DEED IN LIEU OF FORECLOSURE AGREEMENT

This Deed in Lieu of Foreclosure Agreement (the "Agreement") is made effective as of ______________, 20___ (the "Effective Date"), among ________________________ ("Lender"), ________________, a _________________________ (the "Borrower") and ______________________, an individual (the "Guarantor").

RECITALS

A. On ____________, Borrower executed and delivered to Lender the Promissory Note dated _____________, in the original aggregate principal amount of $__________________ (the "Note"). The Note is secured by, among other instruments, that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated ______________, and recorded on ____________________ in Liber _______, Page ____ __, ____________ County Records, pursuant to an Assignment of Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated as of______________, and recorded on ________________ in Liber ____, Page _____, ______________ County Records (the "Mortgage"), encumbering the property more particularly described in the Mortgage.

B. The Note is also secured by, among other things, that certain (i) Assignment of Rents and Leases ("Assignment") dated ________________, between Borrower and Lender, recorded on ________________, in Liber ________, ______________ County Record, (ii) Unconditional Guaranty (the “Guaranty”) dated ________________, executed by Guarantor in favor of Lender and (iii) Environmental Indemnity dated _________________, executed by the Borrower and Guarantor in favor of Lender (the “Environmental Indemnity”).

C. The Note, the Mortgage, the Assignment, the Guaranty, the Environmental Indemnity and all other related agreements or instruments evidencing or securing the foregoing are hereinafter collectively referred to as the "Loan Documents". The indebtedness evidenced by the Loan Documents shall be referred to herein as the "Loan".

D. Borrower has defaulted on the obligations set forth in the Loan Documents because Borrower failed to: _______________________ (collectively, the "Specified Defaults").

E. Borrower, Guarantor and Lender desire to enter into this Agreement to, among other things, provide for the settlement of the obligations of Borrower and Guarantor under the Loan as more particularly set forth herein.

NOW, THEREFORE, in exchange for the Lender's covenant not to sue, limited release and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:
1. **Acknowledgments by Borrower and Guarantor.** Borrower and Guarantor hereby acknowledge and agree with the following:

(a) The recitals set forth in paragraphs A through E above are true and correct in all material respects;

(b) That prior to the date hereof, Lender has not waived in any respect its rights and remedies with respect to the Loan Documents;

(c) That on and as of ____________, (i) Borrower is indebted to Lender, among other things, for the following amounts (collectively, the "Indebtedness"): (A) principal in the amount of $______________; (B) interest in the amount of ________________; (C) default interest in the amount of ___________________; (D) [mortgage discharge and late fees in the amount of $_____________]; and (E) the Fees and Expenses as defined in Section 2; (ii) all such amounts remain outstanding and unpaid; and (iii) all such amounts are due and payable in full, without offset, deduction or counterclaim of any kind or character whatsoever, but are subject to increase, decrease or other adjustment as a result of any and all payments, accrued interest, fees and other charges including, without limitation, attorneys' fees and costs of collection, which are payable to Lender under the Loan Documents;

(d) That on and as of the Effective Date, the Loan Documents including, without limitation, the Mortgage and the Assignment, are valid and binding and are enforceable in accordance with the terms of the Loan Documents, and the security interests, security titles and liens granted to Lender pursuant to the Loan Documents, are, to the best of Borrower's knowledge, properly perfected;

(e) That the Note and all other liabilities and obligations of Borrower and Guarantor to Lender under the Loan Documents shall, except as expressly modified or released hereby, remain in full force and effect, and shall not be released, impaired, diminished or in any other way modified or amended as a result of the execution and delivery of this Agreement or by the agreements and undertakings of the parties contained herein;

(f) That Lender's actions have been reasonable and appropriate under the circumstances and are within its rights under the Loan Documents and applicable law and Lender has fully performed all of its obligations under the Loan Documents and applicable law;

(g) That Lender has no obligation to make loans or other financial accommodations available to Borrower or Guarantor and, due to the Specified Defaults, Lender has the absolute and unconditional right to exercise its remedies and enforce its rights under the Loan Documents and
applicable law at any time without notice, including, without limitation, the right (without prior notice or opportunity to cure of any kind) to commence foreclosure proceedings, seek the appointment of a receiver, or both. If Lender took these actions it would be acting reasonably and appropriately, and within its rights under the Loan Documents and applicable law;

(h) In consideration of the execution and delivery of this Agreement by Lender (which Borrower and Guarantor acknowledge to be good, valuable and adequate consideration), Borrower agrees not to file a proceeding under the United States bankruptcy code or any state insolvency law, or take any other legal action related to the transactions evidenced in the Loan Documents;

(i) Each of the following is an "Event of Default" and a default under this Agreement and the other Loan Documents, and an Event of Default or a default under a Loan Document is an Event of Default under this Agreement and a default and an Event of Default under all other Loan Documents:

i. If Borrower or Guarantor does not comply with any term in this Agreement, the other Loan Documents (other than the Specified Defaults), or any other present or future agreement between Borrower, Guarantor and Lender.

ii. If a Specified Default worsens.

iii. If a default or an Event of Default, other than the Specified Defaults, occurs under the Loan Documents.

iv. If a material adverse change occurs in Borrower's or Guarantor's financial condition or prospects.

v. If a judgment is entered against Borrower or Guarantor.

vi. If Borrower or Guarantor prepays any debts.

vii. If Borrower or Guarantor makes a false representation or warranty in this Agreement or the other Loan Documents.

viii. If anyone attaches, seizes, levies, or places a Lien on any of Borrower's or Guarantor's property. "Lien" means any lien, security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including the interest of a vendor or lessor under any conditional sale, capitalized lease, or other title retention agreement).

ix. If taxes or debts become a Lien on Borrower's or Guarantor's property.
(j) The Indebtedness has been accelerated or has become due by its terms and is currently due and payable;

(k) All of Borrower's cash, checks, instruments, wire transfers, and ACH transfers that are Property or proceeds of Property must be deposited into an account maintained by Borrower at Lender. All other proceeds of Property must be immediately delivered to Lender in the form received. No Property or proceeds of Property may be on deposit with any financial institution, except Lender, or evidenced by a certificate of deposit, cashier’s check, or other instrument issued by any person other than Lender; and

(l) Lender and its agents are granted full and complete access to Borrower's and Guarantor's facilities, books and records to conduct audits as often as Lender desires. Audit costs are part of the Indebtedness, secured by the Property and payable on the earlier of demand or receipt of an invoice therefor.

2. Fees and Expenses. In consideration of Lender's agreements hereunder, at Closing, Borrower and Guarantor shall pay to Lender all costs and expenses associated with the consummation of the transactions contemplated by this Agreement, including without limitation, the following (collectively, the "Fees and Expenses"):

(a) Lender’s counsel’s fees and costs in the amount of $________;

(b) Recording fees, title premiums and related charges in the amount of $_______;

(c) Net Cash Flow (as defined in Section 16) derived from the Property for the period ________________ to the Closing Date in the amount of $__________;

(d) Costs incurred in connection with Lender’s environmental due diligence including a Phase I Environmental Site Investigation and Phase II Environmental Site Investigation, each dated __________ and prepared by ____________________ for Lender with respect to the Property, in the total amount of $____________;

(e) Costs incurred in connection with that certain Property Condition Assessment Report dated ____________, 20__ prepared by ________________ for Lender with respect to the Property (the "Report") in the amount of $____________;

(f) Any and all transfer taxes [documentary stamps] payable in connection with the transfer of the Property from Borrower to Lender in the amount of $___________;

(g) A “workout fee” which shall be equal to ____ percent (___%) of the unpaid principal balance of the Note as of the date hereof in the amount of $____________; and

(h) All other attorneys' fees and costs incurred by Lender in connection with the Property, the Indebtedness, and the relationship between Lender, Borrower and Guarantor, whether or not Lender prevails in whole or in part in the action, proceeding, or litigation, and regardless of the nature of the action or litigation, or the theories or bases of recovery or defense.
3. Property Conveyances by Borrower. At Closing, Borrower hereby agrees to assign and convey to Lender or its designee, absolutely and free of any right of redemption that Borrower may have or anyone claiming by, through or under Borrower in the following real and personal property:

(a) Title in and to the real property described on Exhibit A attached hereto and made a part hereof ("Real Property");

(b) Title in and to all personal property located on the Real Property and owned by Borrower, if any, all personal property acquired for installation or used in connection with the Real Property, wherever located, and all of Borrower's rights under contracts or other arrangements to acquire personal property for installation or use in connection with the Real Property (hereinafter referred to as the "Personal Property");

(c) Title in and to all intangible property belonging to Borrower, if any, used in connection with the Real Property or the Personal Property, or any business or businesses conducted on the Real Property, including, but not limited to, any trade style or trade name used in connection with the Real Property, any contract rights, agreements, commitments, and insurance policies, all correspondence with suppliers, booklets and manuals, advertising material, utility contracts, guaranties, warranties, telephone exchange numbers, surveys, plans and specifications, assignable licenses and other governmental permits and permissions relating to the Real Property and the operation thereof to the extent assignable, including, without limitation, all certificates of occupancy relating to the Real Property (all of the foregoing is hereinafter collectively referred to as the "Intangible Property");

(d) Any and all rights, claims, demands or causes of action of whatever kind or nature, which Borrower has had, or now has, or may have in the future against any and all persons, companies or entities whatsoever, arising or growing out of, relating to or connected with the construction, management, or operation of the Real Property (hereinafter the "Claims"), including but not limited to any claims which Borrower has had, or now has, or may have in the future against any person, company, or entity with respect to the preparation of the site, the design and construction or the repair of any improvements on the Real Property;

(e) All leases, rights to lease, rights to collect rent or any other right and/or privilege arising in any way from the use or occupancy of the Real Property prior to conveyance (except as otherwise agreed) of the Real Property and the Personal Property to Lender (the "Leases");

(f) All contracts and rights arising thereunder for any sale of all or any portion of the Real Property or the Personal Property entered into prior to conveyance of the Real Property and the Personal Property to Lender (the "Contracts"). The Real Property, Personal Property, Intangible Property,