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WHEN RECORDED MAIL TO:

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ORDER NO. : 4803044-511
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8856

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

(PLEASE FILL IN DOCUMENT TITLE(S) ON THIS LINE)

~~RECORDING REQUESTED BY,~~
AND WHEN RECORDED MAIL TO:

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Keith T. Holmes, Esq.
King, Holmes, Paterno & Berliner
1900 Avenue of the Stars, 25th Floor
Los Angeles, California 90067

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

THIS DEED OF TRUST, Assignment of Rents, Security Agreement and Fixture Filing is made as of March 10, 2005 by and among 5335 Market Street, LLC, a California limited liability company, ("**Trustor**"), whose address is 1307 Palisades Beach Road, Santa Monica, California 92114, COMMONWEALTH TITLE INSURANCE COMPANY, a California corporation, as trustee ("**Trustee**"), and the Loretta M. Scherer 1990 Trust (the "**Beneficiary**"), whose address is set forth in Section 4.5.

THIS DEED OF TRUST CONSTITUTES A FIXTURE FILING UNDER SECTION 9313 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF CALIFORNIA. TO THE EXTENT THE GOODS ARE FIXTURES UNDER THE LAWS OF THE STATE OF CALIFORNIA, THE FIXTURES ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY LOCATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO, COMMONLY KNOWN BY THE STREET ADDRESS 5335 MARKET STREET, SAN DIEGO, CALIFORNIA 92114. THE RECORD OWNER OF THE REAL PROPERTY IS TRUSTOR.

This Deed of Trust is given, *inter alia*, for the purpose of securing a loan (the "**Loan**") from Beneficiary, as lender, to Trustor, as borrower, and encumbers certain property located in the County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein (the "**Premises**") and the improvements thereon.

FOR GOOD AND valuable consideration, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, the Premises;

Together with any and all buildings and improvements now or hereafter erected on the Premises including, but not limited to the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements (the "**Improvements**"), all of which shall be deemed and construed to be a part of the realty;

Together with all goods, fixtures and articles of personal property and all appurtenances and additions thereto and substitutions or replacements thereof, now or at any time hereafter owned by Trustor and now or hereafter attached to, contained in, or used in connection with the Premises or placed on any part thereof, though not attached thereto (other than personal property

appurtenances and additions thereto and substitutions or replacements thereof, now or at any time hereafter owned by Trustor and now or hereafter attached to, contained in, or used in connection with the Premises or placed on any part thereof, though not attached thereto (other than personal property which is or at any time has become hazardous or toxic waste or waste products or hazardous substances), and all proceeds thereof, including but not limited to, all screens, awnings, shades, blinds, curtains, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator plants, stoves, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings and fixtures, and the trade name, good will and books and records relating to the business operated on the Premises excepting only such of the foregoing items of personal property as are property of any lessee or tenant of the Premises all as described in a separate lease agreement between Trustor and such lessee or tenant. To the extent that any item captioned in the granting clauses of this Deed of Trust constitutes personal property, Trustor hereby grants to Beneficiary a security interest in all of Trustor's present and future "goods," "fixtures," "proceeds," "equipment" and "general intangibles" (as said quoted terms are defined in or encompassed by the California Commercial Code) and Beneficiary shall have, in addition to all rights and remedies provided herein, and in any other agreements, commitments and undertakings made by Trustor to Beneficiary, all of the rights and remedies of a "secured party" under the said Commercial Code. To the extent permitted under the applicable law, this Deed of Trust shall be deemed to be a "security agreement" (as defined in the aforesaid Commercial Code). If the lien of this Deed of Trust is subject to a security interest covering any such personal property, then all of the right, title and interest of Trustor in and to any and all such property including "equipment," "goods," "fixtures," and "general intangibles" is hereby assigned to Beneficiary, together with the benefits of all deposits and payments now or hereafter made thereon by Trustor;

Together with all rents, issues, profits, royalties, income and other benefits derived from the Premises or the Improvements (collectively, the "Rents"), and all leases and subleases of the Premises now or hereafter existing or entered into, or portions thereof, granted by Trustor, and further subject to the right, power and authority hereinafter given to Trustor to collect and apply such rents;

Together with all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Premises or the Improvements;

Together with all easements, rights-of-way and rights now owned or hereafter acquired by Trustor used in connection therewith or as a means of access thereto, including, without limiting the generality of the foregoing, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto, and all water and water rights and shares of stock evidencing the same;

Together with all leasehold estate, right, title and interest of Trustor in and to all leases or subleases covering the Premises, the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder

including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

Together with all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

Together with all the estate, interest, right, title, other claim or demand, both in law and in equity, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire in the Premises or the Improvements, regardless of whether such proceeds arise from policies of insurance that are required to be maintained by the terms of this Deed of Trust or otherwise, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Trust Estate (as hereinafter defined), including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The entire estate, property and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "Trust Estate."

FOR THE PURPOSE OF SECURING:

A. Payment of indebtedness in the total principal amount of One Million Three Hundred Thousand and no/100 Dollars (\$1,300,000.00), with interest thereon, evidenced by that certain Secured Promissory Note (the "**Note**") of even date herewith executed by Trustor, which Note and any and all modifications, extensions, renewals and replacements thereof are by this reference hereby made a part hereof;

B. Payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the interest rate payable under the terms of the Note (which rate of interest is hereinafter referred to as the "**Agreed Rate**");

C. Payment of all other sums, with interest thereon, which may hereafter be loaned to Trustor, or its successors or assigns, by Beneficiary, or its successors or assigns when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust;

D. Performance of every obligation, covenant or agreement of Trustor contained herein and all supplements, amendments and modifications hereto and all extensions and renewals hereof;

E. Performance of the Note and every other obligation, covenant and agreement of Trustor contained in any agreement now or hereafter executed by Trustor which recites that the obligations thereunder are secured by this Deed of Trust; and

F. Compliance with and performance of each and every material provision of any declaration of covenants, conditions and restrictions pertaining to the Trust Estate or

any portion thereof.

This Deed of Trust, the Note, and any other deeds of trust, mortgages, agreements, guaranties or other instruments given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be collectively referred to as the "**Loan Documents.**"

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR
HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE 1
COVENANTS AND AGREEMENTS OF TRUSTOR

1.1 Payment of Secured Obligations. Trustor shall pay when due the principal of and the interest on the indebtedness evidenced by the Note; all charges, fees and other sums as provided in the Loan Documents; the principal of and interest on any future advances secured by this Deed of Trust; and the principal of and interest on any other indebtedness secured by this Deed of Trust.

1.2 Maintenance, Repair, Alterations. Trustor shall keep the Trust Estate in good condition and repair; Trustor shall not remove, demolish or substantially alter any of the Improvements without the prior written consent of Beneficiary except that Beneficiary's consent shall not be required for any alteration performed in the ordinary course of business, at Trustor's expense and for the planned rehabilitation of the Trust Estate disclosed to Beneficiary in writing in connection with the Loan, or for any alternations to the Trust Estate of less than Ten Thousand Dollars (\$10,000.00) in the aggregate during the term of the Loan; Trustor shall complete promptly and in a good and workmanlike manner any Improvement which may be now or hereafter constructed on the Premises and promptly restore in like manner any portion of the Improvements which may be damaged or destroyed thereon from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefor; Trustor shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Trust Estate or any part thereof or requiring any alterations or improvements; Trustor shall not commit or permit any waste or deterioration of the Trust Estate, and shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; Trustor shall comply with the provisions of any lease, if this Deed of Trust is on a leasehold; and Trustor shall not commit, suffer or permit any act to be done in or upon the Trust Estate in violation of any law, ordinance or regulation.

1.3 Required Insurance. Trustor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force, at no expense to Trustee or Beneficiary, policies of insurance in form and amounts and issued by companies, associations or organizations reasonably satisfactory to Beneficiary covering such casualties, risks, perils, liabilities and other hazards as Beneficiary reasonably requires. All such policies of insurance required by the terms of this Deed of Trust shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Trustor

or any party holding under Trustor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Trustor.

1.4 Delivery of Policies, Payment of Premiums.

(a) At Beneficiary's option all policies of insurance shall either have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to Beneficiary or shall name Beneficiary as an additional insured. At Beneficiary's option Trustor shall furnish Beneficiary with an original of all policies of insurance required under Section 1.3 above or a certificate of insurance for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage. If Beneficiary consents, Trustor may provide any of the required insurance through blanket policies carried by Trustor and covering more than one location, or by policies procured by a tenant or other party holding under Trustor; provided, however, all such policies shall be in form and substance and issued by companies satisfactory to Beneficiary. At least thirty (30) days prior to the expiration of each required policy, Trustor shall deliver to Beneficiary evidence reasonably satisfactory to Beneficiary of the payment of premium and the renewal or replacement of such policy continuing insurance in form as required by this Deed of Trust. All such policies shall contain a provision that, notwithstanding any contrary agreement between Trustor and insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Beneficiary.

(b) In the event Trustor fails to provide, maintain, keep in force or deliver to Beneficiary the policies of insurance required by this Deed of Trust or by any Loan Document, Beneficiary may (but shall have no obligation to) procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon promptly upon demand by Beneficiary, and until such payment is made by Trustor, the amount of all such premiums shall bear interest at the Agreed Rate. After (i) an Event of Default (as defined in Section 3.1 hereof), upon request by Beneficiary, Trustor shall deposit with Beneficiary in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust. In such event Trustor further agrees to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents evidencing that a premium for a required policy is then payable, and providing Trustor has deposited sufficient funds with Beneficiary pursuant to this Section 1.4, Beneficiary shall timely pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds so deposited with Beneficiary are or will be insufficient to pay such amounts as may be then or subsequently due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 1.4, nor shall

anything contained herein modify the obligation of Trustor set forth in Section 1.3 hereof to maintain and keep such insurance in force at all times. Beneficiary may commingle said reserve with its own funds and Trustor shall be entitled to no interest thereon.

1.5 Casualties; Insurance Proceeds. Trustor shall give prompt written notice thereof to Beneficiary after the happening of any casualty to or in connection with the Trust Estate or any part thereof, whether or not covered by insurance. In the event of such casualty, all proceeds of insurance shall be payable to Beneficiary, regardless of whether such proceeds arise from policies of insurance that are required to be maintained by the terms of this Deed of Trust or otherwise, and Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Beneficiary. If Trustor receives any proceeds of insurance resulting from such casualty, Trustor shall promptly pay over such proceeds to Beneficiary. Beneficiary is hereby authorized and empowered by Trustor to settle, adjust or compromise any and all claims for loss, damage or destruction under any policy or policies of insurance. In the event of any damage or destruction of the Premises or the Improvements, Beneficiary shall apply all loss proceeds, after deducting therefrom all costs and expenses regardless of the particular nature thereof (including attorneys' and adjustors' fees and charges) incurred by it in connection with collection or settlement thereof or in connection with disbursing such proceeds as provided below, to the restoration or repair of the Improvements, provided that all of the loss proceeds shall have been deposited with Beneficiary.

If the above condition has been met, Beneficiary shall disburse proceeds in accordance with standard construction lending practices or in any other manner approved by Beneficiary and only as repairs or replacements are effected and continuing expenses become due and payable. If the above condition has not been met, Beneficiary shall not be obligated to make any further disbursements of the Loan and Beneficiary shall apply all loss proceeds remaining after deduction of all expenses and collection and settlement thereof, including, without limitation, attorneys' and adjustors' fees and charges, to the repayment of the outstanding balance of the Note, together with accrued interest, notwithstanding that the outstanding balance may not be due and payable. Nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Trust Estate as provided in Section 1.2 hereof or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

1.6 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Trustor in and to all policies of insurance required by Section 1.3 shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Trust Estate.

1.7 Indemnification; Subrogation; Waiver of Offset.

(a) If Beneficiary is made a party to any litigation concerning the Note, this Deed of Trust, any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Trust Estate by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment. Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Trustor, Trustor shall pay Beneficiary reasonable attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(b) Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Trustor pursuant to this Deed of Trust shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part hereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor.

1.8 Taxes and Impositions.

(a) Trustor shall pay, or cause to be paid at least thirty (30) days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind of nature whatsoever, including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Trust Estate, which are assessed or imposed upon the Trust Estate, or become due and payable, and which create, may create or appear to create a lien upon the Trust Estate, or any part

thereof, or upon any person, property, equipment or other facility used in the operation or maintenance thereof (all the above collectively hereinafter referred to as "**Impositions**"); provided, however, that if, by law any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Trust Estate in lieu of or in addition to the Impositions payable by Trustor pursuant to Section 1.8(a), or (ii) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in Section 1.8(a) and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Trustor fails to pay such Impositions prior to delinquency or if Trustor is prohibited by law from paying such Impositions, Beneficiary may at its option declare all obligations secured hereby together with all accrued interest thereon, immediately due and payable. Anything to the contrary herein notwithstanding, Trustor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Beneficiary or on the obligations secured hereby.

(c) Subject to the provisions of Section 1.8(d) and upon request by Beneficiary, Trustor shall deliver to Beneficiary within thirty (30) days after the date upon which any such Imposition is due and payable by Trustor official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof.

(d) Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.8, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, at Beneficiary's sole option, (i) Trustor shall demonstrate to Beneficiary's satisfaction that the proceedings to be initiated by Trustor shall conclusively operate to prevent the sale of the Trust Estate, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (ii) Trustor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary; or (iii) Trustor shall demonstrate to Beneficiary's satisfaction that Trustor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

(e) After an Event of Default and upon request by Beneficiary, Trustor shall pay to Beneficiary an initial cash reserve in an amount adequate to pay all Impositions for the ensuing tax fiscal year and shall thereafter continue to deposit with Beneficiary, in monthly installments, an amount equal to one-twelfth (1/12) of the sum of

the annual Impositions reasonably estimated by Beneficiary, for the purpose of paying the installment of Impositions next due on the Trust Estate (funds deposited for this purpose shall hereinafter be referred to as "Impounds"). In such event Trustor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and providing Trustor has deposited sufficient Impounds with Beneficiary pursuant to this Section 1.8(e), Beneficiary shall timely pay such amounts as may be due thereunder out of the Impounds so deposited with Beneficiary. If at any time and for any reason the Impounds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due Beneficiary may notify Trustor and upon such notice Trustor shall deposit immediately an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 1.8(e). Beneficiary may commingle Impounds with its own funds and shall not be obligated to pay or allow any interest on any Impounds held by Beneficiary pending disbursement or application hereunder. Beneficiary may reserve for future payment of Impositions such portion of the Impounds as Beneficiary may in its absolute discretion deem proper. Upon an Event of Default under any of the Loan Documents or this Deed of Trust, Beneficiary may apply the balance of the Impounds upon any indebtedness or obligation secured hereby in such order as Beneficiary may determine, notwithstanding that said indebtedness or the performance of said obligation may not yet be due according to the terms thereof. Should Trustor fail to deposit with Beneficiary (exclusive of that portion of said payments which has been applied by Beneficiary upon any indebtedness or obligation secured hereby) sums sufficient to fully pay such Impositions at least fifteen (15) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary as herein elsewhere provided, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Impounds held by it upon any indebtedness or obligation secured hereby in such order as Beneficiary may determine, notwithstanding that said indebtedness or the performance of said obligation may not yet be due according to the terms thereof. Should any default or Event of Default occur or exist on the part of the Trustor in the payment or performance of any of Trustor's or any guarantor's obligations under the terms of the Loan Documents, Beneficiary may, at any time at Beneficiary's option, apply any sums or amounts in its hands received pursuant to Section 1.4(b) and 1.8(e) hereof, or as rents or income of the Trust Estate or otherwise, to any indebtedness or obligation of the Trustor secured hereby in such manner and order as Beneficiary may elect, notwithstanding said indebtedness or the performance of said obligation may not yet be due according to the terms thereof. The receipt, use or application of any such Impounds paid by Trustor to Beneficiary hereunder shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust or any of the rights or powers of Beneficiary or Trustee under the terms of the Loan Documents or any of the obligations of Trustor or any guarantor under the Loan Documents.

(f) Trustor shall not suffer, permit or initiate the joint assessment of any real and personal property which may constitute all or a portion of the

Trust Estate or suffer, permit or initiate any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Trust Estate as a single lien.

(g) If requested by Beneficiary, Trustor shall cause to be furnished to Beneficiary a tax reporting service covering the Trust Estate of the type, duration and with a company satisfactory to Beneficiary.

1.9 Utilities. Trustor shall pay or shall cause to be paid when due all utility charges which are incurred by Trustor for the benefit of the Trust Estate or which may become a charge or lien against the Trust Estate for gas, electricity, water or sewer services furnished to the Trust Estate and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Trust Estate or any portion thereof, whether or not such taxes, assessments or charges are or may become liens thereon.

1.10 Actions Affecting Trust Estate. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and shall pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear.

1.11 Actions By Trustee or Beneficiary to Preserve Trust Estate. If Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do, without releasing Trustor from any obligation, and without notice to or demand upon Trustor, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation, (a) to enter upon and take possession of the Trust Estate; (b) to make additions, alterations, repairs and improvements to the Trust Estate which they or either of them may consider necessary or proper to keep the Trust Estate in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Deed of Trust or be prior to superior hereto; and (e) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Trustor shall, immediately upon demand therefor by Beneficiary and Trustee or any of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by them in connection with the exercise by either Beneficiary or Trustee or both of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees, together with interest thereon from the date of such expenditures at the Agreed Rate.

1.12 Transfer or Encumbrance of Trust Estate by Trustor. In order to

induce Beneficiary to make the Loan, Trustor agrees that, in the event of any transfer of the Trust Estate without the prior written consent of Beneficiary, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this Deed of Trust, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any maker or guarantor of the Note from any liability thereunder without the prior written consent of Beneficiary. As used herein, "transfer" includes the sale, agreement to sell, transfer, conveyance, encumbrance or hypothecation of the Trust Estate, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract or similar instrument affecting all or a portion of the Trust Estate.

1.13 Full Performance Required; Survival of Warranties. All representations, warranties and covenants of Trustor contained in any loan application or made to Beneficiary in connection with the Loan or contained in the Loan Documents or incorporated by reference therein, shall survive the execution and delivery of this Deed of Trust and shall remain continuing obligations, warranties and representations of Trustor so long as any portion of the obligations secured by this Deed of Trust remain outstanding.

1.14 Eminent Domain. In the event that any proceeding or action be commenced for the taking of the Trust Estate, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation or otherwise, or if the same be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Trustor receive any notice or other information regarding such proceeding, action, taking or damage, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled at its option, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name any such action or proceeding. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such taking or damage (the "**Condemnation Proceeds**") are hereby assigned to Beneficiary and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary or Trustee may require. After deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' fees, incurred by it in connection with any such action or proceeding, Beneficiary shall apply all such Condemnation Proceeds to the restoration of the Improvements, provided that the taking or damage will not, in Beneficiary's reasonable judgment, materially affect the contemplated use and operation of the Improvements. If the above condition is met, Beneficiary shall disburse the Condemnation Proceeds in accordance with standard construction lending practices or in any other manner approved by Beneficiary and only as repairs or replacements are effected and continuing expenses become due and payable. If the above condition is not met, Beneficiary shall apply all of

the Condemnation Proceeds, after deductions as herein provided, to the repayment of the outstanding balance of the Note, together with accrued interest thereon, notwithstanding that said outstanding balance may not be due and payable. If the Condemnation Proceeds are not sufficient to repay the Note in full, Trustor shall immediately pay any remaining balance, together with accrued interest. Application or release of the Condemnation Proceeds as provided herein shall not cure or waive any default or notice of default hereunder or under any other Loan Document or invalidate any act done pursuant to such notice.

1.15 Additional Security. No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust; and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of the time of payment of the Indebtedness shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, surety or endorser for the payment of said Indebtedness. In the event Beneficiary at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently or after a sale is made hereunder.

1.16 Appointment of Successor Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the county in which the Trust Estate is located and by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder; and said successor shall, without conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of said predecessor.

1.17 Successors and Assigns. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein.

1.18 Inspections. Beneficiary, or its agents, representatives or workers, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform hereunder or under the terms of any of the Loan Documents.

1.19 Liens. Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Trust Estate, or any part thereof or interest therein; provided that Trustor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge. If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner

as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien encumbrance or charge, together with interest thereon from the date of such expenditure at the Agreed Rate.

1.20 Trustee's Powers. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of said Trust Estate, Trustee may (a) reconvey any part of said Trust Estate, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, (d) or join in any extension agreement or any agreement subordinating the lien or charge hereof.

1.21 Beneficiary's Powers. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Premises not then or theretofore released as security for the full amount of all unpaid obligations, Beneficiary may, in writing, from time to time and without notice (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such obligation, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, portion or all of the Trust Estate, (e) take or release any other or additional security for any obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

1.22 Financial Statements. Trustor shall deliver to Beneficiary copies of such financial statements, balance sheets, profit and loss statements, operating statements, income and expense statements and other financial information in reasonable detail and at the times required by Beneficiary. All such statements shall be prepared in accordance with the requirements of Beneficiary and Beneficiary shall have the right to audit and inspect all books and records relating thereto.

1.23 Trade Names. At the request of Beneficiary, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names or fictitious business names under which Trustor intends to operate the Trust Estate or any business located thereon and representing and warranting that Trustor does business under no other trade names or fictitious business names with respect to the Trust Estate. Trustor shall immediately notify Beneficiary in writing of any change in said trade names or fictitious business names, and will, upon request of Beneficiary, execute any additional financing statements and other certificates necessary to reflect the change in trade names or fictitious business names.

1.24 Leasehold. If a leasehold estate constitutes a portion of the Trust Estate, Trustor agrees not to amend, change, terminate or modify such leasehold estate or any interest therein without the prior written consent of Beneficiary. Consent to one amendment, change, agreement or modification shall not be deemed to be a waiver of the

right to require consent to other, future or successive amendments, changes, agreements or modifications. Trustor agrees to perform all obligations and agreements under said leasehold and shall not take any action or omit to take any action which would effect or permit the termination of said leasehold. Trustor agrees to promptly notify Beneficiary in writing with respect to any default or alleged default by any party thereto and to deliver to Beneficiary copies of all notices, demands, complaints or other communications received or given by Trustor with respect to any such default or alleged default. Beneficiary shall have the option to cure any such default and to perform any or all of Trustor's obligations thereunder. All sums expended by Beneficiary in curing any such default shall be secured hereby and shall be immediately due and payable without demand or notice and shall bear interest from date of expenditure at the Agreed Rate.

1.25 Senior Lien. In the event this Deed of Trust is subject and subordinate to the lien of any other deed or deeds of trust (the "prior deeds of trust"), Trustor shall pay all sums and perform all acts required by the terms of the prior deeds of trust and shall furnish Beneficiary evidence of such payments and the failure so to do shall constitute an Event of Default hereunder. In the event Trustor shall default in the payment of any sums secured by or required to be paid under any prior deed of trust, irrespective of whether such sums are presently secured by such prior deed of trust or are contemplated to be secured thereby, or in the performance of any obligation on its part to be performed thereunder, Beneficiary may pay or perform the same and the amount of such payment and/or the cost of such performance shall be added to the indebtedness evidenced by the Note, shall be immediately due and payable from Trustor, and shall bear interest at the Agreed Rate.

ARTICLE 2

ASSIGNMENT OF RENTS, ISSUES AND PROFITS

2.1 Assignment of Rents, Issues and Profits. Trustor hereby assigns and transfers to Beneficiary all the rents, issues and profits of the Trust Estate, and hereby gives to and confers upon Beneficiary the right, power and authority to collect such rents, issues, and profits. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all such rents, issues and profits and apply the same to the indebtedness secured hereby; provided, however, that Trustor shall have the right to collect such rents, issues and profits (but not in advance unless the written approval of Beneficiary has first been obtained), and to retain and enjoy same, so long as an Event of Default shall not have occurred hereunder and be continuing. Upon request of Beneficiary, Trustor shall execute and deliver to Beneficiary, in recordable form, a specific assignment of any lease, sublease, license, concession or other agreement (collectively, the "Leases") now or hereafter affecting the Trust Estate or any portion thereof to further evidence the assignment hereby made. The assignment of the rents, issues and profits of the Trust Estate in this Article 2 is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest.

2.2 Collection Upon Default. Upon the occurrence of an Event of

Default hereunder Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Trust Estate, or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Trust Estate, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

ARTICLE 3 REMEDIES UPON DEFAULT

3.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default ("**Event of Default**") hereunder: (a) Trustor shall default in the payment of any sums required to be paid by Trustor pursuant to the Note or this Deed of Trust on the date that such payments are required to be made; or (b) Trustor shall breach or be in default of, any of the covenants or provisions contained in this Deed of Trust, the Note or in any document issued in connection herewith; or (c) Trustor shall default the Note or any other obligation for borrowed money, whether to Beneficiary or otherwise which affects the Trust Estate, for a period longer than any period of grace provided in such obligation; or (d) any representation or information given by Trustor to Beneficiary be untrue or any essential financial information be withheld by Trustor from Beneficiary; or (e) the Trust Estate or any part thereof be attached or become subject to any other legal process and not released therefrom within ninety (90) days; or (f) Trustor shall execute any chattel mortgage on any (i) materials, fixtures or articles used in the operation of an Improvement or appurtenance thereto, or (ii) articles of personal property placed on the Premises, or should any such materials, fixtures or articles be purchased on conditional bill of sale or otherwise so that the ownership thereof will not vest unconditionally in Trustor free from encumbrance, on delivery at the Premises; or should Trustor fail to furnish to Beneficiary, if requested, the contracts, bills of sale, statements, receipt vouchers and agreements, or any of them, under which Trustor claims title to such materials, fixtures and articles; or (g) if there shall occur during any consecutive twelve (12) month period one or more uninsured losses, thefts, damage or destruction of the Trust Estate, or any part thereof, having an aggregate value in excess of One Hundred Thousand Dollars (\$100,000); or (h) Trustor shall be in default under Section 1.12 hereunder; or (i) Trustor fails to permit Beneficiary or representatives of Beneficiary, entry upon the Premises and an opportunity to inspect each Improvement thereon at all reasonable times; or (j) Trustor be declared or become insolvent, make an assignment for the benefit of creditors, voluntarily be the subject of any bankruptcy proceedings, reorganization, arrangement, insolvency or receivership proceedings or involuntarily be the subject of such and not discharge such proceedings within thirty (30) days.

3.2 Acceleration Upon Default, Additional Remedies. Upon the

occurrence of an Event of Default, Beneficiary may, at its option, declare all indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same less costs, and expenses of operation and collection including, without limitation, attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Trust Estate or the collection, receipt and application of rents, issues or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Trust Estate to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of the County in which the Trust Estate is located; or

(d) Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing all or any portion of the obligations secured hereby, or by law.

3.3 Foreclosure By Power of Sale. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the note and such receipt and evidence of expenditures made and secured hereby as Trustee may require.

(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in said

Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale in the following priority, to payment of: (i) first, all sums expended under the terms hereof, not then repaid, with accrued interest at the Agreed Rate; (ii) second, all other sums then secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

(c) Subject to California Civil Code § 2924g, Trustee may postpone sale of all or any portion of the Trust Estate by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

3.4 Personal Property. Upon the occurrence of an Event of Default hereunder, it is the express understanding and intent of the parties that as to any personal property interest subject to Article 9 of the California Commercial Code (the "**Code**"), Beneficiary may proceed under the Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect to real property, as specifically permitted under Section 9501(4) of the Code, and treat both real and personal property interests as one parcel or package or security.

3.5 Appointment of Receiver. Upon the occurrence of an Event of Default hereunder, Beneficiary, as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the date of confirmation of sale of the Trust Estate unless such receivership is sooner terminated.

3.6 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust

or under any Loan Document or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies.

3.7 Transfer or Encumbrance of Trust Estate by Trustor. In order to induce Beneficiary to make the Loan, Trustor agrees that, in the event of any transfer of the Trust Estate without the prior written consent of Beneficiary, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this Deed of Trust, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any maker or guarantor of the Note from any liability thereunder without the prior written consent of Beneficiary. As used herein, "transfer" includes the sale, agreement to sell, transfer, conveyance, encumbrance or hypothecation of the Trust Estate, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract or similar instrument affecting all or a portion of the Trust Estate.

ARTICLE 4 MISCELLANEOUS

4.1 Amendments. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

4.2 Trustor Waiver of Rights. Trustor waives to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Trust Estate, (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or

declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created, and (c) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties; provided, however, nothing contained herein shall be deemed to be a waiver of Trustor's rights under Section 2924c of the California Civil Code.

4.3 Statements by Trustor. Trustor shall, within ten (10) days after written notice thereof from Beneficiary, deliver to Beneficiary a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest.

4.4 Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

4.5 Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, through the United States Postal Service to the addresses shown below or such other addresses which the parties may provide to one another in accordance herewith. Such notices, requests and demands, if sent by mail shall be deemed given two (2) days after deposit in the United States mails, and if delivered by hand, shall be deemed given when delivered.

If to Beneficiary: Loretta M. Scherer 1990 Trust
10045 Valley Spring Lane
Toluca Lake, California 91602

If to Trustor: 5335 Market Street, LLC
1307 Palisades Beach Road
Santa Monica, California 92114

4.6 Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

4.7 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

4.8 Invalidity of Certain Provisions. Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to

be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

4.9 Subrogation. To the extent that proceeds of the Note are owed to pay any prior outstanding lien, charge or encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

4.10 Attorneys' Fees. If the Note is not paid when due or if any Event of Default occurs, Trustor promises to pay all costs of enforcement and collection, including but not limited to, reasonable attorneys' fees, whether or not such enforcement and collection includes the filing of a lawsuit.

4.11 No Merger of Lease. If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchase shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

4.12 Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

4.13 Joint and Several Obligations. Should this Deed of Trust be signed by more than one party, all obligations herein contained shall be deemed to be the joint and several obligations of each party executing this Deed of Trust. Any married person signing this Deed of Trust agrees that recourse may be had against community assets and against his or her separate property for the satisfaction of all obligations contained herein.

4.14 Interpretation. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

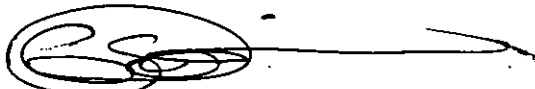
4.15 Loan Statement Fees. Trustor shall pay the amount demanded by Beneficiary or its authorized loan servicing agent for any statement regarding the obligations secured hereby; however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

4.16 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

4.17 Authority. Trustor and each party executing this Deed of Trust on behalf of Trustor warrant that they have the full right, power and authority to do so, and that this Deed of Trust constitutes the legal, valid, binding and enforceable obligation of Trustor.

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

5335 MARKET STREET, LLC
a California limited liability company

By: 
Gustavo Spoliansky, Managing Member

STATE OF CALIFORNIA)
COUNTY OF Riverside) ss.
~~LOS ANGELES~~)

On March 11, 2005, before me, Suzanne P. Hammond, a Notary S.H. Public in and for said County and State, personally appeared Gustavo Spoliansky ~~personally known to me~~ (or 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 capacit(~~-y/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.

WITNESS my hand and official seal.

Suzanne P. Hammond
Signature of Notary

[SEAL]



8879

PROPERTY DESCRIPTION

EXHIBIT "A"

All that certain real property situated in the County of San Diego, State of California, described as follows:

Lots "M" and "N" in Block 19 of Las Alturas Unit No. 5, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 2053, filed in the Office of the County Recorder of San Diego County on August 17, 1927.