

Loan No. _____
Property Address _____

SETTLEMENT AGREEMENT CALLING FOR, INTER ALIA, A PROMPT DEED-IN-LIEU OF FORECLOSURE TO LENDER'S DESIGNEE

(excerpt of generally only those contract provisions particular to this type of transaction)

THIS SETTLEMENT AGREEMENT CALLING FOR, INTER ALIA, A PROMPT DEED-IN-LIEU OF FORECLOSURE TO LENDER'S DESIGNEE (this "Agreement") is made as of the "Effective Date" set forth below, by and among (a) _____, a _____ ("Borrower"); _____ (who constitute all of the principals or other owners of Borrower or guarantors of the Loan hereinafter described (collectively, "Borrower's Principals"); and _____, a _____ ("Lender").

RECITALS:

A. Borrower is the fee simple title owner of certain real property located within the County of _____, State of _____, which real property is more particularly described on Exhibit "_____" hereto, together with any and all infrastructure and improvements situated thereon (collectively, the "Land and Buildings"). Borrower is also the owner of all personal property (other than personal property of any tenants) located on and used in the operation of the Land and Buildings (collectively, the "Personal Property") and all building materials and supplies, if any, situated in, on, or about the Land and Buildings, or in separate storage facilities, and described in Exhibit "_____" hereto (collectively, the "Building Materials"). (The Personal Property and the Building Materials are herein collectively referred to as the "Personalty"; and the Land and Buildings, the Personalty and the other tangible and intangible properties subject to the "Assignment of Leases, Rents and Profits" described below are herein sometimes referred to, collectively, as the "Property".)

B. To evidence and secure a certain loan made to Borrower by Lender (the "Loan"), Borrower executed and delivered the following documents in favor of Lender:

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(1) A "Promissory Note" dated _____, 20____, payable to the order of Lender, in the principal amount of _____ Dollars (\$ _____), together with interest thereon at the rate therein stated (the "Note").

(2) A "Deed of Trust, Security Agreement, and Fixture Filing" of even date with the Note, recorded in the office of the _____ of _____ County, _____ as _____ Number _____ (the "Deed of Trust");

(3) An "Assignment of Leases, Rents, and Profits" of even date with the Note and recorded in the office of the _____ of _____, as _____ Number _____ (the "Assignment of Leases"); and

(4) A UCC-1 Financing Statement filed in the office of the _____ of _____ as _____ Number _____ (the "Financing Statement").

(The Deed of Trust, the Assignment of Leases, and Financing Statement are hereinafter sometimes referred to, collectively, as the "Security Documents".)

C. To further evidence and secure the Loan, Borrower's Principals executed and delivered the following documents in favor of Lender: _____ (collectively, the "Guaranty").

D. Borrower and Borrower's Principals acknowledge, represent and warrant the following unto Lender:

(1) Borrower is in material default of its obligations under the Note and Security Documents by reason of Borrower's failure to

_____.
Based thereon, the entire principal balance, outstanding interest, and various other amounts payable under the Note, and/or under one or more of the Security Documents, are now due and payable in full, along with the attorneys fees and other costs described in the Note and/or the Security Documents with respect to the collection of those amounts.

(2) The outstanding principal balance, interest and late charges due under the Deed of Trust, as of _____, 20____, total

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Dollars (\$ _____). Interest is accruing and shall accrue thereon in the amount of _____ Dollars (\$ _____) per day commencing _____, 20 ____ . Those amounts, together with all other costs, charges and fees, including attorneys' fees and advances, evidenced or secured by the Note and/or the Security Documents, from time to time, are herein referred to, collectively, as the "Indebtedness".

(3) The Indebtedness is justly due, owing, and delinquent. There is no offset, defense, recoupment, or counterclaim that Borrower or any of the Borrower's Principals has, or, by the passage of time or otherwise, could have, in connection therewith.

(4) Lender has repeatedly demanded that Borrower pay the Indebtedness, and that the Borrower's Principals pay the amounts due under the Guaranty. However, both Borrower and Borrower's Principals have failed and refused to do so.

(5) Lender has the immediate right to pursue all of its rights and remedies pursuant to the Note, the Securities Documents, and/or the Guaranty, including foreclosure and seeking the appointment of a receiver for the Property and such other remedies as are available at law or in equity.

(6) The fair market value of the Property is less than _____ Dollars (\$ _____), which is substantially less than the Indebtedness.

E. Borrower's only asset is the Property, Borrower lacks any equity in the Property, and the Property is "single asset real estate" under Section 11 U.S.C. 362(d)(3). In view of those facts and in order to avoid further time-consuming, expensive, and needless litigation, Borrower and Borrower's Principals have requested Lender to accept a settlement, pursuant to which the Property would be transferred, to Lender's designee, whereupon Borrower and the Borrower's Principals would be released from personal liability for a money or deficiency judgment upon the Note or the Security Documents or by reason of the Guaranty. Lender is willing to accept such a settlement, but only upon the terms and conditions hereinafter set forth.

F. Borrower and Borrower's Principals acknowledge that releases and modifications provided herein are of direct and substantial benefit to Borrower and to Borrower's Principals and constitute fair and adequate consideration for their entry into this transaction and transfer of the Property. Lender acknowledges that Borrower's transfer of the Property to Lender's designee and the releases provided herein are of direct and substantial benefit to

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Lender and constitute fair and adequate consideration for Lender's entry into this transaction.

NOW THEREFORE, in consideration of the respective covenants contained herein and intending to be bound hereby, Borrower, Borrower's Principals, and Lender covenant and agree as follows:

1. THE RECITALS. The foregoing Recitals are incorporated herein as though set forth here as covenants, representations and warranties of Borrower and of Borrower's Principals.

2. UP-FRONT PAYMENTS BY BORROWER. Concurrently with the execution hereof, Borrower shall pay to Lender all attorneys' fees, and other costs, and expenses, including reimbursement of Lender's advances thereof, heretofore (including on the Effective Date) incurred by Lender, or that the Lender anticipates incurring, in the negotiation and preparation of this Agreement, the Closing Documents, and all documents incident thereto and in arranging for the conveyance and transfer of the Property. As part of the foregoing, the Lender anticipates incurring fees and other charges to obtain a current environmental report, title commitment, structural engineering report, survey, and zoning report and other current due diligence materials on the Property; those fees and charges shall be included in the amounts due concurrently with the execution hereof. Those amounts shall also include a loan termination fee of _____ Dollars (\$ _____).

3. THE CLOSING. Borrower shall deed the Property to the Lender's designee and take all of the other actions to be taken by Borrower under the terms of this Agreement at the time of such deed (the "Closing"). [vs. putting the deed into escrow] (All documents executed and delivered hereunder by one or more of the parties hereto at the Closing shall sometimes hereinafter be referred to, collectively, as the "Closing Documents".] The Closing shall be held at 10:00 a.m. on _____, 20__ or such earlier date, if any, as the parties hereto agree upon (the "Closing Date"). The Closing shall be held at the offices of _____ at _____.

A. At the Closing, Borrower (and/or where called for Borrower's Principals) shall complete, execute, where called for acknowledge, and deliver, the following documents to Lender's designee, in form and content satisfactory to Lender in accordance with Lender's general procedures and requirements for accepting deeds-in-lieu of foreclosure:

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(1) Borrower's deed, in the form of Exhibit "_____" hereto and otherwise in recordable form, conveying the Land and Buildings to Lender's designee (the "Deed").

(2) Borrower's bill of sale and assignment, in the form of Exhibit "_____" hereto, conveying the Personalty to Lender's designee (the "Bill of Sale").

(3) Borrower's assignment, in the form of Exhibit "_____" hereto, conveying, to Lender's designee, all of Borrower's interest in all of the leases, licenses, and other occupancy agreements for space in or on the Land and Buildings (the "Assignment of Leases").

(4) Borrower's general assignment, in the form of Exhibit "_____" hereto, transferring, to Lender's designee, all licenses, permits, contracts, equipment leases, books, records, plans, specifications, and other documents, if any, designated by Lender's designee, to the extent the same are owned or controlled by Borrower and used, or to be used, in the operation of the Land and Buildings (the "General Assignment").

(5) Borrower's certifications that _____

(6) Such affidavits, indemnities, waivers and other documents as Lender's designee's title insurance company may require in order to remove title exceptions, from such designee's title insurance policy with respect to that conveyance, and issue creditors' rights, non-merger and other endorsements to that policy, in accordance with Lender's general procedures and requirements for accepting deeds-in-lieu of foreclosure (collectively, the "Title Evidence").

(7) Tenant notices, executed by Borrower, in the form of Exhibit "_____" hereto for each tenant, licensee and other occupant of the Land and Buildings (collectively, the "Tenant Notices").

(8) Such closing statements, governmentally mandated disclosures, and filing forms, as are (a) legally required or customary for the conveyance of real estate in the jurisdiction wherein the Land and Buildings are located; or (b) usually required by Lender under its general procedures and requirements for accepting deeds-in-lieu of foreclosure.

B. At the Closing, Lender shall execute and deliver, to Borrower and to Borrower's Principals, a covenant not to sue in the form of Exhibit "_____" hereto (the "Covenant Not To Sue").

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[The Covenant Not to Sue provides that no suit shall be commenced, nor shall any claim be asserted, by Lender against Borrower or Borrower's Principals for personal liability under or with respect to the Note, the Security Documents or the Guaranty, except that: (1) Borrower shall not be deemed to be released, in any way, from its continuing obligations under the terms of this Agreement, except that; (2) such personal liability shall continue with respect to those obligations (such as for fraud and environmental contamination) that expressly constitute recourse obligations under the terms of the Note and/or the Security Documents, not connected with Borrower's failure to pay the principal, interest or unrelated collection charges due under the Note and/or the Security Documents; (3) the release of Borrower and Borrower's Principals from personal liability to Lender described in this Paragraph shall not be deemed to release, discharge, or otherwise affect in any way the Indebtedness or the security or lien of the Security Documents; (4) Lender retains all rights and remedies against the Property as provided in the Security Documents or by law or in equity, including the right to foreclose upon the Property by reason of the Deed of Trust; and (5) the Guaranty shall remain in full force and effect after the Closing, except the obligations guaranteed thereunder shall be only the obligations of Borrower under this Agreement. The provisions of the Covenant Not to Sue shall survive the Closing.]

C. At the Closing, Lender or its designee shall pay Borrower and Borrower's Principals Dollars (\$) as additional consideration under this Agreement.

D. This Agreement, the Closing Documents and the Closing are intended to be, and are acknowledged by Borrower to effect, an absolute, final and unconditional conveyance and transfer of the Property and all of Borrower's Principals rights, titles, interests, income, rents, rent equivalents, issues, revenues, royalties, and profits in connection therewith, as of the Closing Date. Borrower further acknowledges and agrees that none of this Agreement, the Closing Documents or the Closing is intended to create a secured transaction or to give Borrower any rights of subrogation to the position of Lender or Lender's designee. Borrower acknowledges that it has no equity of redemption or other right to redeem any of the Property. There is no consideration for the transfer of the Property to Lender's designee, except as specifically stated in this Agreement. However, title to the Property shall remain subject to the Security Documents to the full extent of the Indebtedness now existing and all increases hereafter thereto. In the event that, contrary to the foregoing, it is, at any time hereafter, determined that Borrower has any equitable and/or statutory rights or interest in the Property or to the return thereof, then, without additional consideration,

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Borrower shall sell, transfer and convey the Property to Lender's designee, and waives for itself any and all equitable and statutory rights of redemption with respect to the Property.

E. None of the completion of the Closing, the delivery, acceptance, and/or recording of the Closing Documents, or the receipt of any amounts hereunder, shall:

(1) result in a merger, of any of the interests of Lender under the Security Documents, with any of the interests of the Lender's designee as new fee holder of the Property, it being understood and agreed that those interests are and shall remain separate and distinct unless and until formally merged of record by a document expressly so stating;

(2) be deemed a waiver by Lender of the priority, that the Security Documents have as of the Effective Date of this Agreement, over any other voluntary or involuntary liens, Deed of Trusts, security interests, judgments or encumbrances of any kind or nature, now existing or hereafter placed upon the Property, or any part thereof;

(3) be deemed a subordination by Lender of the priority that the Security Documents have as of the Effective Date of this Agreement; or

(4) affect or prejudice in any way the right of Lender to foreclose the Deed of Trust or to proceed as provided in the Security Documents and as otherwise provided at law or in equity to exercise its rights or remedies with respect to the Property.

The Note, the Security Documents, the lien imposed thereby and the Guaranty shall, except as otherwise specifically provided in this Agreement, survive the Closing and the delivery and recording of the Closing Documents. Borrower hereby ratifies and confirms the Note and Security Documents in all respects. Borrower's Principals hereby ratify and confirm the Guaranty, as modified at the Closing hereunder, in all respects.

F. At the Closing, Borrower shall pay to Lender or to the Lender's designee:

(1) any and all amounts, of the fees, costs and expenses of the type described in Paragraph 2 above, that shall have turned out to have exceeded the amounts anticipated thereunder;

(2) all pre-payment premiums described in the Note and/or the Security Documents as though Borrower had elected to voluntarily pre-pay the Loan; and

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(3) the balance, as of the Effective Date, in any management, operating or other account and all revenue hereafter received by Borrower or its employees or agents in the operation of the Land and Buildings and not otherwise applied to normal and valid operating expenses due pursuant to the budget attached hereto as Exhibit " " hereto or otherwise toward amounts due to Lender pursuant to the Note or the Security Documents.

4. POSSESSION AND INDEMNITY.

A. From time to time from the Effective Date through the Closing Date, Borrower shall (1) provide Lender's designee and its employees and agents with reasonable access to the Property, during normal business hours, to perform reasonable tests and studies of the Property and to review Borrower's books, records, plans, specifications, and other documents, if any, relating to the Property, and to make copies thereof; and (2) take such other steps as may be requested by Lender's designee to facilitate the transition of ownership and possession of the Property to Lender's designee at the Closing.

B. Before Lender's designee receives actual physical possession and control of the Property, neither Lender or its designee shall be deemed to have possession or control of any part of the Property or be deemed a mortgagee in possession.

C. Concurrently with the execution and delivery of the Closing Documents at the Closing, Borrower shall deliver actual physical possession and control of the Property to Lender's designee; and, as of the completion of the Closing, Lender's designee shall own the Property free and clear of any rights or remedies of Borrower.

D. Borrower hereby covenants and agrees to defend, indemnify, and hold Lender and Lender's designee harmless (including by paying Lender's or Lender's designee's reasonable attorneys fees) from and against:

(1) any and all liabilities or obligations, of every kind and nature, with respect to the Property, incurred, accrued or payable prior to the completion of the Closing; and

(2) all actions and omissions of Borrower (or its employees or agents), whether such actions or omissions (a) occur or arise before, during or after the Closing; or (b) constitute a breach of Borrower's other obligations under this Agreement or under the Note or the Security Documents.

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E. Lender's designee shall defend, indemnify, and hold Borrower harmless (including by paying Borrower's reasonable attorneys fees) from and against any and all liabilities or obligations, of every kind and nature, with respect to the Property, that (a) first occur after the completion of the Closing; and (b) are not caused by any act or omission of Borrower, or of Borrower's employees, agents, representatives or invitees, before or after the completion of the Closing.

F. It is understood and agreed that neither Lender nor Lender's designee is purchasing or continuing the business of Borrower or is otherwise a successor to Borrower or to any such business.

5. RELEASES OF LENDER.

At the Closing, except as otherwise expressly provided in this Agreement, Borrower (for itself and its principals, employees, agents, representatives, successors and assigns) and Borrower's Principals shall RELEASE AND FOREVER DISCHARGE Lender and Lender's designee (and their present and former officers, directors, representatives, employees and agents) of and from all damages, loss, claims, liabilities, obligations, actions, causes of action and judgments - whether such damages, etc. are presently known or unknown - and whether they presently exist or arise hereafter - which Borrower (or its principals, employees, agents, representatives, successors or assigns) may now have, or hereafter be able to claim, as a result of any actions or omissions in connection with the Note, the Security Documents or otherwise in connection with the Loan, including but not limited to, all claims of lender liability and any other such damages, etc. otherwise connected with any dealings or other communications, or lack thereof, between Borrower and Lender, up to and including the completion of the Closing. That release and discharge shall be in the form of Exhibit " " hereto.

6. ADDITIONAL COVENANTS, WARRANTIES, AND REPRESENTATIONS OF BORROWER

A. Borrower acknowledges and agrees that this Agreement is a voluntary and sound commercial decision on Borrower's part, and not the product of any duress or undue influence, for the following reasons: _____

Borrower and Borrower's Principals also acknowledge and agree that they consulted with their own independent attorneys in connection with the negotiation of this Agreement and understand all of the terms and effects of this Agreement.

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B. Borrower and Borrower's Principals covenant and agree that none of them will interfere with or oppose Lender in, and that they hereby consent to:

(1) any foreclosure or receivership by court action or otherwise, or any other proceeding that may be instituted by Lender in connection with realizing upon the security granted pursuant to the Security Documents; and

(2) any action to quiet title that may be instituted by Lender or by Lender's designee to perfect its right, title, and interest in the Property.

Borrower and Borrower's Principals waive any and all rights to a hearing in connection with any such foreclosure proceeding or other suit or proceedings and any and all rights to require that any specific procedures be employed to govern a sale of the Property. If Borrower or any of Borrower's Principals contests Lender's or Lender's designee's right to proceed in any suit, then Borrower and Borrower's Principals shall be jointly and severally liable to Lender, or to Lender's designee, as the case may be, for (1) all damages that Lender or Lender's designee may suffer as a result thereof, and (2) all reasonable attorneys' fees and court costs incurred by Lender or Lender's designee in such contest.

C. Borrower warrants and represents, to Lender and to Lender's designee, that Borrower is currently solvent and able to meet and pay its obligations as they mature. If Borrower or any of Borrower's Principals makes application for or seeks relief or protection under any provision of the United States Bankruptcy Code (the "Bankruptcy Code"), or if any involuntary petition is filed against Borrower, or any of Borrower's Principals, under any provision of the Bankruptcy Code, Lender shall thereupon be entitled, subject to court approval, to immediate relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, upon or against the exercise of the rights and remedies otherwise available to Lender as provided herein or in the Note, the Security Documents, the Guaranty or as otherwise provided at law or in equity.

D. Borrower warrants and represents that it has not conveyed, and will not convey, any of the Property and, prior to the completion of the Closing, will not permit any of the Property to be removed from the Land and Buildings.

E. Borrower warrants and represents that its taxpayer identification number is as follows: _____.

F. Borrower covenants that all covenants, representations, warranties, documents, acknowledgments, affidavits

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and agreements made by Borrower in this Agreement (1) are true, and complete enough that they do not omit anything necessary to prevent them, standing alone, from being misleading, as of the Effective Date; (2) shall be true and so complete on the Closing Date, just as though they were made on, as of, and with respect to the Closing Date; and (3) shall survive the Closing.

G. Borrower agrees to execute and deliver all documents, and take all steps, deemed necessary by Lender to give effect to the terms and conditions of this Agreement and of the Closing Documents.

H. Borrower acknowledges that Lender's designee is a successor of Lender, or a third party beneficiary, with respect to or of the rights and remedies granted to Lender under this Agreement.

I. Borrower warrants and represents to Lender as follows:

_____. [Insert Lender's standard representation and warranties.]

7. ADDITIONAL COVENANTS, WARRANTIES, AND REPRESENTATIONS OF LENDER. Lender warrants and represents to Borrower that Lender is the holder of the Note and is the Lender, Secured Party, or Assignee, as the case may be, pursuant to the Security Documents and has full power and authority to enter into this Agreement and that the person executing this Agreement on behalf of Lender has the authority to do so.

8. REINSTATEMENT. If notwithstanding the provisions of this Agreement, any payments or transfers made by Borrower or any of Borrower's Principals pursuant to this Agreement are rescinded, or must otherwise be restored or returned by Lender (or Lender's designee), by order of court, to or for the benefit of Borrower, any of Borrower's Principals, or its or their legal representatives or estates - whether upon any insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower or of any of Borrower's Principals, upon an action by a creditor of Borrower or any of Borrower's Principals, or otherwise - then (a) Borrower shall return, to Lender, any and all moneys paid to Borrower, or on Borrower's behalf, by Lender hereunder; (b) Borrower's obligations under the terms of the Note and the Security Documents shall be reinstated, and shall be effective, just as though the releases granted by Lender in this Agreement had not been made; and (c) Borrower's Principals' obligations under the terms of the Guaranty shall be reinstated, and shall be effective, just as though the releases granted by Lender in this Agreement had not been made. As part of any such reinstatement (a) the then outstanding balance of the Note, including all default interest that would have accrued thereunder and any additional amounts due under the Security Documents, shall be due

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and payable in full; (ii) the assets so returned shall remain subject to the Security Documents, including but not limited to, the perfection and priority of the Security Documents as of the Closing Date.

9. [ADDITIONAL CONTRACT PROVISIONS. Insert Lender's standard representations and warranties; conditions to closing including that there has been no material change in the condition of any of the Property); standard procedures for closing (including deliveries of documents, payment of closing costs, and prorations); standard notice provisions, attorneys' fees provisions; boilerplate provisions, signature blocks, and acknowledgements, and any statements required by the recorder of deeds. Be sure to include (a) a time of the essence clause, at least with respect to Borrower's obligations; and (b) to the extent enforceable, waiver of jury trial, venue, etc.]

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