

the indemnifying party, the Claim with counsel of the indemnified party's choosing, subject to the right of the indemnifying party to assume the defense of the Claim at any time prior to settlement or final determination thereof. In such event, the indemnified party shall promptly send a written notice to the indemnifying party of any proposed settlement of a Claim, which settlement the indemnifying party may accept or reject, in its reasonable judgment, within thirty (30) days of receipt of such notice, unless the settlement offer is limited to a shorter period of time in which case the indemnifying party shall have such shorter period of time in which to accept or reject the proposed settlement. Failure of the indemnifying party to accept or reject such settlement within the applicable period of time shall be deemed to be its rejection of such settlement. Notwithstanding the foregoing, the indemnified party may settle any matter over the objection of the indemnifying party, but in so doing the indemnified party shall be deemed to have waived any right to indemnity therefor as to (and only as to) liabilities with respect to which the indemnifying party has acknowledged in writing its indemnity obligation.

8.12 Waiver of Certain Damages. Each of the parties hereby waives and agrees not to seek indirect, consequential, punitive or exemplary damages of any kind with respect to any Claim or dispute arising out of or relating to this Agreement or breach hereof. This provision shall not diminish or affect in any way the parties' rights and obligations under any indemnities provided for in this Agreement.

8.13 Limitation on Indemnities. In no event shall an indemnifying party have any obligation of indemnification to the indemnified party, if the Claim for which indemnity is sought was caused by the gross negligence or willful misconduct of the indemnified party or its officers, directors, employees, agents, Affiliates, successors and assigns, nor shall any indemnity provisions in this Agreement apply to or be deemed to apply to matters affecting properties (real, personal or mixed) and appurtenant rights (contractual or otherwise) other than those which are covered by this Agreement.

ARTICLE 9. SPECIAL WARRANTY AND DISCLAIMERS

9.1 Special Warranty of Title. Seller shall warrant title to and forever defend title to the Properties conveyed to Buyer against every person whomsoever lawfully claiming title to the Properties, or any part thereof by, through or under Seller, but not otherwise.

9.2 Disclaimer - Representations and Warranties. Buyer acknowledges and agrees that the Properties are being transferred, assigned and conveyed from Seller to Buyer "AS-IS, WHERE-IS", and with all faults in their present condition and state of repair, without recourse. Except as expressly set forth in this Article 9 and Article 10, Seller hereby