

RECORDING REQUESTED BY:
City of Chula Vista

AND WHEN RECORDED MAIL
DOCUMENT AND TAX
STATEMENT TO:
City of Chula Vista – City Clerk
276 Fourth Avenue
Chula Vista, CA 91910

WITH COPY TO:
Ayres-Millenia L.P.
Attn: Bruce D’Eliscu
355 Bristol, Suite A
Costa Mesa, CA 92626

SPACE ABOVE THIS LINE FOR RECORDER’S USE ONLY

APN: 643-060-70-00

**AGREEMENT FOR DEFERRAL
OF DEVELOPMENT IMPACT FEES**

This AGREEMENT FOR DEFERRAL OF DEVELOPMENT IMPACT FEES (“Agreement”), is made and entered into as of _____, _____, by and between the City of Chula Vista, a chartered municipal corporation (the “City”), and Ayres-Millenia L.P., a California limited partnership (“Developer” or “Borrower” and collectively with the City, the “Parties”), with reference to the below Recitals.

RECITALS

A. Developer (and/or its affiliates) owns, in fee simple, the real property generally known as 1710 Millenia Avenue, Chula Vista, California, 91915, as described in the attached Exhibit “A,” which is incorporated herein (the “Property”).

B. The City has received an application from Developer related to the proposed development of a 135-room hotel project on the Property (the “Project”).

C. The Project will further the desired objectives and goals of the City to facilitate development of a hotel within the eastern portion of the City thereby offering a significant benefit to the public within the surrounding area.

D. As authorized by California *Government Code* section 66000, *et seq.*, the City imposes development impact fees in connection with the approval of a development project for

the purpose of defraying all or a portion of the cost of public facilities related to the development project.

E. It is anticipated that the Project will impact the public facilities of the City, and the Parties wish to ensure that the burdens of the Project and required impact fees correspond proportionately to the impact on the City.

F. Developer has pursued numerous financing sources to finance the Project, and has obtained the requisite financing to commence and complete the Project, but requires assistance from the City to defray the development costs to make the Project fiscally feasible.

G. The City conditions of approval of the Project, *inter alia*, on the payment by Developer of the Transportation Development Impact Fee pursuant to Chula Vista Municipal Code section 3.54, *et seq.* (the "Impact Fees").

H. Developer has requested and the City agrees to defer the Impact Fees, estimated to be Nine Hundred Three Thousand Five Hundred Fifty Five dollars (\$903,555.00), as provided in this Agreement and assessed as further described in Section 2 below.

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals and for good and valuable consideration the receipt and sufficiency of which the Parties hereby acknowledge, Developer and the City agree as follows:

1. **Acknowledgments.** The Parties hereby certify that the above Recitals are true and correct, which are incorporated herein by this reference.

2. **Terms of Payment.** Developer will pay the Impact Fees in the sum of Nine Hundred Three Thousand Five Hundred Fifty Five dollars (\$903,555.00). Developer's obligation to make such payment shall be evidenced by a promissory note ("Note") executed by Developer in favor of the City, in the form attached hereto as Exhibit "B."

2.1. Developer shall execute and deliver the Note to the City concurrently with its execution of this Agreement.

2.2. Full satisfaction of the Impact Fees shall be deferred for forty-eight (48) months (the "Deferral Period") from the date of the issuance of a temporary or final Certificate of Occupancy (the "Certificate of Occupancy"), whichever occurs first, for the Project ("Effective Date").

2.3 The principal sum consists of the estimated Transportation Development Impact Fee (“TDIF”). Final determination of the TDIF Fees will be based on a traffic study that the Borrower shall pay for, have prepared, and submitted for approval to the City’s Director of Development Services after the Project has stabilized, but no later than the fourth year from the date of the issuance of the Certificate of Occupancy. Developer hereby agrees that final TDIF Fees shall be the lesser of: (i) the trip generation determined in the traffic study and the rates in effect at the time of payment (ii) or Nine Hundred Three Thousand Five Hundred Fifty Five dollars (\$903,555.00), the fees assessed at time of Agreement execution, which shall also bear interest at the rate of three and one-half percent (3.50%) per annum. Failure to submit such traffic study and obtain the City’s approval prior to the expiration of the Maturity Date shall result in the entire principal sum as assessed herein being imposed and become immediately due and payable.

2.4 Reserved.

2.5 Interest shall begin to accrue as of the Effective Date.

2.6 The outstanding balance shall become immediately due and payable if Developer transfers the Project and/or Property to any other party without the reasonable advance written notice to the City and together with documentation satisfactory to the City Manager or designee showing that the other party (the “Transferee”) is fully assuming all obligations of the Developer with regards to the Project including the obligation to pay the outstanding balance of the deferred fees as provided herein, including, without limitation, the provision of appropriate security acceptable to the City as evidenced in writing by the Transferee. Developer shall notify the City in writing thirty (30) calendar days prior to transferring the Project and/or Property to the Transferee evidencing that the Transferee will assume all obligations of the Developer with regards to the Project including the obligation to pay the outstanding balance of the deferred fees pursuant to this section.

2.7 Developer may prepay the outstanding balance of the Note in whole or in part at any time without penalty.

3. **Security.** The Note representing the obligation to pay the Impact Fees shall be secured by a deed of trust recorded against the Property (“Trust Deed”), in the form attached hereto as Exhibit “C.” The Trust Deed shall be subordinate to any and all deeds of trust and mortgages executed by trustor securing financing for the acquisition and improvement (including both construction and permanent financing) of the Property and the Project. Initially, the Trust Deed shall be subordinate to a deed of trust executed by Developer in favor of Ayres Legacy Holdings, as Beneficiary, securing a construction loan for the Project. Developer intends to replace that construction loan with permanent financing, the deed of trust and mortgage for which will be senior in priority to the Trust Deed. City shall, at Developer’s request, execute one

or more subordination agreements in commercial reasonable form provided by Developer's current and future lender(s). Developer agrees to pay thirty five percent (35%) or three hundred sixteen thousand two hundred forty-four dollars and twenty-five cents (\$316,244.25) of the principal sum defined in Section 2.3 at Certificate of Occupancy.

4. **Development of the Project.** This Agreement does not obligate Developer to commit to or agree to undertake any disposition or use of the Property nor does it commit Developer to pursue government approvals for the development of the Property. Developer shall have no obligations or liabilities under this Agreement, the Note and the Trust Deed, and each shall be deemed rescinded and reconveyed as appropriate, if Developer provides notice to the City of its abandonment of the Project at any time prior to issuance of a Certificate of Occupancy.

5. **Reserved.**

6 **Remedies.** In order to enforce Developer's obligations under the terms of this Agreement or the Note, the City shall be entitled to pursue any and all remedies provided at law or in equity, including, without limitation, any and all remedies provided under the Note and Trust Deed. Without limiting the generality of the foregoing, in the event of a default by Developer of its obligations hereunder, after reasonable notice and opportunity to cure such default, the City shall have the right to accelerate the debt owed under the Note and pursue collection of the Impact Fee directly from Developer. All such remedies shall be cumulative and non-exclusive. Notwithstanding the foregoing, Developer shall have no further obligations or liabilities under this Agreement and the Note upon an assignment or transfer of the Project consented to by the City.

7. **Indemnification.** To the maximum extent allowed by law, Developer shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents, volunteers, and employees (collectively the "Indemnified Parties"), from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorney's fees and actual costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Developer, its officials, officers, employees, agents, contractors, and subcontractors arising out of or in connection with this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the negligence or willful misconduct of the Indemnified Parties.

8. **Reserved.**

9. **Agreement Runs with the Land.** The burden of the covenants contained in this Agreement is for the benefit of the Property and the City, its successors and assigns and any

successor in interest and thereby run with the land. City is deemed the beneficiary of such covenants for and in its own right and for the purposes of protecting the interest of the community. This Agreement shall be released from the Property when all deferred fees are paid in full. Upon the request of Developer or its successors in interest, City shall execute an appropriate document for recording evidencing such release.

10. **Miscellaneous Provisions.**

10.1. **Authority.** Each of the signatories to this Agreement warrants and represents that he or she is competent and authorized to enter this Agreement on behalf of the Party for whom he or she purports to sign.

10.2. **Notices.** Any and all notices or other communications made pursuant to this Agreement shall be given in writing and delivered by Federal Express and email, which shall be addressed as follows:

If to City: City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attn: City Manager's Office
ghalbert@chulavistaca.gov

With a copy to: City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attn: City Attorney's Office
ggoogins@chulavistaca.gov

If to Developer: Ayres-Millenia L.P.
Attn: Bruce D'Eliscu
355 Bristol, Suite A
Costa Mesa, CA 92626
bdeliscu@ayresgroup.net

Notices shall be deemed delivered upon receipt by personal service or as of the second (2nd) business day after deposit with Federal Express.

10.3. **Captions.** Captions in this Agreement are inserted for convenience of reference and do not define, describe or limit the scope or intent of this Agreement or any of its terms.

10.4. **Allocation of Legal Expenses.** Each Party shall bear its own costs relative to any costs or expenses incurred in compliance with, or in the drafting or negotiation of, and the approval process, of this Agreement.

10.5. **Entire Agreement.** This Agreement contains the entire agreement between the Parties regarding the subject matter hereof. Any prior oral or written representations, agreements, understandings, and/or statements shall be of no force and effect and are intended to be replaced in total by this Agreement. Each Party warrants and represents that no representative of any other Party has made any oral representation or oral agreements not contained in this Agreement. Each party further warrants and represents that it has not relied upon any oral statements or promises made by any representatives of any other Party to this Agreement in executing this Agreement.

10.6. **Preparation of Agreement.** No inference, assumption or presumption shall be drawn from the fact that a Party or its attorney prepared and/or drafted this Agreement. It shall be conclusively presumed that both Parties participated equally in the preparation and/or drafting of this Agreement.

10.7. **Reserved.**

10.8. **Governing Law.** This Agreement shall be subject to and governed by the laws of the State of California, without regard to conflict of law rules.

10.9. **Severability.** In the event that any provision of this Agreement is declared by any court of competent jurisdiction or any administrative judge to be void or otherwise invalid, all of the other terms, conditions and provisions of this Agreement shall remain in full force and effect to the same extent as if that part declared void or invalid had never been incorporated in the Agreement and in such form, the remainder of the Agreement shall continue to be binding upon the Parties.

10.10. **Counterparts.** This Agreement may be signed and executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or email shall be effective as delivery of an originally executed counterpart of this Agreement.

10.11. **Time of the Essence.** Time is of the essence in the performances of the Parties' obligations contained herein.

10.12. **Waiver.** A failure of a Party to enforce strictly a provision of this Agreement shall in no event be considered a waiver of any Party of such provision. No waiver by a Party of any breach or default by the other Party shall operate as a waiver of any succeeding breach or other default or breach by such other Party.

10.13. **Further Acts.** In addition to the acts recited in this Agreement, the Parties agree to perform, or cause to be performed on the date of this Agreement, or thereafter, any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby. Each of the Parties agrees that it will execute and deliver all such documents and instruments as may be necessary and appropriate to effectuate the terms of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the date first written above.

AYRES-MILLENIA L.P.
a California Limited Partnership

By: _____
Name: Bruce D'Eliscu*
Title: President

CITY OF CHULA VISTA
a chartered municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: City Clerk

APPROVED AS TO FORM:

By: _____
Name: _____
Title: City Attorney

* Corporate Authority required for Signatory

EXHIBIT B – NOTE

PROMISSORY NOTE SECURED BY DEED OF TRUST

The undersigned, Ayres-Millenia L.P., a California limited partnership (“Borrower”), promises to pay to the City of Chula Vista, a chartered municipal corporation (“Lender”), the principal sum of Nine Hundred Three Thousand Five Hundred Fifty Five dollars (\$903,555.00), subject to reduction in accordance with Section 1 below, together with interest on the unpaid principal balance at an annual rate of three and one-half percent (3.5%), with all interest due and payable forty-eight (48) months from the date of the issuance of a temporary or final Certificate of Occupancy (the “Certificate of Occupancy”), whichever occurs first (the “Maturity Date”), as defined, described, and set forth in that certain Agreement for Deferral of Development Fees between Borrower and Lender (the “Deferral Agreement”), the terms of which are incorporated herein by this reference.

This promissory note (“Note”) shall be subject to the following additional provisions:

1. Fee Determination: The principal sum consists of the estimated Transportation Development Impact Fee (“TDIF”). Final determination of the TDIF Fees will be based on a traffic study that the Borrower shall pay for, have prepared, and submitted for approval to the City’s Director of Development Services after the Project has stabilized, but no later than the fourth year from the date of the issuance of the Certificate of Occupancy. Final TDIF Fees shall be the lesser of: (i) the trip generation determined in the traffic study and the rates in effect at the time of payment (ii) or Nine Hundred Three Thousand Five Hundred Fifty Five dollars (\$903,555.00), the fees assessed at time of Deferral Agreement execution, which shall also bear interest at the rate of three and one-half percent (3.5%) per annum. Failure to submit such traffic study and obtain the City’s approval prior to the expiration of the Maturity Date shall result in the entire principal sum as assessed above being imposed and become immediately due and payable.
2. Payment Schedule: Payment hereunder shall consist of principal and accrued interest, if any, payable in full as of the Maturity Date.
3. Interest: Interest on the unpaid balance shall begin to accrue on the date of the issuance of the Certificate of Occupancy for the Project, at an annual rate of two percent (2%), as defined in the Deferral Agreement.
4. Security: This Note is secured by a Deed of Trust of even date herewith, made by Borrower, as trustor, for the benefit of Lender, as beneficiary (the “Deed of Trust”), covering certain real property, as therein described. The Trust Deed shall be subordinate to any and all deeds of trust and mortgages executed by trustor securing financing for the

acquisition and improvement (including both construction and permanent financing) of the property.

5. Prepayment: This Note may be prepaid, at any time, in whole or in part, without premium or penalty, as long as any principal prepayment is accompanied by a payment of interest accrued to the date of prepayment of the amount prepaid.
6. Default: The occurrence of any of the following events shall constitute an “Event of Default” hereunder: (a) Borrower’s failure to pay any sum due under this Note when it becomes due and payable, (b) the occurrence of a default under the Deed of Trust and the Deferral Agreement, or (c) any breach of any other promise or obligation in this Note or in any other instrument now or after this date securing the indebtedness evidenced in this Note. During an Event of Default, and after written notice has been given therefor and such Event of Default remains uncured for 21 days after delivery of notice, Lender may, at its option, declare this Note (including, without limitation, all accrued interest) to be immediately due and payable, regardless of the Maturity Date.
7. Costs of Collection: If this Note is not paid when due, whether on the Maturity Date or on acceleration of this Note, Borrower promises to pay all collection costs, including, but not limited to, reasonable attorney fees and court costs, whether or not suit is filed on this Note.
8. Waiver of Presentment: Borrower and all persons liable or to become liable on this Note waive presentment, protest, and demand; notice of protest, demand, and dishonor; and any and all other notices or matters of a like nature.
9. Default Rate of Interest: During an Event of Default, the unpaid payment(s) causing such Event of Default shall bear interest at an annual rate equal to the lesser of (a) five percent (5%) or (b) the maximum interest rate allowed by law until such sum is paid in full.
10. Governing Law: This Note shall be governed by and construed in accordance with the laws of the State of California.
11. Usury. All agreements between Borrower and Lender are expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of this Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money to be advanced under this Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of the provisions of this Note or the Deed of Trust securing this Note or any other agreement pertaining to this Notice, after timely performance of such provisions is due, shall involve exceeding the limit of validity

prescribed by law that a court of competent jurisdiction deems applicable, then ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity. If, under any circumstances, Lender shall receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under this Note, such excess shall be refunded to Borrower. This provision shall control every other provision of all agreements between Borrower and Lender.

12. Time is of the Essence: Time is of the essence with respect to all obligations of Borrower under this Note.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Borrower has executed this Promissory Note Secured by Deed of Trust as of the date written below.

Date: _____

Borrower:

AYRES-MILLENIA L.P., a California
limited partnership

By: _____

Name: Bruce D'Eliscu

Title: President

EXHIBIT C – TRUST DEED

RECORDING REQUESTED BY:
City of Chula Vista

AND WHEN RECORDED MAIL
DOCUMENT AND TAX
STATEMENT TO:

City of Chula Vista – City Clerk
276 Fourth Avenue
Chula Vista, CA 91910

WITH COPY TO:
Ayres-Millenia L.P.
Attn: Bruce D’Eliscu
355 Bristol, Suite A
Costa Mesa, CA 92626

SPACE ABOVE THIS LINE FOR RECORDER’S USE ONLY

APN: 643-060-70-00

DEED OF TRUST

This Deed of Trust (this “Deed”) is made as of this _____ day of _____, _____, between Ayres-Millenia L.P., a California limited partnership, herein called “Trustor”, who address is 355 Bristol Street, #A, Costa Mesa, CA 92626, First American Title Insurance Company, a California corporation herein called “Trustee”, and the City of Chula Vista, a chartered municipal corporation, herein called “Beneficiary.”

THIS DEED OF TRUST IS AND SHALL BE SUBORDINATE TO ANY AND ALL DEEDS OF TRUST AND MORTGAGES EXECUTED BY TRUSTOR SECURING FINANCING FOR THE ACQUISITION AND IMPROVEMENT (INCLUDING BOTH CONSTRUCTION AND PERMANENT FINANCING) OF THE PROPERTY AND THE PROJECT. This Deed of Trust is and shall be subordinate to a deed of trust executed by Trustor in favor of Ayres Legacy Holdings, as Beneficiary, securing a construction loan for the Project. Trustor intends to replace that construction loan with permanent financing, the deed of trust and mortgage for which will be senior in priority to this Deed of Trust.

TRUSTOR IRREVOCABLY GRANTS, TRANSFERS, AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that certain real property in San Diego County, California, (the “Property”) having assessor’s parcel number 643-060-70-00, and more particularly described in Exhibit A, attached hereto and by this reference incorporated herein.

THIS DEED IS MADE FOR THE PURPOSE OF SECURING:

- A. Performance of each obligation, covenant and agreement of Trustor herein contained; and
- B. Payment of the indebtedness evidenced in one promissory note of even date herewith, and any extension and renewal thereof, in the principal sum of Nine Hundred Three Thousand Five Hundred Fifty Five dollars (\$903,555.00) (the "Note"), subject to reduction as set forth in Section 1 of the Note, executed by Trustor as "Borrower," in favor of Beneficiary or order.

TO PROTECT THE SECURITY OF THIS DEED, TRUSTOR AGREES:

1. To keep the Property in good condition and repair; not to remove or demolish any building, thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor (reserving the right to contest disputed claims); to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.
2. To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary subordinate to the rights of the beneficiaries and mortgagees of any and all deeds of trust and mortgages executed by trustor securing financing for the acquisition and improvement of the property. The amount collected under any fire other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.
4. To pay: before delinquency all taxes and assessments affecting the property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on the property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do, without notice to or demand upon Trustor, and without releasing Trustor from any obligation hereof, may: 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; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgement of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay such reasonable fees.

5. To pay immediately and upon demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.
6. That any award of damages in connection with any condemnation for public use of or injury to the property or any part thereof is hereby assigned and shall be paid to Beneficiary, subordinate to the rights of the beneficiaries and mortgagees of any and all deeds of trust and mortgages executed by trustor securing financing for the acquisition and improvement of the property, who may apply or release such monies received by it in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
7. That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
8. That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of the property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.
9. That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals of such reconveyance of any matters or facts shall be conclusive proof

of the truthfulness thereof. The grantee in such reconveyance may be described as the “the person or persons legally entitled thereto.” Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).

10. That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, after reasonable notice and opportunity to cure such default, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, 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 time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall delivery to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled hereto.

11. Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of each successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

12. That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein.
13. That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.
14. This Deed shall be governed by and construed in accordance with the laws of the State of California.
15. In any action or proceeding brought by either Trustor or Beneficiary seeking to enforce the provisions of this Deed, the prevailing party shall be entitled to reasonable attorneys' fees and court costs in addition to any other costs, damages, or remedies.
16. In the event that any provision of this Deed is declared by any court of competent jurisdiction or any administrative judge to be void or otherwise invalid, all of the other terms, conditions and provisions of this Deed shall remain in full force and effect to the same extent as if that part declared void or invalid had never been incorporated in this Deed and in such form, the remainder of this Deed shall continue to be binding upon Trustor and Beneficiary.

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

TRUSTOR:

AYRES-MILLENIA L.P., a California
limited partnership

By: _____
Name: Bruce D'Eliscu
Title: President

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which the certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On _____, 2019 before me, _____,
Notary Public, personally appeared Bruce D’Eliscu, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (SEAL)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That certain real property located in the City of Chula Vista, County of San Diego, State of California and more particularly described as follows:

LOT 20 OF CHULA VISTA TRACT NO. 09-03 OTAY RANCH MILLENIA (EASTERN URBAN CENTER), IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 16081, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DECEMBER 24, 2015.