constitute a default under any of the Loan Documents and such default is not cured after the giving of any required notice and the expiration of any applicable cure period, then Lender, in addition to and without waiving any other right or remedy available at law or in equity, shall have the right, in its sole discretion and without additional notice, to exercise one or more of the following remedies: (i) by providing a Default Notice, immediately terminate the Escrow Period, and require the Escrow Agent to deliver immediately the Borrower Closing Documents to the Designee and the Lender Closing Documents to Borrower, (ii) require the Escrow Agent to return the Borrower Closing Documents to Borrower and the Lender Closing Documents to Lender, (iii) proceed to exercise all of its rights and remedies under the Loan Documents and at law and in equity, or (iv) cure such defaults and add the cost of such cure to the balance of the Loan.

16. **Memorandum of Agreement.** Borrower agrees that, upon a request by Lender, Borrower will execute and record a memorandum of this Agreement, which memorandum will be in form and substance satisfactory to Lender, in its sole discretion.

17. **Limitation on Conveyance.** None of the transactions contemplated by this Agreement shall have the effect of conveying, and neither Lender nor the Designee shall be deemed to own or control, any part of the Property until actual delivery of the Closing Documents to the Designee.

18. **Notices.** Any notice required or permitted by or in connection with this Agreement shall be in writing and shall be made by one of the following means: (a) hand
delivery, or (b) nationally recognized overnight delivery services. Notice shall be directed to the appropriate address set forth below or to such other address as may be hereafter specified by written notice in compliance herewith. Notice shall be considered given as of the date of the hand delivery, or one (1) calendar day after delivery to the overnight delivery service.

If to Lender:  
Telephone:  
Telecopy:  
Attention:

With a copy to:  
Telephone:  
Telecopy:  
Attention:

If to Borrower:  
____________________________________  
Attention:

With a copy to:  
____________________________________  
Attention:

If to Key Principal:  
____________________________________  
Attention:

With a copy to:  
____________________________________  
Attention:

19. **Prohibition on Assignment**. This Agreement may not be assigned by Borrower or Key Principal without the prior written consent of Lender, which may be withheld for any or no reason. Any attempt to assign this Agreement without complying with the preceding sentence shall be void and without force or effect.

20. **No Release**. Nothing contained in this Agreement, the discussions or communications leading up to this Agreement or any Loan Document shall waive the acceleration of the Loan by Lender, or any right or remedy of Lender under the Loan Documents, or at law or in equity.

21. **Survival of Loan Documents**. Notwithstanding anything to the contrary contained in this Agreement, the Loan Documents are in full force and effect in accordance with their respective terms, remain valid and binding obligations of Borrower and have not been
modified or amended, and are hereby reaffirmed and ratified by the parties. The liens, security interests and assignments created by the Loan Documents are and continue to be valid, effective, properly perfected, enforceable and, except as otherwise expressly agreed to by Lender in writing, are hereby ratified and confirmed in all respects.

22. Waiver of Defenses. Borrower acknowledges and agrees that (a) the Loan Documents are the legal, valid and binding obligations of Borrower and Key Principal, enforceable against Borrower and Key Principal in accordance with their respective terms, (b) neither Borrower nor Key Principal has defenses of any nature whatsoever to the enforcement of any or all of the Loan Documents, and (c) neither Borrower nor Key Principal has claims, counterclaims or offsets against Lender or Lender’s predecessor-in-interest in respect of the Loan, or which could be asserted against Lender or Lender’s predecessor-in-interest by reason of any act, conduct or omission of Lender or of Lender’s predecessor-in-interest, nor shall this Agreement give rise to any such defenses, claims, counterclaims or offsets. The releases, waivers and acknowledgments of Borrower in this Agreement shall survive the termination or expiration of the Escrow Period for any reason.

23. Acknowledgment of Default. Borrower acknowledges and agrees that (a) Borrower is in default under the Loan Documents, and such defaults are material and entitle Lender to pursue all of its remedies, including foreclosure of the Deed of Trust, under the Loan Documents or otherwise available at law or in equity, with all applicable grace periods and requirements of notice of default having been satisfied or waived, and (b) as a result of such defaults, and the satisfaction or waiver of all applicable grace periods and notices of default, the entire Indebtedness is due and payable in full. It is expressly understood and agreed that no waiver by, or prejudice to the rights and remedies of, Lender shall be deemed to have occurred with respect to the defaults under the Loan Documents or the Indebtedness by reason of any delay or forbearance by Lender in pursuing such rights and remedies under the Loan Documents or in entering into this Agreement, and Borrower and Key Principal agree not to raise such as a defense to any subsequent foreclosure or collection action by Lender or in any affirmative claims against Lender or the Designee.

24. Release of Claims by Borrower and Key Principal. Borrower and Key Principal each, for itself and on behalf of its agents, employees, representatives, affiliates, predecessors-in-interest, successors, and assigns (such persons and entities other than Borrower and Key Principal are referred to collectively as the “Other Releasors”), does hereby release, discharge and acquit Lender, and its officers, directors, shareholders, agents, employees, servicers, and affiliates, and their respective successors, heirs and assigns (collectively, the “Released Parties”), of and from any and all rights, claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or any relationship, acts, omissions, misfeasance, malfeasance, causes of action, promises, damages, costs, losses and expenses of every kind, nature, description or character, and irrespective of how, why, or by reason of what facts, which could or may be claimed to exist, whether known or unknown, suspected or

5 In most deed in lieu transactions, the Lender will also be asked to give a release or covenant not to sue.

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EXHIBIT A
unsuspected, liquidated or unliquidated, claimed or unclaimed, whether based on contract, tort, breach of any duty, or other legal or equitable theory of recovery, each as though fully set forth herein at length (collectively, the “Claims”), which in any way arise out of, are connected with or relate to any or all of the following: (a) the Loan or the servicing or administration of the Loan, as well as any action or inaction of the Released Parties or any of them with respect to the Loan or the servicing or administration thereof; (b) any or all of the transactions which are the subject of or contemplated by any or all of the Loan Documents; (c) the Property; (d) this Agreement or enforcement of this Agreement; or (e) any fact, matter or transaction existing or occurring as of or prior to the execution of this Agreement by the parties and relating to the Loan. As to all matters being released by Borrower, Key Principal and the Other Releasors pursuant to the provisions hereof, Borrower and Key Principal each, for itself and on behalf of the Other Releasors, expressly acknowledges that the Release of Claims set forth in this Section 24 applies to all Claims whether or not known to Borrower or Key Principal or suspected by Borrower or Key Principal to exist. Borrower and Key Principal each, for itself and on behalf of all Other Releasors, warrants and represents to Lender that neither Borrower, Key Principal, nor any or all of the Other Releasors have sold, assigned, transferred, conveyed or otherwise disposed of any Claims which are the subject of this Section 24. Borrower and Key Principal each, for itself, and on behalf of all Other Releasors, acknowledges and agrees that the facts with respect to which the release of Claims contained in this Section 24 is executed may hereafter be found to be different from the facts now believed by Borrower and Key Principal to be true, and Borrower and Key Principal each, for itself and on behalf of all Other Releasors, expressly accepts and assumes the risks of such possible differences and agrees that the release of Claims contained in this Section 24 shall be and remain effective notwithstanding such differences in facts.

25. **No Admission of Liability.** Nothing contained in this Agreement, including the terms of Section 24 above, constitutes or shall be construed as an admission by Lender of any liability whatsoever.

26. **Modifications and Waivers.** No delay on the part of either party in exercising any right, power or privilege hereunder, shall operate as a waiver thereof, nor shall any waiver of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege hereunder. All rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies which the parties hereto may otherwise have at law or in equity. No waiver, modification, discharge or amendment of this Agreement will be valid in the absence of the written and signed consent of the party against which enforcement of such is sought.

27. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of [_____] applicable to contracts to be performed entirely within such state.

28. **No Third Party Beneficiaries; Successors and Assigns.** Except with respect to the rights and benefits granted to the Designee under this Agreement and the Closing
Documents, nothing in this Agreement is intended to or shall confer any rights or remedies upon any person, other than the parties hereto and, subject to any restrictions on assignment contained in this Agreement and the other Loan Documents, their respective successors and assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

29. **Relationship of Parties.** Nothing contained in this Agreement or the other Loan Documents constitutes or shall be construed as the formation of a partnership, joint venture, tenancy-in-common, or any other form of co-ownership between Lender and Borrower, Key Principal, or any other person, or the creation of any confidential or fiduciary relationship of any kind between Lender and Borrower, Key Principal, or any other person. Lender shall not be deemed to be a partner, joint venturer, cotenant, trustee, or fiduciary with respect to Borrower, Key Principal, or any other person as a result of this Agreement, any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents. Borrower and Key Principal each acknowledges and agrees that Lender has at all times acted and shall at all times continue to be acting only as a lender to Borrower within the normal and usual scope of activities of a lender.

30. **Fees.** Borrower acknowledges and agrees that the Indebtedness shall include all actual out-of-pocket costs, charges and expenses paid or incurred by Lender in connection with (a) the preparation of this Agreement and the other documents and transactions contemplated by this Agreement, including attorneys’ fees and costs, and (b) any inspections, investigations and other due diligence conducted by Lender with respect to the Property or the operations thereof during the Escrow Period. Nothing in this Agreement shall diminish or otherwise limit any obligation Borrower may have under the Loan Documents with respect to payment of Lender’s costs and expenses, or prevent Lender from requiring Borrower to pay all such costs and expenses in accordance with the terms of the Loan Documents. Borrower and Key Principal further acknowledge and agree that the Indebtedness shall include all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, which Lender may incur in connection with (i) the administration of this Agreement, (ii) the exercise or enforcement of any of the rights of Lender hereunder, or (iii) the failure by Borrower or Key Principal to perform or observe any of the provisions hereof. Without limiting the generality of the foregoing, such costs and expenses shall include all attorneys’ fees and costs incurred by Lender in connection with any federal or state bankruptcy, insolvency, reorganization, or other similar proceeding by or against Borrower which in any way affects Lender’s exercise of its rights and remedies under any or all of the Loan Documents.

31. **Borrower and Key Principal Cooperation.** During the Escrow Period, and thereafter if the Closing Documents are delivered to the Designee, Borrower and Key Principal shall each use its best efforts to ensure an orderly transition of the Property, so as not to affect adversely its continued operation.

32. **Advice of Counsel.** As a part of the consideration for this Agreement and prior to the execution and delivery hereof, each party hereto has fully informed itself of the terms, conditions and effects of this Agreement and the Conveyance Documents, and, to the
extent the parties hereto desire to do so, each party has had this Agreement and the documents to be executed and delivered pursuant to this Agreement reviewed by an attorney or attorneys of its choice and fully understands the effect hereof, including specifically, but without implied limitation, all federal income tax consequences of the consummation of the transactions contemplated hereby. No promise or representation of any kind has been made by Lender, or anyone acting on Lender’s behalf, to Borrower, or anyone acting on Borrower’s behalf, except as expressly stated in this Agreement, and Borrower agrees and represents that it is executing this Agreement of its own free will in reliance on its own judgment and the advice of its own legal counsel.

33. **Consideration.** Borrower and Key Principal each (i) does not, and shall at no time in the future, dispute the aggregate fair market value of the Property of $_________________, and (ii) acknowledges and agrees that, in any event, the aggregate fair market value of the Property is substantially less than the outstanding balance under the Loan. Further, Borrower and Key Principal each acknowledges and agrees that it is entering into this Agreement to, among other reasons, avoid further operating losses with respect to the Property, and that such avoidance, and Lender’s promises contained herein, constitute good and sufficient reasons and consideration for Borrower’s and Key Principal’s agreements herein.

34. **Non-Recourse.** Borrower’s and Key Principal’s obligations hereunder shall be subject to the non-recourse provisions of the Loan Documents.6

35. **Descriptive Headings; Interpretation.** The headings to sections of this Agreement are for convenient reference only, do not in any way limit or amplify the terms of this Agreement, and shall not be used in interpreting this Agreement. For purposes of this Agreement: (a) the term “including” shall be deemed to mean “including, without limitation,”; (b) the term “Loan Documents” shall be deemed to include, without limitation, this Agreement; (c) the term “person” means any natural person or any entity, including any corporation, partnership, joint venture, trust, limited liability company, unincorporated organization or association, or trustee; and (d) whenever the context of this Agreement reasonably requires, all words used in the singular shall be deemed to have been used in the plural, and the neuter gender shall be deemed to include the masculine and feminine gender, and vice versa. This Agreement has been prepared and drafted through a joint effort of the parties and, therefore, shall not be construed against any of the parties as the person who prepared or drafted this Agreement.

36. **Entire Agreement.** This Agreement, the documents to be delivered pursuant to this Agreement, and the other Loan Documents contain the entire agreement and understanding between the parties concerning the matters covered by this Agreement and the other Loan Documents, and supersede all prior and contemporaneous agreements, statements, understandings, terms, conditions, negotiations, representations and warranties, whether written or oral, made by Lender, Borrower or Key Principal concerning the matters covered by this Agreement and the other Loan Documents.

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6 Not always applicable. See discussion in article for possibly having certain specified representations such as those regarding prior distributions, made on a recourse basis.

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37. **Time of the Essence.** Time is of the essence of each provision of this Agreement.

38. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

39. **Press Communications.** Neither Borrower, Key Principal, nor Lender shall issue releases, or otherwise disclose the contents of this Agreement or any of the other Loan Documents or the Closing Documents, to any news organizations, media or publishers without first obtaining the written consent of the other party.

40. **Confidentiality.** Neither Borrower nor Key Principal will disclose to any person (a) the fact that any discussions or negotiations are taking place or have taken place concerning this Agreement, or (b) any of the terms, conditions, or other facts with respect to this Agreement, unless and only to the extent that such disclosure (1) (after making reasonable efforts to avoid such disclosure and after advising and consulting with Lender and its counsel about Borrower or Key Principal’s intention to make, and the proposed contents of, such disclosure) is, in the opinion of Borrower or Key Principal’s counsel, required by applicable United States securities or other laws, or (2) is in litigation, arbitration or other dispute resolution between any of Borrower or Key Principle and Lender Parties. The term “person” as used in this Agreement shall be broadly interpreted to include the media and any corporation, partnership, group, individual, or other entity. Borrower or Key Principal may disclose the above restricted matters to any investor, legal, lender or accounting professional or any employee.

In the event that Borrower or Key Principal is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or similar legal process) to disclose any of the terms, conditions, or other facts with respect to the Agreement, it is agreed that, unless prohibited by law, Borrower or Key Principal will provide Lender, to the extent permitted by law, with prompt notice of such request(s) so that it or another Lender Party, as appropriate, may seek an appropriate protective order or other appropriate remedy and/or waive such Borrower or Key Principal’s compliance with the provisions of this Agreement. Borrower or Key Principal agrees to cooperate with Lender, at Lender’s expense, in any efforts to obtain such remedies. In the event that such protective order or other remedy is not obtained, or that Lender grants a waiver hereunder, Borrower or Key Principal may furnish that portion (and only that portion) of the information which, in the written opinion of Borrower or Key Principal’s counsel, Borrower or Key Principal are legally compelled to disclose and will exercise Borrower or Key Principal’s reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any information so furnished. This Section 40 shall survive Closing for a period of 3 years.

41. **Counterparts.** This Agreement may be executed in any number of counterparts so long as each signatory hereto executes at least one such counterpart. Each such
counterpart shall constitute one original, but all such counterparts taken together shall constitute one and the same instrument. Any counterpart may be executed by facsimile copy.

42. **No Electronic Transactions.** The parties hereby acknowledge and agree this Agreement shall not be executed, entered into, altered, amended or modified by electronic means. Without limiting the generality of the foregoing, the parties hereby agree the transactions contemplated by this Agreement shall not be conducted by electronic means, except as specifically set forth in the “Notices” section of this Agreement.

43. **Lender’s Liability.** If this Agreement is terminated before Closing for any reason whatsoever, Lender will not be liable for any obligations under this Agreement. It is acknowledged and agreed that Lender has, and will continue to incur, substantial expenses from the date of this Agreement for the purpose of completing the transactions contemplated hereby, and that Lender’s incurring of such expenses constitutes fair, adequate, sufficient, and good consideration. Nothing contained in this Agreement modifies the Loan Documents or shall be deemed to waive, modify, or limit any of Lender’s rights and remedies, all those rights and remedies being expressly reserved. Nothing contained in this Agreement will be construed, before Closing, as a waiver by Lender of any defaults by Borrower under the Loan Documents. Lender reserves the right at any time before Closing to enforce any or all of its rights and remedies arising under the Loan Documents or otherwise pursuant to law or equity without notice. In no event after Closing shall Lender be personally or individually liable for any obligation set forth in this Agreement.

44. **No Oral Agreements.** THIS AGREEMENT AND THE ATTACHMENTS AND EXHIBITS HERETO REPRESENT THE FINAL, ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OR PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. THE PROVISIONS OF THIS AGREEMENT MAY BE AMENDED OR WAIVED ONLY BY AN INSTRUMENT SIGNED BY ALL OF THE PARTIES HERETO.

45. **WAIVER OF RIGHT TO JURY TRIAL.** BORROWER AND KEY PRINCIPAL EACH IRREVOCABLY WAIVES ALL RIGHTS TO A JURY TRIAL IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY MIND ARISING OUT OF OR IN ANY WAY RELATING TO THE LOAN, ANY OF THE LOAN DOCUMENTS, THE PROPERTY AND ANY OTHER REAL AND PERSONAL PROPERTY COLLATERAL SECURING THE LOAN, OR ANY OF THE TRANSACTIONS WHICH ARE CONTEMPLATED BY THE LOAN DOCUMENTS OR THIS AGREEMENT. THE JURY TRIAL WAIVER CONTAINED IN THIS SECTION IS INTENDED TO APPLY, TO THE FULLEST EXTENT PERMITTED BY LAW, TO ANY AND ALL DISPUTES AND CONTROVERSIES THAT ARISE OUT OF OR IN ANY WAY RELATE TO ANY OR ALL OF THE MATTERS DESCRIBED IN THE PRECEDING SENTENCE, INCLUDING
CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER COMMON LAW AND
STATUTORY CLAIMS OF ANY KIND. THE WAIVER CONTAINED IN THIS SECTION
SHALL APPLY TO ALL SUBSEQUENT EXTENSIONS, RENEWALS, MODIFICATIONS
AND REPLACEMENTS OF ANY OR ALL OF THE LOAN DOCUMENTS. THIS
AGREEMENT MAY BE FILED WITH ANY COURT OF COMPETENT JURISDICTION AS
BORROWER’S AND KEY PRINCIPAL’S WRITTEN CONSENT TO THE WAIVER OF A
JURY TRIAL. BORROWER AND KEY PRINCIPAL HAVE INITIALED THIS SECTION
BELOW TO INDICATE THEIR AGREEMENT WITH THE JURY TRIAL WAIVER AND
OTHER TERMS CONTAINED IN THIS SECTION.

BORROWER’S INITIALS: __________ KEY PRINCIPAL’S INITIALS: ________

46. REVIEW BY BORROWER AND KEY PRINCIPAL WITH
INDEPENDENT COUNSEL. BORROWER AND KEY PRINCIPAL EACH
ACKNOWLEDGES AND AGREES THAT: (A) BORROWER AND KEY PRINCIPAL EACH
HAS CAREFULLY READ AND UNDERSTANDS ALL OF THE TERMS OF THIS
AGREEMENT; (B) EACH HAS EXECUTED THIS AGREEMENT FREELY,
VOLUNTARILY AND OF ITS OWN INITIATIVE, AFTER HAVING CONSULTED WITH
ITS INDEPENDENT LEGAL COUNSEL AND AFTER HAVING HAD ALL OF THE
TERMS OF THIS AGREEMENT EXPLAINED BY ITS INDEPENDENT LEGAL COUNSEL;
(C) THE WAIVERS AND RELEASES CONTAINED IN THIS AGREEMENT HAVE BEEN
INTENTIONALLY, INTELLIGENTLY, KNOWINGLY AND VOLUNTARILY AGREED
TO; (D) THE WAIVERS AND RELEASES CONTAINED IN THIS AGREEMENT HAVE
BEEN AGREED TO WITH FULL KNOWLEDGE OF THEIR SIGNIFICANCE AND
CONSEQUENCES, INCLUDING FULL KNOWLEDGE OF THE SPECIFIC NATURE OF
ANY RIGHTS OR DEFENSES WHICH EACH HAS AGREED TO WAIVE OR RELEASE
PURSUANT TO THIS AGREEMENT; (E) EACH HAS HAD A FULL AND ADEQUATE
OPPORTUNITY TO NEGOTIATE THE TERMS CONTAINED IN THIS AGREEMENT AND
THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY ARE NOT
THE RESULT OF FRAUD, DURESS OR UNDUE INFLUENCE; (F) EACH IS
EXPERIENCED IN AND FAMILIAR WITH TRANSACTIONS OF THE TYPE EVIDENCED
BY THIS AGREEMENT; AND (G) THE WAIVERS AND RELEASES CONTAINED IN
THIS AGREEMENT ARE MATERIAL INDUCEMENTS TO LENDER’S EXECUTION OF
THIS AGREEMENT, AND LENDER HAS RELIED ON SUCH WAIVERS AND RELEASES
IN ENTERING INTO THIS AGREEMENT AND WILL CONTINUE TO RELY ON SUCH
WAIVERS AND RELEASES IN ANY RELATED FUTURE DEALINGS WITH BORROWER
AND KEY PRINCIPAL.

[remainder of page left blank intentionally]
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth on page 1.

BORROWER:

________________________________________

By: _________________________________

Name: ________________________________

Its: _________________________________

KEY PRINCIPAL:

________________________________________

By: _________________________________

Name: ________________________________

Its: _________________________________

LENDER:

By: _________________________________

Name: ________________________________

Its: _________________________________

Many forms contain full sets of pre-negotiated closing documents.
DEED IN LIEU OF FORECLOSURE AGREEMENT

by and between

______________________________

as

BORROWER

and

______________________________

as

LENDER
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DEED-IN-LIEU OF FORECLOSURE AGREEMENT

THIS DEED-IN-LIEU OF FORECLOSURE AGREEMENT (this “Agreement”) is executed as of the ___ day of ___________, 200__, by and between ____________________________, a limited liability company (“Borrower”), with an address ____________________________, and ____________________________, a ____________________________, (“Lender”), with an address ____________________________.

WITNESSETH THAT:

A. On ______________, Borrower, as maker, executed that certain [Mortgage Note] in the original principal amount of $______________ dated ____________________ (the “Note”), payable to the order of Lender.

B. As security for payment of the Note, Borrower executed and delivered for the benefit of Lender, among other things, (i) that certain [Mortgage, Assignment of Leases and Rents and Security Agreement] dated as of ______________ (as has been and may be amended, modified, restated or in effect from time to time, the “Mortgage”), recorded on ______________ with the [Registry of Deeds] of ______________ County, ______________ (the “Records”), encumbering certain real property known as ____________________________, which property is more particularly described on the attached Exhibit A (the “Land”), and other appurtenant rights, privileges, easements and amenities located on or appertaining to the Land (all of the foregoing are sometimes referred to as the “Project”) and all appurtenances thereto and improvements thereon and (ii) all other documents and instruments acting as security for or executed in connection with the loan (the “Loan”) evidenced by the Note and the Mortgage (the “Other Loan Documents”). The Note, the Mortgage and the Other Loan Documents are herein collectively referred to as the “Loan Documents”.

C. Lender is the current holder of the Note, the Mortgage and the Other Loan Documents.

D. Borrower is currently in default under the Loan and, in accordance with the terms of the Loan Documents, all amounts outstanding under the Loan Documents are due and payable as of the date of this Agreement.

E. The parties hereto desire to resolve all rights, duties and obligations relating to the Loan and the Loan Documents without the necessity of foreclosure by providing for the conveyance of the Project to Lender, or its nominee, by Borrower under the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration received to the full satisfaction of each of them, the parties agree as follows:

1. Closing. Simultaneously with the execution of this Agreement (the “Closing Date”), Borrower agrees to convey to Lender, and Lender agrees to accept from Borrower, under the terms and conditions set forth below, all of Borrower’s right, title and interest in and to the Project, all personal property of Borrower located on or at the Project and any easements,
licenses or other arrangements with respect to adjacent properties that benefit the Project, including, without limitation, the following:

(a) All buildings and improvements located on or in the Project (collectively, the “Improvements”);

(b) All furniture, fixtures, plumbing, incinerators, lighting equipment, sprinkler systems, smoke detectors, parking area, maintenance equipment, building equipment, radiators, furnaces, boilers, hot water heaters, water systems, air conditioning equipment and all other tangible personalty located on or in or attached to or used in connection with the Project owned by Borrower, in their “as is” condition except as otherwise expressly provided herein (the “Personal Property”);

(c) All of Borrower’s right, title and interest in and to all leases, licenses and other occupancy agreements with respect to the Project (collectively the “Leases”) including, without limitation, all security deposits and pre-paid rent paid by tenants (the “Tenants”) under the Leases and any other rights of Borrower as landlord under the Leases, including, but not limited to, any and all income, payments (whether due as of or prior to the effective date of this Agreement or made or due on or after the effective date of this Agreement), receivables, revenues, profits or other value generated by or through the Leases or the Project;

(d) To the extent that Lender has agreed by written notice to Borrower to assume any of the contracts for service, labor, maintenance, repair and operation (but excluding any contracts for management) of the Project (the “Service Contracts”) as provided for in Section 4 hereof, then all of Borrower’s right, title and interest in and to any specifically assumed Service Contract (the “Designated Service Contracts”);

(e) All of Borrower’s right in any escrow or reserve deposits currently held by or for the benefit of Lender and all of Borrower’s right in any operating accounts and/or cash management accounts for the Project (the “Project Deposit Accounts”);

(f) All of Borrower’s rights in any uncollected receivables pertaining to the Project, including but not limited to any and all recoveries, awards and other payments in connection with any litigation with respect to the Project (the “Project Receivables”); and

(g) All intangible property used by Borrower in connection with Borrower’s development, use and operation of the Project, including, without limitation, plans and specifications, reports, permits, licenses, certificates of occupancy, development rights, warranties, guaranties, telephone exchanges, trademarks and the name of the Project (collectively, the “Intangible Property”).

All of the foregoing assets and properties to be acquired by Lender are hereinafter collectively referred to as the “Property”.

2. **Instruments of Conveyance.**

(a) The following documents shall be executed by Borrower and delivered to Lender on the Closing Date (“Instruments of Conveyance”):
(i) A Special Warranty Deed, in the form attached hereto as Exhibit B (the “Deed”), conveying good, record, marketable and insurable fee simple title to the Land and Improvements to Lender (or its nominee), subject to (i) zoning ordinances and regulations; (ii) real estate taxes and general and special assessments which are not due and payable as of the Closing Date; and (iii) any and all easements, covenants, conditions, encumbrances, liens, reservations and restrictions acceptable to Lender or otherwise listed on ______________ Title Insurance Company Loan Policy of Title Insurance No. ______________ with an effective date of ______________ (the “Loan Policy”) issued in connection with the Loan (collectively, the “Permitted Exceptions”).

(ii) A Bill of Sale, in the form attached hereto as Exhibit C (the “Bill of Sale”), conveying good and unencumbered title to the Personal Property to Lender (or its nominee). Borrower shall warrant that the Personal Property is free of any liens or encumbrances but otherwise Lender agrees to take the Personal Property in its “as-is” condition;

(iii) An assignment of the Leases, the Designated Service Contracts, the Project Deposit Accounts, the Project Receivables, the Intangible Property, the Insurance Claims (as hereinafter defined) and the Insurance Premiums (as hereinafter defined), in the form attached hereto as Exhibit D (collectively, the “Assignment and Assumption”) assigning all of Borrower’s right, title and interest in the Leases, the Designated Service Contracts, the Project Deposit Accounts, the Project Receivables, the Intangible Property, the Insurance Claims and the Insurance Premiums to Lender (or its nominee). The Assignment and Assumption shall include: (a) an assignment of all security deposits and prepaid rent paid to Borrower by Tenants as of the Closing Date as well as an assignment of any and all of Borrower’s right as the landlord under the Leases to receivables, revenues, profits or other value generated by or through the Project, among other things; (b) an assignment of the proceeds from any claims made or to be made under any property casualty insurance policies that Borrower maintains with respect to the Property (the “Policies”), as well as the right, coupled with a power of attorney, to act on behalf of the named insured under the Policies, to settle and compromise any such claims made or to be made with respect thereto (collectively, the “Insurance Claims”); and (c) an assignment of any excess or unearned premiums that are returned to Borrower after Closing (collectively, the “Insurance Premiums”). Borrower shall terminate the Policies by written letters dated as of the Closing Date, which such letters shall request an immediate refund of the Insurance Premiums, and shall have the obligation, which shall survive Closing, to deliver to Lender any monies Borrower receives after Closing from any insurance companies with respect to the Property, whether as a result of Insurance Claims or Insurance Premiums, including, without limitation, the obligation to endorse any checks payable to Borrower, either jointly or alone, to Lender or otherwise delivering such monies to Lender promptly upon receipt by Borrower.

(b) Prior to, at and after the Closing Date, each party shall also execute and deliver to the other party, such further instruments of conveyance, sale, assignment or transfer and shall take or cause to be taken such other or further action as such other party shall reasonably request at any time or from time to time in order to: (1) convey, vest, confirm or
evidence in Lender (or its nominee) title to all or any part of the Property intended to be conveyed, sold, transferred, assigned and delivered to Lender under this Agreement; or (ii) in any other manner effectuate the terms and conditions of this Agreement. In addition, Borrower will deliver to Lender a final accounting of the Property’s revenues and expenses through the Closing Date within twenty (20) days after Closing. The provisions of this Subsection shall survive Closing.

(c) Borrower acknowledges and agrees that Lender, by its acceptance of title to the Property and the Closing documents, does not assume or create any obligations on the part of Lender to third parties that have claims or liabilities of any kind whatsoever against Borrower or the Property that accrued prior to the Closing Date. Borrower further acknowledges and agrees that Lender is not, and never has been, a venturer, co-venturer, insurer, guarantor or partner of Borrower in Borrower’s ownership of the Property prior to Closing and that Lender bears and shall bear no liability whatsoever resulting from or arising out of Borrower’s ownership of the Property prior to Closing. Therefore, Borrower agrees to indemnify and hold harmless Lender from and against any and all losses, claims, demands, damages, costs and expenses of whatsoever kind or nature including reasonable attorneys’ fees, related to or arising out of any claims against Lender as a result of Borrower’s ownership of the Property prior to Closing. The provisions of this Subsection shall survive Closing.

(d) This Agreement and the Instruments of Conveyance are intended to be and are acknowledged by Borrower to effect an absolute conveyance and unconditional transfer of its interests in the Property and all rights, titles, interests, income, rents, rent equivalents, issues, revenues, royalties and profits in connection therewith as of the date hereof, and are not given as security, PROVIDED THAT title to the Property shall remain subject to the Mortgage to the full extent of the Indebtedness (as such term is defined in the Loan Documents) and all obligations arising thereunder. In the event that, contrary to the foregoing, it is at any time hereafter determined that Borrower had any equitable and/or statutory rights of redemption for the Property, then, for the considerations herein set forth, Borrower hereby sells, transfers and conveys to Lender and waives for itself any and all equitable statutory rights of redemption with respect to the Property.

3. **Title Policy.** Lender has obtained an ALTA owner’s title commitment (the “Title Commitment”) issued by ____________ Title Insurance Company (the “Title Company”), showing Borrower to be vested with fee simple title to the Project and agreeing to issue to Lender an ALTA owner’s title insurance policy in an amount designated by Lender (the “Owner’s Policy”). Borrower shall execute all documents and deliver all materials reasonably required by the Title Company to delete the standard exceptions, including the standard exceptions for parties in possession, mechanic’s liens, status of taxes and assessments, matters of survey and unrecorded easements, to delete the “gap” exclusion, and to enable the Title Company to issue the Owner’s Policy without any creditors’ rights exception and with such other endorsements as are contained in the Title Commitment. Such affidavit shall be in the form attached hereto as Exhibit E (the “Title Affidavit”).

4. **Service Contracts.** Attached hereto as Exhibit F is a true and correct listing of all Service Contracts, true and correct copies of which have been delivered to Lender. Except as otherwise provided herein all Service Contracts shall be terminated by Borrower as of the
Closing Date and Borrower shall pay any and all termination and/or other fees, costs and expenses in connection with said termination(s), which obligation shall survive Closing. Lender may, with prior written notice to Borrower and in Lender’s sole and absolute discretion, elect to assume one or more of the Service Contracts, which will be deemed thereafter to be Designated Service Contracts, but has no obligation to do so. Borrower shall pay on or before the Closing Date any fees that have accrued or may accrue under any Designated Service Contract to be assumed by Lender through and including the Closing Date and provide written evidence thereof to Lender. To the extent such fees have not been paid on or before the Closing Date, Borrower’s obligation to pay them shall survive Closing. In no event shall Lender assume any contract for management of the Property.

5. Closing Date and Possession. On the Closing Date, Lender shall record the Deed and any other necessary documents for record; provided that all necessary funds and documents have been delivered to Lender and that the Title Company can issue the Owner’s Policy on the Closing Date in accordance with the requirements set forth in Section 3 hereof (the foregoing is referred to as the “Closing”).

6. Closing.

(a) At Closing, Borrower shall execute and/or deliver to Lender originals of all of the items listed below:

(i) The Deed and any other required state and local transfer tax declarations and affidavits required to be executed by Borrower;

(ii) The Bill of Sale;

(iii) Two counterparts of the Assignment and Assumption;

(iv) The Title Affidavit;

(v) A settlement statement of the transaction (the “Settlement Statement”);

(vi) All keys and security cards and codes and all other access and/or alarm codes and combinations to the Property in Borrower’s possession;

(vii) All Intangible Property in Borrower’s possession;

(viii) Letters in form attached hereto as Exhibit J addressed to the vendors under the Service Contracts, other than the Designated Service Contracts, informing them, in accordance with the terms hereof, that their services are being terminated, pursuant to Section 4;

(ix) Letters in form attached hereto as Exhibit K addressed to the vendors under the Designated Service Contracts, informing them, in accordance with the terms hereof, that Lender will be assuming the contract, pursuant to Section 4;
(x) Letters in form attached hereto as \textbf{Exhibit L} addressed to all Tenants, informing the Tenants that Lender has obtained title to the Property as of the Closing Date and has taken an assignment of all Leases and that all future rent should be paid to Lender or its nominee;

(xi) Certificate from the office of the Secretary of State of \_
\_
\_
\_
showing that Borrower is in good standing under the laws of the State of \_
\_
\_
\_

(xii) Any funds held by Borrower in any operating accounts and other accounts maintained for the Property pursuant to Section 8 of this Agreement

(xiii) Evidence reasonably satisfactory to Lender and the Title Company that all documents executed by Borrower at Closing were duly authorized, executed and delivered, including incumbency of all signatories to the Closing documents and all documents required by the Title Company to insure title to the Property is in accordance with the terms of the Commitment;

(xiv) Release of claims against Lender, Lender’s predecessors, successors, and nominees relating to the Property and the Loan in the form attached hereto as \textbf{Exhibit H} from Borrower and \_
\_
\_
\_
(collectively, “\textbf{Guarantors}”);

(xv) A termination of the management agreement with the then current property manager effective as of the Closing Date, which termination agreement shall include provisions that the property manager has been paid in full and releases Borrower and Lender from all obligations under the management agreement;

(xvi) All Leases, including any assignments, amendments, side letters or letter agreements, subleases, commencement date memoranda or similar documents, and estoppel certificates and brokerage agreements related thereto and other correspondence with Tenants with respect to the Property; and

(xvii) A schedule of all Personal Property with respect to the Property.

(b) At Closing, and provided that Borrower simultaneously performs its obligations under Section 7(a), Lender shall execute and/or deliver to Borrower all of the items listed below:

(i) The Settlement Statement;

(ii) Two counterparts of the Assignment and Assumption;

(iii) The Lender’s Release with respect to certain claims against Borrower and Guarantors relating to the Loan in the form attached hereto as \textbf{Exhibit I}.

(c) Possession of the Property, subject only to the rights of Tenants, shall be delivered by Borrower to Lender at Closing.
7. **Expenses.** [MODIFY PER BUSINESS DEAL]

(a) The following costs and expenses of this transaction shall be chargeable to, and paid by, Borrower at Closing:

(i) All real property conveyance taxes and fees in connection with the conveyance and transfer of the Property to Lender, including, without limitation, all transfer taxes and recording and filing fees due upon recording of the Deed;

(ii) The recording costs for any title clearing instrument(s);

(iii) Any fee payable in connection with the termination of any Service Contract to be terminated in accordance with the terms hereof; and

(iv) All of Borrower’s attorneys’ fees and costs.

(b) The following costs and expenses of this transaction shall be chargeable to, and paid by Lender, at Closing:

(i) The cost of the Title Commitment, Owner’s Policy and any related title search expenses, at minimum promulgated rate;

(ii) The cost of any survey obtained by Lender;

(iii) All of Lender’s attorneys fees and costs; and

(iv) The costs for any environmental assessment report(s) obtained by Lender.

8. **Prorations and Credits.** [Borrower and Lender agree that, at Lender’s discretion, customary items may be prorated in connection with this transaction. MODIFY AS NEEDED PER BUSINESS DEAL.] The funds in any escrow, reserve, operating or other accounts held by, or for the benefit of, Lender or the Project pursuant to the Loan Documents shall become the property of Lender at Closing and Borrower shall have no further right or interest in said funds. The funds in any operating accounts held by Borrower with respect to the Property shall be delivered to Lender at or prior to Closing with the accounting required under Section 2(b) of this Agreement and Borrower shall have no further right or interest in said funds.

Borrower shall transfer all security deposits and prepaid rent paid under any Leases to Lender at Closing and Borrower shall not receive any credit therefor. To the extent any Designated Service Contract has been prepaid or a deposit exists thereunder, Lender shall receive the benefit thereof and Lender shall not be required to reimburse Borrower for any such prepayment or deposit. Any uncollected receivables of rent or other income under the Leases shall belong to Lender as of the Closing Date. In the event any rents or other income are received by Borrower with respect to the Property after the Closing Date, such rents or other income shall be immediately delivered to Lender. Borrower shall have paid all accounts payable and other expenses of the Property through the Closing Date, and Lender is not assuming any
obligation for the payment of any such accounts payable or other expenses of the Property for any period prior to the Closing Date. The provisions of this Section shall survive Closing.

9. **Representations and Warranties of Borrower.** Borrower represents and warrants to Lender that:

(a) Borrower is a limited liability company organized and in good standing under the laws of the State of ____________, is duly authorized to transact business in the State of ____________, has all necessary power and authority to enter into this Agreement, all actions required to be taken by Borrower to approve or authorize the execution, delivery and performance of this Agreement and consummation of these transactions have been taken, and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby constitute the valid and binding obligation of Borrower in accordance with its terms. The person(s) executing and delivering this Agreement and the Closing documents on behalf of Borrower have all necessary power and authority, without the joinder of any other party, to execute and deliver this Agreement and to consummate the transaction contemplated hereby on behalf of Borrower.

(b) Borrower has received no written notices or citations for the violation of any zoning, building, environmental or other law, ordinance, regulation or directive of any governmental authority or authorities having jurisdiction relating to the Property, or any part or parts thereof, and Borrower has received no written notices from any Tenants of the existence of any facts or conditions which may result in the issuance of any such notice or citation.

(c) Borrower has received no notice and has no actual knowledge of any litigation, proceeding, condemnation, or action pending or threatened against or relating to the Property being conveyed to Lender hereunder which might adversely affect Lender or which questions the validity of this Agreement or any action taken or to be taken by Borrower pursuant hereto.

(d) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will constitute a violation of or be in conflict with or constitute a default under the Mortgage nor any term or provision of any agreement, instrument or lease to which Borrower is a party.

(e) Borrower has not distributed any cash flow derived from the operation of the Project in violation of the terms of the Loan Documents.

(f) A copy of the current Rent Roll for the Project is attached hereto as Exhibit G (the “Rent Roll”). The Rent Roll lists all Tenants and any other persons or parties having a right of possession in and to the Property. Borrower has not entered into any leases, contracts or agreements affecting possession of the Property other than the Leases. Borrower has delivered true and correct copies of all Leases to Lender.

(g) Borrower has not instituted any action contesting the real estate taxes or assessments assessed against the Property.
(h) A list of all Service Contracts affecting the Property is attached hereto as Exhibit F. Borrower has delivered true and correct copies of all Service Contracts to Lender.

(i) Borrower has not received any written notice from any of its insurer(s) to the effect that the Property (or any portion of it) is not insured as required by the Loan Documents.

(j) Borrower has provided Lender with access to all of the plans and specifications, engineering, reports, and other construction related materials relative to the Property.

(k) Borrower has not sold, assigned, conveyed, transferred, mortgaged, hypothecated, pledged or encumbered the Property, or any portion thereof, except for the Mortgage.

(l) Neither Borrower nor any of its members or managers has pledged any interests in Borrower or the Property to any third party as collateral or security for any obligation of Borrower or any of its members or managers except in connection with the Loan. No consent of any lender of Borrower or any member or manager or any third party is required in order for Borrower to enter into or fulfill its obligations under this Agreement.

(m) No court having jurisdiction has entered a decree or order for relief with respect to Borrower in any involuntary case under any bankruptcy, insolvency, or similar law or appointed a receiver, liquidator, assignor, custodian, trustee or similar official for Borrower, or ordered the winding up or liquidation of the affairs of Borrower, nor has Borrower filed or caused to be filed, or have an intent to file or cause to be filed, a petition for relief or commenced a voluntary case under any bankruptcy, insolvency or similar law, consented to the entry of an order for relief in an involuntary case under any such law, or consented to the appointment of, or taking of possession by, a receiver, liquidator, assignee, trustee, custodian, or similar official for Borrower, nor has Borrower made any general assignment for the benefit of creditors or failed to pay its debts as they became due (as such debts relate to the Property), nor has any order, judgment or decree been entered decreeing the dissolution of Borrower.

(n) Borrower intends to transfer and convey to Lender all of Borrower’s right, title and interest in and to the Property and this transaction is not intended as a mortgage, trust conveyance, deed of trust or security instrument of any kind. After the Closing, Borrower will not have any further interest (including rights of redemption) or claims in and to the Property or to the proceeds and profits that may be derived therefrom. The Property being transferred to Lender represents all of the property, real or personal, owned by Borrower and after the Closing Borrower shall have no debts or liabilities to any party. This Agreement and the transaction to occur hereunder are Borrower’s free and voluntary acts, Borrower has consulted with and has been represented by counsel, and Borrower is not acting under duress, undue influence, misapprehension or misrepresentation by Lender.

(o) Borrower has made an independent determination of the fair market value of the Property and as a result thereof, it has concluded that the value of the Property does not
exceed the consideration (including delivery of the Lender’s Release) given by Lender to Borrower for the transfer of the Property to Lender.

(p) Lender, by its acceptance of title to the Property and the Closing documents, does not assume or create any obligations on the part of Lender to third parties that have claims or liabilities of any kind whatsoever against Borrower or the Property that accrued prior to the Closing Date, unless specifically assumed herein or in any document executed in connection herewith.

(q) Other than the taxes and fees paid by Borrower pursuant to Section 7(a)(i) hereof, to the best of Borrower’s knowledge, there are no documentary stamp, transfer or other similar taxes due on this transaction or on the Deed. Borrower agrees to indemnify and hold harmless Lender from any liabilities, costs, expenses (including attorneys’ and paralegal fees at all tribunal levels) or claims of the State of ____________, ____________ County, or any other governmental agency for documentary stamp, transfer or other similar taxes and any interest or penalties thereon which may be or become due in connection with the execution or delivery of the Deed from Borrower to Lender.

(r) Borrower as landlord has no tenant improvement obligations outstanding to any Tenants.

(s) There is no pending or threatened claim against Borrower by any Tenant for any landlord default under any Lease, nor has any event occurred which, with the giving of notice or the passage of time, or both, could ripen into a default or event of default by landlord under any Lease.

(t) Borrower is a single purpose entity as required by the terms of the Mortgage and other related loan documents held by Lender and does not now engage, nor has it engaged since the closing of the Mortgage, in any other business than the holding of title to, and leasing of, the Property. Borrower has no creditors other than Lender, except for operating expenses and leasing obligations for the Property as specifically disclosed in this Agreement.

(u) None of Borrower, or any affiliate or other entity owned or controlled by Borrower, has any affirmative defense, setoff, right of recoupment, counterclaim or other claim or defense of any nature that would constitute (x) a defense to payment of the obligations of Borrower under the Loan Documents in full, (y) a defense to the enforcement by Lender of all of its rights and remedies under the Loan Documents or (z) a claim against Lender or any of its direct or indirect owners or any of its officers, directors, employees, agents, and Borrower and any affiliate or entity owned or controlled by Borrower expressly waives any such claims or defenses.

(v) The Loan Documents and this Agreement constitute the entire agreement between the Lender and Borrower in connection with the Property. The Loan Documents to which Borrower is a party are in full force and effect and constitute the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with their terms.

(w) Each Loan Document and this Agreement are the product and result of arm’s length negotiations between the parties and no party has exerted or attempted to exert
improper or unlawful pressure or in any way attempted to induce, through threats or otherwise, the execution of any Loan Document and this Agreement by any other party to such Loan Document, Property transfer document or this Agreement. Each term, provision, stipulation, representation, warranty and all other facts, matters and agreements set forth in, referenced in or otherwise made a part of any or all of the Loan Documents and this Agreement are the results of arm’s length bargaining between the parties to the respective documents. Borrower has requested that Lender accept conveyance of title to the Property in lieu of the exercise of Lender’s remedies under the Loan Documents. Without in any way limiting the generality of the foregoing, at all times during the course of the negotiation surrounding the execution of any Loan Document or this Agreement, Borrower has, to the extent it has deemed necessary or advisable in its sole discretion, been advised and assisted by competent legal counsel, that counsel has been present and has actively participated in the negotiations surrounding the respective documents and that it has been fully advised by counsel of its choosing of the effect of each term, provision and stipulation contained within such document. Borrower has conducted such investigation of the facts, circumstances and other matters surrounding or in any way involving or otherwise material to any term, conditions, provision or statement contained in the Loan Documents and this Agreement and the contractual relationships created thereby and all other facts, matters and circumstances as it, in its sole and absolute discretion, deems material, and it has not relied upon any facts, statements or representations made by the Lender or Lender’s agents other than those representations made by Lender and expressly set forth in Section 10 of this Agreement.

(x) The conveyance of the Property and the releases described herein are intended by Borrower to be, and are made as, a contemporaneous exchange for new value to Borrower, and Borrower has not entered into this Agreement to provide preferential treatment to Lender or any other creditor.

The representations and warranties set forth above in this Section shall be deemed renewed by Borrower on the Closing Date as if made at such time and shall survive Closing.

10. **Representations and Warranties of Lender.** Lender represents and warrants to Borrower that:

(a) Lender has all necessary power and authority to enter into this Agreement, all actions required to be taken by Lender to approve or authorize the execution of this Agreement and the consummation of these transactions have been taken, and the consummation of the transactions contemplated hereby constitutes the valid and binding obligation of Lender in accordance with their terms.

(b) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will constitute a violation of or be in conflict with or constitute a default under any term or provision of any agreement or lease to which Lender is a party.

(c) The person executing this Agreement and the Closing documents on behalf of Lender is duly authorized to do so and all requisite action has been taken by Lender to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

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Exhibit B
All of the representations and warranties set forth in this Section shall be deemed renewed by Lender on the Closing Date as if made at such time.

11. **Conditions to Closing.**

   (a) Lender’s obligations under this Agreement are expressly conditioned upon the occurrence of the following events:

   (i) The representations and warranties of Borrower set forth in Section 9 shall have been true and correct when made and as of the Closing Date in all material respects; and

   (ii) Borrower shall have delivered or made available to Lender the items referred to in Subsection 6(a) and shall have delivered all due diligence items as Lender may have requested in writing.

   (b) Borrower’s obligations under this Agreement are expressly conditioned upon the occurrence of the following events:

   (i) The representations and warranties of Lender set forth in Section 10 shall have been true and correct when made and as of the Closing Date in all material respects; and

   (ii) Lender shall have delivered to Borrower the items referred to in Subsection 6(b).

   (c) If Borrower shall materially default on its obligations, including but not limited to a refusal to close, Lender shall have the right by written notice to Borrower to terminate this Agreement and in such event the parties shall be restored to their respective positions prior to executing this Agreement.

   (d) If Lender shall materially default on its obligations, including but not limited to a refusal to close, Borrower shall have the right by written notice to Lender to terminate this Agreement and in such event the parties shall be restored to their respective positions prior to executing this Agreement.

12. **Assignment.** Lender’s rights under this Agreement are freely assignable by Lender without Borrower’s consent.

13. **Termination.** A termination of this Agreement by either party hereto shall not in any way relieve the Borrower of its obligations under the Loan Documents.

14. **Mechanic’s Liens.** Borrower represents that no construction work has been performed on the Property or materials supplied for the Property and there is no person or entity to whom a debt is due for labor or materials in connection with any improvement thereof within one hundred twenty (120) days prior to the effective date of the Title Commitment for which a mechanic’s or construction lien could presently be filed. Borrower agrees to hold Lender harmless against any costs, damages and expenses incurred by Lender, including reasonable
attorney’s fees, as a result of mechanic’s or construction liens by persons, firms or corporations claiming to have performed work on the Property or supplied materials for the Property prior to the Closing Date pursuant to authorization from Borrower, Borrower’s authorized agents or employees. Borrower and Lender each agree to give the other notice of any such liens promptly after obtaining knowledge thereof and Borrower shall have the right to defend against said lien or claim of lien. The provisions of this Section shall survive Closing.

15. Brokers. Borrower and Lender represent to each other that no real estate broker participated in or caused the parties to enter into the transaction evidenced by this Agreement. Borrower and Lender each indemnifies the other against any claim, including reasonable attorneys’ fees and costs incurred in the defense of such claim, arising out of the conduct of the party against whose conduct enforcement of any such claim is sought. The provisions of this Section shall survive Closing.

16. Relief from Bankruptcy. In the event that Borrower shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended (the “Bankruptcy Code”), (ii) be the subject of any order for relief issued under the Bankruptcy Code, (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, or (v) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustments, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, and such action causes Lender to seek necessary or appropriate relief, (a) Lender shall thereupon be entitled to and Borrower irrevocably consents to the relief from any automatic stay imposed by Section 362 of Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Lender as provided in this Agreement with respect to the Property and as otherwise provided by law, and Borrower hereby irrevocably waives any right to object to such relief, and acknowledges that no reorganization in bankruptcy is feasible; (b) Borrower waives its exclusive right pursuant to Section 1121(b) of the Bankruptcy Code to file a plan of reorganization and irrevocably consents that Lender may file a plan immediately upon the entry of an order for relief if an involuntary petition is filed against Borrower or upon the filing of a voluntary petition by Borrower; (c) in the event that Lender shall move pursuant to Section 1121(d) of the Bankruptcy Code for an order reducing the 120 day exclusive period, Borrower shall not object to any such motion, and (d) Borrower waives any rights it may have pursuant to Bankruptcy Code Section 108(b).

Borrower hereby stipulates that Lender’s entitlement to relief from the automatic stay as set forth in the preceding paragraph shall be based on: (1) cause, including a lack of good faith in the filing of any bankruptcy case in the face of the substantial concessions granted by Lender in this Agreement; (2) the mutual recognition by Lender and Borrower of the substantial concessions granted by Lender to Borrower in this Agreement; (3) the fact (hereby acknowledged by Borrower) that Lender cannot receive adequate protection of the value of its interest absent the ability to immediately enforce its attachment of the Property and to exercise its other rights and remedies under the Loan Documents; (4) the fact (hereby acknowledged by
Borrower) that the Property is not necessary to any viable plan of reorganization or liquidation due to the attachment of the Property and the ongoing financial burdens attending the operations of the same; (5) the fact (hereby acknowledged by Borrower) that Borrower has no equity in the Property; and (6) the fact (hereby acknowledged by Borrower) that there is no reasonable prospect for reorganization of Borrower. As an alternative, if Lender requests such relief, Borrower shall not object to or oppose Lender from having immediate relief from the automatic stay (i) to permit the filing of financing statements or other instruments and documents evidencing Lender’s interests in the rents and other income of such Property and in any leases, letting or use after the filing of the petition or order for relief, whichever is later, and (ii) to permit Lender’s application of rents and income as provided herein.

17. **No Merger of Interests.** The delivery, acceptance and/or recording of the Instruments of Conveyance and the receipt of the amounts specified in this Agreement by the Lender shall not in any way or manner whatsoever:

   (a) result in a merger of the interests of Lender pursuant to the Mortgage and other Loan Documents, and the interests of Lender as fee holder of the Project and as owner of the other Property shall at all times remain SEPARATE and DISTINCT from Lender’s interest in the Mortgage and the other Loan Documents until such time, if any, as Lender may affirmatively elect otherwise by written notice recorded with the Records. The liens and security interests evidenced by the Loan Documents shall be and remain at all times valid and continuous liens and security interests on the Property;

   (b) be deemed a waiver by Lender of any claim of priority pursuant to the Mortgage or pursuant to the other Loan Documents over any other liens, mortgages, deeds of trust, security interests or encumbrances of any kind or nature, now existing or hereafter placed upon the Property, or any part thereof;

   (c) affect or prejudice, in any way, the right of Lender to foreclose the Mortgage or any other lien granted pursuant to the Loan Documents by judicial proceedings or otherwise or to proceed as provided in the Mortgage, the other Loan Documents and as otherwise provided at law or in equity in the event that subsequent to the date hereof other liens, deeds of trust, security interests or encumbrances, resulting from the act or deed of Borrower, shall be asserted against the Property.

   (d) The Note and Mortgage and the lien imposed thereby and by the other Loan Documents shall, in all respects, remain in full force and effect and survive the Closing and recording of the Instruments of Conveyance and Borrower hereby ratifies and confirms the Note and Mortgage and the other Loan Documents in all respects.

18. **Cooperation and Non-Interference.** Borrower hereby covenants and agrees that it will not interfere with or oppose Lender in, and hereby consents to, any:

   (a) foreclosure proceedings by court action or otherwise, or any other proceedings instituted by Lender in connection with realizing upon the security granted pursuant to the Mortgage and other Loan Documents, including the right to institute proceedings against Borrower in order to effectuate such foreclosure; and
(b) action to quiet title which may be instituted by Lender to perfect its right, title and interest in the Property; and

(c) any request by Lender for the appointment of a receiver.

Borrower waives the right to a hearing in connection with any such foreclosure proceeding or other suit or proceedings, and further waives the right to require sale of the Property in any such suit to be made in parcels. If Borrower contests Lender’s right to proceed in any suit, in addition to Borrower being liable to Lender for all damages which Lender may suffer as a result thereof, Borrower acknowledges and agrees that it will be liable to Lender for all reasonable attorneys’ fees and court costs incurred by Lender in such suit. At Lender’s request, Borrower shall deliver to Lender a Consent Judgment duly executed and acknowledged by Borrower and such further documents as Lender might reasonably request to facilitate the foreclosure of the liens and security interests created by the Loan Documents.

19. Disposition of Collateral Governed by UCC. Borrower hereby renounces and waives all rights that are waivable under Article 9 of the Uniform Commercial Code (the “UCC”) of any jurisdiction in which any of the Property may now or hereafter be located. Without limiting the generality of the foregoing, Borrower hereby (i) renounces any right to receive notice of any disposition by Lender, as the secured party of any of the Property pursuant to Section 9-504(3) of the UCC, whether such disposition is by public or private sale under the UCC or otherwise and (ii) waives any rights relating to compulsory disposition of any of the Property pursuant to Sections 9-504 and 9-505 of the UCC. Borrower also hereby acknowledges and agrees that the transactions contemplated by this Agreement shall constitute a commercially reasonable manner for the disposition of the Property, or any part thereof.

20. Termination of Lender Release. The release provided to Borrower and its Affiliates in Section 6(b) of this Agreement will be voided ab initio and will be of no force or effect in the event any one or more of the following occurs:

(a) Borrower, any Guarantor, or any person claiming by or through Borrower or any Guarantor commences, joins in, assists, cooperates in, or participates as an adverse party or as an adverse witness (subject to compulsory legal process which requires testimony) in any suit or other proceeding against Lender and its Affiliates relating to the Loan, the Loan Documents, the Indebtedness, or the Property; or

(b) The deed or any other document evidencing a conveyance of the Property to Lender or its designee is ever rendered void or is rescinded by operation of law, or by order of any state or federal court of competent jurisdiction, by reason of an order arising out of any claim or proceeding initiated or commenced in favor of, against, on behalf of, or in concert with, directly or indirectly, Borrower, a Guarantor, or any person claiming by or through Borrower or Guarantors or any of their respective agents, employees, representatives, officers, directors, shareholders, subsidiaries, affiliates, successors, or assigns; or

(c) Borrower or any person claiming by or through Borrower denies Lender, or Lender's representatives, the right to inspect the Property, or to inspect, audit, and transcribe the books, records, contracts, and insurance policies maintained by Borrower or any person...
claiming by or through Borrower in connection with the construction, operation, or maintenance of the Property; or

(d) The release of Lender and its Affiliates delivered pursuant to Section 6(a) of this Agreement is ever rendered void, is rescinded, or is adjudicated unenforceable by operation of law or by order of any state or federal court of competent jurisdiction, by reason of an order arising out of any claim or proceeding initiated or commenced in favor of, against, on behalf of, or in concert with, directly or indirectly, Borrower, any Guarantor, or any person claiming by or through Borrower or a Guarantor or any of their respective agents, employees, representatives, officers, directors, shareholders, subsidiaries, affiliates, heirs, personal representatives, successors, or assigns.

21. **Miscellaneous.**

(a) This Agreement shall be binding upon Borrower and Lender and shall inure to the benefit of the heirs, successors, and assigns of the respective parties hereto.

(b) This Agreement, together with all the Exhibits attached hereto and incorporated by reference herein, constitutes the entire agreement between the parties hereto, and supersedes any and all prior agreements, arrangements and undertakings between the parties, except for the Loan Documents.

(c) This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

(d) No amendment to this Agreement shall be binding on either of the parties to this Agreement unless such amendment is in writing and executed by both parties hereto.

(e) This Agreement and all transactions hereunder shall be governed by the laws of the State of ____________. Venue shall be in ____________ County, ____________.

(f) Neither this Agreement nor any memorandum or other document relating to this Agreement shall be recorded in the Records.

(g) If any term, covenant, or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

(h) In the event performance is due on a day that is a legal holiday or weekend, performance shall be postponed to the next business day.

(i) The submission of any draft, form, or copy of this Agreement or any of the documents referenced herein by Lender or any officer, employee, agent or attorney of Lender, whether or not designated as a “draft” or so indicated in connection with the transmittal thereof, shall not constitute (i) an offer by Lender to engage in the transactions set forth in this Agreement, (ii) an agreement to forbear from exercising its rights and remedies under the Loan
Documents, (iii) a waiver with respect to any obligations under the Loan Documents, or (iv) a course of conduct or course of dealing with respect to the Loan Documents. In no event shall Lender be bound by any provision of this Agreement or such other documents and agreements unless and until Lender shall have executed and delivered such agreements.

(j) TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE DEED, ANY OF THE DOCUMENTS OF WHICH COPIES ARE ATTACHED AS EXHIBITS HERETO, ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THIS AGREEMENT, THE DEED, ANY OF THE DOCUMENTS OF WHICH COPIES ARE ATTACHED AS EXHIBITS HERETO, ANY OTHER LOAN DOCUMENT OR IN ANY WAY RELATING TO THE LOAN OR THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT TO LENDER TO ENTER THIS AGREEMENT.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]
IN WITNESS WHEREOF, the parties hereto have signed counterparts of this Agreement, each of which shall be deemed to be an original document, as of the date set forth above.

BORROWER:

By: ____________________________
Name: __________________________
Title: ___________________________
LENDER:

By: __________________________________________
Name: ________________________________________
Title: _________________________________________
EXHIBIT A

LEGAL DESCRIPTION OF THE LAND
EXHIBIT B
SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, dated as of ___________, 200__, is given by ____________, a _______________ limited liability company ("Grantor"), with an address c/o ___________________________, in favor of ____________, a __________ limited liability company ("Grantee"), with an address c/o ___________________________.

Grantor, for and in consideration of the sum of $10.00 and other good and valuable consideration paid by Grantee, receipt of which is acknowledged hereby, grants, bargains, sells and conveys to Grantee the land situate, lying and being in _________ County, ___________, more particularly described on Exhibit A attached hereto (the “Property”).

TOGETHER WITH all right, title and interest of Grantor in (i) any and all structures and improvements on the Property; (ii) any land lying in the bed of any street or highway, opened or proposed, in front of or adjoining the Property; and (iii) all easements, rights of way, privileges, licenses, appurtenances and other rights and benefits belonging to, running with the owner of, or in any way related to the Property.

TO HAVE AND TO HOLD, the same in fee simple forever, by through and under Grantor but not otherwise.

SUBJECT TO the matters reflected on Exhibit B attached hereto (the “Permitted Exceptions”).

AND Grantor covenants with Grantee that Grantor is lawfully seized of the Property in fee simple; that Grantor has good right and lawful authority to sell and convey the Property except as may be limited by the Permitted Exceptions; that Grantor warrants the title to the Property and will defend the same against the lawful claims of others claiming by, through or under Grantor, but not otherwise, except for claims arising from the Permitted Exceptions.

THIS DEED is an absolute conveyance to Grantee of the title to the Property and is not intended to serve or operate as a mortgage, security agreement or security interest of any kind. A portion of the consideration for this Deed is the agreement by Grantor, as the holder of the Mortgage (as described on the attached Exhibit B), to forbear from pursuing its remedies against Grantor for payment of indebtedness secured by the Mortgage but this Deed is not given in satisfaction of the Mortgage.

GRANTEE, by acceptance of this Deed, and Grantor acknowledge and agree that this Deed is not intended to, and shall not, operate to merge the ownership interest conveyed with any other interest or lien which Grantee may now have or subsequently acquire in the Property, it being the intention of the parties that said interest, including, but not limited to, any interest in the Mortgage shall continue to be a valid and enforceable lien against the Property, and shall not merge with Grantee’s ownership interest in the Property.
Grantor has executed this Deed as of the date indicated above.

Signed and acknowledged in the presence of:

GRANTOR:

________________________, a
____________________ limited liability company

Signature:________________________
Print Name:________________________

By:________________________
Name:________________________
Title:________________________

Signature:________________________
Print Name:________________________

STATE OF___ )

) SS:

COUNTY OF___ )

The foregoing instrument was acknowledged, sworn to and subscribed before me this ___ day of ________, 200__, by ____________________, as ________ of ____________________, a ____________ limited liability company, on behalf of the company. He is personally known to me or has produced a driver’s license as identification.

Sign Name:________________________
Print Name:________________________

My Commission Expires:
Serial No. (none, if blank):

NOTARY PUBLIC
EXHIBIT B TO SPECIAL WARRANTY DEED

PERMITTED EXCEPTIONS
EXHIBIT C

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS,

__________________________________, a _______________ limited liability company ("Grantor"), with an address c/o ___________________________, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby convey, sell, transfer and assign unto ___________________________________, a _______________ limited liability company ("Grantee"), with an address c/o ___________________________, its successors and assigns, all of the right, title and interest of Grantor in and to the furniture, fixtures, plumbing, lighting equipment, building equipment, radiators, furnaces, boilers, hot water heaters, water systems, air conditioning equipment and other personalty, in their “as is” condition, located on or in or attached to the property known as ______ located at ____________, in the City of ____________, County of ____________, State of _______________ (collectively the “Personal Property”). Borrower warrants that the Personal Property is free from any liens or encumbrances.

Grantor warrants and will defend title to the personal property against the lawful claims of all persons whomsoever.

To have and to hold unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the undersigned have executed this Bill of Sale as of the____ day of ______________, 200__.

GRANTOR:

__________________________________, a _______________ limited liability company

Signature: ________________________________ By: ________________________________
Print Name: ________________________________ Name: ________________________________
Signature: ________________________________
Print Name: ________________________________
EXHIBIT D

ASSIGNMENT AND ASSUMPTION

THIS ASSIGNMENT AND ASSUMPTION (this “Assignment”) is made this ___ day of ____________, 200__ by and between ____________________________, a __________________ limited liability company (“Assignor”), with an address c/o ____________________________, and ____________________________, a __________________ limited liability company (“Assignee”), with an address c/o ____________________________.

RECITALS:

A. Assignor is the owner of certain real property (the “Land”), known as _______________ located at _______________ , in the City of _______________, County of _______________, State of ________________, more particularly described on Exhibit A attached hereto, and certain improvements thereon (the “Improvements”) and other rights, privileges and appurtenances thereto (collectively, the “Project”).

B. Assignor has leased portions of the Project to the Tenants set forth on the Rent Roll attached hereto as Exhibit B (the “Tenants”) (the leases with the Tenants are sometimes collectively referred to herein as the “Leases”).

C. Assignor has entered into certain contracts for service, labor, maintenance, repair and operation of the Project that Lender may assume in accordance with Section 4 of that certain Deed in Lieu of Foreclosure Agreement dated ____________, 200__, between Assignor and Assignee, as set forth on the list attached hereto as Exhibit C (the “Designated Service Contracts”).

D. Assignor is the beneficial owner, holder and user of certain intangible property used by Assignor in connection with Assignor’s development, use and operation of the Project, including, without limitation, plans and specifications, reports, permits, licenses, certificates of occupancy, development rights, warranties, guaranties, telephone exchanges, trademarks and the name of the Project (collectively, the “Intangible Property”).

E. Assignor is or may be the beneficial owner, holder or has rights or other interests in and to certain escrow or reserve deposits currently held by or for the benefit of Lender as well as operating accounts and/or cash management accounts for the Project (the “Project Deposit Accounts”).

F. Assignor has or may have rights in any uncollected receivables pertaining to the Project, including but not limited to any and all recoveries, awards and other payments in connection with any litigation with respect to the Project (the “Project Receivables”).

G. Assignor has obtained property casualty insurance policies (the “Policies”) that it maintains with respect to the Project. Assignor has or may have rights under the insurance policies to proceeds from claims made or to be made under any Policies, as well as rights to
settle and compromise any such claims made or to be made with respect thereto (collectively the “Insurance Claims”). Additionally, Assignor may be entitled to excess or unearned premiums from the Policies that are to be returned Borrower after Closing (collectively, the “Insurance Premiums”).

H. Assignor desires to assign to Assignee all of Assignor’s right, title and interest in and to the Leases, the Designated Service Contracts, the Intangible Property, the Project Deposit Accounts, the Project Receivables, the Insurance Claims and the Insurance Premiums as more particularly set forth below.

I. Assignee desires to accept the assignment of all of Assignor’s right, title and interest in and to the Leases, the Designated Service Contracts, the Intangible Property, the Project Deposit Accounts, the Project Receivables, the Insurance Claims and the Insurance Premiums and to assume all of Assignor’s obligations under the Leases and the Designated Service Contracts as more particularly set forth below.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties hereto, Assignor and Assignee do hereby agree as follows:

1. **Recitals.** The above recitals are true and are incorporated herein by reference.

2. **Assignment.** Assignor hereby gives, grants, bargains, sells, conveys, transfers and sets over unto Assignee, its successors and assigns, as of the date first above written (the “Effective Date”), all of Assignor’s right, title and interest in and to the Leases (including all security deposits and prepaid rent paid, in addition to, among other things, all income, receivables, revenues, profits or other value generated by, through or under the Leases or the Project), the Designated Service Contracts, the Intangible Property (to the extent assignable), the Project Deposit Accounts, the Project Receivables, the Insurance Claims and the Insurance Premiums. Assignor will execute any necessary documentation in order to effectuate the assignment with respect to the Leases, the Designated Service Contracts, the Intangible Property, the Project Deposit Accounts, the Project Receivables, the Insurance Claims and the Insurance Premiums assigned to Assignee herein.

3. **Assumption.** Assignee hereby accepts the foregoing assignment and, in consideration thereof, Assignee hereby covenants and agrees that, on and after the Effective Date, Assignee will assume, observe, perform, fulfill and be bound by all terms, covenants, conditions and obligations of the Leases and the Designated Service Contracts which arise on and after the Effective Date.

4. **Power of Attorney.** Assignor hereby constitutes and appoints Assignee its true and lawful attorney, with all power and authority to act on its behalf in all matters under the Policies and to settle and compromise any claims made or to be made under the policies, which appointment is coupled with an interest and is therefore irrevocable.

5. **Successors and Assigns.** The terms and conditions of this Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
6. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date first written above.

ASSIGNOR:

__________________________________

______________________________

Signature:________________________

Print Name:_______________________

By:________________________________

Name: ___________________________

Title: ____________________________

______________________________

Signature:________________________

Print Name:_______________________

STATE OF __________

) SS:

COUNTY OF __________

) 

The foregoing instrument was acknowledged, sworn to and subscribed before me this ___ day of ______, 200__, by ____________________________, as Member of ____________________________, a __________________________ limited liability company, on behalf of the company. He is personally known to me or has produced a driver’s license as identification.

Sign Name:________________________

Print Name:_______________________

My Commission Expires:

Print Name:_______________________

NOTARY PUBLIC

Serial No. (none, if blank):
Signed and acknowledged in the presence of:

ASSIGNEE:

________________________________, a _________________ limited liability company
By: ________________________________

Signature: __________________________
Print Name: _________________________

By: ________________________________ (SEAL)
Name: ______________________________
Title: ______________________________

Signature: __________________________
Print Name: _________________________

STATE OF ____________
) SS.: ______________________________
COUNTY OF _________________________

The foregoing instrument was acknowledged before me this _____ day of ________, 200 _______, by __________________, as ________________ of ____________________________, on behalf of said ________________, as manager of and on behalf of ________________________________, a ______________________ limited liability company, on behalf of the company. He is personally known to me or presented a ________________ drivers license as identification.

Print name: __________________________
My Commission Expires: __________________

[AFFIX SEAL]
EXHIBIT A TO ASSIGNMENT AND ASSUMPTION

LEGAL DESCRIPTION
EXHIBIT B TO ASSIGNMENT AND ASSUMPTION

LEASES

[RENT ROLL TO BE ATTACHED]
EXHIBIT C TO ASSIGNMENT AND ASSUMPTION

SERVICE CONTRACTS

[LIST TO BE ATTACHED]
EXHIBIT E

TITLE AFFIDAVIT

STATE OF _______________________
) SS:
COUNTY OF _____________________

BEFORE ME, the undersigned authority, personally appeared ______________________
(“Affiant”), who, being by me first duly sworn, deposes and says that:

1. He is a member of ____________________________, a
limited liability company (“Borrower”), which Borrower is the owner of fee
simple title to that certain property (“Property”) described on the attached Exhibit A.

2. Borrower has not sold, transferred, assigned or conveyed fee title to the Property
prior to the date hereof.

3. To Affiant’s actual knowledge, the Property and all improvements thereon are
free and clear of any and all liens, taxes, waste, water and sewer charges, encumbrances,
judgments or claims of every nature whatsoever, except for those matters reflected in
Title Insurance Company (“Title Company”) Commitment No. ____________
(“Commitment”); and Borrower has no actual knowledge and has received no
written notice of any outstanding, past due or unpaid property owner’s or master association assessments or
common area maintenance assessments.

4. There are no (i) actions or proceedings now pending in any state or Federal court
to which Borrower is or was a party, including, but not limited to, proceedings in bankruptcy,
receivership or insolvency, or (ii) Internal Revenue Service claims or State of ____________
tax claims that could result in a judgment being rendered against Borrower or that could ripen
into a lien or encumbrance on the Property or the improvements thereon prior to the recording of
a deed (“Deed”) to the Property from Borrower to Lender with the Registry of Deeds of
_________ County, ____________.

5. For at least the one hundred twenty (120) days prior to the date hereof, no
material, labor or services have been furnished, performed or supplied in connection with the
Property, including the improvements located thereon, on behalf of Borrower or at Borrower’s
request, or, if same has been done, Borrower will either provide for payment of the same or take
such actions as may be necessary to release the Property from the operation of any lien, if any
such lien is filed and recorded against the Property; and Affiant has no actual knowledge nor has
Affiant or Borrower received any notice of any unpaid mechanics’, materialmen’s or other
charges in connection with or affecting the Property or actual or any potential claims on account
of any such material, labor or services.

6. The taxes upon the Property, city, state and county, real and personal, for fiscal
year 200__ and for prior years have been paid in full.
7. There are no persons or entities other than Borrower and the Tenants listed on the attached Exhibit B that have any right to the possession or occupancy of the Property.

8. Between the last effective date of the Commitment, ______________, 200___, and the date on which the Deed is placed of record ("Gap Period"), neither Borrower nor any officer, director or shareholder thereof will execute any instruments or take any actions that could affect the title or interest to be acquired by Lender and insured by the Title Company. Affiant is not aware of any matter, whether pending or threatened, against Borrower or the Property that could affect the title to the Property during the Gap Period.

9. Borrower is a single purpose entity as required by the terms of the existing loan documents held by Lender and does not now engage, nor has it engaged since the closing of the Mortgage, in any other business than the holding of title to, and leasing of, the Property. Borrower has no creditors other than Lender, except for usual and ordinary operating expenses that are due and payable in connection with the operation and leasing of the Property. Borrower acknowledges and agrees that the fair market value of the Property in its current condition and with the Tenants' Leases or other occupancy agreements, whether written or oral, is less than the outstanding principal balance of the Note secured by the Property.

10. Affiant has no actual knowledge nor has it received any written notice of (i) any disputes concerning the location of the boundary lines on the Property, (ii) any encroachments of improvements on the Property onto adjacent lands or on adjacent lands encroaching onto the Property or (iii) any new improvements on the Property or on adjacent lands which would be reflected by an accurate survey of the Property conducted subsequent to that certain Survey completed under Job No. ______ dated ______________ and updated on ________________ prepared by ___________________.

11. Pursuant to Section 1445 of the Internal Revenue Code, a transferee (Lender) of a U.S. real property interest must withhold tax if the transferor (Borrower) is a foreign person. This Affidavit is given to inform Lender that withholding of tax is not required upon Borrower's disposition of a U.S. real property interest. Borrower is not a nonresident alien for U.S. income taxation purposes. Borrower's U.S. taxpayer identifying number is ___________, and Borrower's principal office address is c/o ___________________________________. Borrower understands that this certification may be disclosed to the Internal Revenue Service by Lender and that any false statement made here could be punished by fine, imprisonment or both.

12. This Affidavit is made for the purpose of inducing Title Company to issue title insurance respecting the Property in connection with conveyance of title to the Property to _________________________, a _______________ limited liability company ("Lender"); the Lender and the Title Company are materially relying upon the representations herein made in accepting such conveyance and issuing such title insurance, respectively. Borrower agrees to indemnify and hold harmless Title Company, its successors and assigns, from all claims, demands, actions, losses, liabilities, settlements, judgments, damages, costs, expenses and fees (including, without limitation, attorneys' fees and costs at trial and upon appeal) that arise as a result of or in connection with the falsity or inaccuracy of any statement made above or the breach of any representation or warranty made in this instrument.
Name: ____________________________

STATE OF _____________

) SS:

COUNTY OF _______________________

Then personally appeared the above-named __________________ before me.

Given under my hand and official seal this the ____ day of ________, 20__. 

Print name: ____________________________

[AFFIX SEAL]
EXHIBIT A TO TITLE AFFIDAVIT

LEGAL DESCRIPTION
EXHIBIT B TO TITLE AFFIDAVIT

TENANTS

[RENT ROLL TO BE ATTACHED]
<table>
<thead>
<tr>
<th>Vendor</th>
<th>Termination Provision</th>
</tr>
</thead>
</table>

[List of service contracts to be attached]
EXHIBIT G

RENT ROLL

[TO BE ATTACHED]
EXHIBIT H

RELEASE OF CLAIMS

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN:

___________________, a __________________limited liability company ("Borrower"). [Identify GUARANTORS and any other Principals who should join in Release.] (collectively, "Releasor"), each with an address c/o ____________________, for and in consideration of the agreements set forth in that certain Deed in Lieu of Foreclosure Agreement dated ________________, 200___ (the "Agreement") by and between Borrower and ____________________, a __________________limited liability company ("Releasee"), with an address c/o ____________________, and of Ten Dollars ($10.00) lawful money of the United States of America and other good and valuable consideration in hand given to Releasor by Releasee, the receipt and sufficiency of which are hereby acknowledged, has waived, remised, released and forever discharged, and by these presents do for themselves, their successors and assigns, absolutely and irrevocably waive, remise, release, acquit, satisfy and forever discharge Releasee, its predecessors in interest and any parent, subsidiary or affiliate of Releasee, and each of their successors, assigns, directors, officers, shareholders, partners, members, employees, affiliates, and servicers, attorneys and agents (collectively, "Released Parties"), from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, inactions, claims, demands and causes of action of any nature whatsoever, at law or in equity, known or unknown which Releasor now has or hereafter can, shall or may have the right to assert by reason of any matter, cause or thing, occurring from the beginning of the world to and including the date of this Release, including, without limitation, matters arising out of or relating to (a) that certain loan (the "Loan") originally made by Lender [Modify if Loan was previously assigned.] in the original principal amount of $__________________ and all documents evidencing, securing or related to the Loan as more particularly set forth on the attached Exhibit A (collectively, the "Loan Documents"), (b) the Agreement, (c) any other agreement or transaction between any of Released Parties and Releasor relating to the Mortgaged Property (as defined in the Loan Documents), and (d) the Mortgaged Property or its development, financing and operation (collectively, the "Claims"), in law or in equity, including, without limitation, any and all Claims which are presently unknown, unsuspected, unanticipated or undisclosed, which Claims against Released Parties the Releasor ever had, now has or which the Releasor hereafter can, shall or may have, for, upon or by reason of any matter, cause of thing whatsoever from the beginning of the world.

Releasor and Releasee (by its acceptance of this Release) agree that, notwithstanding any language contained herein to the contrary, there is specifically excluded from the provisions hereof, representations, warranties and other provisions, if any, contained in the instruments to be delivered by Releasee to Releasor in connection with the Agreement and in other agreements executed in connection therewith, that by their terms survive the execution and delivery of such instruments and other agreements.
IN WITNESS WHEREOF, Releasor has caused this Release to be executed this 
________ day of ____________, 200__.  

Signed and acknowledged  
in the presence of:  

__________________________________

___________ limited liability company  

Signature: ________________________  By: ____________________________  
Print Name: ________________________  Name: ____________________________  
Signature: ________________________  Title: ____________________________  
Print Name: ________________________  
STATE OF ___________  )
 ) SS:
COUNTY OF ___________  )

The foregoing instrument was acknowledged, sworn to and subscribed before me this 
____ day of ________, 200__, by ____________________________________, as Member of 
__________________________________, a _____________ limited liability company, on 
behalf of the company. He is personally known to me or has produced a driver’s license as 
identification.  

Sign Name: ________________________  
Print Name: ________________________  
My Commission Expires: 
Serial No. (none, if blank):  

NOTARY PUBLIC
Signed and acknowledged in the presence of:

Signature: ___________________________  ___________________________
Print Name: ___________________________  ___________________________

Signature: ___________________________
Print Name: ___________________________
STATE OF __  )
 ) SS:
COUNTY OF  )

The foregoing instrument was acknowledged, sworn to and subscribed before me this ___ day of _______, 200___, by ______________________________. He is personally known to me or has produced a driver’s license as identification.

Sign Name: ___________________________
Print Name: ___________________________
My Commission Expires:  
NOTARY PUBLIC
Serial No. (none, if blank):
EXHIBIT A TO RELEASE OF CLAIMS

LOAN DOCUMENTS
EXHIBIT I

LENDER’S RELEASE OF CLAIMS

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN:

__________________________, a ___________________ limited liability company ("Releasor"), with an address c/o ____________________________, for and in consideration of the agreements set forth in that certain Deed in Lieu of Foreclosure Agreement dated April ____, 200___ (the "Agreement") by and between ________________________, a ___________________ limited liability company ("Borrower") and Releasor, and of Ten Dollars ($10.00) lawful money of the United States of America and other good and valuable consideration in hand given to the Releasor by the Released Parties (hereafter defined), the receipt and sufficiency of which are hereby acknowledged, has waived, remised, released and forever discharged, and by these presents do for themselves, their successors and assigns, absolutely and irrevocably waive, remise, release and forever discharge Borrower, [Identify Guarantors and any other Principals who are signing release in favor of Lender.] and their respective successors, assigns, heirs, directors, officers, shareholders, partners, members, managers, employees, affiliates, attorneys and agents (collectively, the “Released Parties”), of and from any and all acts or events occurring or obligations arising under that certain loan (the “Loan”) made by Lender [Modify if Loan previously assigned.] in the original principal amount of $_______________ and all documents evidencing, securing or related to the Loan as more particularly set forth on the attached Exhibit A (collectively, the “Loan Documents”) on and after the date of the conveyance of the Mortgaged Property (as defined in the Loan Documents) to Releasor (the “Acquisition Date”) as set forth in the Agreement, except Releasor does not release Released Parties from any obligations, indemnities, duties and liabilities of Released Parties arising under (i) the Environmental and Hazardous Substance Indemnification Agreement (the “Environmental Obligations”) if such Environmental Obligations are caused by any of the Released Parties or result from conditions existing prior to the Acquisition Date, (ii) all obligations surviving under the Guaranty. Notwithstanding the foregoing, Releasor reserves 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 Agreement and any other instruments and agreements executed in connection therewith or by reason of claims or causes of action arising out of (a) any breach of the covenants, representations, warranties, and agreements by Borrower set forth in the Agreement or in the other agreements and instruments executed in connection therewith, (b) fraud, whether occurring prior to, on or subsequent to the Acquisition Date and whether known or unknown to Releasor as of the Acquisition Date or (c) Releasor’s failure to pay to Releasor (if applicable) rents collected by Borrower allocable to any period following the Acquisition Date and/or delinquent/outstanding rents collected by Borrower allocable to any period prior to the Acquisition Date.

Anything to the contrary notwithstanding, this Release shall not operate as a discharge of the Note (as such term is defined in the attached Exhibit A) or a satisfaction of the Mortgage (as such term is defined in the attached Exhibit A), and, notwithstanding the foregoing, the rights and remedies of the Releasor and its successors and assigns under the Mortgage, including foreclosure thereof, shall remain in full force and effect. This Release shall become null and
void and of no effect whatsoever upon the filing of any action to set aside the transfer of the Property (as defined in the Mortgage) to Releasor, including, without limitation, any action to set aside the transfer of the Property to Releasor as a preferential transfer or fraudulent conveyance under any applicable state or federal law, or if the Property or any part thereof must be returned by Releasor or its designee to Borrower. In such event, Releasor specifically reserves the right to exercise any right or remedy which was available to Releasor or exercisable by Releasor prior to the execution of the Agreement and this Release, including, without limitation, any rights or remedies which Releasor may have as holder of the Loan Documents.

Releasor and Released Parties (by their acceptance of this Release) agree that notwithstanding any language contained herein to the contrary, there is specifically excluded from the provisions hereof, representations, warranties and other provisions, if any, contained in the instruments to be delivered by Released Parties to Releasor in connection with the Agreement or in other agreements executed in connection therewith, which by their terms survive the execution and delivery of such instruments and other agreements.

IN WITNESS WHEREOF, Releasor has caused this Release to be executed this ____ day of ______________, 200__.

Signed and acknowledged in the presence of:

__________________________________
, a
_______________ limited liability company

By: ________________________________

Signature: __________________________

Print Name: _________________________

Name: ______________________________

Title: ________________________________

Signature: __________________________

Print Name: _________________________
STATE OF ____________) SS.:  

COUNTY OF ____________)  

The foregoing instrument was acknowledged before me this _____ day of __________, 200___, by ________________________, as ___________ of ________________, on behalf of said corporation, as manager of and on behalf of ________________________, a _______________ limited liability company, on behalf of the company. He is personally known to me or presented a Florida drivers license as identification.  

______________________________  
Print name:_______________________  
My Commission Expires:______________  

[AFFIX SEAL]
EXHIBIT A TO LENDER’S RELEASE OF CLAIMS

LOAN DOCUMENTS
NOTICE OF TERMINATION TO SERVICE CONTRACTOR

______________, 200___

RE: [Property Name and Address]

Dear Service Contractor:

Please be advised that on this date ________________________, a
_______________ limited liability company (the “Prior Owner”), has transferred ownership of
the property known as ______________________ located at ______________________
________________________. Your contract for services to the Property is hereby terminated.

[BORROWER]

By: ________________________________
Name: ________________________________
Title: ________________________________
EXHIBIT K

NOTICE OF ASSIGNMENT TO SERVICE CONTRACTOR

________________, 200___

RE: [Property Name and Address]

Dear Service Contractor:

Please be advised that on this date ______________, 200___, a ______________ limited liability company (the “Prior Owner”), has transferred ownership of the property known as __________________ located at __________________ to __________________, a ______________ limited liability company (the “New Owner”). You must look to the New Owner, and not to the Prior Owner, for all payments and other expenses, if any, due under your contract for services provided after ______________, 200___. All correspondence should be directed to the New Owner at the following address: __________________.

Very truly yours,

[BORROWER]

By: _____________________________
Name: ___________________________
Title: ___________________________
NOTICE TO TENANT

___________, 200___

RE: [Property Name and Address]

Dear Tenant:

Please be advised that on this date __________________________, a ______________ limited liability company (the “Prior Owner”), has transferred ownership of the property known as __________________________ located at __________________________ to __________________________, a ______________ limited liability company (the “New Owner”). All correspondence regarding your lease should hereafter be sent to the New Owner at __________________________. Please send all further rental payments under the lease to the New Owner at __________________________, unless otherwise directed by the New Owner.

Thank you very much for your assistance in this matter.

[BORROWER]

By: ________________________________
Name: ______________________________
Title: ______________________________

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