

**When Recorded Return To:**

**Parsons Behle & Latimer**  
**201 South Main Street, Suite 1800**  
**Salt Lake City, Utah 84111-2218**  
**Attention: W. Jeffery Fillmore**

8952652  
 01/16/2004 01:40 PM 49.00  
 Book - 8934 Pg - 8293-8311  
**GARY W. OTT**  
 RECORDER, SALT LAKE COUNTY, UTAH  
 LANDMARK TITLE  
 BY: ZJM, DEPUTY - WZ 19 p.

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

This Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (hereinafter called "Deed of Trust") is made as of December 30, 2003, by and among the Trustor, **MICHELE AUDIO CORPORATION OF AMERICA**, a New Jersey corporation, whose address is 5 County Route 42, Massena, New York 13662, hereinafter called "Trustor," **LANDMARK TITLE COMPANY**, whose address is Plaza 7/21, 675 East 2100 South, No. 200, Salt Lake City, Utah 84106, hereinafter called "Trustee," and **MCGILLIS INVESTMENTS**, a Utah general partnership and **FIRST INTERSTATE FINANCIAL, L.L.C.**, a Utah limited liability company, whose address is 1030 West 3038 South, Salt Lake City, Utah 84119 hereinafter called "Beneficiary."

**1. GRANTING CLAUSE; WARRANTY OF TITLE**

1.1 Trustor hereby irrevocably and unconditionally grants, transfers, conveys, warrants and assigns to Trustee, in trust, with power of sale, all of Trustor's now owned or hereafter acquired present and future estate, right, title and interest in and to that real property and all buildings, structures and other improvements now thereon or hereafter constructed thereon (the "Premises"), Salt Lake County, Utah, described on Exhibit "A" attached hereto, together with all of the following which, with the Premises (except where the context otherwise requires), are hereinafter collectively called the "Trust Property":

Together with the following:

- (a) All appurtenances in and to the Premises;
- (b) All water and water rights, ditches and ditch rights, reservoir and reservoir rights, stock or interests in irrigation or ditch companies, minerals, oil, gas and/or other mineral properties and or mineral rights, royalties, lease or leasehold interests or other agreements owned by Trustor, now or hereafter used or useful in connection with, appurtenant to or related to the Premises;
- (c) All improvements, fixtures, movable or immovable property and other real and/or personal property and all easements, servitudes, rights-of-way, leases, licenses, permits, other rights which are now or hereafter used or held for use in connection with the Premises, rights and interests granted herein or in connection with the operation of such Premises, rights and interests or in connection with such Premises, rights and interests.
- (d) All right, title and interest of Trustor now owned or hereafter acquired in and to all streets, roads, alleys and public places, and all access rights, easements and rights of way, public or private, now or hereafter used in connection with the Premises;

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(e) All licenses, permits, entitlements, contracts and agreements required or used in connection with the ownership, management, development, maintenance or operation of the Premises, and the right to the use of any trade name, trademark, or service mark now or hereafter associated with the operation of the Premises;

(f) Subject to the rights of Beneficiary under Section 3 hereof, all existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Premises and all income, receipts, revenues, rents, issues and profits arising from the use or enjoyment of all or any portion of the Premises.

(g) All goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, including without limitation, all such items used for (i) generation, storage or transmission of air, water, heat, steam, electricity, light, fuel, refrigeration or sound; (ii) ventilation, air-conditioning, heating, refrigeration, fire prevention and protection, sanitation, drainage, cleaning, transportation, communications, maintenance or recreation; (iii) removal of dust, refuse, garbage or snow; (iv) transmission, storage, processing or retrieval of information; and (v) floor, wall, ceiling and window coverings and decorations;

(h) All income, receipts, revenues, rents, issues and profits, including without limitation, minimum rents, additional rents, percentage rents, parking and maintenance charges and fees, tax and insurance contributions, proceeds of the sale of utilities and services, cancellation premiums, and claims for damages arising from the breach of any leases;

(i) All claims and causes of action, legal and equitable, in any form whether arising in contract or in tort, and awards, payments and proceeds due or to become due, including without limitation those arising on account of any loss of, damage to, taking of, or diminution in value of, all or any part of the Premises or any personal property described herein;

(j) All plans and specifications prepared for the construction of any improvements, including without limitation, all studies, estimates, data, and drawings;

(k) All documents, instruments and agreements relating to, or in any way connected with the purchase, sale, operation, control, development, or entitlements of the Premises, including without limitation, any declaration of covenants, conditions and restrictions and any articles of incorporation, bylaws and other membership documents of any property owners association or similar group;

(l) All sales agreements, option agreements, reservation agreements, escrow agreements, deposit receipts, and other documents and agreements for the purchase, sale or other use or disposition of all or any part of the Premises or any of the personal property described herein, and deposits, proceeds and benefits arising from the sale or other disposition of all or any part of the Premises or any of the personal property described herein;

(m) All contracts, agreements, permits, licenses, authorizations and certificates, including without limitation all architectural contracts, construction contracts, management contracts, service contracts, maintenance contracts, franchise agreements, license agreements, building permits and operating licenses;

(n) All trade names, trademarks, and service marks (subject to any franchise or license agreements relating thereto);

(o) All policies or certificates of insurance, contracts, agreements or rights of indemnification, guaranty or surety, and awards, loss payments, proceeds, and premium refunds that may be payable with respect to such policies, certificates, contracts, agreements or rights;

(p) All refunds and deposits due or to become due from any utility companies or governmental agencies;

(q) All books, records, correspondence, files and electronic media, and all information stored therein; together with all products and proceeds of all of the foregoing, in any form, including all proceeds received, due or to become due from any sale, exchange or other disposition thereof, whether such proceeds are cash or non-cash in nature, and whether represented by checks, drafts, notes or other instruments for the payment of money.

(r) All proceeds of the Trust Property, whether such proceeds or payments are goods, money, documents, instruments, chattel paper, securities, accounts, general intangibles, fixtures, real/immovable property, personal/movable property or other assets;

(s) All rights, estates, powers and privileges appurtenant to the foregoing rights, interests and properties; and

(t) All replacements and substitutions for, modifications of, and supplements, accessions, addenda and additions to, all of the personal property described herein.

The personal property described or referred to in this Paragraph 1.1 is hereinafter called the "Personal Property." The security interests granted in this Paragraph 1.1 are sometimes hereinafter severally and collectively called the "Security Interest." Trustor warrants that it is well and truly seized of a good and marketable title in fee simple to the Premises, that it is the lawful owner of all of the rest of the Trust Property, and that, except for those matters appearing in the policy of title insurance, issued in accordance with Beneficiary's written instructions, insuring the lien of this Deed of Trust (hereinafter called the "Permitted Exceptions"), the title to all the Trust Property is clear, free and unencumbered; and Trustor shall forever warrant and defend the same unto Beneficiary, its successors and assigns, against all claims whatsoever.

TRUSTOR FURTHER REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

## 2. OBLIGATION SECURED

*This Deed of Trust is given for the purpose of securing, in such order of priority as Beneficiary may elect:*

2.1 Payment of an indebtedness in the principal amount of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000), with interest thereon, and other fees, late charges, costs and attorneys' fees, advanced to or for the benefit of Trustor, as Borrower, as evidenced by the Promissory Note (the "Note") made by Trustor to the order of Beneficiary, of even date herewith made by Trustor to the order of Beneficiary and any and all extensions, modifications, substitutions or renewals of the Note;

2.2 Payment, performance and observance by Trustor of each covenant, condition, provision and agreement contained herein and of all monies expended or advanced by Beneficiary pursuant to the terms hereof, or to preserve any right of Beneficiary hereunder, or to protect or preserve the Trust Property or any part thereof;

2.3 Payment, performance and observance by Trustor of each covenant, condition, provision and agreement contained in the Note and in any other loan document related to the indebtedness (collectively the "Loan Documents") hereby secured and of all monies expended or advanced by Beneficiary pursuant to the terms thereof or to preserve any right of Beneficiary thereunder; and

2.4 Payment of any and all additional loans and advances made by Beneficiary to Trustor and/or to the then record owner or owners of the Trust Property (excluding, however, any such loan to an individual for personal, family or household purposes) with interest thereon, late charges, extension and other fees, prepayment premiums and attorneys' fees, according to the terms of the promissory note(s) and/or credit agreement(s) evidencing such loans and advances, and all extensions, modifications, renewals or replacements thereof.

All of the indebtedness and obligations secured by this Deed of Trust are hereinafter collectively called the "Obligation."

### 3. LEASES; ASSIGNMENT OF RENTS AND LEASES

3.1 To facilitate payment and performance of the Obligation, Trustor hereby absolutely transfers and assigns to Beneficiary all right, title and interest of Trustor in and to (i) all existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any part of the Trust Property, whether written or oral and whether for a definite term or month to month, together with all guarantees of the lessee's obligations thereunder and together with all extensions, modifications and renewals thereof (hereinafter called the "Leases"), and (ii) all income, receipts, revenues, rents, issues and profits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof, including without limitation service charges, management fees, minimum rents, additional rents, percentage rents, parking and maintenance charges and fees, tax and insurance contributions, proceeds of the sale of utilities and services, cancellation premiums, claims for damages arising from any breach of the Leases, proceeds from any sale or other disposition of all or any portion of the Trust Property, and all other benefits arising from the use or enjoyment of, or the lease, sale or other disposition of, all or any portion of the Trust Property, together with the immediate and continuing right to receive all of the foregoing (hereinafter called the "Rents"). In furtherance of this Assignment, and not in lieu hereof, Beneficiary may require a separate assignment of rents and leases and/or separate specific assignments of rents and leases covering one or more of the Leases; the terms of all such assignments are incorporated herein by reference.

3.2 Trustor hereby authorizes and directs the lessees and tenants under the Leases that, upon written notice from Beneficiary, all Rents shall be paid directly to Beneficiary as they become due. Trustor hereby relieves the lessees and tenants from any liability to Trustor by reason of the payment of the Rents to Beneficiary. Nevertheless, Trustor shall be entitled to collect the Rents until Beneficiary notifies the lessees and tenants in writing to pay the Rents to Beneficiary. Beneficiary is hereby authorized to give such notification upon the occurrence of an Event of Default and at any time thereafter while such Event of Default is continuing. Receipt and application of the Rents by Beneficiary shall not constitute a waiver of any right of Beneficiary under this Deed of Trust or applicable law, shall not cure any Event of Default hereunder, and shall not invalidate or affect any act done in connection with such Event of Default, including, without limitation, any trustee's sale or foreclosure proceeding.

3.3 All Rents collected by Trustor shall be applied in the following manner:

First, to the payment of all taxes and lien assessments levied against the Trust Property, where provision for paying such is not otherwise made;

Second, to the payment of ground rents (if any) payable with respect to the Trust Property;

Third, to the payment of any amounts due and owing under the Obligation;

Fourth, to the payment of current operating costs and expenses (including repairs, maintenance and necessary acquisitions of property and expenditures for capital improvements) arising in connection with the Trust Property;

Fifth, to Trustor or its designee.

All Rents collected by Beneficiary may be applied to the items above listed in any manner that Beneficiary deems advisable and without regard to the priorities listed above.

3.4 Trustor represents and warrants that: (i) the Leases are in full force and effect and have not been modified or amended; (ii) the Rents have not been waived, discounted, compromised, setoff or paid more than one month in advance; (iii) there are no other assignments, transfers, pledges or encumbrances of any Leases or Rents; and (iv) neither Trustor nor the lessees and tenants are in default under the Leases.

3.5 Trustor shall (i) fulfill or perform each and every term, covenant and provision of the Leases to be fulfilled or performed by the lessor thereunder; (ii) give prompt notice to Beneficiary of any notice received by Trustor of default thereunder or of any alleged default or failure of performance that could become a default thereunder, together with a complete copy of any such notice; and (iii) enforce, short of termination thereof, the

performance or observance of each and every term, covenant and provision of each Lease to be performed or observed by the lessees and tenants thereunder.

3.6 Trustor, without the prior written consent of Beneficiary, shall not: (i) cancel, modify or alter, or accept the surrender of, any Lease; (ii) assign, transfer, pledge or encumber, the whole or any part of the Leases and Rents to anyone other than Beneficiary; (iii) accept any Rents more than one month in advance of the accrual thereof; (iv) do or permit anything to be done, the doing of which, or omit or refrain from doing anything, the omission of which, could be a breach or default under the terms of any Lease or a basis for termination thereof; or (v) enter in to any new tenant leases.

3.7 Beneficiary does not assume and shall not be liable for any obligation of the lessor under any of the Leases and all such obligations shall continue to rest upon Trustor as though this assignment had not been made. Beneficiary shall not be liable for the failure or inability to collect any Rents.

3.8 Neither the Assignment of Rents and Leases contained herein or in any separate assignment nor the exercise by Beneficiary of any of its rights or remedies thereunder or in connection therewith, prior to Beneficiary obtaining actual possession of the Trust Property as provided in Paragraph 8.2 hereof, shall constitute Beneficiary a "mortgagee in possession" or otherwise make Beneficiary responsible or liable in any manner with respect to the Trust Property or the occupancy, operation or use thereof. In the event Beneficiary obtains actual possession of the Trust Property as provided in Paragraph 8.2 hereof, Beneficiary shall have the rights, and Beneficiary's liability shall be limited, as provided in that Paragraph.

#### 4. SECURITY AGREEMENT

4.1 This Deed of Trust shall cover, and the Trust Property shall include, all property now or hereafter affixed or attached to or incorporated upon the Premises, which, to the fullest extent permitted by law, shall be deemed fixtures and a part of the Premises. To the extent any of the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in all such property, and all proceeds thereof, for the purpose of securing the Obligation. In addition, for the purpose of securing the Obligation, Trustor hereby grants to Beneficiary a security interest in all of the property described below in, to, or under which Trustor now has or hereafter acquires any right, title or interest, whether present, future, or contingent: all equipment, inventory, accounts, general intangibles, instruments, documents, chattel paper and investment property, as those terms are defined in the Uniform Commercial Code, and all other personal property of any kind (including without limitation money and rights to the payment of money), whether now existing or hereafter created, that are now or at any time hereafter (i) in the possession or control of Beneficiary; (ii) erected upon, attached to, or appurtenant to, the Premises; (iii) to be incorporated into any improvements on the Premises (whether stored on the Premises or elsewhere); (iv) used in connection with, or identified for use in connection with, the Premises (whether stored on the Premises or elsewhere); or (v) related to, or arising from, the Premises or any of the personal property described herein, the construction of any improvements on the Premises, or the ownership, development, maintenance, leasing, management, operation, sale or other disposition of the Premises.

4.2 The Security Interest shall be self-operative with respect to the Personal Property, but Trustor shall execute and deliver on demand such additional security agreements, financing statements and other instruments as may be requested in order to impose the Security Interest more specifically upon the Personal Property and Beneficiary is authorized to file financing statements as deemed necessary by Beneficiary. The Security Interest, at all times, shall be prior to any other interests in the Personal Property except any lien or security interest granted in connection with any Permitted Exception. Trustor shall act and perform as necessary and shall execute and file all security agreements, financing statements, continuation statements and other documents requested by Beneficiary to establish, maintain and continue the perfected Security Interest. Trustor, on demand, shall promptly pay all costs and expenses of filing and recording, including the costs of any searches, deemed necessary by Beneficiary from time to time to establish and determine the validity and the continuing priority of the Security Interest.

4.3 Trustor shall not sell, transfer, assign or otherwise dispose of any Personal Property or any interest therein without obtaining the prior written consent of Beneficiary, except Personal Property that Trustor is obliged to replace pursuant to the terms hereof. Unless Beneficiary then agrees otherwise in writing, all proceeds from any

permitted sale or disposition in excess of that required for replacements shall be paid to Beneficiary to be applied to the Obligation, whether or not then due. Trustor shall keep the Personal Property free of all security interests or other encumbrances, except the Security Interest and any security interests and encumbrances granted in connection with any Permitted Exception. Although proceeds of Personal Property are covered hereby, this shall not be construed to mean that Beneficiary consents to any sale of the Personal Property.

4.4 Trustor shall keep and maintain the Personal Property in good condition and repair, and shall promptly replace any part thereof that from time to time may become obsolete, badly worn or in a state of disrepair. All such replacements shall be free of any other security interest or encumbrance, except any security interest or encumbrance granted in connection with any Permitted Exception.

4.5 Except for purposes of replacement and repair, Trustor, without the prior written consent of Beneficiary, shall not remove, or permit the removal of, any Personal Property from the Premises.

4.6 Trustor hereby warrants, covenants and agrees that: (i) the Personal Property is or will be used primarily for business (other than farm) purposes; (ii) the Personal Property will be kept at the Premises; and (iii) Trustor's records concerning the Personal Property will be kept at Trustor's address as set forth in the beginning of this Deed of Trust.

4.7 Trustor represents and warrants that: (i) the name of Trustor set forth in the beginning of this Deed of Trust is the true, correct and complete legal name of Trustor, and (ii) the address of Trustor's chief executive office, or residence if Trustor is an individual without an office, is accurately set forth at the beginning of this Deed of Trust.

4.8 Trustor shall give Beneficiary immediate written notice of any change in the name, identity or structure of Trustor and any change in the location of: (i) Trustor's chief executive office (or residence if Trustor is an individual without an office); (ii) the Personal Property or any part thereof; or (iii) Trustor's records concerning the Personal Property.

4.9 All covenants and warranties of Trustor contained in this Deed of Trust shall apply to the Personal Property whether or not expressly referred to in this Section 4. The covenants and warranties of Trustor contained in this Section 4 are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust.

4.10 Upon its recording in the real property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. In addition, a photographic copy of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder.

## **5. PROTECTION AND PRESERVATION OF THE TRUST PROPERTY**

5.1 Trustor shall neither commit nor permit to occur any waste upon the Trust Property but shall at all times make or cause to be made all repairs, maintenance, renewals and replacements as may be necessary to maintain the Trust Property in good condition and repair. Trustor shall neither use nor permit the use of the Trust Property in violation of applicable laws, ordinances, rules, and regulations (including without limitation zoning laws, building codes, and the requirements of Title III of the Americans with Disabilities Act of 1990 for accessibility and usability by disabled individuals), any other requirements of regulatory authorities having jurisdiction over the Trust Property, any covenants and restrictions running with the land, any leases and other contracts approved by Beneficiary relating to the Trust Property, or any policy of insurance insuring the Trust Property ("Legal Requirements").

5.2 Trustor shall promptly complete any improvements that may be commenced, and shall repair and restore any portions of the Trust Property that may be damaged or destroyed, in a good and workmanlike manner according to plans and specifications approved by Beneficiary, and in compliance with all Legal Requirements.

Trustor shall pay when due all claims for work performed and materials furnished on or in connection with the Trust Property or any part thereof and shall pay, discharge, or cause to be removed, all mechanic's, artisan's, laborer's or materialman's charges, liens, claims of liens or encumbrances upon the Trust Property. Trustor shall comply with all Legal Requirements, including any Legal Requirements that require alterations or improvements to be made to the Trust Property. Except as required by any Legal Requirements, Trustor shall not remove, substantially alter, or demolish any building or improvement included in the Trust Property without Beneficiary's prior written consent.

5.3 Trustor shall provide and maintain policies of fire and extended coverage insurance on the Trust Property in an amount not less than the full insurable value, on a replacement-cost basis, of the Trust Property and, when requested by Beneficiary, shall also provide and maintain policies of insurance in amounts required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement and/or business loss, flood damage, earthquake and all other risks commonly insured against by persons owning like properties in the locality of the Trust Property or commonly required by prudent institutional lenders making loans secured by liens against such properties. All such policies shall contain standard, non-contributory trust beneficiary clauses making losses payable to Beneficiary. Trustor shall also provide and maintain comprehensive public liability insurance in amounts required by Beneficiary and containing endorsements naming Beneficiary as an additional insured. All insurance policies shall be with companies from time to time approved by Beneficiary, shall provide that Beneficiary is to receive thirty (30) days' notice prior to cancellation and shall otherwise be in form and substance satisfactory to Beneficiary. Original policies of insurance shall be delivered to Beneficiary; renewal policies shall be delivered to Beneficiary thirty (30) days before the expiration of the then-existing policies with satisfactory proof that the premiums for renewal have been paid.

5.4 In the event of loss, Trustor shall give immediate notice to Beneficiary, and Beneficiary may make proof of loss if not made promptly by Trustor. Each insurance company is hereby authorized and directed to make payment for loss directly to Beneficiary, instead of to Trustor or to Trustor and Beneficiary jointly; Beneficiary may apply all or any part of such insurance proceeds to the payment of the Obligation, whether or not then due, or the restoration or repair of the Trust Property in accordance with the procedures specified in Paragraph 5.7 below. Beneficiary shall not be responsible for any insurance, for the collection of any insurance proceeds, or for the insolvency of any insurer. Application of insurance proceeds by Beneficiary shall not cure nor waive any Event of Default nor invalidate any act done hereunder because of any such Event of Default. In the event of the sale of the Trust Property under the power of sale herein granted to Trustee, or upon foreclosure of this Deed of Trust as a mortgage, or in the event Beneficiary or a receiver appointed by the court shall take possession of the Trust Property without sale, then all right, title and interest of Trustor in and to all insurance policies then in force shall inure to the benefit of and pass to the beneficiary in possession, receiver or purchaser at such sale, as the case may be. Beneficiary is hereby appointed attorney in fact for Trustor to assign and transfer such policies.

5.5 Trustor shall pay or cause to be paid all taxes and assessments of every kind, nature and description levied or assessed on or against the Trust Property and shall deliver to Beneficiary, at least ten (10) days before they become delinquent, receipts showing payment of all such taxes and assessments and shall pay when due all dues and charges for water and water delivery, electricity, gas, sewers, waste removal, bills for repairs, and any and all other claims, encumbrances and expenses incident to the ownership of the Trust Property.

5.6 In order to insure the payment of taxes and assessments that are now, or hereafter may be, a lien upon the Trust Property, and to insure the payment of all premiums on policies of insurance required herein, Trustor, if required by Beneficiary, shall pay to Beneficiary each month, in addition to any other payments required hereunder, an amount equal to the taxes and special assessments levied or to be levied against the Trust Property and the premium or premiums that will become due and payable to maintain the insurance on the Trust Property, all as reasonably estimated by Beneficiary (giving due consideration to the previous year's taxes, assessments and premiums) less all deposits therefore already made, divided by the number of months remaining before one month prior to the date when the taxes, assessments and premiums become delinquent. If amounts paid to Beneficiary under the terms of this paragraph are insufficient to pay all taxes, assessments and premiums as they become due, Trustor shall pay to Beneficiary upon demand all additional sums necessary to fully pay and discharge these items. All moneys paid to Beneficiary under the terms of this paragraph may be either held by Beneficiary to pay the taxes, assessments and premiums before the same become delinquent or applied to the Obligation upon payment by Beneficiary from its own funds of the taxes, assessments and premiums. To the extent provision is not made for payment pursuant to this paragraph, Trustor shall remain obligated to pay all taxes, assessments and premiums as

they become due and payable. Deposits made under this paragraph may be commingled with Beneficiary's general funds; Beneficiary shall have no liability to Trustor for interest on any deposits.

5.7 Trustor hereby assigns, transfers and conveys to Beneficiary all compensation and each and every award of damages in connection with any condemnation for public or private use of, or injury to, the Trust Property or any part thereof, to the extent of the Obligation then remaining unpaid, and all such compensation and awards shall be paid directly to Beneficiary. Beneficiary may apply all or any part of such compensation and awards to the payment of the Obligation, whether or not then due, or to the restoration or repair of the Trust Property in accordance with the procedures specified in Paragraph 5.8 below.

5.8 If the insurance proceeds or condemnation or other awards are to be used for the restoration and repair of the Trust Property, they shall be held by Beneficiary in a non-interest bearing account selected by Beneficiary in its sole and absolute discretion (the "Restoration Account"). Trustor, at its expense, shall promptly prepare and submit to Beneficiary all plans and specifications necessary for the restoration and repair of the damaged Trust Property, together with evidence acceptable to Beneficiary setting forth the total expenditure needed for the restoration and repair based upon a fixed price contract with a reputable builder and covered by performance and labor and material payment bonds. The plans and specifications and all other aspects of the proposed restoration and repair shall be subject to Beneficiary's approval. In the event the insurance proceeds or condemnation and other awards held in the Restoration Account are insufficient to complete the restoration and repair, Trustor shall deposit in the Restoration Account an amount equal to the difference between the amount then held in the Restoration Account and the total contract price for the restoration and repair. Trustor may commence restoration and repair of the damaged Trust Property only when authorized in writing by Beneficiary to do so and thereafter shall proceed diligently with the restoration and repair until completed. Disbursements shall be made from the Restoration Account for the restoration and repair in accordance with a disbursement schedule, and subject to other terms and conditions, acceptable to Beneficiary. Disbursements from the Restoration Account shall be charged first against funds deposited by Trustor and, after such funds are exhausted, against the insurance proceeds or condemnation and other awards deposited therein. In the event the amounts held in the Restoration Account exceed the cost of the restoration and repair of the damaged Trust Property, the excess funds shall be disbursed to Trustor to the extent of any amounts deposited therein by Trustor. Any funds remaining after such disbursement, at Beneficiary's option, may be applied by Beneficiary to the payment of the Obligation, whether or not then due, or may be disbursed to Trustor. All funds held in the Restoration Account are hereby assigned to Beneficiary as further security for the Obligation. Beneficiary, at any time, may apply all or any part of the funds held in the Restoration Account to the curing of any Event of Default.

## **6. PROTECTION AND PRESERVATION OF BENEFICIARY'S INTEREST**

6.1 Trustor, by the payment of any such tax or taxes, shall protect Beneficiary against any and all loss from any taxation of indebtedness or deeds of trust, direct or indirect, that may be imposed upon this Deed of Trust, the lien of this Deed of Trust on the Trust Property, or upon the Obligation, by any law, rule, regulation or levy of the federal government, any state government, or any political subdivision thereof. In the event the burden of such taxation cannot lawfully be shifted from Beneficiary to Trustor, Beneficiary may declare the entire Obligation due and payable sixty (60) days after notice to Trustor.

6.2 If Trustor shall fail to pay any taxes, assessments, expenses or charges, to keep all of the Trust Property free from liens and claims of liens, to maintain and repair the Trust Property, or to procure and maintain insurance thereon, or otherwise fail to perform as required herein, Beneficiary may advance the monies necessary to pay the same, to accomplish such maintenance and repairs, to procure and maintain such insurance or to so perform; Beneficiary is hereby authorized to enter upon the Trust Property for such purposes.

6.3 Upon written request by Beneficiary, Trustor shall appear in and prosecute or defend any action or proceeding that may affect the lien or the priority of the lien of this Deed of Trust or the rights of Beneficiary hereunder and shall pay all costs, expenses (including the cost of searching title) and attorneys' fees incurred in such action or proceeding. Beneficiary may appear in and defend any action or proceeding purporting to affect the lien or the priority of the lien of this Deed of Trust or the rights of Beneficiary. Beneficiary may pay, purchase, contest or compromise any adverse claim, encumbrance, charge or lien that in the judgment of Beneficiary appears to be prior or superior to the lien of this Deed of Trust, other than any Permitted Exceptions.



6.4 Without obtaining the prior written consent of Beneficiary and except for the existing lien securing the loan to Government Personnel Mutual Life Insurance Company in the original principal amount of \$1,900,000, Trustor shall not sell, transfer, convey, assign or otherwise dispose of, or further encumber, all or any part of the Trust Property or the Personal Property or any interest therein, voluntarily or involuntarily, by operation of law or otherwise. If Trustor is other than a natural person, any material change in the ownership or management of, or interest in, Trustor, or any pledge or encumbrance of any interest in Trustor, shall be deemed to be a transfer of the Trust Property and the Personal Property. Upon the occurrence of any such transaction with Beneficiary's consent, or without Beneficiary's consent if Beneficiary elects not to exercise its rights and remedies for an Event of Default, Beneficiary (i) may increase the interest rate on all or any part of the Obligation to its then current market rate for similar indebtedness; (ii) may charge a loan fee and a processing fee in connection with the change; and (iii) shall not be obligated to release Trustor from any liability hereunder or for the Obligation except to the extent required by law. Consent to any such transaction shall not be deemed to be consent or a waiver of the requirement of consent to any other such transaction.

6.5 Without obtaining the prior written consent of Beneficiary, Trustor shall not consent to, or vote in favor of, the inclusion of all or any part of the Trust Property in any Special Improvement District formed pursuant to Utah law. Trustor shall immediately give notice to Beneficiary of any notification or advice that Trustor may receive from any municipality or other third party of any intent or proposal to include all or any part of the Trust Property in a Special Improvement District. Beneficiary shall have the right to file a written objection to the inclusion of all or any part of the Trust Property in a Special Improvement District, either in its own name or in the name of Trustor, and to appear at, and participate in, any hearing with respect to the formation of any such district.

6.6 All rights, powers and remedies granted Beneficiary herein, or otherwise available to Beneficiary, are for the sole benefit and protection of Beneficiary, and Beneficiary may exercise any such right, power or remedy at its option and in its sole and absolute discretion without any obligation to do so. In addition, if, under the terms hereof, Beneficiary is given two or more alternative courses of action, Beneficiary may elect any alternative or combination of alternatives, at its option and in its sole and absolute discretion. All monies advanced by Beneficiary under the terms hereof and all amounts paid, suffered or incurred by Beneficiary in exercising any authority granted herein, including reasonable attorneys' fees, shall be added to the Obligation, shall be secured by this Deed of Trust, shall bear interest at the highest rate payable on any of the Obligation until paid, and shall be due and payable by Trustor to Beneficiary immediately without demand.

6.7 Trustor, upon request of Beneficiary, shall promptly correct any defect, error or omission that may be discovered in the content of this Deed of Trust or in the execution or acknowledgment hereof. In addition, Trustor shall do such further acts as may be necessary or that Beneficiary may reasonably request to carry out more effectively the purposes of this Deed of Trust, to subject any property intended to be encumbered hereby to the lien and security interest hereof, and to perfect and maintain the lien and security interest hereof.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1 Trustor holds fee simple title to all of the Premises and improvements thereon, subject only to the Permitted Exceptions and Trustor has good title to all portions of the collateral other than the Premises and improvements.

7.2 Trustor owns all portions of the Trust Property that is personal property, free and clear of any liens, security interests, reservations of title or conditional sales contracts and there is no financing statement affecting such personal property on file in any public office other than in favor of the Beneficiary.

7.3 Trustor has the full and unlimited right and authority to encumber the Trust Property and assign the leases and rents. Upon recording of this Deed of Trust and filing of a UCC Financing Statement with respect to any portion of the Trust Property that is determined to be personal property this Deed of Trust will create a lien on that portion of the Trust Property and that it will not be subject or subordinate to any other liens except for liens and rights to the Beneficiary and the Permitted Exceptions.

7.4 The liens, security interests and assignments created hereby will be valid, effective, properly perfected and enforceable liens, security interests and assignments.

7.5 The Trust Property is in compliance with all Legal Requirements and neither the Trust Property nor Trustor are subject to any existing, pending or threatened claim, investigation, or proceeding in connection with any Legal Requirements.

7.6 All representations and warranties made herein shall survive the execution hereof, the execution and delivery of all other documents and instruments in connection with the Obligation, and until the Obligation has been fully paid and performed.

## 8. DEFAULTS; REMEDIES

8.1 The occurrence of any one or more of the following shall constitute an "Event of Default":

(a) Failure to make any payment or to perform an obligation to pay money that arises under the Note or any of the other Loan Documents.

(b) There is an uncured Event of Default under the Note.

(c) A transfer, purported transfer, or change of ownership or control of Trustor, the Trust Property and/or the Personal Property in violation of paragraph 6.4.

(d) Trustor hereafter (a) files a petition in bankruptcy or for an arrangement, reorganization, or any other form of debtor relief; or such a petition is filed against Trustor or any trustee of Trustor and is not dismissed within sixty (60) days after the date of filing; (b) commences any proceeding for dissolution or liquidation or any such proceeding is commenced against Trustor and is not dismissed within sixty (60) days after the date of commencement; or (c) makes an assignment of all or substantially all of its assets for the benefit of its creditors.

(e) A decree or order is entered for the appointment of a trustee, receiver, or liquidator for Trustor or any of the Collateral, and such decree or order is not vacated within forty-five (45) days after the date of entry.

(f) A final judgment, order or decree for the payment of money shall be rendered against Trustor, and Trustor shall not satisfy and pay the same or cause it to be discharged within 30 days from the entry thereof, or shall not appeal therefrom and secure a stay of execution pending such appeal, or there is an attachment, execution, or other judicial seizure of any portion of Trustor's assets and such seizure is not discharged or bonded against to Lender's reasonable satisfaction within thirty (30) days.

(g) Any written representation or disclosure made to Lender by Trustor proves to be materially false or misleading when made, whether or not that written representation or disclosure is contained herein.

(h) There is an uninsured casualty with respect to any material portion of the Collateral and Trustor fails to immediately repair such damage, Trustor fails to satisfy the conditions set forth in the Deed of Trust for the release of insurance proceeds or any condemnation award, or, whether or not Lender has received and applied insurance proceeds or any condemnation award to the Secured Obligations in accordance with the Deed of Trust, Lender reasonably determines that its security is impaired by such casualty or condemnation and Trustor fails to immediately deposit in Trustor's Account an amount determined by Lender as necessary to restore such security.

(i) The assertion or creation by any federal, state or local department, regulatory body or other agency of lien upon any or all of the Trust Property by reason of the presence of any Hazardous Materials thereon or any violation of any Hazardous Materials Law affecting the Project.

(j) A levy on any of the assets of Trustor and such levy is not stayed or abated within sixty (60) days after such levy.

(k) Trustor defaults in the performance of any material covenant under any permitted financing related to the Trust Property, or under any sales agreement, lease, or other instrument assigned to Lender as security for the Loan.

(l) Trustor fails to perform any other covenant, agreement, or obligation under any of the Loan Documents, including the failure to provide any reports required to be provided to Lender, if such default is not cured within thirty (30) days after written notice thereof by Lender (or such other period as may otherwise be specified herein or in the Loan Document under which such default arises).

8.2 Upon the occurrence of any Event of Default, and at any time while such Event of Default is continuing, Beneficiary may do one or more of the following:

(a) Declare the entire Obligation to be immediately due and payable, and the same, with all costs and charges, shall be collectible thereupon by action at law.

(b) Give such notice of default and of election to cause the Trust Property to be sold as may be required by law or as may be necessary to cause Trustee to exercise the power of sale granted herein. Trustee shall then record and give such notice of trustee's sale as then required by law and, after the expiration of such time as may be required by law, may sell the Trust Property at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by Beneficiary, or by Trustor to the extent required by law, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, all in accordance with applicable law. Trustee, from time to time, may postpone or continue the sale of all or any portion of the Trust Property by public declaration at the time and place last appointed for the sale. No other notice of the postponed sale shall be required. Upon any sale, Trustee shall deliver its deed conveying the property sold, without any covenant or warranty, express or implied, to the purchaser or purchasers at the sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale.

(c) Commence proceedings for foreclosure of this Deed of Trust in the manner provided by law for the foreclosure of a real property mortgage.

(d) Exercise any or all of the remedies of a secured party under the Uniform Commercial Code with respect to the Personal Property. If Beneficiary should proceed to dispose of any of the Personal Property in accordance with the provisions of the Uniform Commercial Code, ten (10) days' notice by Beneficiary to Trustor shall be deemed to be commercially reasonable notice under any provision of the Uniform Commercial Code requiring notice. Trustor, however, agrees that all property of every nature and description, whether real or personal, covered by this Deed of Trust, together with all personal property used on or in connection with the Premises or any business conducted thereon by the Trustor and covered by separate security agreements, is encumbered as one unit, that this Deed of Trust and such security interests, at Beneficiary's option, may be foreclosed or sold in the same proceeding, and that all property encumbered (both realty and personalty), at Beneficiary's option, may be sold as such in one unit as a going business, subject to the provisions of applicable law.

(e) Without regard to the adequacy of any security for the Obligation or the solvency of Trustor or any other person or entity, send notifications to any and all lessees and tenants under the Leases that all Rents shall be paid to Beneficiary. Thereafter, Beneficiary shall be entitled to collect the Rents until Trustor cures all Events of Default and may apply the Rents collected at its sole discretion to the maintenance of the Trust Property and/or the payment of the Obligation.

(f) Apply any funds in the possession or control of Beneficiary under the provisions of Paragraph 5.5 hereof to the payment of the Obligation, in lieu of the purposes specified in that paragraph.

(g) Apply for and obtain, without regard to the adequacy of any security for the Obligation or the solvency of the Trustor or any other person or entity, a receiver by any court of competent jurisdiction to take charge of all the Trust Property, to manage, operate and carry on any business then being conducted or that could be conducted on the Premises, to carry on, protect, preserve, replace and repair the Trust Property, and receive and

collect all Rents and to apply the same to pay the receiver's expenses for the operation of the Trust Property and then in the manner provided in Paragraph 3.3 herein. Upon appointment of said receiver, Trustor shall immediately deliver possession of all of the Trust Property to such receiver. Neither the appointment of a receiver for the Trust Property by any court at the request of Beneficiary or by agreement with Trustor nor the entering into possession of all or any part of the Trust Property by such receiver shall constitute Beneficiary a "mortgagee in possession" or otherwise make Beneficiary responsible or liable in any manner with respect to the Trust Property or the occupancy, operation or use thereof.

(h) Without regard to the adequacy of any security for the Obligation or the solvency of Trustor or any other person or entity, enter upon and take possession of all or any part of the Trust Property, either in person or by agent or employee, or by a receiver appointed by a court of competent jurisdiction; Trustor shall on demand peaceably surrender possession of the Trust Property to Beneficiary. Beneficiary, in its own name or in the name of Trustor, may operate and maintain all or any part of the Trust Property to such extent as Beneficiary deems advisable, may rent and lease the same to such persons, for such periods of time, and on such terms and conditions as Beneficiary in its sole discretion may determine, and may sue for or otherwise collect any and all Rents, including those past due and unpaid. In dealing with the Trust Property as a beneficiary in possession, Beneficiary shall not be subject to any liability, charge, or obligation therefor to Trustor, other than for willful misconduct, and shall be entitled to operate any business then being conducted or which could be conducted thereon or therewith at the expense of and for the account of Trustor (and all net losses, costs and expenses thereby incurred shall be advances governed by Paragraph 6.6 hereof), to the same extent as the owner thereof could do, and to apply the Rents to pay the receiver's expenses, if any, for the operation of the Trust Property and then in the manner provided in Paragraph 3.3 herein.

(i) Upon the completion of any foreclosure or trustee's sale of all or a portion of the Trust Property, commence an action to recover any of the Obligation that remains unpaid or unsatisfied. For purposes of this Deed of Trust the Obligation shall be deemed to be paid or satisfied only to the extent that Beneficiary actually receives immediately available funds, to the extent of any credit bid by Beneficiary at any foreclosure or trustee's sale of any of the Trust Property, or to the extent agreed in writing by Beneficiary. In any action by Beneficiary to recover a deficiency judgment following a foreclosure or trustee's sale, the successful bid amount at that sale shall be deemed conclusively to be the fair market value of the Trust Property sold at that sale, which value shall be binding against Trustor in any proceeding to determine or establish the fair market value of that portion of the Trust Property. The successful bid at any foreclosure or trustee's sale shall be the preferred alternative means of determining and establishing the fair market value of the portion of the Trust Property sold at that sale. Trustor hereby waives any right to have the fair market value of the Trust Property determined by a judge or jury in any action seeking a deficiency judgment.

8.3 Trustor shall pay all costs and expenses, including without limitation costs of title searches and title policy commitments, Uniform Commercial Code searches, court costs and reasonable attorneys' fees, incurred by Beneficiary in enforcing payment and performance of the Obligation or in exercising the rights and remedies of Beneficiary hereunder. All such costs and expenses shall be secured by this Deed of Trust and by all other lien and security documents securing the Obligation. In the event of any court proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Beneficiary.

8.4 In addition to any remedies provided herein for an Event of Default, Beneficiary shall have all other legal or equitable remedies allowed under applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage). No failure on the part of Beneficiary to exercise any of its rights hereunder arising upon any Event of Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Event of Default. No delay on the part of Beneficiary in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Event of Default is continuing. Beneficiary may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Obligation after its due date, Beneficiary shall not thereby waive the agreement contained herein that time is of the essence, nor shall Beneficiary waive either its right to require prompt payment or performance when due of the remainder of the Obligation or its right to consider the failure to so pay or perform an Event of Default.

## 9. GENERAL PROVISIONS

9.1 Trustor shall defend, indemnify and hold harmless Beneficiary, any successors to Beneficiary's interest in the Trust Property, any purchaser of the Trust Property upon foreclosure, and all shareholders, directors, officers, employees and agents of all of the foregoing and their heirs, personal representatives, successors and assigns from and against all claims, costs, expenses, actions, suits, proceedings, losses, damages and liabilities of any kind whatsoever, including but not limited to all amounts paid in settlement of, and all costs and expenses (including attorneys' fees) incurred in defending or settling, any actual or threatened claim, action, suit or proceeding, directly or indirectly arising out of or relating to the Obligation, this Deed of Trust, or the Trust Property, including but not limited to (i) any violation or claim of violation of any Legal Requirements with respect to the Trust Property; or (ii) any breach of any of the warranties, representations and covenants contained herein; but excluding any claim or liability that arises solely as a result of the gross negligence or willful misconduct of Beneficiary. This indemnity provision shall continue in full force and effect and shall survive the payment and performance of the Obligation, the release of record of the lien of this Deed of Trust, any foreclosure (or action in lieu of foreclosure) of this Deed of Trust, the exercise by Beneficiary of any other remedy under this Deed of Trust or any other document or instrument evidencing or securing the Obligation, and any suit, proceeding or judgment against Trustor by Beneficiary hereon.

9.2 The acceptance of this Deed of Trust by Beneficiary shall not be considered a waiver of or in any way to affect or impair any other security that Beneficiary may have, acquire simultaneously herewith, or hereafter acquire for the payment or performance of the Obligation, nor shall the taking by Beneficiary at any time of any such additional security be construed as a waiver of or in any way to affect or impair the security of this Deed of Trust; Beneficiary may resort, for the payment or performance of the Obligation, to its several securities therefor in such order and manner as it may determine.

9.3 Without notice or demand, without affecting the obligations of Trustor hereunder or the personal liability of any person for payment or performance of the Obligation, and without affecting the lien or the priority of the lien of this Deed of Trust, Beneficiary, from time to time, may: (i) extend the time for payment of all or any part of the Obligation, accept a renewal note therefor, reduce the payments thereon, release any person liable for all or any part thereof, or otherwise change the terms of all or any part of the Obligation; (ii) take and hold other security for the payment or performance of the Obligation and enforce, exchange, substitute, subordinate, waive or release any such security; (iii) consent to the making of any map or plat of the Trust Property; (iv) join in granting any easement on or in creating any covenants, conditions or restrictions affecting the use or occupancy of the Trust Property; (v) join in any extension or subordination agreement; or (vi) release or direct Trustee to release any part of the Trust Property from this Deed of Trust. Any such action by Beneficiary, or Trustee at Beneficiary's direction, may be taken without the consent of any junior lienholder and shall not affect the priority of this Deed of Trust over any junior lien.

9.4 Trustor waives and agrees not to assert: (i) any right to require Beneficiary to proceed against any guarantor, to proceed against or exhaust any other security for the Obligation, to pursue any other remedy available to Beneficiary, or to pursue any remedy in any particular order or manner; (ii) the benefits of any legal or equitable doctrine or principle of marshaling; (iii) the benefits of any statute of limitations affecting the enforcement hereof; (iv) demand, diligence, presentment for payment, protest and demand, and notice of extension, dishonor, protest, demand and nonpayment, relating to the Obligation; and (v) any benefit of, and any right to participate in, any other security now or hereafter held by Beneficiary.

9.5 Upon written request of Beneficiary stating that all of the Obligation has been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or, if requested, delivery, then Trustee (and Beneficiary if necessary to clear title), upon payment of Trustee's fees, shall reconvey, without warranty, the Trust Property. The recitals in such reconveyance of any matters or facts shall be conclusive as to the accuracy thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy the Note and this Deed of Trust (unless directed in such request to retain them), unless prior thereto Trustee has been directed to deliver them to the person or persons to whom the property was reconveyed.

9.6 Beneficiary or Trustee, or both, shall have the right to inspect the Trust Property at all reasonable times.

9.7 Time is of the essence hereof. If more than one Trustor is named herein, the word "Trustor" shall mean all and any one or more of them, severally and collectively. All liability hereunder shall be joint and several. This Deed of Trust shall be binding upon, and shall inure to the benefit of, the parties hereto and their heirs, personal representatives, successors and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder, including pledgees, of the Note. The provisions hereof shall apply to the parties according to the context thereof and without regard to the number or gender of words or expressions used.

9.8 The acceptance by Trustee of this trust shall be evidenced when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. The trust created hereby is irrevocable by Trustor.

9.9 This Deed of Trust cannot be changed except by agreement, in writing, signed by Trustor and Beneficiary.

9.10 No setoff or claim that Trustor now has or may in the future have against Beneficiary shall relieve Trustor from paying or performing the Obligation.

9.11 Each term, condition and provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law but if any term, condition or provision of this Deed of Trust shall be held to be void or invalid, the same shall not affect the remainder hereof which shall be effective as though the void or invalid term, condition or provision had not been contained herein. In addition, should this instrument be or become ineffective as a deed of trust, then these presents shall be construed and enforced as a realty mortgage with the Trustor being the Mortgagor and Beneficiary being the Mortgagee.

9.12 This Deed of Trust, the Obligation and the agreements of any person or entity to pay or perform the Obligation shall be governed by and construed according to the laws of the State of New Mexico.

9.13 Trustor requests all notices to be given to it shall be made to its address stated on the first page of this Deed of Trust. All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail, by commercial delivery service or by electronic transmission with verified receipt. Any notice directed to a party to this Deed of Trust shall become effective upon the earliest of the following: (i) actual receipt by that party; (ii) delivery to the designated address of that party, addressed to that party; or (iii) if given by certified or registered United States mail, three (3) days after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown at the beginning of this Deed of Trust or such other address as that party, from time to time, may specify by notice to the other parties.

9.14 All exhibits and schedules attached to this Deed of Trust are incorporated herein at each reference thereto.

9.15 As further security for the payment and performance of the Obligation, Beneficiary shall be subrogated to the lien, although released of record, of any and all encumbrances paid from the proceeds of any loan included in the Obligation.

9.16 Trustor shall, upon request, cooperate with Beneficiary or Trustee to correct any defect, error or omission that may be discovered in the contents of this Deed of Trust or in the execution or acknowledgment hereof, and will execute, acknowledge, and deliver such further instruments and take such further actions as may be reasonably requested by Lender or Trustee to carry out more effectively the purposes of this Deed of Trust.

9.17 If more than one person has executed this Deed of Trust as Trustor, the obligations of all such persons hereunder shall be joint and several.

9.18 If any term of this Deed of Trust, or the application thereof to any person or circumstances, shall, to any extent, be invalid, void 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, void or unenforceable, shall not be affected thereby, and each term of this Deed of Trust shall be valid and enforceable to the fullest extent permitted by law. If the lien of this Deed of Trust is invalid, void or unenforceable as to any part of the Obligation, or if the lien is invalid, void or unenforceable as to any part of the Collateral, the unsecured or partially secured portion of such indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of such Obligation, and all payments made on such Obligation shall be considered to have been first paid on and applied to the full payment of that portion of such indebtedness that is not secured or fully secured by the lien of this Deed of Trust.

9.19 No waiver or delay or omission in the exercise or enforcement by Lender of any of its rights or remedies hereunder or under any of the other Loan Documents shall be considered a waiver of any subsequent application of, or right to enforce, such right or remedy, or of the right to enforce any other right or remedy of Lender in another instance. Furthermore, no waiver of Lender's rights or remedies in one or more instances shall establish a course of dealing or other agreement that will bind Lender or prohibit Lender from enforcing the terms of this Deed of Trust or any other Loan Document in another instance.

9.20 In addition to any other indemnifications provided in any of the Loan Documents, Trustor shall (except to the extent caused by the gross negligence or willful misconduct of an Indemnified Party), at its sole cost and expense, protect, defend, indemnify, release and save harmless Beneficiary, Trustee, or any person or entity who is or will have been involved in the servicing of this Loan, any person or entity whose name the encumbrance created by this Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in this Loan (including but not limited to investors, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties) as well as the respective affiliates, subsidiaries, persons controlling or under common control, directors, officers, shareholders, members, partners, employees, agents, servants, representatives, contractors, subcontractors, participants, successors and assigns of any and all of the foregoing, including but not limited to, any other person or entity who holds or acquires or will have held a participation or other full or partial interest in this Loan or the Trust Property, whether during the term of this Loan or as a part of or following a foreclosure of this Loan and including, but not limited to any successors by merger, consolidation or acquisition of all or a substantial portion of Beneficiary's assets and business) (collectively, the "Indemnified Parties"), from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against any of the Indemnified Parties and *directly or indirectly arising out of or in any way relating to any one or more of the following*: (a) management, development and ownership of the Trust Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, and the Note, this Deed of Trust or any other Loan Documents; (c) any and all lawful action that may be taken by Beneficiary in connection with the enforcement of the provisions of any Deed of Trust or the Note or any other Loan Documents; (d) any and all lawful action that may be taken by Beneficiary in connection with the enforcement of the provisions of this Deed of Trust or the Note or any other Loan Documents, whether or not suit is filed in connection with same, or in connection with Trustor, any Guarantor and/or any member, partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (e) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Trust Property or any part thereof; (f) any use, nonuse or condition in, on or about the Trust Property or any part thereof or; (g) any failure on the part of Trustor to perform or comply with any of the terms of this Deed of Trust; (h) performance of any labor or services or the furnishing of any materials or other property in respect of the Trust Property or any part thereof; (i) any failure of the Trust Property to comply with any laws or ordinances affecting or which may be interpreted to affect the Trust Property; (j) any representation or warranty made in the Note, this Deed of Trust or the other Loan Documents being false or misleading in any material respect as of the date such representation or warranty was made; (k) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Trust Property or any part thereof under any legal requirement or any liability asserted against Beneficiary with respect thereto; (l) the claims of any lessee to any portion of the Trust Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease; (m) performance of any labor or services or the furnishing of any materials or other property in respect of the Trust Property or any part thereof; (n) the enforcement by any Indemnified Party of the provisions of this Section; or (o) any and all claims and demands

whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease. Notwithstanding anything contained herein to the contrary, the foregoing indemnity shall not apply to matters resulting solely from the actions of Beneficiary or any other party that are taken after Beneficiary has taken title to or exclusive possession of the Trust Property, provided that such matters shall not arise from or be cumulated with any condition of the Trust Property caused by Trustor or its agents and contractors or which existed prior to Beneficiary taking title or exclusive possession of the Trust Property.

9.21 Upon written request by an Indemnified Party, Trustor shall defend such Indemnified Party (if requested by an Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their reasonable discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of the Indemnified Parties, their attorneys shall control the resolution of claim or proceeding. Upon demand, Trustor shall pay or reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, and other professionals in connection therewith. Any amounts payable to any of the Indemnified Parties by reason of the application of Section 9.20 or this Section shall be secured by this Deed of Trust and shall become immediately due and payable and shall bear interest at the Default Rate specified in the Note from the date loss or damage is sustained by any of the Indemnified Parties until paid.

9.22 Nothing contained herein shall be construed to permit Beneficiary to assign the indemnity obligations contained herein to a third party, independent buyer at a foreclosure sale or to a subsequent owner (other than Beneficiary or its affiliates) of the Trust Property following a foreclosure sale or a deed-in-lieu accepted by Beneficiary, but Beneficiary may assign these obligations to an assignee in conjunction with the assignment of the Loan at any time prior to foreclosure or acceptance of a deed-in-lieu by Beneficiary.

9.23 This Deed of Trust and the other Loan Documents may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Trustor or Beneficiary, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.


9.24 The provisions of this Deed of Trust and the other Loan Documents are for the benefit of Trustor, Beneficiary and Trustee and shall not inure to the benefit of any third party (other than any successor or assignee of either Trustee or Beneficiary). This Deed of Trust and the other Loan Documents shall not be construed as creating any rights, claims or causes of action against Beneficiary or any of its officers, directors, agents or employees in favor of any party other than Trustor.

9.25 The relationship of Beneficiary and Trustor is solely that of debtor and creditor, and Beneficiary has no fiduciary or other special relationship with Trustor, and no term or condition of any of the Loan Documents shall be construed to be other than that of debtor and creditor. Trustor represents and acknowledges that the Loan Documents do not provide for any shared appreciation rights or other equity participation interest.

IN WITNESS WHEREOF, these presents are executed as of the date indicated above.

**TRUSTOR:**

**MICHELE AUDIO CORPORATION OF AMERICA**, a  
New Jersey corporation

By:   
Thomas Gramuglia, Vice President



STATE OF NEW YORK )  
 )  
COUNTY OF St. Lawrence ) : ss.

The foregoing instrument was acknowledged before me this 9th day of January, 2004 ~~December, 2003~~, by Thomas Gramuglia, Vice President of MICHELE AUDIO CORPORATION OF AMERICA, a New Jersey corporation, on behalf of said limited liability company.

Marilyn O. Bain  
NOTARY PUBLIC

My Commission Expires:  
July 15, 2007

Residing at:  
Massena NY

MARILYN O. BAIN  
Notary Public, State of New York  
No. 01BA5012441  
Qualified in St. Lawrence County  
Commission Expires July 15, 2007

NOTARY SEAL NOT LEGIBLE  
- CO RECORDER -

**EXHIBIT "A"**

**DESCRIPTION OF PROPERTY**

Tax Parcel No. 07-36-276-015

Lot 1, SALT LAKE INTERNATIONAL CENTER PLAT 2 **AMENDED**, according to the official plat thereof, filed in Book "2000P" of Plats at Page 330 of the Official Records of the Salt Lake County Recorder, and being more particularly described as follows:

BEGINNING on the East right-of-way line of Neil Armstrong Road at a point South 00°02'00" East 801.50 feet from the Northeast corner of Salt Lake International Center Plat 1A, an industrial subdivision of part of Section 36, Township 1 North, Range 2 West, Salt Lake Base and Meridian, Salt Lake City, Utah, and running thence North 89°58'00" East 675.00 feet; thence South 00°02'00" East 448.50 feet to the Northerly right-of-way line of Amelia Earhart Drive (350 North Street); thence South 89°58'00" West 653.48 feet along said line to a curve to the right; thence along said curve having a radius of 32.00 feet a distance of 22.74 feet (Delta 40°42'26") to a point on a compound curve to the right; thence along said curve having a radius of 192.00 feet a distance of 24.32 feet (Delta 07°15'32"); thence North 00°02'00" West 408.35 feet to the point of BEGINNING.

**TOGETHER WITH** a non-exclusive easement and right-of-way in common with others, for access and driveway purposes, and for foot and vehicular traffic, as provided for and further defined in that certain Right-Of-Way Easement recorded May 24, 1976 as Entry No. 2817463, in Book 4209, at Page 230 of the official records of the Salt Lake County Recorder, over and across the following described tract of land situate in the City of Salt Lake, County of Salt Lake, State of Utah, to-wit:

An easement and right-of-way thirty feet (30.00') wide being fifteen feet (15.00') on either side of the following described centerline: BEGINNING at a point which lies in the West boundary of Wright Brothers Drive and is more particularly described as South 0°16'02" East 164.00 feet from the Northeast corner of Lot 2, Salt Lake International Center Plat 2 (according to the official plat thereof, filed in Book "76-5" of Plats at Page 107 of the Official Records of the Salt Lake County Recorder), and thence South 89°58' West 239.98 feet to a point on the common boundary of Lots 1 and 2 of said Plat 2.

(Continued)

**ALSO TOGETHER WITH** a non-exclusive easement in common with others, for purposes of establishing, constructing, and maintaining a subsurface drainage system for drainage of surface waters, as provided for and further defined in that certain Drainage Easement recorded May 24, 1976 as Entry No. 2817464, in Book 4209, at Page 232 of the official records of the Salt Lake County Recorder, over and across the following described tract of land situate in the City of Salt Lake, County of Salt Lake, State of Utah, to-wit:

An easement thirteen feet (13.00') wide being six and one-half feet (6.50') on either side of the following described centerline: BEGINNING at a point which lies in the West boundary of Wright Brothers Drive and is more particularly described as South 0°16'02" East 142.50 feet from the Northeast corner of Lot 2, Salt Lake International Center Plat 2 (according to the official plat thereof, filed in Book "76-5" of Plats at Page 107 of the Official Records of the Salt Lake County Recorder), and thence South 89°58' West 239.90 feet to a point on the common boundary of Lots 1 and 2 of said Plat 2.

**ALSO TOGETHER WITH** a non-exclusive easement and right-of-way for ingress and egress, for access and driveway purposes, as provided for and further defined in that certain Access Easement recorded April 9, 2001 as Entry No. 7865608, in Book 8443, at Page 8925 of the official records of the Salt Lake County Recorder, over and across the following described tract of land situate in the City of Salt Lake, County of Salt Lake, State of Utah, to-wit:

A 10 foot access easement as shown on the "Amended Parcel Plat 2A And Lots 1 & 2 Plat 2, Salt Lake International Center"; said Amended Plat was recorded November 22, 2000 as Entry No. 7765425, in Book 2000P, at Page 330, in the office of the Salt Lake County Recorder, and being more particularly described as follows: BEGINNING on the East line of Neil Armstrong Road at a point South 00°02'00" East 801.50 feet from the Northeast corner of Salt Lake International Center Plat 1A, an industrial subdivision of part of Section 36, Township 1 North, Range 2 West, Salt Lake Base and Meridian, Salt Lake City, Utah; and running thence North 89°58'00" East 415.00 feet; thence North 00°02'00" West 10.00 feet; thence South 89°58'00" West 415.00 feet to the Easterly line of Neil Armstrong Road; thence South 00°02'00" East 10.00 feet to the point of BEGINNING.

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