

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Attn:_____

**CONSTRUCTION DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING**

_____, LLC, a _____
limited liability company,

Trustor

_____, LLC, a _____
limited liability company and
_____, LLC, a _____
limited liability company,

collectively, Beneficiary

_____ 20____

**CONSTRUCTION DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING**

Project Commonly Known As
“ _____ ”

THIS CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this “Deed of Trust”) is made as of _____, 20____ by _____, a _____ (“Trustor”) whose address is _____, in favor of _____ (“Trustee”) whose address is _____, for the benefit of _____, a _____ and _____, a _____, their respective successors and/or assigns (collectively, the “Beneficiary”) whose address is _____.

1. Grant and Secured Obligations.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Trustor hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages and warrants to Trustee, in trust for the benefit of Beneficiary, with power of sale and with right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the “Property”):

(a) The real property located in the County of _____, State of California, as described in Exhibit A, together with all existing and future easements and rights affording access to it (the “Premises”); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Premises (the “Improvements”); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All rents, income, revenues, issues and profits of or from the Premises or the Improvements (including without limitation all payments made on account of the purchase of all or any portion of the Premises or the Improvements (including condominium units), cash or security deposits, advance rentals and deposits or payments

of similar nature, all minimum annual rent, percentage rent, late charges, utilities charges, common area maintenance charges), all existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions relating to the use and enjoyment of all or any part of the Premises and Improvements ("Leases"), and any and all guaranties and other agreements relating to or made in connection with any of such Leases; together with

(e) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; together with

(f) Any and all now or hereafter existing (i) contracts for the purchase of the condominium units now or hereafter situated in or upon the Premises, (ii) deposits and down payments towards the purchase of such condominium units, (iii) all brochures, advertising materials, condominium documents, prospectuses, and any other documents or instruments now or hereafter existing relative to the condominium project now existing or hereafter constructed upon the Premises; together with

(g) All of Trustor's rights, title, interest and privileges whatsoever, as "Developer", "Declarant", "Subdivider" or similar position or title pursuant to any "condominium declaration", "declaration of covenants, conditions and restrictions," or similar document recorded in the Official Records of the County in which the Premises is located; together with

(h) All goods, materials, supplies, chattels, furniture, furnishings, Fixtures (as hereinafter defined), equipment, signs and machinery now or later to be attached to, placed in or on, or used in connection with the ownership, development, use, enjoyment, occupancy, operation or maintenance of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

(i) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements; together with

(j) All of Trustor's interest in and to all operating accounts, the Loan funds, whether disbursed or not, all reserves set forth in the Budget, the Condominium Deposits Account, and any other bank accounts of Trustor, including without limitation, the Operating Account; together with

(k) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), contract rights, development and use rights and agreements, governmental permits, licenses, consents, approvals, authorizations and applications, plats, maps, surveys, architectural and engineering plans, specifications and drawings, as built drawings, reports, test borings, market surveys, and other similar work products, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally and any builder's or manufacturer's warranties with respect thereto; together with

(l) All insurance policies pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(m) All of Trustor's rights in and to all Swap Transactions and Interest Rate Agreements entered into between Trustor and Beneficiary, including without limitation any payments or rights to payment under any Swap Agreement or Confirmation and any deposit account or accounts with Beneficiary in the name of the Trustor for deposit of payments to Trustor in connection with any Swap Transaction or Interest Rate Agreement entered into at any time between Beneficiary and Trustor and any and all funds now or hereafter on deposit therein (capitalized terms (other than the terms "Trustor," "Beneficiary" and "Interest Rate Agreement") used in this Section 1.1(m) are defined in the 1991 ISDA Definitions, published by the International Swap Dealers Association, Inc.); together with;

(n) All books and records pertaining to any and all of the property described above, including computer readable memory and any computer hardware or software necessary to access and process such memory ("Books and Records"); together with

(o) (i) all agreements heretofore or hereafter entered into relating to the construction, ownership, operation, management, leasing or use of the Premises or Improvements, (ii) any and all present and future amendments, modifications, supplements, and addenda to any of the items described in clause (i), (iii) any and all guarantees, warranties and other undertakings (including payment and performance bonds) heretofore or hereafter entered into or delivered with respect to any of the items described in clauses (i) through (ii), (iv) all trade names, trademarks, logos and other

materials used to identify or advertise, or otherwise relating to the Premises or Improvements, and (v) all building permits, governmental permits, licenses, variances, conditional or special use permits, and other authorizations (collectively, the "Permits") now or hereafter issued in connection with the construction, development, ownership, operation, management, leasing or use of the Premises or Improvements, to the fullest extent that the same or any interest therein may be legally assigned by Trustor; together with

(p) All products and proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Loan Agreement referred to in Section 1.2(a)(iii) below.

1.2 Secured Obligations.

(a) Trustor makes the grant, conveyance, and mortgage set forth in Section 1.1 above, and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Beneficiary may choose:

(i) Payment of all obligations at any time owing under a promissory note (the "Note") bearing even date herewith, payable by Trustor as maker in the stated principal amount of _____ and ____/100s Dollars (\$_____) to the order of Beneficiary; and

(ii) Payment and performance of all obligations of Trustor under this Deed of Trust; and

(iii) Payment and performance of all obligations of Trustor under a Loan Agreement bearing even date herewith between Trustor as "Borrower" and Beneficiary as "Lender" (the "Loan Agreement"); and

(iv) Payment and performance of any obligations of Trustor under any Loan Documents which are executed by Trustor (expressly excluding, however, the obligations of Trustor under that certain Environmental Indemnity of even date herewith executed by Trustor in favor of Beneficiary); and

(v) Payment and performance of any and all obligations of Trustor to Beneficiary under or related to any Swap Transaction and/or Interest Rate Agreement entered into between Beneficiary and Trustor, including without limitation any Cash Settlement Amount or any payments on Early Termination payable by Trustor under any Swap Agreement or Confirmation (capitalized terms (other than the terms "Trustor," "Beneficiary" and "Interest Rate Agreement") used in this Section 1.2(a)(v) are defined in the 1991 ISDA Definitions, published by the International Swap Dealers Association, Inc.; and

(vi) Payment and performance of all future advances and other obligations that Trustor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this Deed of Trust; and

(vii) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Agreement which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. Assignment of Rents.

2.1 Assignment. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary all of Trustor's right, title and interest in, to and under any and all Leases, together with all rents (and payments in lieu of rents), royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (some or all collectively, as the context may require, "Rents"). This is an absolute assignment, not an assignment for security only.

2.2 Grant of License. Beneficiary hereby confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.2 below, shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of Beneficiary's security under this Deed of Trust.

2.3 Collection and Application of Rents. Subject to the License granted to Trustor under Section 2.2 above, Beneficiary has the right, power and authority to collect any and all Rents. Trustor hereby appoints Beneficiary its attorney in fact to perform any and all of the following acts, if and at the times when Beneficiary in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents.

Beneficiary and Trustor agree that the mere recordation of the assignment granted herein entitles Beneficiary immediately to collect and receive rents upon the occurrence of an Event of

Default, as defined in Section 6.2, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Trustor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property as permitted under Section 6.3(c). In Beneficiary's sole discretion, Beneficiary may choose to collect Rents either with or without taking possession of the Property. Beneficiary shall apply all Rents collected by it in the manner provided under Section 6.6. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity.

2.4 Notice. All lessees under any and all Leases are hereby irrevocably authorized and notified by Trustor to rely upon and to comply with (and shall be fully protected in so doing) any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of lessees' undertakings under the Leases, and lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder.

2.5 Proceeds. Beneficiary shall have the right to apply all amounts received by it pursuant to this assignment to pay any of the following in such amounts and in such order as Beneficiary shall deem appropriate: (i) any and all Secured Obligations, together with all costs and attorneys' fees; (ii) all expenses of leasing, operating, maintaining and managing the Property, including without limitation, the salaries, fees, commissions and wages of a managing agent and such other employees, agents or independent contractors as Beneficiary deems necessary or desirable; (iii) all taxes, charges, claims, assessments, any other liens, and premiums for all insurance Beneficiary deems necessary or desirable; (iv) the cost of all alterations, renovations, repairs or replacements; and (v) all expenses incident to taking and retaining possession of the Property.

2.6 Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Premises and Improvements, unless Beneficiary agrees in writing to the contrary, Beneficiary is not and shall not be deemed to be:

- (a) A "Beneficiary in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.7 Leasing. Trustor shall not accept any deposit or prepayment of rents under the leases for any rental period exceeding one (1) month without Beneficiary's prior written consent. Trustor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement.

3. Grant of Security Interest.

3.1 Grant. Trustor grants to Beneficiary a security interest in, and pledges and assigns to Beneficiary, all of Trustor's right, title and interest now or hereafter acquired in and to all of the following described personal property (collectively, the "Personalty"):

(a) all tangible personal property of every kind and description, whether now existing or later acquired, including, without limitation, all goods, materials, supplies, tools, books, records, chattels, furniture, fixtures, equipment and machinery, and, without limiting the generality of any of the foregoing classifications, including any and all fire sprinkler, alarm, trash compaction, security, heating, ventilation and air conditioning, electrical, plumbing and any other utility, life safety or maintenance system and any and all components or units thereof, and in all cases whether attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and the Improvements, whether stored on the Premises or elsewhere; and

(b) all rights to the payment of money, reserves, deferred payments, refunds, savings and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), accounts, including, without limitation, the Escrow Account, if any, (provided, however, this Deed of Trust does not create a lien on accounts receivable, other than accounts receivable constituting Rents, arising in the ordinary course of the business conducted by Trustor on the Property), contract rights, money, instruments, documents and chattel paper; and

(c) all general intangibles (to the extent not included under clause (b) above) relating to the Premises, the Improvements, and/or any business now or later to be conducted thereon by Trustor, including, without limitation, all permits, licenses and goodwill, all books, records and files, including, without limitation, computer readable memory and data and any computer software or hardware reasonably necessary to access and process such memory and data, all architectural and engineering plans, specifications and drawings, and as-built drawings, which arise from or relate to the Premises, the Improvements, and/or any of the foregoing property described in this Section 3.1, all claims to or demands for the voluntary or involuntary conversion of any of the Premises, the Improvements or the other property described above into cash or liquidated claims, all proceeds of present and future fire, hazard or casualty insurance policies, all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, the Improvements or the other property described above or any part of them, or breach of warranty in connection with the

construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; and

(d) all substitutions, replacements, additions, accessions and proceeds for or to any of the foregoing property described in this Section 3.1.

3.2 Financing Statements. Trustor hereby authorizes Beneficiary to file one or more financing statements and such other documents as Beneficiary may from time to time require to perfect or continue the perfection of Beneficiary's security interest in any part of the Property. In addition, Trustor agrees to sign any and all other documents that Beneficiary deems necessary in its sole discretion to perfect, protect, and continue Beneficiary's lien and security interest in the Property. As provided in Section 5.9 below, Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. In case Trustor fails to execute such other documents for the perfection or continuation of any security interest, Trustor hereby appoints Beneficiary as its true and lawful attorney in fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

3.3 Security Agreement. This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code covering all Personalty.

4. Fixture Filing.

This Deed of Trust constitutes a fixture filing under Article 9 of the California Uniform Commercial Code, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Premises or the Improvements. For this purpose, the respective addresses of Trustor, as debtor, and Beneficiary and Trustee, as secured parties, are as set forth in the preambles of this Deed of Trust. "Fixtures" shall include all articles of personal property now or hereafter attached to, placed upon for an indefinite term or used in connection with said real property, appurtenances and improvements, together with all goods and other property which are at any time so related to the Property that an interest arises in them under real estate law.

5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Trustor represents and warrants that:

(a) Trustor lawfully possesses and holds fee simple title to all of the Premises and Improvements;

(b) Trustor has or will have good title to all Property other than the Premises and Improvements;

(c) Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;

(d) This Deed of Trust creates a first and prior lien on the Property;

(e) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

(f) Trustor owns any Property which is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office; and

(g) Trustor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified below.

5.2 Taxes, and Assessments. Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, in accordance with Section 9.3 of the Loan Agreement.

5.3 Performance of Secured Obligations. Trustor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 Liens, Charges and Encumbrances. Trustor shall immediately discharge any lien on the Property which Beneficiary has not consented to in writing in accordance with the terms of the Loan Agreement.

5.5 Damages and Insurance and Condemnation Proceeds. In the event of any casualty or condemnation of the Property, Beneficiary may elect to collect, retain and apply upon the indebtedness of Borrower under this Agreement or any of the other Loan Documents all proceeds of insurance or condemnation (individually and collectively referred to as "Proceeds") after deduction of all expenses of collection and settlement, including attorneys' and adjusters' fees and charges. Any proceeds remaining after repayment of the indebtedness under the Loan Documents shall be paid by Beneficiary to Trustor. Trustor hereby unconditionally and irrevocably waives all rights of a property owner under Section 1265.225(a) of the California Code of Civil Procedure or any successor statute providing for the allocation of condemnation proceeds between a property owner and a lien holder. In case Beneficiary does not elect to apply or does not have the right to apply the Proceeds to the indebtedness, Trustor shall:

(a) Proceed with diligence to make settlement with insurers or the appropriate governmental authorities and cause the Proceeds to be deposited with Beneficiary;

(b) In the event of any delay in making settlement with insurers or the appropriate governmental authorities or effecting collection of the Proceeds, deposit with Beneficiary the full amount required to complete construction as aforesaid;

(c) In the event the Proceeds and the available proceeds of the Loan are insufficient to assure the Beneficiary that the Loan will be in balance, promptly deposit with Beneficiary any amount necessary to place the Loan in balance; and

(d) Promptly proceed with the assumption of construction of improvements, including the repair of all damage resulting from such fire, condemnation or other cause and restoration to its former condition.

Any request by Trustor for a disbursement by Beneficiary of Proceeds and funds deposited by Trustor shall be treated by Beneficiary as if such request were for an advance of the Loan hereunder, and the disbursement thereof shall be conditioned upon Trustor's compliance with and satisfaction of the same conditions precedent as would be applicable under the Loan Agreement for an advance of the Loan.

5.6 Maintenance and Preservation of Property.

(a) Trustor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Trustor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change or variance in any zoning or other Premises use classification which affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Beneficiary's express prior written consent in each instance

(c) If all or part of the Property becomes damaged or destroyed, Trustor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether or not Beneficiary agrees to disburse Proceeds or other sums to pay costs of the work of repair or reconstruction under the Loan Agreement.

(d) Trustor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable Laws or order of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under the Loan Agreement.

(e) Trustor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste which arises out of Hazardous Material.

(f) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.7 Releases, Extensions, Modifications and Additional Security. From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person:

(a) Release any person liable for payment of any Secured Obligation;

(b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

(c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

(d) Alter, substitute or release any property securing the Secured Obligations;

(e) Consent to the making of any plat or map of the Property or any part of it;

(f) Join in granting any easement or creating any restriction affecting the Property; or

(g) Join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or

(h) Release the Property or any part of it.

5.8 Release. When all of the Secured Obligations have been paid and performed in full and all fees and other sums owed by Trustor under Section 5.9 of this Deed of Trust and the other Loan Documents have been paid in full, Beneficiary shall request Trustee in writing to reconvey the Property and shall surrender this Deed of Trust and all notes and instruments evidencing the Secured Obligations to Trustee. When Trustee receives Beneficiary's written request for reconveyance and all fees and other sums owing to it by Trustor under Section 5.9 hereof, Trustee shall reconvey the Property, or so much of it as is then held under this Deed of Trust, without warranty to the person or persons legally entitled to it. That person or those persons shall pay any costs of preparation and recordation of such release. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.

5.9 Compensation, Exculpation, Indemnification.

(a) Trustor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including providing a statement of the Secured Obligations or providing the reconveyance pursuant to Section 5.8 above. Trustor shall also pay or reimburse all of Beneficiary's and Trustee's costs and expenses which may be incurred in rendering any such services. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including any rights or remedies afforded to Beneficiary and Trustee under Section 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including attorneys' fees and other legal costs, costs of any Trustee's Sale (as defined in Section 6.3(i) below) or any Foreclosure Sale (as defined in Section 6.3(k)(ii) below) and

any cost of evidence of title. If Beneficiary and/or Trustee, as required by applicable law, chooses to dispose of Property through more than one Trustee's Sales and/or more than one Foreclosure Sale, Trustor shall pay all costs, expenses or other advances that may be incurred or made by Beneficiary and/or Trustee in each of such Trustee's Sale and/or Foreclosure Sales. In any suit to foreclose the lien hereof or enforce any other remedy of Trustee or Beneficiary under this Deed of Trust or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Trustee and Beneficiary for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Trustee and Beneficiary with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Trustee and Beneficiary may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Property. All expenditures and expenses of the nature mentioned in this Section 5.9(a), and such expenses and fees as may be incurred in the protection of the Property and maintenance of the lien of this Deed of Trust, including the fees of any attorney (including the costs and fees of paralegals) employed by Trustee or Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the Default Rate and shall be secured by this Deed of Trust.

(b) Neither Beneficiary nor Trustee shall be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

(i) Beneficiary's or Trustee's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary and/or Trustee in this Deed of Trust;

(ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or

(iii) Any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property, or from any other act or omission of Beneficiary in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Beneficiary.

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary or Trustee.

(c) Trustor agrees to indemnify Beneficiary and Trustee against and hold them harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which they may suffer or incur:

(i) In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law;

(ii) Because of any failure of Trustor to perform any of its obligations;
or

(iii) Because of any alleged obligation of or undertaking by Beneficiary and/or Trustee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Trustor to indemnify Beneficiary and Trustee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Deed of Trust.

(d) Trustor shall pay all obligations to pay money arising under this Section 5.9 immediately upon demand by Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate.

5.10 Defense and Notice of Claims and Actions. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary created under it, against all adverse claims. Trustor shall give Beneficiary prompt notice in writing if any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.11 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust or with the proceeds of any loan secured by this Deed of Trust.

5.12 Site Visits, Observation and Testing. Beneficiary and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Beneficiary has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Beneficiary, its agents or representatives shall impose any liability on any of Beneficiary, its agents or representatives. In no event shall any site visit, observation or testing by Beneficiary, its agents or representatives be a representation that Hazardous Material are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Material or any other applicable governmental law. Neither Trustor nor any other party is entitled to rely on any site visit,

observation or testing by any of Beneficiary, its agents or representatives. Neither Beneficiary, its agents or representatives owe any duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Beneficiary shall give Trustor reasonable notice before entering the Property. Beneficiary shall make reasonable efforts to avoid interfering with Trustor's use of the Property in exercising any rights provided in this Section 5.12.

5.13 Notice of Change. Trustor shall give Beneficiary prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Trustor's name or business structure. Unless otherwise approved by Beneficiary in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Trustor's place of business or chief executive office if Trustor has more than one place of business.

5.14 Substitution of Trustee. From time to time, Beneficiary may substitute a successor to any Trustee named in or acting under this Deed of Trust in any manner now or later to be provided at law, or by a written instrument executed and acknowledged by Beneficiary and recorded in the office(s) of the recorder(s) of the county or counties where the Premises and Improvements are situated. Any such instrument shall be conclusive proof of the proper substitution of the successor Trustee, who shall automatically upon recordation of the instrument succeed to all estate, title, rights, powers and duties of the predecessor Trustee, without conveyance from it.

6. Accelerating Transfers, Default and Remedies.

6.1 Accelerating Transfers.

(a) "Accelerating Transfer" means any Transfer not expressly permitted under the Loan Agreement.

(b) Trustor acknowledges that Beneficiary is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Trustor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary's reliance, Trustor agrees that Trustor shall not make any Accelerating Transfer, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Beneficiary may, in its sole discretion, without being required to demonstrate any actual impairment of its security or any increased risk of default hereunder, declare all of the Secured Obligations to be immediately due and payable, and Beneficiary may invoke any rights and remedies provided by Section 6.3 of this Deed of Trust.

6.2 Events of Default. Trustor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default;" any one singly, an "Event of Default").

(a) Failure of Trustor (i) (x) to pay any of the principal of the Loan when due, (y) to pay interest within five (5) days after the date when due or (z) to observe or perform any of the other covenants or conditions by Trustor to be performed under the terms of this Deed of Trust or any of the other Loan Documents concerning the payment of money for a period of ten (10) days after written notice from Beneficiary that the same is due and payable; or (ii) for a period of thirty (30) days after written notice from Beneficiary, to observe or perform any non-monetary covenant or condition contained in this Deed of Trust or any of the other Loan Documents; provided that if any such failure concerning a non-monetary covenant or condition is susceptible to cure but cannot reasonably be cured within said thirty (30) day period, then Trustor shall have an additional sixty (60) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as (x) Trustor commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within such resulting ninety (90) day period from the date of Beneficiary's notice, and (y) the existence of such uncured default will not result in any tenant under a Lease having the right to terminate such Lease due to such uncured default; and provided further that if a different notice or grace period is specified under Article 19 of the Loan Agreement (or elsewhere in this Deed of Trust or the Loan Agreement) in which such particular breach will become an Event of Default, the specific provision shall control; or

(b) An "Event of Default" occurs under the Loan Agreement or any other Loan Document.

6.3 Remedies. At any time after an Event of Default, Beneficiary shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Beneficiary at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Receiver. Beneficiary shall, as a matter of right, without notice and without giving bond to Trustor or anyone claiming by, under or through Trustor, and without regard for the solvency or insolvency of Trustor or the then value of the Property, apply ex parte to any court having jurisdiction to appoint a receiver to enter upon and take possession of all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Trustor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Beneficiary would have, upon entering and taking possession of the Property under Section 6.3(c) below.

(c) Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Trustor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Beneficiary; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Premises and make all of it available to Beneficiary at the site of the Premises. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

(d) Cure; Protection of Security. Beneficiary may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust, including, without limitation, completing construction of the improvements at the Property contemplated by the Loan Agreement. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or to be conclusive as among the parties to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary. Beneficiary may take any of the actions permitted under this Section 6.3(d) either with or without giving notice to any person. Any amounts expended by Beneficiary under this Section 6.3(d) shall be secured by this Deed of Trust.

(e) Uniform Commercial Code Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the California Uniform Commercial Code.

(f) Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right provided in Section 6.3(b), upon, or at any time after the filing of a complaint to foreclose this Deed of Trust, Trustee and

Beneficiary shall be entitled to the appointment of a receiver of the Property by the court in which such complaint is filed, and Trustor hereby consents to such appointment.

(g) Power of Sale. Under this power of sale, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(h) Sales of Personal Property. Beneficiary may dispose of any personal property separately from the sale of real property, in any manner permitted by Article 9 of the California Uniform Commercial Code, including any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation for purposes of Section 2924c of the California Civil Code. In connection with any sale or other disposition of such Property, Trustor agrees that the following procedures constitute a commercially reasonable sale:

Beneficiary shall mail written notice of the sale to Trustor not later than forty-five (45) days prior to such sale. Once per week during the four weeks immediately preceding such sale, Beneficiary will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Beneficiary will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Beneficiary shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(i) Trustee's Sales of Real Property or Mixed Collateral. Beneficiary may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by applicable law. In its discretion, Beneficiary may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Section 9604 of the California Uniform Commercial Code. Trustor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together in accordance with California Uniform Commercial Code Section 9604, will sometimes be referred to as a "Trustee's Sale."

Before any Trustee's Sale, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee shall sell the property being sold at a

public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any Trustee's Sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any Trustee's Sale by public announcement at the time and place noticed for that sale.

At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Trustee's Sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all persons as to the facts recited in it.

(j) Other Remedies. Beneficiary may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Trustor or any other person or entity in favor of Beneficiary in connection with the Secured Obligations or any part thereof, without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Trustor. Beneficiary shall have the right to pursue all remedies afforded to a Beneficiary under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(k) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Beneficiary and/or Trustee, as required by applicable law, may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Beneficiary may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" and any two or more, "Foreclosure Sales").

If Beneficiary chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Beneficiary may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Deed of Trust on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

6.4 Credit Bids. At any Foreclosure Sale, any person, including Trustor or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary and Trustee under Section 5.9 of this Deed of Trust; and

(b) Second, all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

6.5 Application of Foreclosure Sale Proceeds. Beneficiary shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to reimburse Beneficiary or Trustee under Section 5.9 of this Deed of Trust;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary under the terms of this Deed of Trust which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

6.6 Application of Rents and Other Sums. Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Beneficiary may receive or collect under Section 6.3 above, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Beneficiary or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds which it does not actually receive.

7. The Trustee.

7.1 Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ and consult with counsel (who

may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his or her agents or attorneys, (iii) to select and employ, in and about the execution of his or her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys in fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney in fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (iv) any and all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Premises for debts contracted for or liability or damages incurred in the management or operation of the Premises. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Trustor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save and hold Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

7.2 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, and shall be segregated from any other moneys of Trustee.

7.3 Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary's sole discretion and with or without cause, shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed on its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Trustor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his or her successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute trustees are appointed, each of such multiple substitute trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable law. Any prior election to act jointly or

severally shall not prevent either or both of such multiple substitute Trustees from subsequently executing, jointly or severally, any or all of the provisions hereof.

7.4 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.

7.5 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its, his or her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in such Trustee's place.

7.6 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

8. Miscellaneous Provisions.

8.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property.

8.2 No Waiver or Cure.

(a) Each waiver by Beneficiary must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary to take action on account of any default of Trustor. Consent by Beneficiary to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the

effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Deed of Trust; or prejudice Beneficiary or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

(i) Trustee or Beneficiary, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Section 6.3(c).

(ii) Beneficiary collects and applies Rents as permitted under Sections 2.3 and 6.6 above, either with or without taking possession of all or any part of the Property.

(iii) Beneficiary or Trustee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under Section 5.5 above.

(iv) Beneficiary makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.12 above.

(v) Beneficiary or Trustee receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Beneficiary, Trustee or any receiver invokes any right or remedy provided under this Deed of Trust.

8.3 Powers of Beneficiary.

(a) If Beneficiary performs any act which it is empowered or authorized to perform under this Deed of Trust, including any act permitted by Sections 5.7 or 6.3(d) of this Deed of Trust, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Deed of Trust on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Trustor shall not be released or changed if Beneficiary grants any successor in interest to Trustor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Beneficiary shall not be required to comply with any demand by the original Trustor that Beneficiary refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Beneficiary may take any of the actions permitted under Sections 6.3(b) and/or 6.3(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

(c) From time to time, Beneficiary may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Deed of Trust. Beneficiary may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

8.4 Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

8.5 Joint and Several Liability. If Trustor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

8.6 Applicable Law. The Deed of Trust shall be governed by the laws of the State of California.

8.7 Successors in Interest. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 8.7 does not waive the provisions of Section 6.1 above.

8.8 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated in this Deed of Trust.

8.9 In House Counsel Fees. Whenever Trustor is obligated to pay or reimburse Beneficiary for any attorneys' fees, those fees shall include the allocated costs for services of in house counsel.

8.10 Waiver of Statutory Rights. To the extent permitted by law, Trustor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws. Trustor for itself and all who may claim through or

under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Trustor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Deed of Trust on behalf of Trustor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Deed of Trust. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

8.11 Severability. If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

8.12 Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

Trustor:

Fax:

Attn:

Beneficiary:

Fax: _____

Attn: _____

Fax: _____

Attn: _____

With a copy to:

Attn: .

Telephone:

Facsimile:

Trustee: _____

Fax: _____

Attn: _____

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

Any notice or demand delivered to the person or entity named above to accept notices and demands for Trustor shall constitute notice or demand duly delivered to Trustor, even if delivery is refused.

8.13 Future Advances. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that the Beneficiary may, but shall not be obligated to, make under this Deed of Trust, the Loan Documents or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed _____ Dollars (\$_____), plus interest thereon, and any disbursements made for the enforcement of this Deed of Trust and any remedies hereunder, payment of taxes, special assessments, utilities or insurance on the Property and interest on such disbursements and all disbursements by Beneficiary pursuant to applicable law (all such indebtedness being hereinafter referred to as the maximum amount secured hereby). This Deed of Trust shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.

8.14 Beneficiary's Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Deed of Trust secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Beneficiary not to exceed the maximum amount secured hereby. For purposes hereof, all obligations of Trustor to Beneficiary under all Interest Rate Agreements and any indebtedness or obligation contained therein or evidenced thereby shall be considered an obligation of Trustor secured hereby.

8.15 WAIVER OF TRIAL BY JURY. TRUSTOR, TO THE FULLEST EXTENT THAT IT MAY LAWFULLY DO SO, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS DEED OF TRUST, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF TRUSTOR OR BENEFICIARY INCLUDING WITHOUT LIMITATION ANY TORT ACTION. TRUSTOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. TRUSTOR FURTHER ACKNOWLEDGES

THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO MAKE THE LOAN, ENTER INTO THIS DEED OF TRUST AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN. TRUSTOR HEREBY AGREES THAT THIS AGREEMENT CONSTITUTES A WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY PURSUANT TO THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 631. TRUSTOR DOES HEREBY CONSTITUTE AND APPOINT BENEFICIARY ITS TRUE AND LAWFUL ATTORNEY-IN-FACT, WHICH APPOINTMENT IS COUPLED WITH AN INTEREST, AND TRUSTOR DOES HEREBY AUTHORIZE AND EMPOWER BENEFICIARY, IN THE NAME, PLACE AND STEAD OF TRUSTOR, TO FILE THIS AGREEMENT WITH THE CLERK OR JUDGE OF ANY COURT OF COMPETENT JURISDICTION AS A STATUTORY WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY.

TRUSTOR'S INITIALS: _____

8.16 Inconsistencies. In the event of any inconsistency between this Deed of Trust and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling.

8.17 Certain Matters Relating to Property Located in the State of California. With respect to the Property which is located in the State of California, notwithstanding anything contained herein to the contrary:

(a) In the event that any portion of the Property is determined to be "environmentally impaired" (as "environmentally impaired" is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as "affected parcel" is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting Beneficiary's or Trustee's rights and remedies under this Deed of Trust, Beneficiary may elect to exercise its right under California Code of Civil Procedure Section 726.5(a) to (i) waive its lien on such environmentally impaired or affected portion of the Property, and (ii) exercise the rights and remedies of an unsecured creditor, including reduction of its claim against Trustor to judgment and any other rights and remedies permitted by law. For purposes of determining Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant or user of any portion of the Property and Trustor knew or should have known of the activity by such lessee, occupant or user which caused or contributed to the release or threatened release.

8.18 Counterparts. This Deed of Trust may be executed in any number of counterparts and by different signatories hereto in separate counterparts, each of which when so executed

shall be deemed to be an original and all of which taken together shall constitute one and the same instrument, for the same effect as if all signatories hereto had signed the same signature page. Any signature page of this Deed of Trust may be detached from any counterpart of this Deed of Trust without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Deed of Trust identical in form hereto but having attached to it one or more additional signature pages.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first above written.

TRUSTOR:

_____, a

By: _____
Name: _____
Title: _____

EXHIBIT A

Description of Premises

[illegible]

On _____, 20____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public