

Form 6

Deed in Lieu of Foreclosure Agreement

THIS DEED IN LIEU OF FORECLOSURE AGREEMENT is made as of the ___ day of _____, ____ (this "Agreement") by, between, and among _____ Limited Partnership, a _____ limited partnership, _____ with a mailing address of c/o _____, _____, Suite _____, _____, _____ ("Borrower"), _____ with a mailing address of c/o _____, _____, Suite _____, _____, _____ ("Guarantor"), and _____, a _____ corporation with a mailing address of _____, _____, _____ ("Lender").

WITNESSETH:

A. Borrower owns fee simple title to the real estate and the improvements thereon commonly known as " _____ " ¹ located at _____, _____, ² and legally described on Exhibit A attached hereto, which real estate includes, but is not limited to, _____ ³.

B. Lender made a loan to Borrower in the amount of _____ and 00/00 Dollars (\$____.00) ("Loan") which Loan was made pursuant to a certain Loan Agreement dated _____ between Borrower and Lender (as amended, the "Loan Agreement"). The Loan is evidenced by a certain Promissory Note dated _____ made by Borrower, as maker, in favor of Lender, as payee, in the face principal amount of _____ and 00/00 Dollars (\$____.00) (as amended, the "Note"). The Loan is secured by, among other things, a certain Mortgage, Assignment of Leases and Rents, and Security Agreement dated _____ made by Borrower, as mortgagor, in favor of Lender, as mortgagee, recorded in the real property records of _____ County, State of _____ as Document No. _____ (as amended, the "Mortgage"). The Borrower's obligations under the Note are guaranteed by Guarantor pursuant to a certain Guaranty of Payment and Performance dated _____ made by Guarantor, as guarantor, in favor of Lender, as lender (as amended, the "Guaranty"). In addition to the Loan Agreement, the Note, the Mortgage, and the Guaranty, the Loan is evidenced, secured, and governed by the agreements, instruments, and documents identified on Exhibit B attached hereto and by this reference made a part hereof (such agreements, instruments, and documents, as amended, together with the Loan Agreement, the Note, the Mortgage, and the Guaranty are sometimes herein collectively referred to as the "Loan Documents").

C. As of ____ ____, 199_, the total outstanding principal balance of the Loan was \$_____ and the total accrued and unpaid interest thereon was \$_____ ⁴.

D. Borrower is in default under the Loan Documents in that [describe defaults] ("Borrower's Default"). The Loan has been accelerated and the entire principal amount of Loan together with all accrued interest thereon is now due and owing.

E. In order to avoid the financial hardship and damage to reputation that would result from the Borrower's Default, Borrower has requested that the parties resolve Borrower's Default by Borrower's conveyance of the real

¹ Insert common name; for example, XYZ Apartments.

² Insert street address.

³ Insert general description of improvements and amenities (e.g., "twenty-four (24) three-story residential apartment buildings containing a total of 375 residential apartments, a clubhouse with two (2) swimming pools, three (3) lighted tennis courts and parking for five hundred twenty-five (525) automobiles").

⁴ Be certain to calculate interest at the "default" rate, if applicable.

1 estate legally described on Exhibit A and other property to Lender, or to a person or other entity designated by
2 Lender ("Buyer"), in lieu of foreclosure in consideration of _____ and other consideration.⁵
3

4 F. The fair market value of the "Property" (as hereinafter defined) does not exceed the total outstanding
5 unpaid principal of, interest accrued and unpaid on, and other outstanding indebtedness due and owing under the
6 Loan Documents.
7

8 G. Lender wishes to accept the conveyance of the Property pursuant to this Agreement to avoid the
9 necessity of litigation, foreclosure, the delays associated therewith, and to avoid the delays associated with
10 Borrower's statutory redemption rights, if any, with respect to the Property, and Lender acknowledges that the
11 provisions of this Agreement directly benefit Lender in this regard; and
12

13 NOW, THEREFORE, for and in consideration of the foregoing premises and for other good and valuable
14 consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Guarantor, and Lender
15 do hereby agree as follows:
16

17 ARTICLE I

18 Incorporation/Property 19 Transferred in Lieu of Foreclosure

20
21 1.01 Incorporation. The recitals to this Agreement are fully incorporated herein by this reference thereto
22 with the same force and effect as though restated herein.
23

24
25 1.02 Transfer of Property. Subject to the terms, provisions, conditions, covenants, and agreements herein
26 contained, and subject to the matters set forth on Exhibit C hereto (the "Permitted Exceptions") Borrower agrees
27 to sell, grant, transfer, assign, and convey to Lender (or Buyer) and Lender agrees to acquire, or cause Buyer to
28 acquire, from Borrower absolutely and free of any right of redemption or other right or interest of Borrower or
29 anyone claiming by, through, or under Borrower, the following real and personal property (collectively, the
30 "Property"): (a) good, valid, indefeasible, and marketable fee simple title to the land ("Land") legally described on
31 Exhibit A attached hereto, all buildings, fixtures, and other improvements situated on the Land (all said buildings
32 and other improvements hereinafter called the "Improvements"), all of Borrower's right, title, and interest in and
33 to and all easements, rights, tenements, and appurtenances thereunto belonging or appertaining to the Land and
34 Improvements, and all of Borrower right, title, and interest in and to any and all streets, alleys, or publicways
35 adjacent thereto, before or after vacation thereof ("Real Estate");⁶(b) all of Borrower's right, title, and interest as
36 lessor or lessee in all leases, licenses, and other agreements to occupy all or any part of the Real Estate together
37 with all rents and other sums due, accrued or to become due under each such lease, license, and agreement, all
38 rents that are received and allocable to periods following the "Closing Date" (as hereinafter defined) and all
39 guarantees by third parties of the tenants' obligations under said leases, and all lease security and other deposits, if
40 any (together, the "Leases"); (c) all right, title, and interest of Borrower in and to all plans and specifications
41 relating to Improvements (the "Plans and Specifications") and all unexpired claims, warranties, and guarantees, if
42 any, received in connection with the construction or equipping of the Real Estate, if and to the extent assignable
43 (all warranties and guarantees pursuant to which any affiliate of Borrower or its partners is an obligor, and all
44 claims against any affiliate of Borrower or its partners concerning the design and construction of the Real
45 Property shall be deemed assignable, and Borrower shall cause the applicable obligors to consent to such
46

⁵ Generally describe the consideration (e.g., "Lender's covenant not to sue Borrower or exercise foreclosure remedies otherwise available to Lender").

⁶ The borrower may need to exclude improvements that are owned by tenants.

1 assignments ("Warranties"); (d) all of Borrower's right, title, and interest in and to the service, supply, and
2 maintenance contracts and equipment leases listed on Exhibit D attached hereto and incorporated herein (the
3 "Assigned Contracts"); (e) all licenses, permits, certificates of occupancy, and franchises (including, without
4 limitation, those listed on Exhibit E attached hereto) issued by any federal, state, county, or other governmental
5 authority relating to the use, maintenance, or operation of the Real Property (the "Licenses and Permits"), running
6 to, or in favor of, Borrower and/or the Real Estate;⁷ and (f) all other tangible and intangible personal property,
7 equipment, and supplies located at or used in connection with the Real Estate, including without limitation, the
8 items listed on Exhibit F attached hereto now owned or hereafter acquired by the Borrower in connection with the
9 development, leasing, management, use, and/or operation of the Real Estate including, but not limited to, logos,
10 trade styles, and trade names (including, without limitation, the name "_____"), brochures, manuals, lists of
11 prospective tenants, advertising material, assignable utility contracts, assignable telephone numbers [franchise
12 agreements], and [_____]⁸(together, the "Personal Property").⁹

13
14 ARTICLE II
15 Consideration

16
17 2.01 Covenant Not to Sue. In consideration for the transfer by Borrower of the Property to Lender (or, at
18 Lender's option, Buyer), and subject to the terms, provisions, and conditions herein contained, at the "Closing" (as
19 hereinafter defined), Lender shall [(i)] deliver a covenant not to sue ("Covenant Not to Sue") Borrower,
20 Guarantor, and certain other persons, which Covenant Not to Sue shall be in the form of Exhibit G attached
21 hereto[,] [and] [(ii)] pay \$_____ to Borrower or certain of the creditors of Borrower described on Exhibit S as
22 "To Be Paid by Lender".¹⁰

23
24 ARTICLE III
25 Title¹¹

26
27 3.01 Owners Title Policy. As a condition to Lender's obligation to close, Buyer must, at Closing, obtain
28 from _____ ("Title Company") an ALTA Form _____ Owner's Title
29 Insurance Policy or equivalent acceptable to Lender ("Title Policy"), dated as of the Closing Date naming Buyer,

⁷ The borrower may need to exclude licenses and permits that are not assignable (e.g., "specifically excluding such licenses and permits that are not, by their terms or applicable law, assignable").

⁸ Insert any other items to which specific reference may be warranted, such as inventory, supplies, booking contracts, customer deposits (get a cash payment), utility deposits, bonds, etc.

⁹ The borrower may need to exclude property owned by others or items specifically designated by the borrower as excluded. Consider adding:

but specifically excluding tangible personal property owned by tenants under Leases, Borrower's managing agent, utility service providers and the items, if any, of tangible personal property owned by Borrower listed on Exhibit F attached hereto and denoted as "Excluded."

¹⁰ If specifically negotiated by the parties, the note will be canceled and the mortgage released (e.g., "[and] (iii) cancellation of the Note and release of the Mortgage"]. Note that conforming changes may be required throughout the Agreement. However this is unusual and risky for the lender, because if the transaction is later voided by a bankruptcy court or a court of equity as a preferential transfer, fraudulent conveyance, equitable mortgage, or "clog" on the borrower's equity of redemption, the lender will have no remaining lien on the property and may be only an unsecured creditor for the full amount of its debt in the borrower's bankruptcy proceeding.

¹¹ It would, of course, be prudent, to obtain a title commitment sufficiently in advance of closing to identify and resolve title clearance issues.

1 as the insured, which Title Policy shall show fee simple title to the Real Estate vested in Buyer subject only to the
2 Permitted Exceptions. The Title Policy must (a) insure as separate parcels any easements appurtenant to the Real
3 Property, (b) be in the amount of the indebtedness evidenced by the Note which is outstanding on the Closing
4 Date (or such lesser amount as Lender shall accept), (c) contain full extended coverage insurance over all general
5 exceptions set forth in such policy [(other than matters which would be deleted by delivery of a current plat of
6 survey to the Title Company)], (d) delete any so-called "creditors" rights exclusion or exceptions, and (e) include
7 such reinsurance (with such reinsurers) as Lender may require, together with direct access agreements with such
8 reinsurers.

9
10 3.02 Loan Title Policy. As an additional condition to Lender's obligation to close, Lender shall receive, at
11 Closing, the following endorsements to ALTA Loan Policy (____ Form) issued by Title Company as Policy No.
12 _____ ("Loan Policy") (which endorsements shall be dated as of the Closing Date): (a) a date-down
13 endorsement showing fee simple title in Buyer, and insuring the Mortgage as a [first] priority encumbrance on the
14 Real Property, subject only to the Permitted Exceptions and (b), at Lender's option, a non-merger endorsement
15 acceptable to Lender (collectively, the "Loan Policy Endorsements"). Such Loan Policy Endorsements must also
16 be approved by all reinsurers of the Loan Policy.

17
18 3.03 Borrower Cooperation. Borrower shall cooperate with Lender to permit Lender, or, as applicable,
19 Buyer, to obtain the Title Policy and the Loan Policy Endorsements.

20
21 **ARTICLE IV**
22 Closing¹²

23
24 4.01 Closing. Provided all terms, provisions, and conditions contained in this Agreement to be satisfied
25 on or before Closing have been timely satisfied so as to provide for the closing of the transaction contemplated
26 hereby, including without limitation, the vesting in Lender or Buyer of good, valid, indefeasible, and marketable
27 fee simple title to the Real Property, subject only to the Permitted Exceptions, closing of the transaction
28 contemplated hereby ("Closing"), shall take place at the office of _____, in
29 _____, _____, at 10:00 A.M.¹³ (_____, _____ time) on _____ ("Closing Date")
30 through an escrow with the Title Company, or on such other date or such other place as may be mutually agreed
31 upon in writing by Borrower and Lender. The agreement ("Escrow Agreement") for such escrow shall in the form
32 of Exhibit H attached hereto. Each party shall have the right to inspect all documents prior to, at the time of, and
33 after their deposit in escrow. To accommodate Closing, the parties will enter into the Escrow Agreement with
34 Title Company concurrently with their execution and delivery of this Agreement. This Agreement shall not be
35 merged into the Escrow Agreement, but the Escrow Agreement shall be deemed auxiliary to this Agreement, and
36 as between the parties hereto, upon failure of the escrow or otherwise, the provisions of this Agreement shall be
37 controlling.

38
39 4.02 Closing Deliveries, etc. The following deliveries and/or actions shall constitute the Closing and, as
40 described above, and, to the extent provided in the Escrow Agreement, shall be effected through the Escrow
41 Agreement and, if not specified in the Escrow Agreement to be deposited in, and delivered under, the Escrow
42 Agreement, shall be delivered at the Closing. Such deliveries, showings, and actions shall be deemed to be taken
43 simultaneously and no one of which shall be deemed completed until all of such deliveries, showings, and actions
44 have been completed.

45
46 A. Title Documents. The following title, transfer, and original documentation and other matters shall be
47 duly authorized, properly executed, acknowledged (if applicable) and/or delivered:

¹² This agreement assumes simultaneous execution and closing.

¹³ Consider wiring of funds cutoff times.

1
2 (a) The Title Policy. The Title Policy (or a "marked-up" title commitment to issue the Title
3 Policy) together with executed reinsurance agreements containing direct access provisions with all reinsurers shall
4 be delivered to Lender.

5
6 (b) Endorsements to the Loan Policy. The Loan Policy Endorsements (or a "marked-up"
7 commitment to issue the Loan Policy Endorsements) shall be delivered to Lender.

8
9 (c) ALTA Statement [Owner's Affidavit]. Borrower shall deliver to Lender and Title Company its
10 duly executed [American Land Title Association Loan and Extended Coverage Statement] [Owner's Affidavit].

11
12 (d) GAP Affidavit. Borrower shall execute and deliver to Title Company, a GAP Undertaking and
13 Affidavit satisfactory to Title Company so as to permit issuance of the Title Policy and Loan Policy Endorsements
14 on the Closing Date.

15
16 (e) Searches. [Borrower shall deliver to Lender] [Lender shall have received], Uniform
17 Commercial Code Financing statement, tax lien, and judgment searches of Borrower and its general partner dated
18 not earlier than _____ issued by a search firm acceptable to Lender confirming the existence of
19 no financing statements filed against the Property, tax liens (against the Property or Borrower) or judgments
20 (against the Property or Borrower) other than the Permitted Exceptions.

21
22 (f) Search Certificate. Borrower shall deliver to Lender, a statement of Borrower in the form of
23 Exhibit I attached hereto to the effect that Borrower has not executed any financing statements other than the
24 financing statements constituting a part of the Loan Documents.

25
26 B. Transfer Documents. The following Property transfer documentation shall be duly authorized, properly
27 executed, acknowledged (if applicable), and delivered to Lender:

28
29 (a) Deed. Borrower's duly executed, acknowledged, and stamped recordable deed in form and
30 substance as set forth on Exhibit J attached hereto.

31
32 (b) Bill of Sale. Borrower's duly executed bill of sale in form and substance as set forth on
33 Exhibit K attached hereto.

34
35 (c) Assignment of Leases, Rents, and Security Deposits. Borrower's duly executed Assignment of
36 Rents, Leases, and Security Deposits in the form of Exhibit L attached hereto. Lender will execute and deliver (or
37 cause Buyer to execute and deliver) to Borrower an acceptance of such assignment in the form of the Acceptance
38 attached as part of the exhibit referred to in the preceding sentence.

39
40 (d) Assignment. Borrower's duly executed Assignment in the form of Exhibit M attached hereto.
41 Lender will execute and deliver (or cause Buyer to execute and deliver) to Borrower an acceptance of such
42 assignment in the form of the Acceptance attached as part of the exhibit referred to in the preceding sentence.

43
44 (e) Non-Foreign Status Certificate Statement. Borrower's duly executed Non-Foreign Status
45 Certificate in the form of Exhibit N attached hereto.

46
47 (f) Certified Rent Roll. A schedule of Leases accompanied by a Rent Roll Certificate in the form
48 of Exhibit O attached hereto certified by Borrower. The rent roll shall include (i) the name and address of each
49 tenant; (ii) the commencement and expiration dates of each Lease; (iii) the base rent; and (iv) escalations, "stops,"
50 base years, yearly escalation collections (to date), if any, and other pass-throughs; (vi) annual percentage rent
51 collections (to date); (vii) rent concessions, if any; (viii) security deposits and interest, if any, thereon; (ix) rental
52 delinquencies; (x) extension, renewal, expansion, and other options, if any; and (xi) unpaid leasing commissions

1 and tenant improvement expenses.

2
3 (g) Tenant Letters. Borrower's duly executed letters to the tenants of the Real Property in the form
4 of Exhibit P attached hereto.¹⁴

5
6 (h) Estoppel Certificate. Estoppel certificates executed by each [non-residential] tenant of the
7 Real Property, in the form required under the Leases in question.

8
9 (i) Non-Tenant Estoppel Certificates. Estoppel certificate satisfactory to Lender executed by (i)
10 each party to an Assigned Contract [and (ii) [as designated by Lender, each beneficiary of an easement,
11 restriction or condition of record]].¹⁵

12
13 (j) Transfer Declarations. Borrower's completed and executed state, county, and municipal
14 transfer or exemption declarations. If the declarations have been properly completed, Lender or Buyer shall
15 execute such declarations if legally required.

16
17 (k) Deed In Lieu Certificate. Borrower's Deed in Lieu of Foreclosure Certificate dated the
18 Closing Date in the form of Exhibit Q attached hereto.

19
20 (l) Certificate(s) of Title. Certificate(s) of title endorsed to Lender, or, at Lender's option, Buyer,
21 transferring to Buyer all Personal Property registered on any so-called certificates of title.

22
23 C. Original Documents. The following documentation shall be delivered:

24
25 (a) Leases/Contracts. Borrower shall deliver the original Leases and Contracts to Lender.

26
27 (b) Licenses and Permits. Borrower shall deliver the original Licenses and Permits to Lender.

28
29 (c) Warranties. Borrower shall deliver the original Warranties to Lender.

30
31 (d) Plans and Specifications. Borrower shall deliver to Lender, if available, the original Plans and
32 Specifications.

33
34 (e) Management Documents. Borrower shall deliver (or cause the managing agent to deliver) to
35 Lender (or Buyer), copies of all books, records, bills, invoices, lease files, credit reports, and other documents
36 related to the ownership, operation, management, use, maintenance, or leasing of the Property (the "Management
37 Documents"), or, with Lender's permission only, for any such items not physically delivered to Lender on the
38 Closing Date, a letter from Borrower to Lender stating where such item is located, and a letter from Borrower and
39 its managing agent addressed to the keeper of such records, directing such keeper to release all such Management
40 Documents to Lender or to Lender's designee.

41
42 D. Borrower Documents. The following documents of Borrower shall be delivered to Lender:

43
44 (a) Partnership Agreement and Certificates. Certified copy of Borrower's Partnership Agreement
45 together with Borrower's Certificate of Limited Partnership issued by the _____ Secretary of State (dated not
46 earlier than _____) and a Certificate of Existence for Borrower from the _____
47 Secretary of State dated not earlier than _____.

¹⁴ Consider having the Manager execute these as well.

¹⁵ Consider specifying specific document (e.g., CCREA) for which an estoppel letter or consent is required.

1
2 (b) Corporate Documentation. Certified copy of the articles of incorporation of the general
3 partner of Borrower (certified by the _____ Secretary of State) (dated not earlier than
4 _____) together with a certificate of good standing for the general partner of Borrower
5 from the _____ Secretary of State (dated not earlier than _____), a certified copy of the
6 bylaws of the general partner of Borrower, a certified copy of the general partner's board of directors' resolution
7 and shareholder consent approving the transaction, and a certificate of incumbency for the general partner of
8 Borrower.
9

10 (c) Consents. Consents of [all] the partners of Borrower authorizing the execution of this
11 Agreement and the execution and delivery of all documents required pursuant hereto.
12

13 E. Other Deliveries. The following deliveries, showings, and occurrences shall have been delivered or
14 shall have occurred:

15 (a) Security and Other Deposits. Borrower shall deliver (with such assignments as Lender shall
16 require) to Lender or, at Lender's option, Buyer, all cash and non-cash security and other deposits and interest, if
17 any, required by law or agreement to be paid thereon.
18

19 (b) Possession. Borrower shall deliver possession of the Real Property and the other Property to
20 Lender, subject to the rights of existing tenants and the Permitted Exceptions.
21

22 (c) Keys to Premises. Borrower shall deliver to Lender or Lender's designee, a key code inventory
23 and all keys to the Real Estate or, with Lender's permission, a letter executed by Borrower and the Borrower's
24 managing agents addressed to the person(s) or entities possessing the keys directing such persons or entities to
25 deliver the keys to Lender or Lender's designated representative.
26

27 (d) Legal Opinion. Borrower shall cause to be delivered to Lender, an opinion addressed to
28 Lender and Buyer from counsel to Borrower, dated as of the Closing Date, in the form of Exhibit R attached
29 hereto.
30

31 (e) Department of Revenue Release. Borrower shall deliver to Lender, evidence satisfactory to
32 Lender that the transfer of the Property to Lender or Buyer does not subject Lender to liability under Chapter ____,
33 Section _____ of the _____ Revised Statutes.¹⁶
34

35 (f) Evidence of Termination. Borrower shall deliver to Lender, evidence of termination (at no cost
36 to Lender or Buyer and free of all liens or claims for liens by reason of the terminated agreements) of all (i)
37 management, brokerage, and leasing commission agreements and (ii) service and maintenance contracts that are
38 not Assigned Contracts.
39

40 [(g) Payments to Lender. Borrower shall pay to Lender an amount equal to \$_____ plus
41 any prepaid rents allocable to the period following Closing.¹⁷
42

43 (h) Property Manager's Waiver. Borrower shall deliver to Lender, a lien waiver from each
44 property manager [and leasing broker or agent] for the Property and waiver of any and all rights or claims to real
45 estate brokerage, leasing or management fees, and commissions with respect to any sale, lease, or the operation of

¹⁶ Some jurisdictions require releases with respect to tax liabilities to be obtained prior to transfers. The purchaser and seller may need to consider whether municipal and county ordinances impose similar requirements.

¹⁷ A to-be-negotiated item. Might include security deposits, collected (but unexpended rent), etc. See, *Balcor Real Estate Holdings, Inc. v. Walentas Phoenix Corporation*, 1996 WL 1838 (7th Cir (Ill.)).

1 the Property or any part of the Property.

2
3 (i) Miscellaneous Waivers. Borrower shall deliver to Lender, lien waivers and lien releases from
4 each person listed in the Payable Statement attached hereto as Exhibit S or any other person who, pursuant to
5 applicable law or agreement, may have a right to a lien on the Property or any portion thereof on account of work
6 or services performed or provided to, or for the benefit of, the Property [Borrower may, in lieu of providing such
7 lien waivers, deliver to the issuers of the Title Policy and Loan Policy Endorsements such documentation and
8 funds as such issuers may require to insure against any of such claims on the Title Policy and Loan Policy (as
9 modified by the Loan Policy Endorsements); in any event, Borrower shall notwithstanding non-delivery of any
10 such releases or waivers, induce the issuer of the Loan Policy Endorsements and the Title Policy to waive any
11 exceptions with respect to any of such claims.

12
13 (j) Release of Lender by Borrower, et al. Borrower and Guarantor shall deliver to Lender, a
14 release of Lender and its respective affiliates, successors and assigns and other parties reasonably designated by
15 Lender, in the form of Exhibit T attached hereto.

16
17 (k) Covenant Not to Sue Borrower. Lender shall deliver the Covenant Not to Sue to Borrower.

18
19 (l) Additional Consents. Borrower shall deliver to Lender, any and all consents from persons
20 whose consent is required by Borrower for the closing of this transaction.

21
22 (m) Settlement Statement. Beneficiary and Lender shall jointly execute and deliver a settlement
23 statement to each other.

24
25 [(n) Payments to Borrower. Lender shall pay Borrower the sum of \$_____].¹⁸

26
27 4.03 Approvals and Monetary Deposits. All items to be delivered to pursuant to the provisions of
28 Paragraphs 4.01 and 4.02 shall be subject to the approval of the parties. All deliveries and deposits of funds
29 described in Paragraph 4.02 shall be in good immediately available funds.

30
31 4.04 Expenses of Closing. Except as set forth on Exhibit U, each party shall pay its own expenses in
32 connection with the Closing.

33
34 ARTICLE V
35 Covenants

36
37 5.01 Cooperation. Commencing on the date of this Agreement, Borrower will reasonably cooperate,
38 upon Lender's request, with Lender and Buyer, including, without limitation, any management company
39 designated by Lender to facilitate an orderly transfer of the ownership and management of the Property.

40
41 5.02 Audit. Commencing on the date of this Agreement, Borrower will permit Lender and/or Lender's
42 designated representatives to audit and review Borrower's books and records.¹⁹

¹⁸ A to-be-negotiated item. On occasion (e.g., if the amount of the debt due is close to the appraised value of the mortgaged property), the lender will agree to pay consideration to the borrower for the transfer or may agree to reimburse the borrower for expenses approved by the lender or to return funds deposited with it.

¹⁹ The Lender might consider a right to proceed against the Borrower and Guarantors to the extent a post-closing audit indicates that property income may have been improperly spent or not turned over to the lender. The borrower will resist this because it seeks to end matters at the closing and because of the difficulty that may arise in trying to define "improper" spending. One possibility to consider is an intensive pre-closing audit of the property records prior to closing. Of course, the problems (e.g., improper payments and unreported rent

1 5.03 Rent Collections. Borrower agrees that in the event that Borrower or any affiliate of Borrower
2 receives any rental payment or other payment from any tenant or other occupant or user of the Property following
3 Closing, Borrower will deliver to Lender or Lender's designee, with proper endorsements, such funds not later
4 than two (2) business days following receipt of such funds.

5
6 ARTICLE VI
7 Representations and Warranties

8
9 6.01 Representations and Warranties of Lender. Lender represents and warrants to Borrower and
10 Guarantor as follows:

11
12 (a) Lender is an organized and existing corporation in good standing under the laws of the State
13 of its incorporation and if such State of _____ is other than the State of _____, Lender is
14 authorized to do business in the State of _____.

15
16 (b) Lender has the right, power, and authority to execute this Agreement and to perform its
17 obligations under this Agreement. The execution and delivery of this Agreement by Lender and the performance
18 by Lender under this Agreement has been authorized by all necessary corporate action of Lender.

19
20 6.02 Representations and Warranties of Borrower. Borrower represents and warrants to Lender as
21 follows:

22
23 (a) Organization and Authority. Borrower is a[n] _____ limited partnership, and duly formed,
24 organized, validly existing, and, as applicable, in good standing under the laws of _____. Borrower and
25 Guarantor have the capacity, right, power, and authority to execute this Agreement and to perform their respective
26 obligations hereunder and to consummate the transaction described herein contemplated by this Agreement
27 including the execution and delivery of all documentation required by this Agreement. The execution of this
28 Agreement has been authorized by all necessary partnership or corporate authorizations of Borrower. The
29 execution, delivery, and performance of this Agreement by Borrower and Guarantor does not breach, conflict
30 with, or contravene: (i) Borrower's partnership agreement or certificate; (ii) any agreement, instrument, document,
31 or indenture to which Borrower or Guarantors are a party or by which they or the Property is bound; (iii) any
32 applicable law; or (iv) any judgment, writ, or order directed to Borrower or Guarantors or by which Borrower or
33 Guarantors may be bound.

34
35 (b) Bankruptcy. Guarantor and Borrower have not filed a petition in any case, action, or
36 proceeding under the Bankruptcy Code or any similar state law; no petition in any case, action, or proceeding
37 under the Bankruptcy Code or any similar state law has been filed against Borrower or Guarantor that has not
38 been dismissed or vacated; and neither Borrower nor Guarantor have filed an answer or otherwise admitted in
39 writing insolvency or inability to pay their debts or made an assignment for the benefit of creditors or consented
40 to an appointment of a receiver or trustee of all or a material part of their property. The transaction contemplated
41 herein is not a preference, voidable transfer, fraudulent conveyance, or otherwise in violation of the [Bankruptcy
42 Code] or any other similar state or federal law.

43
44 (c) Absence of Litigation. Neither Borrower nor Guarantor have received any written notice of
45 any, nor is there any, pending or, to the best of Borrower's knowledge any threatened, litigation or administrative
46 proceeding involving in any manner the Real Property or the ownership, leasing, operation, management, use, or
47 maintenance thereof or this transaction.

48

collections) might occur after the completion of the pre-closing audit, and before the closing date. If there is
sufficient time before closing, the parties might consider a lockbox-type arrangement with tenant notification.

1 (d) Arm's-Length Transaction. Borrower and Guarantor have requested conveyance of title to the
2 Property in lieu of the exercise of Lender's remedies pursuant to the Loan Documents and throughout the
3 negotiation, preparation, and execution of this Agreement has been, and will through the Closing be represented
4 by competent legal counsel of their own choosing. This Agreement was entered into out of the free will of
5 Borrower and Guarantor and pursuant to arm's-length negotiations and Borrower and Guarantor believe this
6 Agreement is fair. Lender has not taken advantage of Borrower or Guarantor by threats, intimidation,
7 overreaching, unconscionable conduct, or otherwise and Borrower and Guarantors are proceeding in this
8 transaction as volunteers in what they perceive to be their own best interest.

9
10 6.03 Representations and Warranties of Guarantors. Guarantor represents and warrants to Lender as
11 follows:

12
13 (a) Guarantor is over the age of 18, is competent, and has sufficient legal capacity to enter into,
14 deliver, and perform his/her respective obligations under this Agreement and the documents to be executed and
15 delivered by him/her pursuant to this Agreement.

16
17 (b) Guarantor has not filed a petition in any case, action, or proceeding pursuant to the
18 Bankruptcy Code or any similar state law; no petition, in any case, action, or proceeding under the Bankruptcy
19 Code or any similar state law has been filed against Guarantor that has not been dismissed or vacated; and
20 Guarantor has not filed an answer or otherwise admitted in writing insolvency or inability to pay Guarantor's
21 debts or made an assignment for the benefit of creditors nor consented to an appointment of a receiver or trustee
22 of all or any material part of his/her property.

23
24 (c) Guarantor has requested Lender to enter into this Agreement of Guarantor's own free will and
25 has been represented by competent legal counsel of their own choosing. Guarantor agrees that this Agreement is
26 fair. Lender has not taken advantage of Guarantor by threats, intimidation, overreaching unconscionable conduct
27 or otherwise. Guarantor is proceeding in this transaction as a volunteer in what he perceives to be Guarantor's own
28 best interests.

29
30 6.04 Additional Representations and Warranties. Borrower also makes the representations and
31 warranties set forth on Exhibit V.

32
33 6.05 Indemnity. Borrower agrees to defend, indemnify, and hold Lender, Buyer, and their respective
34 partners, successors, assigns, members, officers, participants, shareholders, directors, and personal representatives
35 (collectively, the "Lender-Connected Parties") harmless from and against any losses, damages, costs (including,
36 without limitation, attorneys' fees, court costs, and costs of appeal), expenses, judgments, liens, decrees, fines,
37 penalties, liabilities, claims, actions, suits, and causes of action arising, directly or indirectly, from (a) any breach
38 by Borrower or Guarantor of warranty or representation contained in this Agreement or in the documents
39 executed and delivered by Borrower pursuant to this Agreement (with this Agreement, sometimes collectively
40 referred to as the "Borrower Documents"); (b) any breach, default, or violation by Borrower or Guarantor of any
41 covenant, agreement, or provision of the Borrower Documents; and (c) any claims or liabilities pertaining to the
42 Property arising prior to the Closing [other than claims or liabilities arising under the Loan Documents [which for
43 purposes of this Section 6.05, does not include the Environmental Indemnification Agreement].

44 45 ARTICLE VII

46 No Obligation of Lender to Third Parties

47
48 7.01 No Third-Party Beneficiary. Borrower acknowledges and agrees that the transfer to Lender or
49 Buyer of title to the Real Property pursuant to the terms of this Agreement shall not create any obligations on the
50 part of Lender to third parties that have claims of any kind whatsoever against Borrower with respect to the
51 Property, and Lender does not assume or agree to discharge any liabilities pertaining to the Property except as
52 otherwise expressly provided in this Agreement.

1
2 ARTICLE VIII
3 Absolute Conveyance
4

5 8.01 Conveyance. The conveyance of the Property to Lender or Buyer according to the terms of this
6 Agreement is an absolute conveyance of all of its right, title, and interest in and to the Property in fact as well as
7 form and was not and is not now intended as a mortgage, trust conveyance, deed of trust, or security instrument of
8 any kind, and that the consideration for such conveyance is exactly as recited herein and Borrower has no further
9 interest (including rights of redemption) or claims in and to the Property or to the rents, proceeds, and profits that
10 may be derived thereof, of any kind whatsoever.

11
12 ARTICLE IX
13 No Merger
14

15 9.01 Merger. Notwithstanding Lender's or Buyer's acquisition of the Property, the indebtedness
16 evidenced by the Note shall not be cancelled, shall survive the Closing and delivery of any deeds and/or releases,
17 and all of the Loan Documents shall remain in full force and effect after the transaction contemplated by this
18 Agreement has been consummated. The parties further agree that the interest of Lender in the Property after
19 Buyer's acquisition of the Property shall not merge with the interest of Lender in the Property under the Loan
20 Documents. It is the express intention of each of the parties hereto (and all of the conveyances provided for in this
21 Agreement shall so recite) that such interests of Lender and Buyer in the Property shall not merge, but be and
22 remain at all times separate and distinct, notwithstanding any union of said interest in Lender at any time by
23 purchase, termination, or otherwise and that the lien of the Mortgage in the Property shall be and remains at all
24 times a valid and continuous lien on the Property until and unless released of record by Lender or its successors
25 and assigns.

26
27 ARTICLE X
28 Notices
29

30 10.01 Notice. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or
31 (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid,
32 registered or certified mail, return receipt requested, or (d) legible facsimile transmission sent to the intended
33 addressee at the address set forth below, or to such other address or to the attention of such other person as the
34 addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been
35 given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of
36 first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile transmission,
37 as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended
38 addressee by means described in clauses (a), (b), or (c) above. Unless changed in accordance with the preceding
39 sentence, the addresses for notices given pursuant to this Agreement shall be as follows:
40

41 To Borrower and Guarantor: _____
42 _____
43 _____
44 Attention: _____
45 Facsimile No.: _____
46

47 with a copy to: _____
48 _____
49 _____
50 Attention: _____
51 Facsimile No.: _____
52

1 To Lender: _____
2 _____
3 _____
4 Attention: _____
5 Facsimile No.: _____
6
7 with a copy to: _____
8 _____
9 _____
10 _____
11 Attention: _____
12 Facsimile No.: _____
13

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

15
16 ARTICLE XI
17 Miscellaneous

18
19 11.01 Entire Agreement. This Agreement, and the exhibits attached hereto, and all other instruments and
20 documents executed and delivered at Closing by either party hereto, embody the entire agreement between the
21 parties in connection with the transaction contemplated hereby and there are no oral or parol agreements,
22 representations, or inducements existing between the parties relating to the transaction contemplated hereby that
23 are not expressly set forth herein and covered hereby. This Agreement may not be modified except in writing
24 signed by all of the parties hereto.

25
26 11.02 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the
27 parties hereto, Buyer and the respective heirs, administrators, executors, personal representatives, successors, and
28 assigns of the parties hereto and Buyer.

29
30 11.03 Waivers. No written waiver by any party at any time of any breach of any provision of this
31 Agreement shall be deemed a waiver of a breach of any other provision herein or a consent to any subsequent
32 breach of the same or any other provision. If any action by any party shall require the consent or approval of
33 another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or
34 approval of such action on any subsequent occasion or a consent to or approval of any other action on the same or
35 any subsequent occasion.

36
37 11.04 Captions. The captions, section numbers, and article numbers appearing in this Agreement are
38 inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of such
39 paragraphs or articles of this Agreement nor in any way affect this Agreement.

40
41 11.05 Time is of Essence; Counterparts; Governing Law. All parties hereto agree that time is of the
42 essence in this transaction and that this Agreement may be executed in counterparts and shall be governed by and
43 interpreted in accordance with the laws of the State of _____.

44
45 11.06 Appointment of Designee. Lender does hereby reserve the right to appoint Buyer to accept title to
46 the Property at the time of the Closing.

47
48 11.07 Brokers. Lender and Borrower represent and warrant to the other that it has had no direct dealings
49 with any real estate brokers, salesmen, agents, finders, or consultants in connection with the conveyance of the
50 Property to Lender.

51
52 11.08 Lender's Liability. In no event shall Lender be personally or individually liable for any obligation

1 set forth in this Agreement. Except to the extent expressly provided in the Borrower Documents, neither Buyer
2 nor Lender is assuming any obligations or liabilities of Borrower or Guarantor.
3

4 **11.09 Borrower's Liability; Guarantor's Liability.** Notwithstanding any provision contained in this
5 Agreement to the contrary, or in any agreement to be delivered pursuant to this Agreement, it is agreed that the
6 limited partners of Beneficiary and the officers, shareholders, and directors of general partner shall not be
7 individually or personally liable to Lender by reason of a breach of any obligation of Borrower pursuant to this
8 Agreement, all recourse of Lender or Buyer against Borrower to be satisfied solely from the assets of Borrower (it
9 being agreed that any obligation of a limited partner, shareholder, director, or officer of its general partner to
10 contribute funds or loan funds to Borrower and any negative capital account on the part of a limited partner of
11 Borrower shall not be deemed an asset of Borrower for the purposes of this Agreement). Proceeds of the Property
12 received by Borrower or paid to any affiliate of Borrower shall be deemed assets of Borrower.
13

14 **11.10 Value.** Borrower hereby confirms to Lender that this value of the Property does not exceed the
15 indebtedness owing to Lender pursuant to the Loan Documents.
16

17 **11.11 Survival.** The terms and provisions of this Agreement shall survive the Closing and delivery of the
18 deed and other documents to be delivered to Lender pursuant to this Agreement.
19

20 IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed
21 this Agreement as of the day and year first above written.
22

23 **BORROWER:**

24
25
26 **LENDER:**

27
28 _____, a _____ corporation
29

30 By: _____
31

32 Name: _____
33

34 Title: _____
35

36 **GUARANTOR:**
37
38 _____

1 LIST OF EXHIBITS
2
3 EXHIBIT A LEGAL DESCRIPTION*
4 EXHIBIT B LIST OF LOAN DOCUMENTS*
5 EXHIBIT C PERMITTED EXCEPTIONS*
6 EXHIBIT D ASSIGNED CONTRACTS*
7 EXHIBIT E LICENSES AND PERMITS*
8 EXHIBIT F LIST OF TANGIBLE PERSONAL PROPERTY*
9 EXHIBIT G FORM OF COVENANT NOT TO SUE
10 EXHIBIT H FORM OF ESCROW AGREEMENT
11 EXHIBIT I FORM OF SEARCH CERTIFICATE
12 EXHIBIT J FORM OF DEED
13 EXHIBIT K FORM OF BILL OF SALE
14 EXHIBIT L FORM OF ASSIGNMENT AND ACCEPTANCE OF LEASES
15 EXHIBIT M FORM OF ASSIGNMENT
16 EXHIBIT N FORM OF NON-FOREIGN STATUS CERTIFICATE
17 EXHIBIT O FORM OF RENT ROLL CERTIFICATE
18 EXHIBIT P FORM OF TENANT LETTER
19 EXHIBIT Q FORM OF DEED IN LIEU OF FORECLOSURE CERTIFICATE
20 EXHIBIT R FORM OF LEGAL OPINION
21 EXHIBIT S PAYABLE STATEMENT
22 EXHIBIT T FORM OF RELEASE
23 EXHIBIT U EXPENSES
24 EXHIBIT V ADDITIONAL REPRESENTATIONS AND WARRANTIES
25

26 * Note: Exhibits A-F are matter-specific, and therefore not included.

1 EXHIBIT G
2 FORM OF COVENANT NOT TO SUE

3
4 _____, a _____ corporation ("Lender"), for and in consideration of the
5 sum of Ten and No/100 Dollars (\$10.00), in hand paid, and for other good and valuable consideration, the receipt
6 and sufficiency of which hereby are acknowledged, pursuant to that certain Deed in Lieu of Foreclosure
7 Agreement dated as of _____ (the "Purchase Agreement") between Lender,
8 _____, a _____ limited partnership ("Borrower"), and _____
9 ("Guarantor"), does hereby covenant and agree not to sue Borrower, Guarantor, and their respective heirs,
10 executors, administrators, personal representatives, successors, assigns, and past, present, and future affiliates,
11 officers, directors, employees, shareholders, and agents, on account of any and all liabilities, duties,
12 responsibilities, obligations, claims, demands, actions, damages, costs, losses, and expenses now existing or
13 hereafter arising out of or in any way relating to or connected with, directly or indirectly, the "Property" (as
14 defined in the Purchase Agreement), the "Loan" (as defined in the Purchase Agreement), and the "Loan
15 Documents" (as defined in the Purchase Agreement) excluding, however, those specific matters or obligations of
16 Borrower arising under the specific terms of the Purchase Agreement [and][,] the "Borrower Documents" (as
17 defined in the Purchase Agreement) [and the Environmental Indemnification Agreement].
18

19 Notwithstanding the foregoing, Lender reserves, on its own behalf and on behalf of "Buyer" (as defined in
20 the Purchase Agreement), the right to sue (including, without limitation, the right to counterclaim against) and
21 obtain and satisfy a judgment against, Borrower and Guarantor to the full extent of any indemnification
22 obligations of Borrower and Guarantor under the Purchase Agreement or by reason of claims of causes or action
23 arising out of (a) any breach of the covenants, representations, warranties, and agreements by Borrower and
24 Guarantor set forth in the Borrower Documents, (b) fraud, or (c) Borrower's failure to pay to Lender or Buyer
25 rents collected by Borrower allocable to any period following the Closing Date. The foregoing covenant not to
26 sue will be null, void, and of no force and effect, if (x) Borrower or Guarantor commences any action, suit, or
27 proceeding against Lender, Buyer, or any other "Lender-Connected Party" (as defined in the Purchase Agreement)
28 in connection with the Purchase Agreement seeking to rescind the transaction contemplated thereby (in whole or
29 in part) or attacking the validity thereof (in whole or in part) or (y) if on or before the 367th day following the
30 "Closing Date" (as defined in the Purchase Agreement) Borrower files [or General Partner files against Borrower]
31 a petition under any chapter or section of Title 11 of the United States Code, as amended. Furthermore, Lender
32 shall have the right to sue and (including, without limitation, the right to counterclaim against) obtain and satisfy a
33 judgment against Borrower if Borrower is a necessary or reasonably necessary party in any action brought against
34 Lender or any affiliate of Lender. Nothing contained herein shall affect, and Lender hereby expressly reserves, the
35 right to foreclose the "Mortgage" (as defined in the Purchase Agreement) by judicial or, to the extent permitted by
36 applicable law, nonjudicial foreclosure and, in connection with any such foreclosure, Borrower and/or Guarantor
37 may, in Lender's sole discretion, be named as a party defendant, and Lender will be permitted to seek, obtain, and
38 satisfy a judgment in any such foreclosure proceedings, provided, however, that Borrower and Guarantor shall not
39 be personally liable for satisfaction of such judgment.
40

41 Date: _____, a _____ corporation

42
43 By: _____
44 Name: _____
45
46 Title: _____

1 EXHIBIT H
2 FORM OF ESCROW AGREEMENT

3
4 This ESCROW AGREEMENT ("Escrow Agreement"), dated as of _____, _____, by and among
5 _____, a _____
6 ("Borrower"), _____, a _____ (together with its successors and
7 assigns, "Lender"), and _____, _____ ("Escrowee").
8

9 R E C I T A L S

10
11 A. Borrower[,] [and] Lender [and Guarantor] have entered into that certain Deed in Lieu of Foreclosure
12 Agreement of even date herewith (the "Purchase Agreement"), subject to the terms and conditions of which,
13 among other things, Borrower has agreed to sell to [Lender] [Buyer] _____, a _____ ("Buyer"),
14 and [Lender] Buyer shall acquire from Borrower, [fee simple] [leasehold] title to the real estate and the
15 improvements thereon legally described on Exhibit A attached hereto.
16

17 B. Pursuant to the Purchase Agreement, Borrower has agreed [(i)] to deposit the Transfer Documents with
18 Escrowee, to be held by Escrowee, in escrow, pursuant to the terms of this Escrow Agreement[, (ii)] [deposit
19 \$_____ in immediately available funds with Escrowee ("Deposit")] [and (iii)] to enter into this Escrow
20 Agreement with Escrowee and Lender.
21

22 NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby
23 are acknowledged, the parties hereto agree as follows:
24

25 1. Incorporation of Recitals. The foregoing Recitals hereby are affirmed by the parties hereto, and are
26 acknowledged by Lender [, Buyer] [and Borrower] Borrower to be true and correct and are incorporated into the
27 body of this Escrow Agreement by this reference as if fully set forth herein. [Incorporate definitions]
28

29 2. Borrower's Escrow Deposits. Borrower hereby deposits with Escrowee the [Deposit and the]
30 documents referenced in Schedule 1 of this Escrow Agreement. Escrowee hereby acknowledges receipt of such
31 items and agrees to hold and dispose of same in accordance with the terms of this Escrow Agreement.
32

33 3. Lender's Escrow Deposits. Lender hereby deposits with Escrowee the funds, if any, and the documents
34 referenced on Schedule 2 of this Escrow Agreement. Escrowee hereby acknowledges receipt of such items and
35 agrees to hold and dispose of same in accordance with the terms of this Escrow Agreement.
36

37 4. Provided Escrowee (a) has received funds sufficient to pay all title, recording, and escrow charges and
38 title premiums payable in connection with the actions to be taken by Escrowee described below; (b) has received
39 written notice from Lender that all conditions to Buyer's and Lender's obligations under the Purchase Agreement
40 have been satisfied or waived (other than those to be satisfied pursuant to this Escrow Agreement); and (c) is
41 irrevocably committed to issue the owners title insurance policy in the form of the specimen policy attached
42 hereto as Schedule 3 and the endorsements to its loan policy number _____ in the form attached hereto as
43 Schedule 4, Escrowee is then authorized and directed to proceed as follows:
44

- 45 (a) purchase all necessary state, county, and municipal transfer stamps and/or taxes and affix
46 same to the deed;
47
48 (b) record the deed at once;
49
50 (c) pay all title and escrow trust charges and title premiums;
51
52 (d) deliver all of Borrower's deposits to Buyer;

1
2 (e) deliver all of Lender's deposits to Borrower; and

3
4 (f) issue and deliver to Lender the owners title policy and loan policy endorsements.

5
6 In the event that on or before _____, Escrowee has not received (a) funds sufficient to pay all title,
7 recording, and escrow charges and title premiums payable in connection with the actions to be taken by Escrowee
8 described above; (b) all deposits specified on Schedules 1 and 2; and (c) written notice from Lender that all
9 conditions to Buyer's and Lender's obligations under the Purchase Agreement have been satisfied or waived (other
10 than those to be satisfied pursuant to this Escrow Agreement), or in the event that Escrowee is not committed to
11 proceed as provided in items (a)-(f) of Paragraph 4 of this Escrow Agreement then Escrowee shall continue to
12 hold all deposits made under this Escrow Agreement and comply with the terms of this Escrow Agreement until
13 Escrowee receives a written demand from Lender to return all deposits to the party depositing same.
14

15 5. Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or
16 (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid,
17 registered or certified mail, return receipt requested, or (d) legible facsimile transmission sent to the intended
18 addressee at the address set forth below, or to such other address or to the attention of such other person as the
19 addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been
20 given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of
21 first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile transmission,
22 as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended
23 addressee by means described in clauses (a), (b), or (c) above. Unless changed in accordance with the preceding
24 sentence, the addresses for notices given pursuant to this Agreement shall be as follows:
25

26 To Borrower and Guarantor: _____
27 _____
28 _____
29 Attention: _____
30 Facsimile No.: _____
31

32 with a copy to: _____
33 _____
34 _____
35 Attention: _____
36 Facsimile No.: _____
37

38 To Lender: _____
39 _____
40 _____
41 Attention: _____
42 Facsimile No.: _____
43

44 with a copy to: _____
45 _____
46 _____
47 _____
48 Attention: _____
49 Facsimile No.: _____
50

51 To Escrowee: _____
52

1
2
3
4
5
6
7
8
9
10
11
12
13

Attention: _____
Facsimile No.: _____

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

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

[remainder of this page intentionally left blank]

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

3
4 **BORROWER:**

5
6 _____
7

8
9 **LENDER:**

10
11 _____
12

13
14 **ESCROWEE:**

15
16 _____

- 1 EXHIBIT A
- 2 LEGAL DESCRIPTION
- 3

1 SCHEDULE 1
2 TO
3 ESCROW AGREEMENT
4
5 Borrower's Deposits

1 SCHEDULE 2
2 TO
3 ESCROW AGREEMENT
4
5 Lender's Deposits

1 SCHEDULE 3
2 TO
3 ESCROW AGREEMENT
4
5 Specimen Owners Title Insurance Policy
6
7 (See Attached)

1 SCHEDULE 4
2 TO
3 ESCROW AGREEMENT
4
5 Specimen Loan Policy Endorsements
6
7 (See Attached)

1 EXHIBIT I
2 FORM OF SEARCH CERTIFICATE

3
4 The undersigned hereby certifies, represents, and warrants to [Lender, Buyer, and their respective
5 successors and assigns] that it is familiar with the matters set forth herein and has full power and has been duly
6 authorized to execute and deliver this Search Certificate. The undersigned agrees that this Search Certificate is
7 provided pursuant to that certain Deed in Lieu of Foreclosure Agreement dated as of _____,
8 _____ among [Lender, Borrower, and Guarantor] (the "Agreement") and that [Lender, Buyer, and their
9 respective successors and assigns] are entitled to rely on this Search Certificate. All certifications, representations,
10 and warranties contained herein shall be deemed remade on, and as of, the "Closing Date" (as defined in the
11 Agreement). The undersigned further certifies, represents, and warrants to [Lender, Buyer, and their respective
12 successors and assigns] that:

13
14 (a) The principal place of business and chief executive office of [Borrower] is _____;
15 and

16
17 (b) Since _____, _____ no Uniform Commercial Code financing
18 statements executed by or on behalf of Borrower have been filed in any filing office naming [Borrower], as
19 "debtor"; and

20
21 (c) Except as shown on the Uniform Commercial Code financing statement searches prepared by
22 _____, copies of which are attached hereto, [Borrower] has not executed any Uniform Commercial
23 Code financing statements.

24
25 Executed this ____ day of _____, ____.

1 EXHIBIT J
2 FORM OF DEED

3
4
5
6
7
8
9
10
11
12
13 (The Above Space for Recorder's Use Only

14
15 [SPECIAL] [LIMITED]
16 WARRANTY DEED

17
18 _____, a[n] _____
19 ("Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable
20 consideration in hand paid to the undersigned by _____ ("Grantee"), whose mailing
21 address is _____, the receipt and sufficiency of such consideration being hereby
22 acknowledged, Grantor does hereby GRANT, SELL, AND CONVEY unto Grantee that certain real property
23 being more particularly described in Exhibit 1 attached hereto and made a part hereof for all purposes, together
24 with all improvements and fixtures situated thereon (collectively, the "Property"); subject, however, to those
25 matters described in Exhibit 2 attached hereto and made a part hereof for all purposes.
26

27 TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances
28 thereto in anywise belonging, unto Grantee and its successors and assigns and to WARRANT AND FOREVER
29 DEFEND all and singular the Property unto Grantee, its successors and assigns, against every person whomsoever
30 lawfully claiming, or claim the same, or any part thereof, by, through, or under Grantor but not otherwise.
31

32 The [Special] [Limited] Warranty Deed is given by Grantor as a deed in lieu of foreclosure. [within the
33 purview of [statutory citation, if applicable, permitting deeds in lieu of foreclosure]]. It is the purpose and intent
34 of Grantor and Grantee that the interests of Grantee shall not merge with the interests of [Lender] under the
35 [Mortgage].
36

37 EXECUTED this ____ day of _____, ____.

38
39 _____
40
41 [ACKNOWLEDGMENTS]

42
43 This instrument was prepared by and after recording is to be returned to: _____,
44 _____,
45 _____

1 EXHIBIT 1

2

3 1. Street address:

4

5 2. Permanent index No.:

6

7 3. Legal description:

1 EXHIBIT K
2 FORM OF BILL OF SALE

3
4 _____, a[n]
5 _____ ("Seller"), in consideration of the sum of Ten and No/100
6 Dollars (\$10.00), in hand paid, the receipt and sufficiency of which hereby are acknowledged, hereby sells,
7 assigns, transfers, and sets over unto _____, a _____ ("Buyer"),
8 pursuant to that certain Deed in Lieu of Foreclosure Agreement dated as of _____, 199__ (the "Purchase
9 Agreement") between Borrower, _____, a[n] _____ corporation, _____, all
10 the tangible personal property owned by Borrower in connection with the "Real Estate" (as defined in the
11 Purchase Agreement), including, without limitation, the personal property listed on Exhibit A attached hereto (the
12 "Personal Property"). [Notwithstanding the foregoing, the items of tangible property listed on Exhibit A-1 as
13 excluded are not being transferred to Buyer]. Seller represents and warrants that it is the owner of the Personal
14 Property. Seller does not make any representation or warranty, express or implied, with respect to
15 merchantability, condition, quality, durability, design, operation, fitness for use, or suitability for any particular
16 purpose.

17
18 IN WITNESS WHEREOF, and intending to be legally bound hereby, Borrower has executed and
19 delivered this Bill of Sale as of the date set forth below.

20
21 Date: _____, ____
22
23 _____, a[n] _____
24
25 _____
26

27 By: _____, a[n] _____ corporation, its sole general partner

28
29 By: _____

30
31 Name: _____

32
33 Title: _____

- 1 EXHIBIT A
- 2 TO BILL OF SALE
- 3 LIST OF SPECIFIC PERSONAL PROPERTY

- 1 [EXHIBIT A-1
- 2 TO BILL OF SALE
- 3 EXCLUDED PERSONAL PROPERTY]

1 EXHIBIT L
2 FORM OF ASSIGNMENT AND ACCEPTANCE OF LEASES

3
4 _____, a[n] _____
5 ("Seller"), in consideration of the sum of Ten and No/100 Dollars (\$10.00), in hand paid, the receipt and
6 sufficiency of which hereby is acknowledged, hereby sells, assigns, transfers, and sets over unto
7 _____, a _____ ("Buyer"), pursuant to that certain
8 Deed in Lieu of Foreclosure Agreement dated as of _____, ____ (the "Purchase Agreement") between
9 Seller, _____ and _____, a[n] _____, the following
10 described property (all capitalized terms used but not elsewhere defined herein shall have the respective meanings
11 ascribed to such terms in the Purchase Agreement):
12

13 1. All of Seller's right, title, and interest as lessor in leases, licenses, and other agreements in effect on the
14 Closing Date (collectively, the "Leases") to occupy all or any portion of the Real Estate which Real Estate is
15 commonly known as _____, and is legally described on Exhibit A
16 attached hereto, together with (a) all rents due but unpaid, accrued, or to become due under each such Lease, (b)
17 all rents that have been received and are allocable to periods following the Closing Date, and (c) all guaranties by
18 third parties of the tenants' obligations thereunder. The Leases are described on the rent roll attached hereto as
19 Exhibit B.
20

21 2. All lease security deposits under the Leases (including both cash and non-cash items given as lease
22 security deposits), together with all interest thereon, subject, however, to the rights of tenants therein.
23

24 3. All claims against tenants under the Leases or against the guarantors thereof.
25

26 The Leases are sold, transferred, conveyed, assigned, and set over unto Buyer subject to the Permitted
27 Exceptions and the Loan Documents.
28

29 IN WITNESS WHEREOF, and intending to be legally bound hereby, Seller has executed and delivered
30 this Assignment and Acceptance of Leases as of the date set forth below.
31

32 Date: _____, ____

33 _____, a[n] _____
34

35
36 By: _____, a[n] _____, its sole general partner

37
38 By _____, a[n] _____, its sole general partner
39

40
41 By: _____
42

43 Name: _____
44

45 Title: _____
46

1 ACCEPTANCE

2
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Buyer hereby accepts the foregoing assignment as of the Closing Date and assumes Seller's obligations under the Leases to the extent such obligations accrue after the Closing Date provided, however, Buyer does not accept Seller's obligation to return any security deposit (and interest thereon) unless Seller concurrently with its execution and delivery of the foregoing Assignment delivers to Buyer such security deposit and interest, if any, required to be accrued thereon by the Lease in question or applicable law.

Date: _____

_____, a _____ corporation

By: _____

Name: _____

Title: _____

- 1 EXHIBIT A
- 2 TO ASSIGNMENT AND ACCEPTANCE OF LEASES
- 3 LEGAL DESCRIPTION

- 1 EXHIBIT B
- 2 TO ASSIGNMENT AND ACCEPTANCE OF LEASES
- 3 RENT ROLL

1 EXHIBIT M
2 ASSIGNMENT

3
4 _____, a[n] _____ ("Seller"), in consideration of the
5 sum of Ten and No/100 Dollars (\$10.00), in hand paid, the receipt and sufficiency of which is acknowledged,
6 hereby sells, assigns, transfers, and sets over unto _____, a _____
7 _____ ("Buyer"), pursuant to that certain Deed in Lieu of Foreclosure Agreement dated as of
8 _____, _____ (the "Purchase Agreement") between Seller, _____ and
9 _____ (all capitalized terms shall have the meanings ascribed to such terms in the Purchase
10 Agreement), the following (collectively, the "Assigned Property"):

11
12 (1) All of Seller's right, title, and interest in and to the Assigned Contracts, including, without limitation,
13 the right to sue any obligor thereto for any breach of any covenant, agreement, representation, warranty, or
14 guarantee contained therein, if and to the extent assignable.

15
16 (2) All of Seller's right, title, and interest in and to all Warranties, including, without limitation, the right
17 to sue any obligor thereto for any breach of any covenant, agreement, representation, warranty, or guarantee
18 contained therein, if and to the extent assignable.

19
20 (3) All of Seller's right, title, and interest in and to all Licenses and Permits, if and to the extent
21 assignable.

22
23 (4) All of Seller's right, title, and interest in and to all intangible personal property of Seller in connection
24 with the development, leasing, management, and/or operation of the Real Estate including, but not limited to,
25 logos, trade styles, and trade names (including without limitation the name " _____"), brochures,
26 manuals, lists of prospective tenants, advertising material, assignable utility contracts, and assignable telephone
27 numbers.

28
29 (5) All of Seller's right, title, and interest in and to all Plans and Specifications.

30
31 The Assigned Property is sold, transferred, conveyed, assigned, and set over unto Buyer subject to the
32 Permitted Exceptions and the Loan Documents.

33
34
35 IN WITNESS WHEREOF, and intending to be legally bound hereby, Seller has executed and delivered
36 this Assignment as of the date set forth below.

37
38 Date: _____, _____

39
40 _____,
41 a[n] _____

42
43 By: _____, a[n]
44 _____, _____

45
46 By: _____, a[n]
47 _____, _____

48
49
50 By: _____
51 _____
52 President

1 ACCEPTANCE

2
3 Buyer hereby accepts the foregoing assignment of the Assigned Contracts as of the Closing Date (as
4 defined in the Purchase Agreement) and assumes Seller's obligations under the Assigned Contracts to the extent
5 arising after the Closing Date.

6
7 Date: _____, ____

8
9 _____,

10
11 a _____ corporation

12
13 By: _____

14
15 Name: _____

16
17 Title: _____

18

1 EXHIBIT N
2 FORM OF NON-FOREIGN STATUS CERTIFICATE

3
4 To inform _____, a _____ ("Transferee"), that
5 withholding under Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), will not be
6 required upon the transfer of certain real property legally described on Schedule 1 attached hereto to the
7 Transferee by the undersigned ("Transferor"), Transferor hereby certifies to Transferee that:

8
9 1. Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate, or foreign
10 person (as those terms are defined in the Code and the regulations promulgated thereunder);

11
12 2. Transferor's U.S. Employer Identification Number is _____; and

13
14 3. The address of Transferor is _____
15 _____.

16
17 Transferor understands that Transferee is relying on this Certification in determining whether withholding
18 is required upon said transfer, that this Certification may be disclosed to the Internal Revenue Service by
19 Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

20
21 Under penalties of perjury, the individual executing this Certification on behalf of Transferor declares that
22 he has examined this Certification and to the best of his knowledge and belief it is true, correct, and complete, and
23 he further declares that he has authority to sign this document on behalf of Transferor.

24
25 Date: _____, _____

26
27 TRANSFEROR:

28
29 _____, a[n] _____
30 _____

31
32 By: _____, a[n] _____ corporation, its sole general partner

33
34 By: _____

35
36 Name: _____

37
38 Title: _____
39

- 1 SCHEDULE 1
- 2
- 3 Legal Description

1 EXHIBIT O

2
3 FORM OF RENT ROLL CERTIFICATE²⁰

4
5 The undersigned hereby certifies, represents, and warrants that it is familiar with the facts herein certified
6 and has full power and has been duly authorized to execute and deliver this Rent Roll Certificate.

7
8 Pursuant to that certain Deed in Lieu of Foreclosure Agreement dated as of _____ (the
9 "Purchase Agreement"), among the undersigned, _____ and
10 _____, a[n] _____ ("Lender"), the undersigned hereby certifies,
11 represents and warrants to Lender and [Buyer], their [its] successors and assigns, that the Rent Roll attached
12 hereto as Schedule 1 for the "Real Estate" (as defined in the Purchase Agreement), is true and accurate in every
13 material respect as of the date thereof. All of the certifications, representations, and warranties contained herein
14 shall be deemed remade on, and as of, the "Closing Date" (as defined in the Purchase Agreement).

15
16 EXECUTED on this ____ day of _____, ____.

17 _____

18
19
20 By: _____

21
22 Name: _____

23
24 Title: _____

25
26 [Acknowledgment]

²⁰ Consider changing if property manager will be providing certificate.

- 1 SCHEDULE 1
- 2
- 3 Rent Roll

1 EXHIBIT P

2

3 FORM OF TENANT LETTER

4

5 _____, _____

6

7 TO ALL TENANTS AT _____:

8

9 TO WHOM IT MAY CONCERN:

10

11 Please be advised that we have conveyed our entire ownership interest (inclusive of your lease [and
12 security deposit]) to _____, a _____, having
13 an office at _____. Therefore, all rents and other payments payable pursuant to the
14 terms of your lease shall hereafter be payable to, notices to the landlord or lessor under the lease should be given
15 to, and your security deposit shall be held and returned in accordance with your lease by or at the direction of:

16

17

18

19

20

21

Very truly yours,

22

23

1 EXHIBIT Q

2
3 FORM OF DEED IN LIEU OF FORECLOSURE CERTIFICATE

4
5 _____, a[n] _____ ("Seller") represents and
6 warrants to _____, a[n] _____ ("Lender")[, _____, a
7 _____ ("Buyer")], and their respective successors and assigns, as follows:

8
9 1. Seller, [Guarantor] and Lender are parties to a certain Deed in Lieu of Foreclosure Agreement of even
10 date herewith ("Agreement"). Unless otherwise defined in this Certificate, all capitalized terms shall have the
11 meanings ascribed to them in the Agreement.

12
13 2. Seller executed and delivered, or is contemporaneously with its execution and delivery hereof,
14 executing, a certain deed dated _____ (the "Deed") and other documents, conveying the Property to Buyer.

15
16 3. The Deed was executed and delivered pursuant to the Agreement.

17
18 4. The Deed was intended to be and is an absolute conveyance of title to the Real Estate to Buyer in effect
19 as well as in form; the Deed was not and is not intended to serve or operate as a mortgage, deed to secure debt,
20 security agreement, trust conveyance, deed of trust, lien, security interest, or security of any kind; Seller, by virtue
21 of the Deed, the Agreement, and the other Borrower Documents, waived, relinquished, and gave up any and all
22 right, title, and interest, legal, equitable, or otherwise in the Property; the consideration for the Deed was and is
23 for the benefit of Seller and consists of Lender's execution and delivery of the Covenant Not to Sue and
24 _____.

25
26 5. The Deed was executed and delivered as the result of the Seller's request and was the free and
27 voluntary act of Seller; Seller has no creditors whose rights would be prejudiced by the Deed; Seller's execution
28 and delivery of the Agreement and the other Borrower Documents is not the result of duress or undue influence,
29 intimidation, misapprehension, bad faith, unconscionable conduct, overreaching conduct, or misrepresentation by
30 Lender, Buyer, or any agent, attorney, or any other representative of Lender or Buyer; Seller has been represented
31 by legal counsel of its own choosing throughout the transactions contemplated or referenced in the Agreement.

32
33 6. Except as disclosed in Schedule 1 attached hereto, no work, labor, or materials have been supplied to
34 the Property upon which anyone could base a mechanics' lien, equitable lien, or any other type of lien against the
35 Property which has not been fully paid for.

36
37 7. Neither Lender nor Buyer has taken advantage of Seller by threats, duress, intimidation, overreaching
38 conduct, unconscionable conduct, bad faith, or otherwise, and Seller, by executing and delivering the Agreement,
39 the Deed, and the other Borrower Documents, acted freely and voluntarily, and not under coercion or duress;
40 Seller is proceeding with the transaction contemplated by the Agreement as a volunteer pursuant to what it
41 perceives to be in its own best interest. Seller understands that the transactions contemplated by the Agreement
42 may have adverse tax consequences and has consulted with such tax, legal, and accounting advisors with respect
43 to such consequences as it has deemed advisable.

44
45 8. After consummation of the transaction contemplated by the Agreement, the assets of Seller at fair value
46 will equal or exceed the sum of its debts. The value of the Property does not equal or exceed the indebtedness
47 evidenced by the Loan Documents. [If it's a close call, then refer to any payment made by the lender.]

48 9. This Certificate is made to induce Lender and Buyer to accept the Deed, is made for the protection and
49 benefit of Lender and Buyer and their successors, grantees, and assigns, any title insurers who may now or
50 hereafter insure Buyer's or Lender's respective interests in the Property, and all other parties hereafter dealing with
51 or who may acquire any interest in the Property, all of whom may rely on this Certificate.
52

1 10. The undersigned will cause [the] [its] officers, directors, shareholders, employees, and agents of
2 [General Partner] to testify, declare, depose or certify before any competent tribunal, officer, or person, in any
3 case now pending or that may hereafter be constituted, to the truth and accuracy of the particular facts set forth
4 above.

5
6 11. All representations and warranties made in this Certificate shall be deemed remade on and as of the
7 Closing Date.
8

1 EXHIBIT A TO CERTIFICATE

1 SCHEDULE 1 TO CERTIFICATE

1 EXHIBIT R
2
3 FORM OF LEGAL OPINION

4
5 [letterhead of Borrower's counsel]

6
7 [date]

8
9
10 [Lender's name and address]

11 _____
12 _____
13
14 [insert Buyer's name and address]

15
16 RE: Deed in Lieu of Foreclosure Agreement dated as of
17 _____, by and among
18 _____, a[n] _____ ("Borrower"),
19 _____ ("Guarantor") and _____, a[n]
20 _____ ("Lender") ("Agreement")

21
22 Dear Sir:

23
24 We have acted as counsel for Borrower [and Guarantor] in connection with the Agreement and have been
25 authorized and directed by our clients to deliver this opinion to you. All capitalized terms shall have the meanings
26 ascribed to them in the Agreement unless otherwise defined herein. We have examined the following documents
27 in connection with the transaction described in the Agreement each dated _____ [(unless otherwise
28 indicated below) (such documents referred to herein collectively as the Documents)]:

- 29
30 A. Agreement;
31
32 B. Special [Limited] Warranty Deed executed and delivered by Borrower to Buyer;
33
34 C. Bill of Sale executed by Borrower;
35
36 D. Assignment executed by Borrower;
37
38 E. Assignment and Acceptance of Leases executed by Borrower;
39
40 F. Certificate executed by Borrower;
41
42 G. Release executed by Borrower;
43
44 H. Rent Roll Certificate executed by Borrower; and
45
46 I. Search Certificate executed by Borrower.²¹

47
48 We have further (i) investigated such questions of law, (ii) examined such [corporate/partnership/limited
49 liability company] documents and records of Borrower and Guarantor, and (iii) received such information from

_____ ²¹ Add other documents as required.

1 officers and/or representatives of Borrower and Guarantor, as we have deemed necessary or appropriate for the
2 purposes of its opinion.
3

4 We have assumed, with your permission, (i) the due authorization, execution, and delivery of each of the
5 Documents by all parties to the Documents other than the Borrower and Guarantor and that each such document
6 is valid, binding, and enforceable against the parties thereto; (ii) the legal capacities of natural persons [other than
7 Guarantor]; (iii) the genuineness of all signatures (other than those on behalf of Borrower and Guarantor); (iv) the
8 authenticity of all Documents submitted to us as originals; and (v) the conformity to original documents of all
9 documents submitted to us as copies. As to various questions of fact (and not legal conclusions) material to our
10 opinion, we have relied upon certificates from officers or representatives of the Borrower and the representations
11 and warranties of Borrower and Guarantor contained in the Documents, which to our knowledge do not contain
12 any untrue statements[, and, in the case of the confirmation regarding litigation described below, a review of our
13 litigation docket and the litigation searches prepared by _____, copies of which litigation searches
14 are attached hereto]. For purposes of this opinion letter, the phrase "our knowledge" shall mean the [present
15 conscious recollection] [actual knowledge] [following review of our files and inquiry of representatives of
16 Borrower and Guarantor] of the attorneys [presently] employed by, or members of, this law firm who have
17 represented Borrower and Guarantor in connection with the preparation and negotiation of the Borrower
18 Documents and this opinion letter [and the Property].
19

20 Based upon our review of the foregoing as well as such other documents as we have deemed necessary
21 for the opinions hereinafter expressed, and subject to the qualifications stated below, we are of the opinion that:
22

23 1. Borrower is a _____ duly authorized to transact business and is in good standing in
24 the State of _____.
25

26 2. Borrower has the power and authority to execute and deliver the Documents and perform its
27 obligations thereunder.
28

29 3. The Documents have been duly executed and delivered by Borrower and Guarantor and constitute the
30 legal, valid, and binding obligations of Borrower and Guarantor, enforceable in accordance with their terms.
31

32 4. The execution and delivery of the Documents by Borrower and Guarantors does not breach, violate,
33 cause a default under, conflict with, or contravene: (a) any applicable law; (b) [the organizational documents of
34 Borrower/Guarantor]; and (c) any agreement or document [(exclusive of the Leases and the Permitted Exceptions,
35 as to which we express no opinion)] of which we have knowledge to which Borrower or Guarantor is a party, or
36 by which they or the Property is bound.
37

38 5. Borrower is duly authorized to execute and deliver the Documents.
39

40 6. No approval of, or consent from any federal [or] [, state] [or other] governmental authority is required
41 with respect to Borrower's and Guarantor's execution and delivery of the Documents.
42

43 7. Based upon the factual information set forth in the certificate of Borrower (a copy of which is attached
44 hereto) and the copy of transfer tax declaration of Borrower (a copy of which is attached hereto), upon payment of
45 \$_____ to _____, all recording, stamp, transfer, and transaction taxes payable on account of the
46 transfer of title to Buyer in accordance with the Documents will have been paid.
47

48 We confirm to you that we have no knowledge of any litigation, proceeding, or investigation pending or
49 threatened against Borrower or Guarantor that questions the validity of the Documents or any action taken or to
50 be taken pursuant to or in connection with the Documents.
51

52 The opinions expressed in Paragraphs 3 and 4(a) are qualified as follows:

1 (a) Enforceability of the Documents may be limited by applicable bankruptcy, fraudulent
2 conveyance, insolvency, reorganization, moratorium, and other similar laws affecting the enforcement of
3 creditors' rights generally;

4
5 (b) Enforceability of the Documents may be limited or modified by subsequent course of dealings
6 between the parties; and

7
8 (c) We express no opinion as to whether a court would grant specific performance or any other
9 equitable remedy with respect to the Documents.

10
11 This opinion is subject to and qualified in all respects by the following:

12
13 (a) This opinion is specifically limited to the laws of the State of _____ (and not any
14 political subdivision thereof) and the United States of America.

15
16 (b) We express no opinion as to the title to any real or personal property, the accuracy or
17 sufficiency of any description of any real or personal property set forth in the Documents, or the validity, creation,
18 attachment, perfection, or priority of the liens and security interests described in the Loan Documents.

19
20 (c) We express no opinion as to whether the Documents are effective to assign the Permits and
21 Licenses.

22
23 This opinion is made as of the date hereof. We have no obligation to advise you of any change in fact or
24 law that may hereafter come to our attention. This opinion is solely for the benefit of the Lender [, its participants]
25 [and] [Buyer][,] [their successors] and their legal counsel in connection with the transaction contemplated by the
26 Documents and without our prior written consent may not be relied upon in any manner by any other person or
27 entity.

28
29 Very truly yours,

30
31 _____
32
33
34

- 1 EXHIBIT S
- 2
- 3 PAYABLE STATEMENT

1 EXHIBIT T
2
3 FORM OF RELEASE
4
5 GENERAL RELEASE
6

7 _____, a[n] _____
8 ("Borrower"), and _____ ("Guarantor"), for and in consideration of the sum of Ten and No/100
9 Dollars (\$10.00), in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which
10 hereby are acknowledged, pursuant to that certain Deed in Lieu of Foreclosure Agreement dated as of
11 _____, _____ (the "Purchase Agreement") between Borrower,
12 _____, and _____, a[n] _____
13 ("Lender"), do hereby forever release and discharge Lender, [Buyer] ("Buyer") and their successors, assigns, and
14 past, present, and future affiliates, partners, participants, members, officers, directors, employees, shareholders,
15 attorneys, and agents from any and all liabilities, duties, responsibilities, obligations, claims, demands, actions,
16 causes of action, cases, controversies, damages, costs, losses, and expenses now existing or hereafter arising out
17 of or in any way relating to or connected with, directly or indirectly, the "Property" (as defined in the Purchase
18 Agreement) or the "Loan" (as defined in the Purchase Agreement), excluding, however, those specific matters or
19 obligations of Lender and Buyer arising under the specific terms of the "Borrower Documents" (as defined in the
20 Purchase Agreement).

21
22 Date: _____, 199__

23
24 BORROWER:
25
26 _____

27
28 GUARANTOR:
29
30 _____

31
32

1 EXHIBIT U
2
3 EXPENSES

1 EXHIBIT V

2
3 ADDITIONAL REPRESENTATIONS AND WARRANTIES

4
5 A. No authorization or approval of any governmental authority is required to be obtained by Borrower or
6 Guarantor in connection with their execution, delivery, and performance of this Agreement or the other Borrower
7 Documents that have not been obtained.

8
9 B. Borrower and Guarantor are not in [material] default or breach in any respect under any applicable law
10 or order of any court, administrative agency, or other governmental entity, or any agreement or document (except
11 for the Borrower's Default), to which Borrower or Guarantor is a party, or by which Borrower or Guarantor may
12 be bound or to which the Property or any portion of their properties or assets may be subject.

13
14 C. Borrower has filed all tax returns that are required by federal, state or other law to be filed prior to the
15 Closing Date and has paid all income, franchise, sales, use, employment, and property taxes that have become
16 due.

17
18 D. Other than the contracts set forth in Exhibit ___ attached hereto and made a part hereof for all purposes
19 (being herein sometimes referred to collectively as the "Contracts"), there is not any contract or agreement, oral or
20 written, or any amendment or supplement to any such contract or agreement, to which Borrower is a party or that
21 affects the Property. The Contracts do not require the consent or waiver of any individual, corporation,
22 partnership, or other entity (including any governmental authority) to the consummation of the transaction
23 contemplated by this Agreement, except as may be otherwise set forth in the Contracts. True and complete copies
24 of all Contracts have been provided to Lender. Except as may be otherwise set forth in the Contracts, the
25 Contracts have not been modified or amended. The Contracts are in full force and effect and no [material] default
26 by any party thereto (other than Borrower) exists under the Contracts.

27
28 E. Except for the Contracts, the Loan Documents, the Permitted Exceptions, or as expressly disclosed in
29 Exhibit S of this Agreement, Borrower has no contingent, liquidated, or other liabilities or obligations with
30 respect to the Property.

31
32 F. Borrower owns the Real Estate in fee simple [has valid leasehold title to the Real Estate] and has good
33 title to the other components of the Property and there are no existing liens, encumbrances, agreements,
34 encroachments, overlaps, special assessments, claims, leases, tenancies, other adverse interests, or defects upon or
35 affecting the Property, except for the Permitted Exceptions and the Loan Documents. Upon the conveyance of the
36 Property to Buyer, Buyer will acquire and have good, marketable, and indefeasible title thereto, subject only to
37 the Permitted Exceptions [, provided, however, that no warranty or representation is given with respect to the
38 assignability of the Permits and Licenses without the consent of the issuer thereof].

39
40 G. Borrower and Guarantor have not received any notice of, and have no knowledge of, any pending
41 condemnation proceeding or conveyance in lieu thereof, or threatened rezoning, of the Real Estate or any portion
42 thereof.

43
44 H. The Property is in compliance with all applicable [material] governmental laws and Borrower and
45 Guarantor have not received notice and do not have knowledge that the Property does not comply therewith.

46
47 I. There are no unpaid bills or invoices for labor, services, or work performed upon the Real Estate or
48 within the improvements thereon, or for materials or supplies furnished or delivered to, or in connection with, the
49 Real Estate, that could result in the filing of mechanic's, materialmen's, or laborer's liens on the Property except as
50 disclosed on Exhibit S.

51
52 J. All Management Documents and the tangible personal property that is identified on Exhibit F are

1 located at the Real Estate or at Borrower's offices at _____. Borrower has not
2 removed, or permitted the removal of, any tangible personal property owned at any time by Borrower or
3 Management Documents, except, in the case of tangible personal property, consumable supplies consumed in the
4 ordinary course of business or otherwise removed in the ordinary course of business. The Management
5 Documents are true and accurate in all respects, fairly and accurately represent the financial status of the matters
6 therein covered and do not omit any information, the omission of which would be materially misleading.
7

8 K. The rent roll to be delivered pursuant to Section 4.02(B)(g) is a true and complete rent roll ("Rent
9 Roll") of all Leases dated as of the Closing Date. All Leases are identified on the Rent Roll. Except as shown on
10 the Rent Roll, no persons are entitled to occupy the Real Estate. Except as set forth on the Rent Roll, no tenant
11 under any Leases is in default and each tenant had accepted and approved its premises as complete under the
12 terms of its Lease. All Leases are in full force and effect. Borrower has fully performed all of its obligations under
13 the Leases. True and correct copies of all Leases have been provided to Lender. The Leases have not been
14 amended, modified, assigned, or subleased, except as described on the Rent Roll or in the copy of the Leases
15 provided to Lender. No rent or other allowances or concessions have been granted to any tenants except as shown
16 on the Rent Roll. Borrower has not accepted any prepaid rents except as shown on the Rent Roll.
17

18 L. There are no security deposits ("Security Deposits") deposited by any tenants, except as shown on the
19 Rent Roll. All Security Deposits are currently held by Borrower. None of the Security Deposits are interest
20 bearing except as shown on the Rent Roll.
21

22 M. Borrower has not engaged any broker or finder as leasing agent for the Real Estate other than
23 _____. No brokers' commissions or finder's fees are owing, or may be owed, to any person
24 or entity on account of any actual or prospective Lease (or extension, renewal, or expansion thereof) except as
25 shown on the Rent Roll.²²
26

27 N. To the best of Borrower's knowledge, [except as disclosed in the [Environmental Site Assessment,]]
28 there has been no presence, use, generation, release, production, disposal, migration, or storage on the Property of
29 any Hazardous Materials or any other activity that could have toxic results, and there is no proceeding or inquiry
30 by any Authority with respect thereto. For purposes of this Agreement, the term "Hazardous Materials" shall have
31 the meaning ascribed to it in the Loan Documents.
32

33 O. No personal property is registered under any so-called certificate of title, or similar documents [other
34 than _____].

²² Consider obtaining registration letters (i.e., letters notifying the addressees of the brokers' prospects) from brokers.