

NO FEE DOCUMENT
RECORDING REQUESTED BY:
The Redevelopment Agency
of the City of Oakland

WHEN RECORDED MAIL TO:

The Redevelopment Agency
of the City of Oakland
c/o Oakland City Attorney's Office
One City Hall Plaza, 6th Floor
Oakland, California 94612

TO BE A TRUE COPY OF DOCUMENT
DATE 10-20-99
FILE NO 394071
CLERK OF RECORDS OF ALAMEDA COUNTY FOR
Chicago Title Company
By [Signature]

SUBORDINATED DEED OF TRUST AND FIXTURE FILING

NOTICE: THIS DEED OF TRUST AND FIXTURE FILING CONTAINS A
SUBORDINATION CLAUSE WHICH MAY RESULT IN THE LIEN OF THIS DEED
OF TRUST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER
PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY
INSTRUMENT

THIS SUBORDINATED DEED OF TRUST AND FIXTURE FILING ("Deed of Trust") is made as of October 20, 1999, by ROTUNDA PARTNERS II, LLC, a California limited liability company ("Trustor"), whose mailing address is c/o California Commercial Investments, 600 Grand Avenue, Suite 404, Oakland, California 94610, to CHICAGO TITLE COMPANY, a California corporation ("Trustee"), for the benefit of THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a public body, corporate and politic ("Beneficiary"), whose mailing address is c/o Oakland, City Attorney's Office, One City Hall Plaza, 6th Floor, Oakland, California 94612.

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, the proceeds of which are to be used to finance certain construction involving the real property having a street address of 1501 Broadway, located in the City of Oakland, County of Alameda, State of California, more particularly described in Exhibit A (the "Property"). All initially-capitalized terms used herein without definition shall have the meanings given such terms in the Disposition and Development Agreement and the Loan Documents (as hereinafter defined) and are incorporated herein by reference.

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 of Beneficiary, under and subject to the terms and conditions hereinafter set forth, the Property;

9710327-21L

TOGETHER WITH:

- (i) The building and improvements now or hereafter erected on the Property, including, without limitation, fixtures, tenements, attachments, appliances, equipment, building systems, machinery, and other articles now or hereafter attached to such building and improvements (collectively, the "Improvements"), all of which shall be deemed to be part of the Property; and
- (ii) All rents, issues, profits, revenue, royalties, income, proceeds, earnings and other benefits, including, without limitation, prepaid rents (collectively, the "Rents") derived from any lease, sublease, license, franchise, occupancy or other agreement now existing or hereafter created affecting all or any portion of the Project (as hereinafter defined) or the use or occupancy thereof (collectively, the "Leases"); and
- (iii) All estate, right, title and interest of Trustor in, to and under all of the Leases; and
- (iv) All easements, tenements, hereditaments, appurtenances, rights-of-way and rights now owned or hereafter acquired by Trustor and used or useful in connection with the Project or as a means of access thereto, including, without limitation, all rights to the use of common drive entries, all oil, gas and other hydrocarbons, all other minerals and all water and water rights and shares of stock evidencing the same; and
- (v) 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 Project and any and all sidewalks, vaults, alleys and strips and gores of land adjacent to or used in connection with the Project; and
- (vii) All proceeds from and rights to (including, without limitation, payments, judgments, awards, settlements, contract rights, profits, general intangibles, rebates and benefits and rights at law and in equity) any insurance policies now or hereafter in effect with respect to the Project, including, without limitation, casualty insurance, rental loss or business interruption insurance and earthquake insurance, whether or not such policies contain a Mortgage Clause/Beneficiary's loss payable endorsement

in favor of Beneficiary and whether or not such policies are required to be maintained by Trustor pursuant to the Loan Documents; and

- (vii) All estate, interest, right, title, other claim or demand, both at law and in equity which Trustor now has or may hereafter acquire in any and all awards made for any Condemnation Event (as hereinafter defined) of the Project or any portion thereof or interest therein, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages; and
- (viii) All refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, subsidy payments, credits, waivers and payments, whether in cash or in kind, due from or payable by any Governmental Agency relating to any or all of the Project or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development, ownership, occupancy, use or operation of the Project; and
- (ix) All refunds, rebates, reimbursements, credits and payments of any kind due from or payable by any Governmental Agency for any taxes, special taxes, assessments, or similar governmental or quasi-governmental charges or levies imposed upon Trustor with respect to the Project or upon any or all of the Project itself or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development, ownership, occupancy, use or operation of the Project (excepted from this provision are Historic Tax Credits as long as Trustor has not committed an Event of Default hereunder); and
- (x) All rights, title, interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Project or any portion thereof, including, without limitation, any greater estate in the Project or any portion thereof.

The entire estate, Property and interest hereby conveyed to Trustee is collectively referred to herein as the "Project." This Deed of Trust constitutes a fixture filing under Sections 9313 and 9402(b) of the California Uniform Commercial Code, as amended or recodified from time to time.

FOR THE PURPOSE OF SECURING:

(a) Payment of indebtedness in the total principal amount of Twelve Million Dollars (\$12,000,000) (the "Loan"), or so much thereof as may have been advanced from time to time by Beneficiary pursuant to the Disposition and Development Agreement, with interest thereon, evidenced by that certain Promissory Note secured by Deed of Trust of even date herewith, and all modifications, extensions, renewals and replacements thereof (collectively, the "Note"), executed by Trustor pursuant to the Disposition and Development Agreement and other Loan Documents between Trustor and Beneficiary, and all supplements, amendments, modifications thereto and all extensions and renewals thereof;

(b) Payment of all sums advanced by Beneficiary or Trustee to protect the Project and all other amounts owing by Trustor to Beneficiary under the Disposition and Development Agreement and other Loan Documents, with interest thereon at the applicable rate set forth in the Note;

(c) Performance of every obligation, covenant and agreement of Trustor contained herein or in the Note, Disposition and Development Agreement, and other Loan Documents; and

(d) Performance of every obligation, covenant and agreement of Trustor contained in any document, instrument or agreement now or hereafter executed by Trustor which recites that the obligations thereunder are secured by this Deed of Trust.

Notwithstanding anything to the contrary contained herein or in the Disposition and Development Agreement and other Loan Documents, this Deed of Trust does not secure any obligations or liabilities arising out of the Environmental Indemnity or any Post-Foreclosure Transfer Environmental Losses (as defined therein). It is the express intention of Trustor and Beneficiary that such obligations and liabilities be unsecured.

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

ARTICLE 1
TRUSTOR'S COVENANTS

1.1 Title.

Trustor represents, warrants and covenants that (a) it is the lawful owner of good and marketable fee title to the Project, subject only to the title exceptions set forth in the Title Policy, (b) it will maintain and preserve the lien of this Deed of Trust until all of the obligations to Beneficiary have been paid and satisfied in full, (c) it has full power and authority to grant a security interest in the Project as provided in this Deed of Trust, and (d) it will forever warrant and defend its grant made herein against any and all claims and demands whatsoever, except as specifically provided in this Deed of Trust.

1.2 Payment of Secured Obligations.

Trustor shall pay when due the principal of and the interest on the Loan, all charges, fees and other sums as provided in the Disposition and Development Agreement, and other 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.

1.3 Maintenance, Repair and Alterations.

Trustor (a) shall keep the Project in good condition and repair, reasonable wear and tear excepted, (b) shall pay or cause to be paid when due all utility charges with respect to all or any portion of the Project and all other assessments or charges of a similar nature, (c) except as expressly provided herein and in the Disposition and Development Agreement, shall not remove, demolish or substantially alter any of the Improvements without Beneficiary's prior written consent, (d) shall complete promptly and in a good and workmanlike manner any Improvement which may be now or hereafter constructed on the Project and promptly restore in like manner any portion of the Improvements which may be damaged or destroyed from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefor, (e) shall comply with all Laws now or hereafter affecting the Project or any part thereof or requiring any alterations or improvements, (f) shall not commit or permit any waste or deterioration of the Project, and (g) shall not change the use of the Project as a mixed use retail and office project in accordance with the provisions of the Disposition and Development Agreement, without Beneficiary's prior written consent. Notwithstanding the foregoing, Beneficiary's prior written consent shall not be required for nonstructural improvements or alterations which are required by the terms of any lease entered into by Trustor.

1.4 Impositions.

(a) **Impositions.** As used herein, "Impositions" means all real estate and personal property taxes and other taxes and assessments, water and sewer charges, and all other governmental charges relating to all or any portion of the Project, including, without limitation, any interest, costs or penalties with respect thereto, and charges for any easement or agreement maintained for the benefit of the Project, all of any kind and nature whatsoever that at any time may be assessed, imposed or become a lien upon the Project or any portion thereof, whether general or special, ordinary, extraordinary or supplemental, foreseen or unforeseen; any and all other charges, expenses, payments or assessments of any nature, if any, which are or may become a lien upon the Project or any portion thereof; and any license fee, tax or assessment (other than Beneficiary's income taxes) imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured by this Deed of Trust.

(b) **Payment of Impositions.** Trustor shall pay all Impositions prior to delinquency. At Beneficiary's request, Trustor shall provide Beneficiary with reasonable evidence of the payment of such Impositions. Without limiting Trustor's obligation to pay all Impositions prior to delinquency, Trustor shall have the right to contest any Imposition assessed against the Project as provided in Section 1.11.

1.5 Insurance

Trustor shall procure and maintain, or cause to be procured and maintained, at all times during the term of the Loan, policies of insurance in form and amounts reasonably satisfactory to Beneficiary, and issued by companies having a Best's rating of at least B+, 10, or equivalent rating, and otherwise reasonably satisfactory to Beneficiary, covering (i) such casualties, risks, perils, liabilities and other hazards as may be reasonably required by Beneficiary and (ii) such casualties, risks, perils, liabilities and other hazards which are at the time commonly insured against or required by institutional lenders to be insured against with respect to properties similar to the Project. All policies of insurance (i) shall be in form reasonably satisfactory to Beneficiary; (ii) shall have a deductible of not more than Ten thousand dollars (\$10,000) with respect to any insurance other than earthquake insurance, and with respect to earthquake insurance, shall have a deductible reasonably acceptable to Beneficiary; (iii) shall include a Standard Mortgage Clause/Lender's Loss Payable Endorsement and Chattel Mortgage Clause in favor of, and in form reasonably satisfactory to, Beneficiary, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Beneficiary; and (iv) may be in the form of blanket policies in amount, form and substance satisfactory to Beneficiary.

Without limiting the generality of the foregoing, Trustor shall maintain or cause to be maintained the following insurance coverages:

- (a) Property damage insurance for the full replacement cost of the Project, on an "all risks" basis (including fire, extended coverage, vandalism and malicious mischief), together with a four percent (4%) inflationary guard endorsement;
- (b) Commercial general liability insurance on an "occurrence" basis in the minimum amount of Two Million Dollars (\$2,000,000) for any one accident;
- (c) Twelve (12) months of business interruption or loss of rents coverage in an amount equal to the rents otherwise payable during such twelve (12)-month period;
- (d) Earthquake insurance for the full replacement cost of the Project, less the minimum deductible amount permitted by the insurance company; and
- (e) Builder's Risk Insurance during the period of construction in amounts as reasonably required by Beneficiary from time to time.

The preceding paragraph to the contrary notwithstanding, Beneficiary will waive the requirement for earthquake insurance if the provisions of the following paragraph are satisfied.

Trustor shall have the election to retain an engineer (who shall be subject to Beneficiary's approval), at its sole cost, to conduct a seismic study (the "Seismic Study") of the Project in order to determine the Maximum Probable Loss (as herein defined). If the Maximum Probable Loss is determined to be an amount less than twenty percent (20%) of the greater of the then current fair market value of the Project or Twelve Million Dollars (\$12,000,000), as approved by Beneficiary, Beneficiary shall not require Trustor to maintain earthquake insurance

unless the maintenance of earthquake insurance is required by applicable Laws. As defined herein, "Maximum Probable Loss" means the estimated replacement costs of the Project, based upon a ninety percent (90%) confidence level, in the event of an earthquake with a fifty percent (50%) chance of being exceeded in thirty (30) years determined in a manner acceptable to Beneficiary.

In the event of damage or destruction to the Project caused by an earthquake where the Maximum Probable Loss is exceeded, then from and after such damage or destruction Trustor shall maintain earthquake insurance as required by this Section 1.5, subject to Trustor's right to conduct a subsequent Seismic Study and have the requirement for earthquake insurance waived in accordance with the preceding paragraph.

1.6 Casualty.

(a) **Collection of Insurance Proceeds.** Trustor shall promptly notify Beneficiary of any damage or destruction to any portion of the Project, whether or not covered by insurance. Without limiting Beneficiary's security interest in any insurance proceeds, Trustor shall be authorized, so long as no Event of Default has occurred under any of the Loan Documents, to collect and receive all proceeds of insurance ("Casualty Proceeds") with respect to any casualty involving damage to the Project which is less than the Casualty Threshold as defined in the last sentence of this paragraph (a "Minor Casualty"). Beneficiary is authorized, at its option upon written notice to Trustor, to settle and adjust any claim with respect to any casualty damage to the Project equal to or greater than the Casualty Threshold (a "Major Casualty") or, if an Event of Default has occurred under any of the Loan Documents, any Minor Casualty. Beneficiary is authorized to collect and receive all Casualty Proceeds with respect to any Major Casualty, or, if an Event of Default has occurred under any of the Loan Documents, any Minor Casualty, and Trustor hereby authorizes and directs any affected insurance company to make payment of such Casualty Proceeds directly to Beneficiary. Trustor shall promptly pay over to Beneficiary any Casualty Proceeds received by Trustor relating to a Major Casualty or, if an Event of Default has occurred under any of the Loan Documents, a Minor Casualty. Trustor agrees to execute and deliver to Beneficiary, within ten (10) days after Beneficiary's request, such further assignments of any Casualty Proceeds as Beneficiary may reasonably require. As used herein, "Casualty Threshold" shall mean the lesser of (i) Two Hundred Fifty Thousand Dollars (\$250,000), or (ii) ten percent (10%) of the outstanding principal balance of the Loan at the time of such casualty.

(b) **Application of Insurance Proceeds; Reconstruction Obligations.** Beneficiary shall apply all Casualty Proceeds with respect to a Major Casualty remaining after the deduction of all reasonable expenses of collection and settlement thereof, including, without limitation, reasonable attorneys' and adjustors' fees and costs, to the reconstruction of the Project, provided that and so long as (i) no Event of Default has occurred under any of the Loan Documents, (ii) Beneficiary in its reasonable judgment and all applicable Governmental Agencies shall have approved the final plans and specifications for the reconstruction of the Project, (iii) Beneficiary shall have approved in its reasonable judgment a budget of all costs of reconstruction of the Project, a construction schedule for such work (which schedule shall reasonably show the completion of such reconstruction no later than the date which is thirty (30) days prior to the then effective maturity date of the Note), all construction contracts and

subcontracts for such work and such other documents relating to such reconstruction as Beneficiary shall reasonably require, (iv) Trustor shall have delivered to Beneficiary completion and/or performance bonds and Builder's All Risk insurance reasonably acceptable to Beneficiary, (v) Beneficiary shall have determined that after the reconstruction work is completed, the value of the Project, as determined by Beneficiary in its sole discretion in the same manner as Beneficiary's original appraisal of the Project, shall be not less than the value of the Project immediately prior to such event, and (vi) Trustor shall have deposited with Beneficiary in cash, from time to time including, without limitation, as the budgeted reconstruction costs as approved by Beneficiary change, the deficiency, if any, between the costs of the reconstruction of the Project and such net Casualty Proceeds then held by Beneficiary. All Casualty Proceeds so applied to the reconstruction of the Project shall be disbursed under such conditions as Beneficiary may reasonably require and shall be disbursed only as repairs or replacements are effected and as continuing expenses become due and payable. Any surplus which may remain out of such Casualty Proceeds after payment of such cost of rebuilding or restoration shall, at the option of Beneficiary, be applied to the outstanding principal balance of the Note or the other amounts owing by Trustor to Beneficiary under the Loan Documents.

(c) **Failure of Conditions.** If any one or more of the conditions set forth in Section 1.6(b) are not satisfied at any time: (i) Beneficiary shall not be obligated to disburse any further Casualty Proceeds and Beneficiary shall apply all Casualty Proceeds then held by Beneficiary to the prepayment of the outstanding balance of the Note, together with accrued interest, and the other amounts owed to Beneficiary under the Loan Documents in such order as Beneficiary may elect, notwithstanding that such amounts may not be due and payable; (ii) if the Casualty Proceeds are not sufficient to repay the Note in full, Trustor shall immediately pay the remaining balance, together with interest accrued thereon and all other amounts owing to Beneficiary under the Loan Documents; and (iii) if there are Casualty Proceeds remaining after the repayment of the foregoing amounts, such remaining proceeds shall be paid over to the persons legally entitled thereto.

(d) **Acceleration of Indebtedness.** If there are no Casualty Proceeds available after any Major Casualty, or, if an Event of Default has occurred under any of the Loan Documents, any Minor Casualty, for any reason whatsoever, then upon written notice to Trustor, the outstanding balance of the Note, together with accrued interest, shall become immediately due and payable unless all of the conditions set forth in Section 1.6(b) are satisfied and Trustor deposits with Beneficiary, in cash, such funds as Beneficiary deems necessary for such repair and restoration.

(e) **Trustor's Reconstruction Obligation.** Nothing contained in this Section 1.6 shall be deemed to excuse Trustor from repairing or maintaining the Project as provided in Section 1.3 or restoring all damage or destruction to the Project, regardless of whether or not there are Casualty Proceeds available to Trustor or whether any such Casualty Proceeds are sufficient in amount. The application or release by Beneficiary of any Casualty Proceeds shall not cure or waive any Event of Default under the Loan Documents or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

1.7 Condemnation.

(a) **Collection of Condemnation Proceeds.** In the event that any proceeding or action is commenced for the taking of the Property or the Project, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation proceeding or in any other manner (any of the foregoing being "Condemnation Events"), should Trustor receive any written notice or other information relating to a threatened Condemnation Event, Trustor shall give prompt written notice thereof to Beneficiary. Trustor hereby assigns to the Beneficiary all compensation, rights of action, proceeds of any award and any claim for damages relating to such Condemnation Event ("Condemnation Proceeds") and all such amounts shall be paid to Beneficiary; provided, however, that so long as no Event of Default exists under any of the Loan Documents, Trustor shall be entitled to reasonably participate in any action, proceeding or any settlement relating to such Condemnation Event. Trustor shall promptly pay over to Beneficiary any Condemnation Proceeds relating to any Condemnation Event received by Trustor. Beneficiary may, at its option without regard to the adequacy of its security, commence, appear in and prosecute, in its own name or in Trustor's name, any action or proceeding, or make any compromise or settlement, in connection with any Condemnation Event; provided that Beneficiary shall be under no obligation to question the amount of any Condemnation Proceeds payable with respect to any such Condemnation Event. Trustor agrees to execute and deliver to Beneficiary, within ten (10) days after Beneficiary's request, such further assignments of any Condemnation Proceeds as Beneficiary may reasonably require.

(b) **Application of Condemnation Proceeds; Reconstruction Obligations.** Beneficiary shall apply, in the manner set forth in Section 1.6(b) with respect to a Major Casualty, all Condemnation Proceeds remaining after deduction of all reasonable expenses of collection and settlement thereof, including, without limitation, reasonable attorneys' fees and costs, to the reconstruction of the Project on the Property to the maximum extent possible given such Condemnation Event, provided that and so long as (a) Beneficiary reasonably determines that the taking will not materially affect the use and operation of the Project based upon the use and operation thereof immediately prior to such taking; and (b) all of the conditions set forth in Section 1.6(b) shall have been satisfied. If any one or more of the foregoing conditions are not satisfied at any time, Beneficiary shall have the option to apply such Condemnation Proceeds to the repayment of the Note as provided in Section 1.6(c).

(c) **Trustee's Reconstruction Obligations.** Nothing contained in this Section 1.7 shall be deemed to excuse Trustor from repairing or maintaining the Project as provided in Section 1.3 or restoring all damage to the Project, regardless of whether or not there are Condemnation Proceeds available to Trustor or whether any such Condemnation Proceeds are sufficient in amount. The application or release by Beneficiary of any Condemnation Proceeds shall not cure or waive any Event of Default or Potential Default under the Loan Documents or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

1.8 Liens and Encumbrances.

Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens against the Project or any portion thereof or interest therein, except liens expressly permitted under the Loan Documents. Without limiting Trustor's obligation to pay and discharge any such lien, Trustor shall have the right to contest liens as provided in Section 1.11. If Trustor fails to discharge any lien or to contest the same as provided in the immediately preceding sentence, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by bonding as provided herein, and all amounts expended by Beneficiary in connection therewith shall (a) bear interest at the Default Interest Rate, (b) be secured hereby, and (c) be payable within ten (10) days after demand by Beneficiary. Beneficiary shall have no obligation to make any further disbursements of Loan proceeds pursuant to the provisions of the Disposition and Development Agreement until all such liens are released, discharged or bonded against to Beneficiary's reasonable satisfaction.

1.9 Actions Affecting Project.

Trustor shall promptly give Beneficiary written notice of, and shall appear in and contest, any action or proceeding purporting to affect the Project, the Personal Property or the security of this Deed of Trust or any of the other Loan Documents or the rights or powers of Beneficiary or Trustee. Trustor shall pay all costs and expenses, including, without limitation, title costs and reasonable Attorneys' Fees and costs, in any such action or proceeding in which Beneficiary or Trustee may reasonably be required to appear.

1.10 Transfer of Project.

Subject to the following paragraph, in the event that: (a) the Project or any part thereof, or any interest therein, is sold, conveyed, alienated, assigned, liquidated, divested, optioned, leased (with or without an option to purchase), encumbered, hypothecated, or otherwise transferred by Trustor in any manner or way, whether voluntary or involuntary; or (b) there is a transfer of any partnership interest, stock, or other form of ownership of Trustor; or (c) there occurs a merger, consolidation, sale or lease of all or substantially all of the assets of Trustor; or (d) Trustor agrees to do any of the foregoing (each of such acts, transactions and/or events described in clauses (a), (b) and (c) above being hereinafter referred to as a "Transfer"), then the entire unpaid balance of the principal sum, together with all accrued and unpaid interest thereon and all other sums due under the Note, this Deed of Trust, and/or other Loan Documents, shall be immediately due and payable without demand or notice, at the election of Beneficiary. Trustor shall notify Beneficiary promptly in writing of any proposed or actual Transfer that may give rise to the right of acceleration hereunder. Any attempted Transfer in violation of this Section 1.10 shall constitute an Event of Default hereunder.

The provisions of the preceding paragraph to the contrary notwithstanding, Transfer shall not include:

(a) Any transfer (voluntary or involuntary) of any partnership interest, stock, or other form of ownership, where the transferee has certain rights of management and control and where the aggregate percentage of the ownership interest in Trustor that is transferred does

not exceed twenty six percent (26%) at any time, or any transfer (voluntary or involuntary) of any partnership interest, stock, or other form of ownership, where the transferee shall not have any rights to manage and control Trustor;

(b) Any transfer (voluntary or involuntary) of any partnership interest, stock, or other form of ownership, as a result of death, incapacity, and/or insolvency of the transferor where the transferee has certain rights of management and control and where the aggregate percentage of the ownership interest in Trustor that is transferred does not exceed twenty six percent (26%) at any time, or any transfer (voluntary or involuntary) of any partnership interest, stock, or other form of ownership, where the transferee shall not have any rights to manage and control Trustor;

(c) Any retail space leases and office leases covering individual portions of the Property entered into in the ordinary course of business.

(d) Any encumbrances pursuant to Article 3 of this Deed of Trust.

Trustor shall notify Beneficiary of any exempt Transfer under (a) and (b) on or before the effective date of the Transfer, which notice shall include the name(s) and address(es) of the transferee(s). A copy of the agreement and/or instrument transferring the interest in question shall also accompany the notice to Beneficiary. Any new Principal that shall have rights of management and control shall execute a guaranty in the form and content of **Exhibit K** to the Disposition and Development Agreement.

1.11 Contesting Impositions and Liens. Without limiting Trustor's obligation to pay all Impositions as provided in **Section 1.4** or to pay and discharge all liens as provided in **Section 1.8**, Trustor shall have the right, at Trustor's expense and in Trustor's name, to contest in good faith any Imposition or lien against the Project by appropriate legal or administrative proceedings which are not prejudicial to Beneficiary's rights if (a) Trustor shall have demonstrated to Beneficiary's satisfaction that such proceedings shall be reasonably expected to operate to prevent enforcement prior to final determination of any such proceedings, and (b) Trustor shall have furnished such bond, surety or other security in connection therewith as is reasonably satisfactory to Beneficiary. In the event that, by any such contest, the security of this Deed of Trust or any of the other Loan Documents is endangered or the Project or any portion thereof is subject to imminent loss or forfeiture, such Impositions or liens, as applicable, shall be immediately paid. Trustor hereby indemnifies and agrees to defend and hold the Indemnitees harmless from all expenses, loss, claims, damage or liability that may be imposed in connection with any such contest or resulting loss.

1.12 Historic Tax Credits. No later than the one hundred fiftieth (150th) day following the date of this Deed of Trust, Trustor shall enter into a partnership agreement and related documents and instruments necessary to secure the Historic Tax Credits as provided in the following paragraph, which documents and instruments shall include, without limitation, a funding agreement providing that the proceeds from the Historic Tax Credits shall be paid no later than completion of construction of the core and shell of the Project pursuant to the provisions of the Disposition and Development Agreement. The partnership agreement and

related documents and instruments are subject to the Beneficiary's approval, which shall not be unreasonably withheld.

The Historic Tax Credits referred to herein are pursuant to the applicable provisions of the Internal Revenue Code (26 USC Section 47), shall be in an amount not less than Three Million Eight Hundred Thousand Dollars (\$3,800,000), and all of the proceeds shall be invested by Trustor in the project regardless of the amount, if needed.

ARTICLE 2 EVENTS OF DEFAULT; REMEDIES

2.1 Events of Default.

The occurrence of any of the following events shall be an Event of Default hereunder (an "Event of Default"):

(a) Trustor's failure to pay any principal, interest, or other monies due under the Note, the Disposition and Development Agreement, and other Loan Documents within the ten (10) days after such amount is due;

(b) Trustor's failure to pay any amount when due as required by this Deed of Trust, and/or Trustor's failure to perform any obligation required by this Deed of Trust when performance is required; or

(c) The occurrence of an Event of Default under the Note, the Disposition and Development Agreement, and other the Loan Documents (as "Event of Default" is defined therein).

2.2 Acceleration and Other Remedies.

Upon the occurrence of an Event of Default, Beneficiary may, at its option, declare all of the obligations 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 Project or the Personal Property, 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 Project or the Personal Property, including, without limitation (i) taking possession of Trustor's books and records, (ii) completing the construction of the Improvements, (iii) maintaining or repairing the Improvements, the Property or the Personal Property, (iv) increasing the income from the Project or the Personal Property, with or without taking possession of the Project or the Personal Property, (v) entering into, modifying, or enforcing leases, (vi) suing for or otherwise collecting the rents or other amounts owing to Trustor, including those past due and unpaid, and (vii) applying the same, less costs and expenses of operation and collection including, without limitation, reasonable Attorneys' Fees and compensation for the services of Trustee or Beneficiary, to any of the obligations secured hereby, all in such order as Beneficiary may

determine. The entering upon and taking possession of the Project, the taking possession of any Personal Property, the collection of such rents and the application thereof, shall not cure or waive any Event of Default or Potential Default or notice of default hereunder;

(b) Commence an action to foreclose this Deed of Trust and the security interests under the other Loan Documents as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof and thereof;

(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 Project to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Alameda County; and/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 or equity.

2.3 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 receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Beneficiary or Trustee shall give such notice of default and election to sell as is then required by applicable Law. 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 Project at the time and place of sale fixed by it in such notice of sale, either as a whole, or in separate lots or parcels or items as Beneficiary 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 a trustee's deed conveying the property so sold, which shall not contain 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 Beneficiary shall be entitled to pay the purchase price by crediting the obligations secured hereby against the purchase price of the Property. 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, appraisals and environmental audits, Trustee shall apply the proceeds of sale in the following priority, to payment of: (i) first, all sums expended under the terms hereof and not then repaid, including, without limitation, reasonable Attorneys' Fees and compensation for the services of Trustee or Beneficiary, all with accrued interest at the Default Interest 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 Section 29249, Trustee may postpone sale of all or any portion of the Project 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.

2.4 Personal Property.

(a) Concurrently herewith, Trustor has executed and delivered to Beneficiary the Security Agreement which grants Beneficiary a security interest in certain Personal Property described therein. Upon the occurrence of an Event of Default, Beneficiary may proceed at its election, in any sequence: (i) to dispose of any Personal Property separately from the sale of real property in accordance with Division 9 of the California Uniform Commercial Code or other applicable Law; (ii) to dispose of some or all of the Project and the Personal Property in any combination consisting of both real and personal property together in one or more sales to be held in accordance with the provisions of Section 9501(4) of the California Uniform Commercial Code; and (iii) to exercise any remedies of a secured party under the California Uniform Commercial Code or any other applicable Law. Expenses of retaking, holding, preparing for sale, selling or the like shall include Beneficiary's reasonable Attorneys' Fees and costs.

(b) Upon the occurrence of an Event of Default, in addition to Beneficiary's rights under the California Uniform Commercial Code, Beneficiary may, but shall not be obligated to, at any time and at the expense of Trustor (i) give notice to any person of Beneficiary's rights hereunder and enforce such rights; (ii) insure, protect, defend and preserve the Personal Property and any rights or interests of Beneficiary therein; (iii) inspect the Personal Property; and (iv) endorse, collect and receive any right to payment of money owing to Trustor under or from the Personal Property. Beneficiary shall have no duty or obligation to make or give any presentments, demands for performance, notices of non-performance, notices of protest or notices of dishonor in connection with any of the Personal Property.

(c) Any disposal of the Personal Property may, at Beneficiary's election, be at public sale, without having the Personal Property at the place of sale, and upon terms and in such manner as Beneficiary may determine. Unless the Personal Property is perishable or threatens to decline rapidly in value or is of a type customarily sold on a recognized market, Beneficiary shall give Trustor at least five (5) days prior written notice of the time and place of any public sale of the Personal Property or any other intended disposition thereof. Such notice may be mailed to Trustor as provided in Section 4.15. Beneficiary may be a purchaser at any such sale of the Personal Property.

(d) In connection with any exercise of Beneficiary's remedies under this Section 2.4, Beneficiary may take immediate and exclusive possession of the Personal Property, or any part thereof, and with or without judicial process, enter upon any property on which the Personal Property, or any part thereof, may be situated and remove the same without any liability therefor or, at Beneficiary's option, Trustor shall assemble the Personal Property and make it available to Beneficiary at the time and place designated by Beneficiary and reasonably convenient to Trustor and Beneficiary. Beneficiary shall be entitled to operate, hold, maintain, repair, preserve and prepare the Personal Property for sale or Beneficiary may, without removal, render the Personal Property unusable and dispose of the Personal Property on Trustor's property. Beneficiary may exercise all rights and powers of Trustor with respect to the Personal

Property or any portion thereof and Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's true and lawful attorney-in-fact (which power is coupled with an interest) to enforce, in the name of Trustor or Beneficiary, all rights and powers of Trustor with respect to such Personal Property. Beneficiary and its agents and representatives shall have the right to enter upon any or all of Trustor's property to exercise Beneficiary's rights hereunder:

2.5 Appointment of Receiver.

Upon the occurrence of an Event of Default, 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 Project or the adequacy of any security for the obligations secured hereby, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers for the Project, 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. Trustor agrees to promptly deliver to any such receiver all leases, rents, documents, financial data and other information requested by such receiver in connection with the Project and, without limiting the foregoing, Trustor hereby authorizes Beneficiary to deliver to any such receiver any or all of the leases, rents, documents, data and information in Beneficiary's possession relating to the Project.

2.6 Additional Remedies.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; (b) commence, appear in and litigate any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, including any bankruptcy proceeding affecting the Property or Trustor; (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and (d) in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including attorney's, accountant's, and appraisal fees and costs of securing evidence of title, and all amounts so expended shall be obligations of Trustor secured by this Trust Deed.

Trustor shall pay immediately upon demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the Default Rate of Interest as provided for the Note, and the repayment of all such sums expended shall be secured hereby.

2.7 Remedies Not Exclusive.

Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any of the 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 that some or all of the obligations 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.

2.8 Request for Notice.

Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in Section 4.15 of this Deed of Trust.

2.9 Forbearance by Beneficiary Not a Waiver.

Any forbearance by Beneficiary in exercising any right or remedy hereunder or under any of the other Loan Documents, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of any of the obligations secured hereby nor shall Beneficiary's receipt of any awards, proceeds or damages under this Deed of Trust operate to cure or waive Trustor's default in payment of any of the obligations secured hereby.

2.10 Environmental Provisions.

Without limiting any of the remedies provided in the Loan Documents, Trustor acknowledges and agrees that Article 9 of the Disposition and Development Agreement are environmental provisions (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by the Trustor relating to the Property and the Project (the "Environmental Provisions"), and that Trustor's failure to comply with the Environmental Provisions is a breach of contract such that Beneficiary shall have the remedies provided under Section 736 of the California Code of Civil Procedure ("Section 736") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure. Other than the remedy provided under Section 736, all remedies provided for by the Loan Documents are

separate and distinct causes of action that are not abrogated, modified, limited or otherwise affected by the remedies provided under Section 736(a) of the California Code of Civil Procedure.

ARTICLE 3 SUBORDINATION PROVISIONS

3.1. Subordination to Construction Loan. Provided no Event of Default hereunder exists, Beneficiary agrees that the deed of trust securing the Construction Loan (referred to in Section 7.3 of the Disposition and Development Agreement), and other security instruments in connection with the Construction Loan, shall unconditionally be and remain at all times a lien or charge on the Property and the Project prior and superior to the lien and security interests under this Deed of Trust and the other Loan Documents. The lender of the Construction Loan is referred to as "Construction Lender."

3.2 Subordination to Take Out Financing. Provided no Event of Default hereunder exists, and subject to the conditions and provisions of this Article 3, Beneficiary agrees that the deed of trust securing the Take Out Financing (as defined in the following paragraph), and other security instruments in connection with the Take Out Financing, shall unconditionally be and remain at all times a lien or charge on the Property and the Project prior and superior to the lien and security interests under this Deed of Trust and the other Loan Documents. The subordination of this Deed of Trust and other Loan Documents shall be evidenced by Beneficiary executing a subordination agreement with Trustor and the Permanent Lender (as defined in the following paragraph) in form and content reasonably acceptable to Beneficiary. All loan documents and instruments of the Take Out Financing are subject to the reasonable approval of Beneficiary.

The phrase "Take Out Loan" is a loan from an institutional lender (defined in Section 3.4(d)) the proceeds of which are to be used solely to pay in full the principal and accrued interest under the Construction Loan. The lender of the Take Out Financing and Permanent Financing (defined in Section 3.3(a)) is referred to as "Permanent Lender."

Provided the Construction Loan is paid in full as provided in the preceding paragraph, Trustor shall have a right to receive from the proceeds of the Take Out Financing a sum not to exceed Three Million Dollars (\$3,000,000) as a return of a portion of Trustor's Equity Contribution (as defined in Section 7.2(b) of the Disposition and Development Agreement).

3.3 Subordination to Refinancing.

(a) Agreement to Subordinate. Provided no Event of Default hereunder exists, and subject to the conditions and provisions of this Article 3, Beneficiary agrees that the deed of trust securing Permanent Financing (as defined in the following paragraph), and other security instruments in connection with Permanent Financing, shall unconditionally be and remain at all times a lien or charge on the Property and the Project prior to and superior to the lien and security interests under this Deed of Trust and the other Loan Documents. The subordination of this Deed of Trust and the other Loan Documents shall be evidenced by Beneficiary executing a subordination agreement with Trustor and the Permanent Lender in form

and content reasonably acceptable to Beneficiary. All loan documents and instruments of the Permanent Financing is subject to the reasonable approval of Beneficiary.

The phrase "Permanent Financing" is the Take Out Financing and a subsequent loan from an Institutional Lender secured by a deed of trust or mortgage encumbering the Property and the Project.

(b) **Additional Provisions Relating to Permanent Financing.** In addition to the conditions and provisions of this Article 3, the following conditions and limitations are applicable to the Permanent Financing.

(i) **Maximum Principal.** The principal amount of any Permanent Financing shall not exceed the lesser of:

(y) Seventy percent (70%) of the loan to Project Value (as defined herein) ratio; or

(z) The Project Value less the then unpaid principal balance and accrued interest under the Note.

The Project Value shall be established by a qualified appraiser who shall be subject to Beneficiary's reasonable approval. The appraiser's report establishing the Project Value shall be subject to Beneficiary's reasonable approval. The costs of the appraisal shall be paid by Trustor. Project Value is the same as "fair market value" as defined in Section 5(b) of the Note.

(ii) **Pay Off Prior Loan.** As a condition to Beneficiary's obligation to subordinate to Permanent Financing as herein provided, all or part of the proceeds shall be used to pay the entire principal and accrued interest payable under any existing loan which is secured by a deed of trust or mortgage encumbering the Property and the Project, with any excess proceeds subject to Section 5(d) of the Note.

3.4 Provisions Relating to Beneficiary's Subordination Obligations.

Beneficiary's obligations under this Article 3 are subject to the following conditions:

(a) **No Liability of Beneficiary.** Beneficiary shall not be required to execute any instrument which would obligate Beneficiary to the payment of any Construction Financing, Take Out Financing, and Permanent Financing, or any part thereof.

(b) **Principal and Interest Payments.** The principal and interest under Take Out Financing and Permanent Financing shall be payable monthly, amortized over a period of not less than twenty (20) years and more than thirty (30) years, but subject to a maturity date not sooner than seven (7) years from the date of the loan.

(c) **Loan Documents.** Trustor shall furnish Beneficiary with a true copy of the deed of trust, the promissory note secured thereby, and all other loan documents in connection with the Construction Loan, Take Out Financing, and Permanent Financing.

(d) **Institutional Lender.** An "Institutional Lender" is a bank, which term includes a federal or state savings and loan association, trust company, insurance company, real estate investment trust, educational institution, pension, retirement or welfare fund, charity, endowment fund or foundation, or any other similar organization whose primary business is to make loans secured by commercial real estate.

(e) **Interest Rate, Points and Fees.** The interest rate, points and fees payable by Trustor under any Take Out Financing and Permanent Financing shall not exceed the norm for similar types of loans in Northern California at the time.

(f) **Reimbursement of Costs and Expenses.** As a condition to Beneficiary's obligation to execute a subordination agreement as herein provided, Trustor shall pay to Beneficiary for all reasonable costs and expenses (including Attorneys' Fees and costs) incurred by Beneficiary in complying with the obligations of Beneficiary under this Article.

(g) **Trustor's Performance.** As a material consideration to Beneficiary's obligations under this Article 3, Trustor shall pay all amounts due, and perform all of its obligations when required under the Construction Loan, Take Out Financing, and Permanent Financing.

(h) **Endorsements to Title Policy.** If endorsements to the Title Policy are required by the Title Company in order to maintain coverage thereunder, Beneficiary's obligations under this Article 3 shall be subject to obtaining such endorsements, at Trustor's cost.

ARTICLE 4 MISCELLANEOUS PROVISIONS

4.1 Acceptance of Trust. Notice of Indemnification.

Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, becomes a public record as provided by Law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless Trustee brings such action. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of such act is requested in writing and Trustee is reasonably indemnified against loss, cost, liability and expense arising therefrom.

4.2 Powers of Trustee.

From time to time upon written request of Beneficiary, without affecting the personal liability of any Person for payment of any indebtedness or performance of the obligations secured hereby, Trustee may, without liability therefor and without notice: (a) reconvey all or any part of the Project; (b) consent to the making of any map or plat thereof; (c) join in granting an easement thereon; (d) join in any declaration of covenants and restrictions; or (e) join in any extension agreement or any agreement subordinating the lien or charge hereof. Trustee or Beneficiary may from time to time apply in any court of competent jurisdiction for aid and direction in the execution of the trusts hereunder and the enforcement of the rights and remedies

available hereunder, and Trustee or Beneficiary may obtain orders or decrees directing or confirming or approving acts in the execution of such trusts and the enforcement of such remedies available hereunder. Trustor shall pay to Trustee reasonable compensation and reimbursement for services and expenses in the administration of the trusts created hereunder, including reasonable Attorneys' Fees and costs. Trustor hereby protects, holds harmless, indemnifies and agrees to defend Trustee against all expenses, loss, claims, demands, and liabilities which Trustee may incur, suffer, or sustain in the execution of the trusts created hereunder or in the performance of any act required or permitted hereunder or by Law.

4.3 Substitution of Trustee.

From time to time, by a writing signed and acknowledged by Beneficiary and filed for record in the Official Records of Alameda County, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the Trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to this Section shall be conclusive proof of the proper substitution of such new trustee.

4.4 Inspections.

Subject to the rights of tenants at the Project, during normal business hours and upon reasonable advance notice (except in the event of an emergency, in which event entry shall not be limited to normal business hours and no advance notice shall be necessary) Beneficiary, or its agents, employees or representatives, are authorized to enter upon or in any part of the Project for the purpose of inspecting the same and performing any of the acts Beneficiary is authorized to perform hereunder or under the terms of any of the Loan Documents. Without limiting the generality of the foregoing, Trustor agrees that Beneficiary will have the same right, power and authority to enter and inspect the Project as is granted to a secured lender under Section 2929.5 of the California Civil Code, and that Beneficiary will have the right to appoint a receiver to enforce the right to enter and inspect the Project to the extent such authority is provided under California law, including the authority given to a secured lender under Section 564(c) of the California Code of Civil Procedure.

4.5 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 Project, (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the obligations secured hereby in the event of foreclosure of the liens hereby created, (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, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured hereby, and (e) any rights, legal or equitable, to require marshaling of assets or to require foreclosure sales in a particular order, including any rights under California Civil Code Sections 2899 and 3433. Beneficiary shall have the right to determine the order in which any or all of the Project shall be subjected to the remedies provided herein. Beneficiary shall have the right to

determine the order in which any or all portions of the obligations secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Nothing contained herein shall be deemed to be a waiver of Trustor's rights under Section 2924c of the California Civil Code.

4.6 Beneficiary's Powers.

Without affecting the liability of any other Person for the payment or performance of any of the obligations secured hereby, and without affecting the lien or priority hereof or of any of the other Loan Documents upon any property not released, Beneficiary may, without notice, release any Person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the Project and/or the Personal Property, and/or take or release any other security or make compositions or other arrangements with debtors. Beneficiary may also accept additional security, either concurrently herewith or hereafter, and sell the same or otherwise realize thereon either before, concurrently with, or after sale hereunder.

4.7 Non-Waiver.

By accepting late payment or performance of any of the obligations secured hereby, Beneficiary shall not waive its rights against any Person obligated directly or indirectly hereunder or on any of such obligations, either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to make such prompt payment. No exercise of any right or remedy by Trustee or Beneficiary hereunder shall constitute a waiver of any other right or remedy herein contained or provided by Law. No delay or omission of the Trustee or Beneficiary in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

4.8 Protection of Security.

Upon an Event of Default under any of the Loan Documents, Beneficiary may, without obligation, and without notice to or demand upon Trustor and without releasing Trustor from any of the obligations secured hereby, (a) make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof or of any of the other Loan Documents; (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or of any of the other Loan Documents, the value thereof or the rights or powers of Beneficiary; or (c) pay, purchase, contest, or compromise any lien which, in the judgment of Beneficiary, is prior or superior hereto or Beneficiary's security interest under any of the other Loan Documents. In exercising any such power, Beneficiary is authorized to enter upon the Project or any other property on which the Personal Property is located and to incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title and reasonable Attorneys' Fees and costs and consultants' fees and costs. Any expenditures made by Beneficiary under this Section 4.8 shall (x) bear interest at the Default Interest Rate, (y) be secured hereby, and (z) be payable within ten (10) days after demand by Beneficiary.

4.9 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 Project or other security under the Loan Documents 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 Project pursuant to the provisions hereof, any leases then existing and affecting all or any portion of the Project shall not be destroyed or terminated by application of the law of merger, 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 purchaser shall constitute a termination of any lease unless Beneficiary or such purchaser shall give written notice thereof to the applicable tenant or subtenant.

4.10 Subordination.

At the option of Beneficiary, this Deed of Trust shall become subject and subordinate in whole or in part (but not with respect to priority of entitlement to any Casualty Proceeds, Condemnation Proceeds or other compensation resulting from damage to the Project or any Condemnation Event) to any or all contracts of sale and/or any or all Leases upon the execution by Beneficiary of a unilateral declaration to that effect and the recordation thereof in the Official Records of the County in which the Project is situated.

4.11 Contingent Payment; Reconveyance by Trustee.

The obligations secured by this Deed of Trust include, without limitation, the obligation, to pay the Contingent Payment (as defined in the Note). Trustor acknowledges that any such obligation to pay the Contingent Payment may survive the payment of all other principal and interest due under the Note, and that the lien of this Deed of Trust shall likewise survive until all obligations secured hereby, including, without limitation, the obligation to pay the Contingent Payment, are satisfied in full.

Upon written request of Beneficiary stating that all sums (including payment of the Contingent Payment) secured hereby have been paid, and upon surrender of this Deed of Trust 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 Project 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." Such grantee shall pay Trustee a reasonable fee and Trustee's costs incurred in so reconveying the Project.

4.12 Rules of Construction.

When the identity of the parties hereto or the circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. Article and Section headings in this Deed of Trust are included herein for convenience of

reference only and shall not constitute a part of this Deed of Trust for any other purpose or be given any substantive effect.

4.13 Severability.

If any term of the Deed of Trust or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Deed of Trust shall be valid and enforceable to the fullest extent.

4.14 Successors and Assigns.

This Deed of Trust shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. 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 satisfaction of the obligations secured hereby. As used herein, "Beneficiary" shall include all holders of the Note, including, without limitation, pledgees of the Note, whether or not named as Beneficiary herein. In exercising any rights hereunder or taking any actions provided for herein, Beneficiary may act through its employees, agents or independent contractors authorized by Beneficiary.

4.15 Notices.

Any notice, or other document or demand required or permitted under this Deed of Trust shall be in writing addressed to the appropriate address set forth above and shall be deemed delivered upon the earliest of (a) actual receipt, (b) the next business day after the date when sent by recognized overnight courier, or (c) the second business day after the date when sent by registered or certified mail, postage prepaid. Any party may, from time to time, change the address at which such written notice or other documents or demands are to be sent, by giving the other parties written notice of such change in the manner hereinabove provided.

4.16 Governing Law.

This Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

4.17 Amendments and Waivers.

This Deed of Trust and the other Loan Documents may only be modified in writing signed by all of the parties hereto or thereto or their respective successors and assigns. No waiver of any provision of this Deed of Trust or of any of the other Loan Documents, or consent to any departure by Trustor therefrom, shall in any event be effective without the written agreement of Beneficiary. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. Except as expressly required by the terms of the Loan Documents, no notice to or demand on Trustor in any case shall entitle Trustor to any other or further notice or demand in similar or other circumstances.

4.18 Fixture Filing.

This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of Alameda County with respect to any and all fixtures included within the term "Project" as used herein, and with respect to any goods or other personal property that may now be or hereafter become such fixtures. Trustor grants to Beneficiary a security interest in all existing and future goods which are now or in the future become fixtures relating to the Project and the proceeds thereof. Trustor covenants and agrees that the recording of this Deed of Trust in the Official Records of Alameda County shall also operate from the date of such filing as a fixture filing in accordance with Section 9402 of the California Uniform Commercial Code.

4.19 Counterparts.

This Deed of Trust may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Deed of Trust to physically form one document, which may be recorded.

4.20 Statement of Condition.

Beneficiary shall furnish any statement required by Law regarding the obligations secured hereby or regarding the amounts held in any trust, escrow or reserve fund hereunder. For any such statement, Beneficiary may charge a reasonable fee, not to exceed the maximum amount permitted by Law at the time of the request therefor.

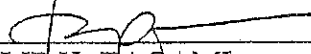
4.21 Disposition and Development Agreement.

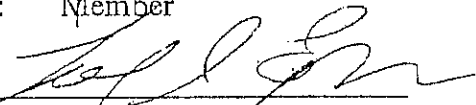
The Disposition and Development Agreement referred to in this Deed of Trust is that certain document titled Disposition and Development Agreement between Trustor's predecessor in interest, Rotunda Partners I, a California general partnership, and Beneficiary dated June 29, 1998, as amended by First Amendment dated January 29, 1999, and Second Amendment dated July 14, 1999. Loan Documents as used herein are those agreements, documents, and instruments defined in Sections 2.16 and 6.1 of the Disposition and Development Agreement incorporated herein by reference.

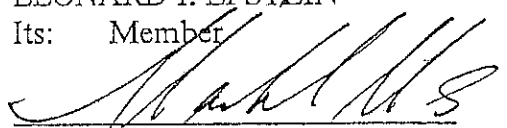
IN WITNESS WHEREOF, Trustor has executed and delivered this Deed of Trust as of the date first above written.

ROTUNDA PARTNERS II, LLC, a California
limited liability company

By: ROTUNDA PARTNERS I, LLC, a
California limited liability company
Its: Managing member

By: 
PHILLIP H. TAGAMI
Its: Member

By: 
LEONARD I. EPSTEIN
Its: Member

By: 
MARK A. MOSS
Its: Member

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

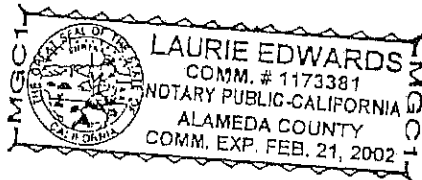
State of California

County of Alameda

On OCTOBER 15, 1999 before me, LAURIE EDWARDS
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared PHILLIP H. TAGAMI, LEONARD I. EPSTEIN AND MARK A. MOSS
NAME(S) OF SIGNER(S)

☒ 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 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.



WITNESS my hand and official seal.

Laurie Edwards

SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

Legal Description of Property:

All that certain real property situated in the City of Oakland, County of Alameda, State of California, more particularly described as follows:

PARCEL ONE:

BEGINNING AT A POINT IN THE WESTERN LINE OF BROADWAY, FORMERLY TELEGRAPH AVENUE, DISTANT THEREON 100 FEET SOUTHERLY FROM THE SOUTHERN LINE OF 16TH STREET; RUNNING THENCE SOUTHERLY ALONG THE WESTERN LINE OF BROADWAY 130 FEET; THENCE NORTH $78^{\circ} 48'$ WEST 103.95 FEET; THENCE SOUTH $75^{\circ} 36'$ WEST 102.44 FEET TO THE EASTERN LINE OF SAN PABLO AVENUE; THENCE NORTHERLY ALONG SAID EASTERN LINE OF SAN PABLO AVENUE 130 FEET; THENCE NORTH $75^{\circ} 33'$ EAST 90 FEET; THENCE NORTH $14^{\circ} 24'$ WEST 5.72 FEET; THENCE NORTH $11^{\circ} 11'$ EAST 112.89 FEET TO THE SOUTHERN LINE OF 16TH STREET; THENCE ALONG THE SOUTHERN LINE OF 16TH STREET SOUTH $78^{\circ} 48'$ EAST 74 FEET; THENCE SOUTH $11^{\circ} 12'$ WEST 100 FEET; THENCE SOUTH $78^{\circ} 48'$ EAST 100 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT A POINT ON THE WESTERN LINE OF BROADWAY, FORMERLY TELEGRAPH AVENUE, DISTANT THEREON 230 FEET SOUTHERLY FROM THE POINT OF INTERSECTION THEREOF WITH THE SOUTHERN LINE OF 16TH STREET; THENCE SOUTH $11^{\circ} 12'$ WEST ALONG SAID WESTERN LINE OF BROADWAY 20 FEET; THENCE NORTH $78^{\circ} 48'$ WEST 99.41 FEET; THENCE SOUTH $75^{\circ} 36'$ WEST 97.90 FEET TO A POINT ON THE EASTERN LINE OF SAN PABLO AVENUE, DISTANT THEREON 315.00 FEET SOUTHERLY FROM THE POINT OF INTERSECTION THEREOF WITH THE SOUTHERN LINE OF 16TH STREET; THENCE NORTH $14^{\circ} 24'$ WEST ALONG SAID LINE OF SAN PABLO AVENUE 20 FEET; THENCE NORTH $75^{\circ} 36'$ EAST 102.44 FEET; THENCE SOUTH $78^{\circ} 48'$ EAST 103.95 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE INTEREST TAKEN BY THE CITY OF OAKLAND IN THE CONDEMNATION PROCEEDINGS AND IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ALAMEDA, ENTITLED CITY OF OAKLAND, VS. SAN PABLO CO., ET AL., CASE #74496, A CERTIFIED COPY OF FINAL JUDGMENT WAS RECORDED SEPTEMBER 23, 1924, IN BOOK 803, OFFICIAL RECORDS, AT PAGE 245, BEING AN INTEREST IN A PARCEL OF UNIFORM WIDTH OF 18 FEET EXTENDING FROM THE WEST LINE OF BROADWAY TO THE EASTERN LINE OF SAN PABLO AVENUE.

PARCEL THREE:

BEGINNING AT THE POINT OF INTERSECTION OF THE WESTERN LINE OF TELEGRAPH AVENUE WITH THE SOUTHERN LINE OF 16TH STREET; RUNNING THENCE SOUTHERLY ALONG SAID LINE OF TELEGRAPH AVENUE 100 FEET; THENCE AT RIGHT ANGLES WESTERLY 100 FEET; THENCE AT RIGHT ANGLES NORTHERLY 100 FEET TO THE SOUTHERN LINE OF 16TH STREET; AND THENCE EASTERLY ALONG SAID LAST NAMED LINE 100 FEET TO THE POINT OF BEGINNING.

BEING LOTS 1, 2, 3 AND 4, IN BLOCK "A", AS SAID LOTS AND BLOCK ARE SHOWN ON THE "MAP OF SURVEY MADE FOR G.C. POTTER, MARCH 28, 1877, BY T.J. ARNOLD, C.E.", ETC., FILED APRIL 23, 1877, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MAP BOOK 2, PAGE 14.

ASSESSOR'S PARCEL NO. 008-0619-004-01