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Page: 1 of 55 Fee: \$68.00

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RECORD AND RETURN TO:

Greenberg Traurig, LLP
3161 Michelson Drive, Suite 1000
Irvine, California 92612
Attention: Ronald D. Husdon, Esq.

1318-27002-005

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

ROPPONGI-TAHOE LP

(Trustor)

TO

CHICAGO TITLE INSURANCE COMPANY

(Trustee)

FOR THE BENEFIT OF

SUMITOMO MITSUI BANKING CORPORATION

(Beneficiary)

LOCATION OF PROPERTY:
4130 LAKE TAHOE BOULEVARD,
SOUTH LAKE TAHOE, CALIFORNIA



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THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust"), dated as of January 23, 2013 (hereinafter defined), by **ROPPONGI-TAHOE LP**, a California limited partnership, having a place of business at 2200 Pacific Coast Highway, Suite 301, Hermosa Beach, California 90254 ("Trustor") to **CHICAGO TITLE INSURANCE COMPANY**, having an address at 700 South Flower Street, Los Angeles, California 90017 ("Trustee"), for the benefit of **SUMITOMO MITSUI BANKING CORPORATION**, a Japanese banking corporation having a place of business at 1-1-2 Marunouchi, Chiyoda-ku, Tokyo 100-0005, Japan ("Beneficiary").

WITNESSETH:

To secure the payment of any and all of the obligations of Trustor to Beneficiary pursuant to that certain Continuing Guaranty dated as of January 23, 2013 (such Guaranty together with all extensions, renewals or modifications thereof, being hereinafter collectively called the "Guaranty") pursuant to which Trustor guaranteed payment of all present and future obligations of Ken Real Estate Lease Ltd., a Japanese corporation ("Debtor"), to Beneficiary under the certain Loan Agreement dated as of January 23, 2013 (the "Loan Agreement") among Beneficiary, Debtor, Trustor, Ken Corporation Ltd., RKN Holding, Inc., RTKN, Inc., RTKL, Inc., and Tahoe-KN, Inc. pursuant to which Beneficiary agreed to loan (the "Loan") the sum of Four Billion Nine Hundred Ten Million Japanese Yen (¥4,910,000,000) to Debtor, as evidenced by that certain Promissory Note dated as of January 23, 2013 (the "Note") (all indebtedness, interest, obligations, liabilities, fees, expenses and all other sums due hereunder, the Guaranty, the Loan Agreement, the Note and under any other Loan Document (as hereinafter defined) being collectively called the "Indebtedness"), Trustor hereby irrevocably grants, bargains, sells and conveys to Trustee IN TRUST, WITH POWER OF SALE, the following property and rights (which include the foregoing real property interests), whether now owned or held or hereafter acquired (collectively, the "Trust Property") and Trustor further grants to Trustee a security interest in the Trust Property:

GRANTING CLAUSE ONE

All right, title and interest of Trustor in and to the real property or properties described on Exhibit A hereto (collectively, the "Land").

GRANTING CLAUSE TWO

All additional lands, estates and development rights hereafter acquired by Trustor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental deed of trust or otherwise, be expressly made subject to the lien thereof (collectively, the "Additional Land").



GRANTING CLAUSE THREE

Any and all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located on the Land or any part thereof (collectively, the “Improvements”; the Land, the Additional Land and the Improvements hereinafter collectively referred to as the “Real Property”).

GRANTING CLAUSE FOUR

All easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, oil, gas and mineral rights, air rights and development rights, zoning rights, tax credits or benefits and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever in any way now or hereafter belonging, relating or pertaining to the Real Property or any part thereof and the reversion and reversions, remainder and remainders and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land or any part thereof to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both in law and in equity, of Trustor in, of and to the Real Property and every part and parcel thereof, with the appurtenances thereto.

GRANTING CLAUSE FIVE

All machinery, equipment, fixtures and other property of every kind and nature whatsoever owned by Trustor or in which Trustor has or shall have an interest (to the extent of such interest) now or hereafter located upon the Real Property or appurtenant thereto and usable in connection with the present or future operation and occupancy of the Real Property and all building equipment, materials and supplies of any nature whatsoever owned by Trustor or in which Trustor has or shall have an interest (to the extent of such interest) now or hereafter located upon the Real Property or appurtenant thereto or usable in connection with the present or future operation and occupancy of the Real Property, including but not limited to all heating, ventilating, air conditioning, plumbing, lighting, communications and elevator machinery, equipment and fixtures (hereinafter collectively called the “Equipment”) and the right, title and interest of Trustor in and to any of the Equipment which may be subject to any security agreements (as defined in the Uniform Commercial Code of the State of California (the “Uniform Commercial Code”)) superior, inferior or pari passu in lien to the lien of this Deed of Trust. In connection with Equipment which is leased to Trustor or which is subject to a lien or security interest which is superior to the lien of this Deed of Trust, this Deed of Trust shall also cover all right, title and interest of each Trustor in and to all deposits and the benefit of all payments now or hereafter made with respect to such Equipment.

GRANTING CLAUSE SIX

All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Real Property or any part thereof, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of



or in anticipation of the exercise of said right), or for a change of grade or for any other injury to or decrease in the value of the Real Property.

GRANTING CLAUSE SEVEN

All leases and subleases (including, without limitation, all guarantees thereof) and other agreements affecting the use, enjoyment and/or occupancy of the Real Property or any part thereof, now or hereafter entered into (including any use or occupancy arrangements created pursuant to Section 365(h) of Title 11 of the United States Code (the “Bankruptcy Code”) or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings or any assignment for the benefit of creditors in respect of any tenant or occupant of any portion of the Real Property), together with any extension or renewal of the same (the “Leases”) and all income, rents, issues, profits, revenues and proceeds including, but not limited to, all oil and gas or other mineral royalties and bonuses from the Real Property (including any payments received pursuant to Section 502(b) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings or any assignment for the benefit of creditors in respect of any tenant or occupant of any portion of the Real Property and all claims as a creditor in connection with any of the foregoing) (the “Rents”) and all proceeds from the sale, cancellation, surrender or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Indebtedness.

GRANTING CLAUSE EIGHT

All proceeds of and any unearned premiums on any insurance policies covering the Real Property or any part thereof including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Real Property or any part thereof.

GRANTING CLAUSE NINE

All tax refunds, including interest thereon, tax credits and tax abatements and the right to receive or benefit from the same, which may be payable or available with respect to the Real Property.

GRANTING CLAUSE TEN

The right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Real Property or any part thereof and to commence any action or proceeding to protect the interest of Beneficiary in the Real Property or any part thereof.

GRANTING CLAUSE ELEVEN

All accounts receivable, utility or other deposits, intangibles, contract rights, interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Real Property or any part thereof.



GRANTING CLAUSE TWELVE

All rights which Trustor now has or may hereafter acquire to be indemnified and/or held harmless from any liability, loss, damage, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements) relating to the Real Property or any part thereof.

GRANTING CLAUSE THIRTEEN

All plans and specifications, maps, surveys, studies, reports, contracts, subcontracts, service contracts, management contracts, franchise agreements (including, but not limited to the Hilton Agreement (as hereinafter defined)) and other agreements, franchises, trade names, trademarks, symbols, service marks, approvals, consents, permits, special permits, licenses and rights, whether governmental or otherwise, respecting the use, occupation, development, construction and/or operation of the Real Property or any part thereof or the activities conducted thereon or therein, or otherwise pertaining to the Real Property or any part thereof.

GRANTING CLAUSE FOURTEEN

All proceeds, products, offspring, rents and profits from any of the foregoing, including without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

WITH RESPECT to any portion of the Trust Property which is not real estate under the laws of the State of California, Trustor hereby grants, bargains, sells and conveys the same to Beneficiary and Trustor further grants to Trustee a security interest in such portion of the Trust Property for the purposes set forth hereunder and the references above to Trustee shall be deemed to be to Beneficiary with respect to such portion of the Trust Property and Beneficiary shall be vested with all rights, power and authority granted hereunder or by law to Trustee with respect thereto.

TO HAVE AND TO HOLD the above granted and described Trust Property unto and to the use and benefit of Trustee and its successors and assigns for the benefit of Beneficiary and the successors and assigns of Beneficiary forever.

IN TRUST, WITH POWER OF SALE, to secure the payment to Beneficiary of the Indebtedness at the time and in the manner provided for its payment in the Guaranty and in this Deed of Trust;

PROVIDED, HOWEVER, these presents are upon the express condition, if Trustor shall well and truly pay to Beneficiary the Indebtedness at the time and in the manner provided in the Guaranty and this Deed of Trust and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Guaranty and in the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void;



AND Trustor represents and warrants to and covenants and agrees with Beneficiary and Trustee as follows:

PART I - GENERAL PROVISIONS

1. **Payment of Indebtedness and Incorporation of Covenants, Conditions and Agreements.** Trustor shall pay the Indebtedness at the time and in the manner provided in the Guaranty, this Deed of Trust and the other Loan Documents. All the covenants, conditions and agreements contained in the Guaranty and the other Loan Documents are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein.

2. **Warranty of Title.** Trustor has good and marketable title to the Trust Property; Trustor has the right to deed, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, lease, assign, hypothecate and grant a security interest in the Trust Property; Trustor possesses an indefeasible fee estate in the Real Property; and Trustor owns the Trust Property free and clear of all liens, encumbrances and charges whatsoever except those exceptions shown in the title insurance policy insuring the lien of this Deed of Trust (this Deed of Trust and the liens, encumbrances and charges shown as exceptions in such title policy, hereinafter collectively referred to as the "Permitted Encumbrances"). Trustor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same to Beneficiary and Trustee against the claims of all persons whomsoever.

3. **Insurance; Casualty.**

(a) Trustor, at its sole cost and expense, shall keep the Trust Property insured during the term of this Deed of Trust for the mutual benefit of each Trustor, Trustee and Beneficiary against loss or damage by any peril covered by a standard "special perils" or "all risk of physical loss" insurance policy including, without limitation, riot and civil commotion, acts of terrorism, vandalism, malicious mischief, burglary, theft and mysterious disappearance in an amount (i) equal to at least one hundred percent (100%) of the then "full replacement cost" of the Improvements and Equipment, without deduction for physical depreciation and (ii) such that the insurer would not deem Trustor a coinsurer under such policies. The policies of insurance carried in accordance with this Paragraph 3 shall be paid annually in advance and shall contain the "Replacement Cost Endorsement" with a waiver of depreciation, and shall have a deductible no greater than \$100,000 unless so agreed by Beneficiary.

(b) Trustor, at its sole cost and expense, for the mutual benefit of each Trustor, Trustee and Beneficiary, shall also obtain and maintain during the term of this Deed of Trust the following policies of insurance:

(i) Flood insurance if any part of the Real Property is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount at least equal to the outstanding principal amount of the Note or the maximum limit of



coverage available with respect to the Improvements and Equipment under said Act, whichever is less.

(ii) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages.

(iii) Rental loss insurance in an amount equal to at least one hundred percent (100%) of the aggregate annual amount of all rents and additional rents payable by all of the tenants under the Leases (whether or not such Leases are terminable in the event of a fire or casualty), such rental loss insurance to cover rental losses for a period of at least one (1) year after the date of the fire or casualty in question. The amount of such rental loss insurance shall be increased from time to time during the term of this Deed of Trust as and when new Leases and renewal Leases are entered into in accordance with the terms of this Deed of Trust, to reflect all increased rent and increased additional rent payable by all of the tenants under such renewal Leases and all rent and additional rent payable by all of the tenants under such new Leases.

(iv) Insurance against loss or damage from explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements.

(v) Such other insurance (including, without limitation, earthquake insurance) as may from time to time be reasonably required by Beneficiary in order to protect its interests.

(c) All policies of insurance (the "Policies") required pursuant to this Paragraph 3 (i) shall be issued by an insurer satisfactory to Beneficiary, (ii) shall contain the standard New York mortgagee non-contribution clause naming Beneficiary as the person to which all payments made by such insurance company shall be paid, (iii) shall be maintained throughout the term of this Deed of Trust without cost to Beneficiary, (iv) shall be delivered to Beneficiary, (v) shall contain such provisions as Beneficiary deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Trustor, Trustee, Beneficiary nor any other party shall be a co-insurer under such Policies and that Beneficiary shall receive at least thirty (30) days prior written notice of any modification or cancellation and (vi) shall be satisfactory in form and substance to Beneficiary and shall be approved by Beneficiary as to amounts, form, risk coverage, deductibles, loss payees and insureds. All amounts recoverable under the Policies are hereby assigned to the Beneficiary. Not later than thirty (30) days prior to the expiration date of each of the Policies, Trustor will deliver to Beneficiary satisfactory evidence of the renewal of each of the Policies.

(d) If the Improvements shall be damaged or destroyed, in whole or in part, by fire or other casualty, Trustor shall give prompt notice thereof to Beneficiary and prior to the making of any repairs thereto. Following the occurrence of fire or other casualty, where the estimated cost of repair for the occurrence of the damage or destruction exceeds \$25,000.00 Trustor, regardless of whether insurance proceeds are payable under the Policies or, if paid, are made available to Trustor by Beneficiary, shall promptly proceed to cause the repair, alteration,



restoration, replacement or rebuilding of the Improvements as near as possible to their value, utility, condition and character prior to such damage or destruction. Such repairs, alterations, restoration, replacement and rebuilding are herein collectively referred to as the "Restoration". The Restoration shall be performed in accordance with the following provisions:

(i) Trustor shall procure, pay for and furnish to Beneficiary true copies of all required governmental permits, certificates and approvals with respect to the Restoration.

(ii) Trustor shall furnish Beneficiary, within ninety (90) days of the casualty, evidence reasonably satisfactory to Beneficiary of the cost to complete the Restoration.

(iii) If the Restoration involves structural work or the estimated cost to complete the Restoration exceeds five percent (5%) of the original principal amount of the Note, the Restoration shall be conducted under the supervision of an architect (the "Architect") selected by Trustor and approved by Beneficiary (which approval shall not be unreasonably withheld), and no such Restoration shall be made except in accordance with detailed plans and specifications, detailed cost estimates and detailed work schedules approved by Beneficiary (which approval shall not be unreasonably withheld).

(iv) If the estimated cost of the Restoration shall exceed ten percent (10%) of the original principal amount of the Note in the aggregate, at the request of Beneficiary, Trustor, before commencing any work, shall cause to be furnished to Beneficiary a surety bond or bonds, in form and substance reasonably satisfactory to Beneficiary, naming Trustor and Beneficiary as co-obligees, in an amount that is not less than the estimated cost of the Restoration, issued by a surety company or companies reasonably satisfactory to Beneficiary.

(v) The Restoration shall be prosecuted to completion with all due diligence and in an expeditious and first class workmanlike manner and in compliance with all laws and other governmental requirements, all permits, certificates and approvals, all requirements or fire underwriters and all insurance policies then in force with respect to the Real Property.

(vi) At all times when any work is in progress, Trustor shall maintain all insurance then required by law or customary with respect to such work, and, prior to the commencement of any work, shall furnish to Beneficiary duplicate originals or certificates of the policies therefor.

(vii) Upon completion of the Restoration, Trustor shall obtain (A) any occupancy permit which may be required for the Improvements and (B) all other governmental permits, certificates and approvals and all permits, certificates and approvals of fire underwriters which are required for or with respect to the Restoration, and shall furnish true copies thereof to Beneficiary.

(viii) An Event of Default (as hereinafter defined) shall be deemed to have occurred under this Deed of Trust if Trustor, after having commenced demolition or



construction of any Improvements, shall abandon such demolition or the construction work or shall fail to complete such demolition and construction within a reasonable time after the commencement thereof.

(e) Trustor and Beneficiary shall jointly adjust and settle all insurance claims, provided, however, if an Event of Default shall have occurred and be continuing, Beneficiary shall have the right to adjust and settle such claims without the prior consent of Trustor. In the event of any insured loss, the payment for such loss shall be made directly to Beneficiary. Any insurance proceeds payable under any of the Policies may, at the option of Beneficiary, be used in one or more of the following ways: (w) applied to the Indebtedness, whether such Indebtedness then be matured or unmatured (such application to be without prepayment fee or premium, except that if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred and remains uncured, then such application shall be subject to the applicable premium computed in accordance with the Note), (x) used to fulfill any of the covenants contained herein as the Beneficiary may determine, (y) used to replace or restore the property to a condition satisfactory to the Beneficiary, or (z) released to the Trustor for purposes of completing the Restoration. Any application of insurance proceeds to the Indebtedness shall be to the unpaid installments of principal due under the Note in the inverse order of their maturity, such that the regular payments under the Note shall not be reduced or altered in any manner.

(f) Insurance proceeds and any additional funds deposited by Trustor with Beneficiary shall constitute additional security for the Indebtedness. Trustor shall execute, deliver, file and/or record, at its expense, such documents and instruments as Beneficiary deems necessary or advisable to grant to Beneficiary a perfected, first priority security interest in the insurance proceeds and such additional funds. If Beneficiary elects to have the insurance proceeds applied to Restoration, (i) the insurance proceeds shall be, at Beneficiary's election, disbursed in installments by Beneficiary or by a disbursing agent ("Depository") selected by Beneficiary and whose fees and expenses shall be paid by Trustor in the manner provided in Paragraph 3(e) above and (ii) all costs and expenses incurred by Beneficiary in connection with the Restoration, including, without limitation, reasonable counsel fees and costs, shall be paid by Trustor.

4. Payment of Taxes, Etc.

(a) Trustor shall pay or cause to be paid all taxes, assessments, water rates and sewer rates and assessments, now or hereafter levied or assessed or imposed against the Trust Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including, without limitation, vault charges and license fees (collectively, "Other Charges") for the use of vaults, chutes and similar areas adjoining the Real Property, prior to delinquency or the assessment of any penalties or interest thereon. Trustor will deliver to Beneficiary, promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Taxes and Other Charges have been so paid and are not then delinquent. Trustor shall not suffer or permit any lien or charge (including, without limitation, any mechanic's lien) against all or any part of the Trust Property and Trustor shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Trust Property. Trustor shall promptly pay (or caused to be paid) for all utility



services provided to the Trust Property. In addition, Beneficiary may, at its option, retain the services of a firm to monitor the payment of Taxes, the cost of which shall be borne by Trustor.

(b) Notwithstanding the provisions of subparagraph (a) of this Paragraph 4, Trustor shall have the right to contest in good faith the amount or validity of any such Taxes, liens or Other Charges (including, without limitation, tax liens and mechanics' liens) referred to in subparagraph (a) above by appropriate legal proceedings and in accordance with all applicable law, after notice to, but without cost or expense to, Beneficiary, provided that (i) no Event of Default or event that, with the passage of time or giving of notice or both, would constitute a default hereunder, under the Guaranty or other Loan Documents has occurred and is continuing, (ii) Trustor pays (or caused to be paid) such Taxes, liens or Other Charges prior to delinquency or the assessment of any penalties or interest thereon, unless Trustor delivers evidence satisfactory to Beneficiary that, as a result of Trustor's contest, Trustor's obligation to pay such Taxes, liens or Other Charges has been deferred by the appropriate governmental authority, in which event, Trustor may defer such payment of such Taxes, liens or Other Charges until the date specified by such governmental authority, (iii) such contest shall be promptly and diligently prosecuted by and at the expense of Trustor, (iv) Beneficiary shall not thereby suffer any civil penalty, or be subjected to any criminal penalties or sanctions, (v) such contest shall be discontinued and such Taxes, liens or Other Charges promptly paid if at any time all or any part of the Trust Property shall be in imminent danger of being foreclosed, sold, forfeited or otherwise lost or if the title, lien and security interest created by this Deed of Trust or the priority thereof shall be in imminent danger of being impaired, (vi) Trustor shall have set aside adequate reserves (in Beneficiary's judgment) for the payment of such Taxes, liens or Other Charges, together with all interest and penalties thereon and (vii) Trustor shall have furnished such security as may be required in the proceeding or as may be requested by Beneficiary, to insure the payment of any such Taxes, liens or Other Charges, together with all interest and penalties thereon.

5. INTENTIONALLY OMITTED

6. Condemnation. Trustor shall promptly give Beneficiary and Trustee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Beneficiary and Trustee copies of any and all papers served in connection with such proceedings. Following the occurrence of a condemnation, Trustor, regardless of whether an award is available, shall promptly proceed to restore, repair, replace or rebuild the Improvements to the extent practicable to be of at least equal value and of substantially the same character as prior to such condemnation, all to be effected in accordance with applicable law. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Trustor shall continue to pay the Indebtedness at the time and in the manner provided for its payment in the Guaranty, in this Deed of Trust and the other Loan Documents and the Indebtedness shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Beneficiary to the discharge of the Indebtedness. Trustor shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Trustor, to be paid directly to Beneficiary. Beneficiary may, at Beneficiary's election, use the award in any one or more of the following ways: (a) apply any such award or payment (for purposes of this Paragraph 6, the



award or payment that may be made in any condemnation or eminent domain proceeding shall mean the entire award allocated to Trustor in any capacity) to the discharge of the Indebtedness whether or not then due and payable (such application to be without prepayment fee or premium, except that if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the applicable premium computed in accordance with the Note), (b) use the same or any part thereof to fulfill any of the covenants contained herein as the Beneficiary may determine, (c) use the same or any part thereof to replace or restore the Trust Property to a condition satisfactory to the Beneficiary, or (d) release the same to the Trustor. If the Trust Property is sold, through foreclosure or otherwise, prior to the receipt by Beneficiary of such award or payment, Beneficiary shall have the right, whether or not a deficiency judgment on the Guaranty shall have been sought, recovered or denied, to receive said award or payment or a portion thereof sufficient to pay the Indebtedness.

7. Leases and Rents.

(a) Trustor does hereby absolutely and unconditionally assign to Beneficiary its right, title and interest in all current and future Leases and Rents and all proceeds from the sale, cancellation, surrender or other disposition of the Leases, it being intended by Trustor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Beneficiary shall not be construed to bind Beneficiary to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise to impose any obligation upon Beneficiary. Trustor agrees to execute and deliver to Beneficiary such additional instruments in form and substance satisfactory to Beneficiary, as may hereafter be requested by Beneficiary to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Paragraph 7, Beneficiary grants to Trustor a revocable license to operate and manage the Trust Property and to collect the Rents. Trustor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due (i) on the Indebtedness and (ii) for the repair and maintenance of the Trust Property, in trust for the benefit of Beneficiary for use in the payment of such sums. The grant of the foregoing license is subject to the provisions of Paragraph 1 of the separate Assignment of Agreements, Permits and Contracts, dated as of even date herewith, granted by the Trustor as "Assignor" to the Beneficiary as "Assignee" with respect to the Trust Property ("Assignment"). Upon the occurrence of an Event of Default, the license granted to Trustor herein shall be automatically revoked and Beneficiary shall immediately be entitled to possession of all Rents, whether or not Beneficiary enters upon or takes control of the Trust Property. Beneficiary is hereby granted and assigned by Trustor the right, at its option, upon the revocation of the license granted herein to enter upon the Trust Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Indebtedness in such priority and proportion as Beneficiary in its discretion shall deem proper. It is further the intent of Trustor and Beneficiary that the Rents hereby absolutely assigned are no longer, during the term of this Deed of Trust, property of Trustor or property of any estate of Trustor as defined in Section 541 of the Bankruptcy Code and shall not constitute collateral, cash or otherwise, of Trustor. The term "Rents" as used herein shall mean the gross rents without deduction or offsets of any kind.



(b) All Leases executed after the date of this Deed of Trust shall provide that they are subordinate to this Deed of Trust and that the lessee agrees to attorn to Beneficiary; provided, however, that nothing herein shall affect Beneficiary's right to designate from time to time any one or more Leases as being superior to this Deed of Trust and Trustor shall execute and deliver to Beneficiary and shall cause to be executed and delivered to Beneficiary from each tenant under such Lease any instrument or agreement as Beneficiary may deem necessary to make such Lease superior to this Deed of Trust. Upon request, Trustor shall promptly furnish Beneficiary with executed copies of all Leases.

(c) Trustor shall not, without the prior consent of Beneficiary (such consent not to be unreasonably withheld), (i) lease all or any part of the Trust Property, (ii) alter or change the terms of any Lease or cancel or terminate, abridge or otherwise modify the terms of any Lease, (iii) consent to any assignment of or subletting under any Lease not in accordance with its terms, (iv) cancel, terminate, abridge or otherwise modify any guaranty of any Lease or the terms thereof, (v) collect or accept prepayments of installments of Rents for a period of more than one (1) month in advance or (vi) further assign the whole or any part of the Leases or the Rents.

(d) With respect to each Lease, Trustor shall (i) observe and perform each and every provision thereof on the lessor's part to be fulfilled or performed under each Lease and not do or permit to be done anything to impair the value of the Leases as security for the Indebtedness, including surrender or voluntary termination of any Lease, (ii) promptly send to Beneficiary copies of all notices of default which Trustor shall send or receive thereunder, (iii) enforce all of the terms, covenants and conditions contained in such Lease upon the lessee's part to be performed, short of termination thereof, (iv) execute and deliver, at the request of Beneficiary, all such further assurances, confirmations and assignments in connection with the Trust Property as Beneficiary shall, from time to time, require and (v) upon request, furnish Beneficiary with executed copies of all Leases. Upon the occurrence of any Event of Default under this Deed of Trust, Trustor shall pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of the Trust Property or part of the Trust Property as may be occupied by Trustor or any one Trustor and upon default in any such payment Trustor shall vacate and surrender possession of the Trust Property to Beneficiary or to such receiver and, in default thereof, Trustor may be evicted by summary proceedings or otherwise.

(e) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Trustor and, if cash, shall be deposited by Trustor at such commercial or savings bank or banks as may be reasonably satisfactory to Beneficiary. Any bond or other instrument which Trustor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Beneficiary, shall, if permitted pursuant to any legal requirements, name Beneficiary as payee or beneficiary thereunder (or at Beneficiary's option, be fully assignable to Beneficiary) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Beneficiary. Trustor shall, upon request, provide Beneficiary with evidence reasonably satisfactory to Beneficiary of Trustor's compliance with the foregoing. Following the



occurrence and during the continuance of any Event of Default, Trustor shall, upon Beneficiary's request, if permitted by any applicable legal requirements, turn over to Beneficiary the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Trust Property, to be held by Beneficiary subject to the terms of the Leases.

8. Maintenance and Use of Trust Property. Trustor shall, at its sole cost and expense, keep and maintain the Trust Property, including, without limitation, parking lots and recreational and landscaped portions thereof, if any, in good order and condition. The Improvements and the Equipment shall not be diminished, removed, demolished or materially altered (except for normal replacement of Equipment) and Trustor shall not erect any new buildings, structures or building additions on the Trust Property without the prior consent of Beneficiary. So long as no Event of Default shall have occurred and be continuing, Trustor shall have the right at any time and from time to time after providing Beneficiary with written notice to make or cause to be made reasonable alterations of and additions to the Trust Property or any part thereof, provided that any alteration or addition (i) shall not change the general character of the Trust Property or reduce the fair market value thereof below its value immediately before such alteration or addition, or impair the usefulness of the Trust Property, (ii) is effected with due diligence, in a good and workmanlike manner and in compliance with all applicable laws and with all provisions of any insurance policy covering or applicable to the Trust Property and all requirements of the issuers thereof, (iii) is promptly and fully paid for, or caused to be paid for, by Trustor, (iv) the estimated cost of such alteration or addition does not exceed five percent (5%) of the original principal amount of the Note, (v) is made under the supervision of a qualified architect or engineer and (vi) shall not violate the terms of any Leases or the Hilton Agreement, and (vii) upon completion, Trustor shall provide Beneficiary with (aa) a satisfactory final improvement survey if the footprint of the building has been altered, (bb) any final occupancy permit which may be required for the Improvements, (cc) all other governmental permits, certificates and approvals and all other permits, certificates and approvals of fire underwriters which are required with respect to the alterations and additions and the use and occupancy thereof, and shall furnish true copies thereof to Beneficiary, and (dd) final lien waivers from all contractors, subcontractors and materialmen. Trustor shall promptly comply with all laws, orders and ordinances affecting the Trust Property, or the use thereof, provided, however, that nothing in the foregoing clause shall require Trustor to comply with any such law, order or ordinance so long as Trustor shall in good faith, after notice to, but without cost or expense to, Beneficiary, contest the validity of such law, order or ordinance by appropriate legal proceedings and in accordance with all applicable law, which proceedings must operate to prevent (i) the enforcement thereof, (ii) the payment of any fine, charge or penalty, (iii) the sale or forfeiture of the Trust Property or any part thereof, (iv) the lien of this Deed of Trust and the priority thereof from being impaired, (v) the imposition of criminal liability on Beneficiary and (vi) the imposition, unless stayed, of civil liability on Beneficiary; provided that during such contest Trustor shall, at the option of Beneficiary, provide cash, bonds or other security satisfactory to Beneficiary, indemnifying and protecting Beneficiary against any liability, loss or injury by reason of such non-compliance or contest, and provided further, that such contest shall be promptly and diligently prosecuted by and at the expense of Trustor. Trustor shall promptly, at its sole cost and expense, repair, replace or rebuild any part of the Trust Property which may be destroyed by any casualty, or become damaged, worn or dilapidated. Trustor shall not commit any waste at the Trust Property. Trustor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private



restriction, limiting or defining the uses which may be made of the Trust Property or any part thereof without the prior written consent of Beneficiary, which consent shall not be unreasonably conditioned, withheld or delayed. If under applicable zoning provisions the use of all or any portion of the Trust Property is or shall become a nonconforming use, Trustor will not cause or permit such nonconforming use to be discontinued or abandoned without the express consent of Beneficiary. Trustor covenants and agrees that it shall operate the Trust Property at all times as a first-class hotel.

9. Transfer or Encumbrance of the Trust Property or Interests in the Trustor; Other Indebtedness.

(a) Trustor acknowledges that Beneficiary has examined and relied on the creditworthiness and experience of Trustor in owning and operating properties such as the Trust Property in agreeing to issue the Loan, and that Beneficiary will continue to rely on Trustor's ownership of the Trust Property as a means of maintaining the value of the Trust Property as security for repayment of the Indebtedness. Trustor acknowledges that Beneficiary has a valid interest in maintaining the value of the Trust Property so as to ensure that, should Trustor default in the repayment of the Indebtedness, Beneficiary can recover the Indebtedness by a sale of the Trust Property. Trustor shall not, without the prior written consent of Beneficiary, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer in trust or otherwise the Trust Property or any part thereof or interest therein, or permit the Trust Property or any part thereof to be sold, conveyed, alienated, deeded, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, deed, encumbrance, pledge or transfer within the meaning of this Paragraph 9 shall be deemed to include (i) an installment sales agreement wherein Trustor agrees to sell the Trust Property or any part thereof for a price to be paid in installments, (ii) an agreement by Trustor leasing all or a substantial part of the Trust Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Trustor's right, title and interest in and to any Leases or any Rents, (iii) if Trustor, any guarantor, any indemnitor of environmental liabilities or any general partner or managing member of Trustor or of any such guarantor or indemnitor is a corporation, the voluntary or involuntary sale, assignment, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than ten percent (10%) of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation, (iv) if Trustor, any guarantor, any indemnitor of environmental liabilities or any general partner or managing member of Trustor or any such guarantor or indemnitor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of the partnership interest of any general partner, managing partner or limited partner or the transfer of the interest of any joint venturer or member, and (v) if Trustor, any guarantor or any indemnitor of environmental liabilities, is an entity, whether one of the above-mentioned entities or not, any change in the ownership or control of such entity, any merger, consolidation or dissolution or syndication affecting such entity, or the transfer, sale, assignment or pledge of any interest in such entity or in any person,



directly or indirectly, controlling such entity or in any general partner or managing member thereof, whether at one time or in a series of related transactions.

(c) Beneficiary shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Indebtedness immediately due and payable upon Trustor's sale, conveyance, alienation, deed, encumbrance, pledge or transfer of the Trust Property without Beneficiary's consent. This provision shall apply to every sale, conveyance, alienation, deed, encumbrance, pledge or transfer in trust or otherwise of the Trust Property regardless of whether voluntary or not, or whether or not Beneficiary has consented to any previous sale, conveyance, alienation, deed, encumbrance, pledge or transfer of the Trust Property.

(d) Beneficiary's consent to a sale, conveyance, alienation, deed, encumbrance, pledge or transfer in trust or otherwise of the Trust Property shall not be deemed to be a waiver of Beneficiary's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, deed, encumbrance, pledge or transfer in trust or otherwise of the Trust Property made in contravention of this Paragraph 9 shall be null and void and of no force and effect.

(e) Trustor agrees to bear and shall pay or reimburse Beneficiary on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Beneficiary in connection with the review, approval and documentation of any such sale, conveyance, alienation, deed, encumbrance, pledge or transfer in trust or otherwise.

(f) Trustor has not incurred and will not incur any indebtedness, secured or unsecured, other than the Guaranty and debt (i) incurred in the ordinary course of business to vendors and suppliers of services to the Trust Property, (ii) not secured by the Trust Property, or any portion thereof, or by interests in the Trustor or any constituent entity thereof, and (iii) not accompanied by any rights to control or to obtain control of the Trustor or any constituent entity thereof. No indebtedness other than the Indebtedness may be secured (subordinate or pari passu) by the Trust Property, or any portion thereof, or by interests in the Trustor or any constituent entity thereof.

10. Estoppel Certificates.

(a) Trustor, within ten (10) business days after request by Beneficiary, shall furnish Beneficiary from time to time with a statement, duly acknowledged and certified, setting forth (i) the amount of the original amount of the Note, (ii) the unpaid amount of the Note, (iii) the rate of interest in the Note, (iv) the date through which all installments of interest, commitment fees and/or principal have been paid, (v) any offsets or defenses to the payment of the Indebtedness, if any, (vi) that the Note and this Deed of Trust have not been modified or if modified, giving particulars of such modification and (vii) such other information as shall be requested by Beneficiary.

(b) Trustor, after request by Beneficiary, will obtain and furnish (within the time periods, if any, provided in the applicable Leases or if no time period is so



specified, within ten (10) business days after request) Beneficiary from time to time with estoppel certificates from any tenants under then existing Leases, which certificates shall be in form and substance as required by such Leases, or if not required, then in form and substance reasonably satisfactory to Beneficiary.

11. **No Cooperative or Condominium.** Trustor represents and warrants that the Trust Property has not been subjected to a cooperative or condominium form of ownership. Trustor hereby covenants and agrees that it will not file a declaration of condominium, map or any other document having the effect of subjecting the Trust Property to a condominium or cooperative form of ownership.

12. **Changes in the Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Deed of Trust which deducts the Indebtedness or any portion thereof from the value of the Trust Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the amount of the Loan or Beneficiary's interest in the Trust Property, Trustor will pay such tax, with interest and penalties thereon, if any. In the event Beneficiary is advised by counsel chosen by it that the payment of such tax or interest and penalties by Trustor would be unlawful or taxable to Beneficiary or unenforceable or provide the basis for a defense of usury, then in any such event, Beneficiary shall have the option, by notice of not less than sixty (60) days, to declare the Indebtedness immediately due and payable without prepayment fee or premium, except that if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, the applicable premium computed in accordance with the Note shall apply.

13. **No Credits on Account of the Indebtedness.** Trustor will not claim or demand or be entitled to any credit or credits on account of the Indebtedness for any part of the Taxes assessed against the Trust Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Trust Property, or any part thereof, by reason of this Deed of Trust or the Indebtedness. In the event such claim, credit or deduction shall be required by law, Beneficiary shall have the option, by notice of not less than sixty (60) days, to declare the Indebtedness immediately due and payable without prepayment fee or premium, except that if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, the applicable premium computed in accordance with the Note shall apply.

14. **Documentary Stamps.** If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Guaranty or this Deed of Trust, or impose any other tax or charge on the same, Trustor will pay for the same, with interest and penalties thereon, if any.

15. **Right of Entry.** Beneficiary and its agents shall have the right to enter and inspect the Trust Property at any time during reasonable business hours upon twenty-four (24) hour notice to Trustor, except in the case of an emergency, in which event Beneficiary and its agents may enter and inspect the Trust Property at any time.



16. INTENTIONALLY OMITTED

17. Performance of Other Agreements. Trustor shall observe and perform each and every term to be observed or performed by such Trustor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Trust Property.

18. Representations and Covenants Concerning Loan Documents. Trustor represents, warrants and covenants as follows:

(a) The Guaranty, this Deed of Trust and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor would the operation of any of the terms of the Guaranty, this Deed of Trust and the other Loan Documents, or the exercise of any right thereunder, render this Deed of Trust unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(b) To Trustor's actual knowledge all certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy of the Trust Property, have been obtained and are in full force and effect. The Trust Property is free of material damage and is in good repair, and there is no proceeding pending for the total or partial condemnation of, or affecting, the Trust Property.

(c) To Trustor's actual knowledge all of the Improvements which were included in determining the appraised value of the Trust Property lie wholly within the boundaries and building restriction lines of the Trust Property, and no improvements on adjoining properties encroach upon the Trust Property, and no easements or other encumbrances upon the Land encroach upon any of the Improvements, so as to affect the value or marketability of the Trust Property except those which are insured against by title insurance. To Trustor's actual knowledge all of the Improvements comply with all requirements of applicable zoning and subdivision laws and ordinances in all material respects.

(d) The Trust Property is not subject to any Leases other than such Leases as may be described in a rent roll delivered to Beneficiary on or before the date hereof in connection with this Deed of Trust and other than day to day occupancies of hotel guests in the usual and customary course of Trustor's business. No person has any possessory interest in the Trust Property or right to occupy the same except under and pursuant to the provisions of the Leases or the Permitted Exceptions or except for day to day occupancies of hotel guests in the usual and customary course of Trustor's business. Except as otherwise disclosed in writing to Beneficiary, any current Leases are in full force and effect and there are no defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. Except as otherwise disclosed in writing to Beneficiary, any presently existing Leases are subordinate to this Deed of Trust.

(e) To Trustor's actual knowledge the Trust Property and the Leases are in compliance with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Trust Property.



(f) There has not been to Trustor's actual knowledge and shall never be committed by Trustor or any other person in occupancy of or involved with the operation or use of the Trust Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Trust Property or any part thereof or any monies paid in performance of Trustor's obligations under any of the Loan Documents. Trustor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture.

(g) Other than Trustor's agreement entered into in connection with Embassy Suites Management LLC, there is no management or similar agreement between Trustor and any other person entity relating to the management or operation of the Trust Property, and Trustor is solely responsible for management and operation of the Trust Property. Trustor shall not enter into any agreement relating to the management or operation of the Trust Property without the express written consent of Beneficiary, which consent shall not be unreasonably withheld. If at any time Beneficiary consents to the appointment of a manager of the Trust Property, such new manager and Trustor shall, as a condition of Beneficiary's consent, execute a Manager's Consent and Subordination of Management Agreement in the form then used by Beneficiary.

(h) Improper Financial Transactions.

(i) Trustor is, and shall remain at all times, in full compliance with all applicable laws and regulations of the United States of America that prohibit, regulate or restrict financial transactions, and any amendments or successors thereto and any applicable regulations promulgated thereunder (collectively, the "Financial Control Laws"), including but not limited to those related to money laundering offenses and related compliance and reporting requirements (including any money laundering offenses prohibited under the Money Laundering Control Act, 18 U.S.C. Sections 1956, 1957 and the Bank Secrecy Act, 31 U.S.C. Sections 5311 *et seq.*) and the Foreign Assets Control Regulations, 31 C.F.R. Section 500 *et seq.*

(ii) Trustor represents and warrants that: (a) Trustor is not a Barred Person (hereinafter defined); (b) Trustor is not owned or controlled, directly or indirectly, by any Barred Person; (c) no tenant of the Trust Property or the property manager for the Trust Property is a Barred Person and (d) Trustor is not acting, directly or indirectly, for or on behalf of any Barred Person.

(iii) Trustor represents and warrants that it understands and has been advised by legal counsel on the requirements of the Financial Control Laws.

(iv) Under any provision of this Deed of Trust or any of the other Loan Documents where the Beneficiary shall have the right to approve or consent to any particular action, including without limitation any (a) sale, transfer, assignment of the Trust Property or of any direct or indirect ownership interest in Trustor, (b) leasing of the Trust Property, or any portion thereof, or (c) incurring of additional financing secured by Trust Property, or any portion thereof or by any direct or indirect ownership interest in the Trustor,



Beneficiary shall have the right to withhold such approval or consent, in its sole discretion, if the granting of such approval or consent could be construed as a violation of any of the Financial Control Laws.

(v) Trustor covenants and agrees that it will upon request provide Beneficiary with (or cooperate with Beneficiary in obtaining) information required by Beneficiary for purposes of complying with any Financial Control Laws.

As used in this Deed of Trust, the term "Barred Person" shall mean (i) any person, group or entity named as a "Specially Designated National and Blocked Person" or as a person who commits, threatens to commit, supports, or is associated with terrorism as designated by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), (ii) any person, group or entity named in the lists maintained by the United States Department of Commerce (Denied Persons and Entities), (iii) any government or citizen of any country that is subject to a United States Embargo identified in regulations promulgated by OFAC and (iv) any person, group or entity named as a denied or blocked person or terrorist in any other list maintained by any agency of the United States government.

19. Hilton Agreement.

(a) Reference is made to that certain Franchise License Agreement between HLT Existing Franchise Holding LLC as successor in interest to Promus Hotels, Inc. and Trustor dated as of November 14, 2000 (the foregoing as the same may now or hereinafter be amended, restated or otherwise modified is called the "Hilton Agreement"). Trustor does hereby absolutely and unconditionally assign to Beneficiary its right, title and interest in the Hilton Agreement, it being intended by Trustor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Beneficiary shall not be construed to bind Beneficiary to the performance of any of the covenants, conditions or provisions contained in any such Hilton Agreement or otherwise to impose any obligation upon Beneficiary. Trustor agrees to execute and deliver to Beneficiary such additional instruments in form and substance satisfactory to Beneficiary, as may hereafter be requested by Beneficiary to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Deed of Trust, Beneficiary grants to Trustor a revocable license to operate and manage the Trust Property. The grant of the foregoing license is subject to the provisions of the Assignment. Upon the occurrence of an Event of Default, the license granted to Trustor herein shall be automatically revoked.

(b) Trustor represents and warrants that (i) the Hilton Agreement is in full force and effect and has not been amended or modified; (ii) neither Trustor or Hilton is in default of their respective obligations under the Hilton Agreement; (iii) Trustor has not received any notice or communication from Hilton which either (1) terminates the Hilton Agreement, or (2) alleges that Trustor is in default thereunder; and (iv) Trustor is not aware of any event or occurrence which with the passage of time or the giving of notice would constitute a default by Trustor under the Hilton Agreement.

(c) Trustor shall not, without the prior consent of Beneficiary (which shall not be unreasonably withheld), (i) alter or change the terms of the Hilton Agreement or



cancel or terminate, abridge or otherwise modify the terms of the Hilton Agreement, (ii) assign or otherwise transfer its interests in the Hilton Agreement; or (iii) consent to any assignment by Hilton of its rights or obligations under the Hilton Agreement.

(d) With respect to the Hilton Agreement, Trustor shall (i) observe and perform each and every provision thereof on the Trustor's part to be fulfilled or performed under the Hilton Agreement and not do or permit to be done anything to impair the value of the Hilton Agreement as security for the Indebtedness, including surrender or voluntary termination of the Hilton Agreement, (ii) promptly send to Beneficiary copies of all notices of default which Trustor shall send or receive thereunder, (iii) enforce all of the terms, covenants and conditions contained in the Hilton Agreement upon Hilton's part to be performed, short of termination thereof, and (iv) execute and deliver, at the request of Beneficiary, all such further assurances, confirmations and assignments in connection with the Trust Property as Beneficiary shall, from time to time, require.

20. INTENTIONALLY OMITTED.

21. Events of Default; Remedies. Each of the following events shall constitute an "Event of Default" hereunder:

(a) if (i) an "Event of Default" shall occur under the Guaranty or the other Loan Documents, or (ii) the entire indebtedness arising under the Note is not paid in full on or before January 31, 2023 (the "Maturity Date");

(b) if any Taxes payable directly to the billing authority by Trustor are not paid before interest becomes payable on the amount due or a penalty is assessed (provided that the foregoing provisions of this clause (b) shall be subject to the right to contest Taxes granted to Trustor in Paragraph 4(b) of this Deed of Trust, but only for so long as the conditions in Paragraph 4(b) of this Deed of Trust remain satisfied);

(c) if the Policies are not kept in full force and effect and are not delivered to Beneficiary when required hereunder, or if the Policies are not delivered to Beneficiary within ten (10) days after request by Beneficiary;

(d) if any of the provisions of Paragraphs 7, 9, 19 or 39 herein are violated or not complied with;

(e) if any of the events described in Paragraph 41 shall occur;

(f) if at any time any representation or warranty of Trustor or any guarantor made herein or in any guaranty, agreement, certificate, report, affidavit, owner's affidavit, financial statement or other instrument furnished to Beneficiary shall be false or misleading in any respect;

(g) if any beneficiary under a deed of trust on the Trust Property, whether superior or subordinate to this Deed of Trust (i) demands payment in full or otherwise accelerates any indebtedness of Trustor or (ii) otherwise commences the exercise of any remedy



available to such party under any such deed of trust or other document related to such deed of trust;

(h) INTENTIONALLY OMITTED

(i) if a default occurs under the Hilton Agreement or any provisions of this Deed of Trust relating to the Hilton Agreement or if Hilton terminates the Hilton Agreement;

(j) INTENTIONALLY OMITTED;

(k) if Trustor fails to cure promptly any violation of any law or ordinance affecting the Trust Property (provided that the foregoing provisions of this subparagraph (k) shall be subject to any right to contest such violation specifically granted to Trustor in Paragraph 8 of this Deed of Trust);

(l) if a default by Trustor under any of the other terms, covenants or conditions of the Guaranty, this Deed of Trust or any other Loan Document shall occur and such default shall not have been cured within thirty (30) days after notice from Beneficiary, provided that if such default is not susceptible of being cured within such thirty (30) day period and Trustor shall have commenced the cure of such default within such thirty (30) day period and thereafter diligently pursues such cure to completion, then such thirty (30) day period shall be extended for a period of ninety (90) days from the occurrence of the default, provided, further, that the notice and grace period set forth in this subparagraph (l) shall not apply to any other Event of Default expressly set forth in this Paragraph 21 or to any other Event of Default defined as such in any other Loan Document or to any other covenant or condition with respect to which a grace period is expressly provided elsewhere; or

(m) if any of the provisions of Paragraphs 42(d) and/or Paragraph 42(f) are violated or not complied with, and/or if any representation or warranty in Paragraph 42(b) and/or 42(c) shall prove false or misleading in any respect and/or if any of the events described in Paragraph 42(e) shall occur.

Upon the occurrence of any Event of Default, the Indebtedness shall immediately become due at the option of Beneficiary.

Upon the occurrence of any Event of Default, Trustor shall pay interest on the entire unpaid balance of the Indebtedness, as provided for in the Note.

Upon the occurrence of any Event of Default, Beneficiary may, to the extent permitted under applicable law, elect to treat the fixtures included in the Trust Property either as real property or as personal property, or both, and proceed to exercise such rights as apply thereto. With respect to any sale of real property included in the Trust Property made under the powers of sale herein granted and conferred, Beneficiary may, to the extent permitted by applicable law, include in such sale any fixtures included in the Trust Property and relating to such real property.



22. Additional Remedies.

(a) Upon the occurrence of any Event of Default, Beneficiary may take such action, without notice or demand, as it shall deem advisable to protect and enforce its rights against Trustor and in and to the Trust Property or any part thereof or interest therein, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary to (i) enter into or upon the Real Property, either personally or by its agents, nominees or attorneys and dispossess Trustor and its agents and servants therefrom, and thereupon Beneficiary may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Trust Property and conduct the business thereat, (B) complete any construction on the Trust Property in such manner and form as Beneficiary deems advisable, (C) make alterations, additions, renewals, replacements and improvements to or on the Trust Property, (D) exercise all rights and powers of Trustor with respect to the Trust Property, whether in the name of Trustor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Trust Property and every part thereof and (E) apply the receipts from the Trust Property to the payment of the Indebtedness, after deducting therefrom all expenses (including reasonable attorneys' fees and expenses) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Trust Property, as well as just and reasonable compensation for the services of Beneficiary and its counsel, agents and employees, or (ii) institute proceedings for the complete foreclosure of this Deed of Trust in which case the Trust Property may be sold for cash or upon credit in one or more parcels, or (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Deed of Trust for the balance of the Indebtedness not then due, or (iv) sell or cause Trustee to sell for cash or upon credit the Trust Property or any part thereof and all or any part of any estate, claim, demand, right, title and interest of Trustor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Trust Property, this Deed of Trust shall continue as a lien on the remaining portion of or estate in the Trust Property, or (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Guaranty or any other Loan Document, or (vi) recover judgment on the Guaranty either before, during or after any proceedings for the enforcement of this Deed of Trust or (vii) pursue such other remedies as Beneficiary may have under applicable law.

(b) The purchase money proceeds or avails of any sale made under or by virtue of this Paragraph 22, together with any other sums which then may be held by Beneficiary under this Deed of Trust, whether under the provisions of this Paragraph 22 or otherwise, shall be applied as follows:



First: To the payment of the costs and expenses of any such sale, including reasonable compensation to Beneficiary and Trustee, their agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Beneficiary or Trustee under this Deed of Trust, together with interest as provided herein on all advances made by Beneficiary or Trustee and all taxes or assessments, except any taxes, assessments or other charges subject to which the Trust Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Guaranty for principal, together with any and all applicable interest, fees and late charges.

Third: To the payment of any other sums required to be paid by Trustor pursuant to any provision of this Deed of Trust, the Guaranty, or any other Loan Document.

Fourth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

Beneficiary and any receiver of the Trust Property, or any part thereof, shall be liable to account for only those rents, issues and profits actually received by it.

(c) Beneficiary may adjourn from time to time any sale by Trustee to be made under or by virtue of this Deed of Trust by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Beneficiary, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by Beneficiary or Trustee under or by virtue of this Paragraph 22, Beneficiary, Trustee, or an officer of any court empowered to do so, as the case may be, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Beneficiary or Trustee, as the case may be, is hereby irrevocably appointed the true and lawful attorney of Trustor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Trust Property and rights so sold and for that purpose Beneficiary or Trustee, as the case may be, may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Trustor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this Paragraph 22, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Trustor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Trustor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Trustor.

(e) In the event of any sale made under or by virtue of this Paragraph 22 (whether made under the power of sale herein granted or under or by virtue of



judicial proceedings or of a judgment or decree of foreclosure and sale) the entire Indebtedness, if not previously due and payable, immediately thereupon shall, anything in the Guaranty, this Deed of Trust, or any other Loan Document to the contrary notwithstanding, become due and payable.

(f) Upon any sale made under or by virtue of this Paragraph 22 (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Beneficiary may bid for and acquire the Trust Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness (including any prepayment premium due thereon) the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Beneficiary is authorized to deduct or receive under this Deed of Trust.

(g) No recovery of any judgment by Beneficiary and no levy of an execution under any judgment upon the Trust Property or upon any other property of Trustor shall affect in any manner or to any extent, the lien of this Deed of Trust upon the Trust Property or any part thereof, or any liens, rights, powers or remedies of Beneficiary hereunder, but such liens, rights, powers and remedies of Beneficiary shall continue unimpaired as before.

(h) For purposes of any sale made under or by virtue of this Paragraph 22 (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the Indebtedness secured hereby shall be stated and computed in United States Dollars. The exchange rate applicable to said computation shall be the rate offered to Beneficiary for the purchase of Japanese Yen in exchange for United States Dollars in the interbank market for Japanese Yen selected by Beneficiary ("Exchange Rate"). Any Event of Default shall be cured, if at all, by payment in United States Dollars of (i) the United States Dollar amount stated in any Notice of Default, together with (ii) subsequent arrearages, (iii) such adjustments as Beneficiary may deem appropriate to reflect any difference between the Exchange Rate on the date of such cure and the Exchange Rate used in preparing the Notice of Default, and (iv) other costs and fees allowed by law. In the event that the default specified in the Notice of Default is not cured as permitted by law, and Beneficiary instructs Trustee to prepare a Notice of Trustee's Sale, Trustee shall prepare said Notice of Trustee's Sale, which shall specify in United States Dollars the unpaid balance due under obligations secured by this Deed of Trust. In the event that the Exchange Rate applicable on the date Beneficiary delivers its instructions to Trustee to prepare the Notice of Trustee's Sale differs from the Exchange Rate used in preparing the Notice of Default, Beneficiary may include in such instructions the instruction that the dollar amount of indebtedness specified in the Notice of Trustee's Sale and Beneficiary's credit bid be computed at the Exchange Rate applicable to the date of Beneficiary's delivery to Trustee of instructions to prepare the Notice of Trustee's Sale or applicable to the date of Beneficiary's credit bid, as the case may be.

23. Right to Cure Defaults. Upon the occurrence of any Event of Default or if Trustor fails to make any payment or to do any act as herein provided, Beneficiary may, but without any obligation to do so and without notice to or demand on Trustor and without releasing Trustor from any obligation hereunder, make or do the same in such manner and to such extent



as Beneficiary may deem necessary to protect the security hereof. Without limiting the foregoing, Beneficiary may (a) enter upon the Trust Property for such purposes, (b) appear in, defend, or bring any action or proceeding to protect its interest in the Trust Property, (c) pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which may affect the security of this Deed of Trust or be prior or superior hereto; and (d) the cost and expense thereof (including, without limitation, reasonable attorneys' fees and disbursements to the extent permitted by law), with interest as provided in this Paragraph 23, shall be immediately due and payable to Beneficiary upon demand by Beneficiary therefor. All such costs and expenses incurred by Beneficiary in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the rate equal to the higher of fourteen percent (14%) per annum or the interest rate provided in the Note plus two percent (2%) per annum (the "Default Rate"), for the period from the date that such cost or expense was incurred to the date of payment to Beneficiary. All such costs and expenses, together with interest thereon at the Default Rate, shall be added to the Indebtedness and shall be secured by this Deed of Trust. If any other amount required to be paid under the Guaranty or the Loan Documents shall not be paid on the date required, interest shall thereafter be computed and paid at the Default Rate.

24. INTENTIONALLY OMITTED

25. INTENTIONALLY OMITTED

26. Appointment of Receiver. Beneficiary, upon the occurrence of an Event of Default or in any action to foreclose this Deed of Trust or upon the actual or threatened waste to any part of the Trust Property, shall be entitled to the appointment of a receiver without notice and without regard to the value or condition of the Trust Property as security for the Indebtedness or the solvency or insolvency of any person liable for the payment of the Indebtedness.

27. Security Agreement.

(a) This Deed of Trust is both a real property Deed of Trust and a "security agreement" within the meaning of the Uniform Commercial Code. The Trust Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Property. Trustor, by executing and delivering this Deed of Trust grants to Beneficiary and Trustee (to the extent provided herein), as security for the Indebtedness, a security interest in the Trust Property to the full extent that the Trust Property may be subject to the Uniform Commercial Code (such portion of the Trust Property so subject to the Uniform Commercial Code being called in this Paragraph 27 the "Collateral"). Trustor hereby authorizes Beneficiary to file financing statements in order to create, perfect, preserve and continue the security interest(s) herein granted. This Deed of Trust shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code and shall cover all items of the Collateral that are or are to become fixtures. Information concerning the security interest(s) herein granted may be obtained from Beneficiary upon request.

If an Event of Default shall occur, Beneficiary and/or Trustee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately



and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary and/or Trustee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Beneficiary and/or Trustee, Trustor shall at its expense assemble the Collateral and make it available to Beneficiary and/or Trustee at a convenient place acceptable to Beneficiary and/or Trustee. Trustor shall pay to Beneficiary and Trustee on demand any and all expenses, including legal expenses and reasonable attorneys' fees and disbursements, incurred or paid by Beneficiary and Trustee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Beneficiary and/or Trustee with respect to the Collateral sent to Trustor in accordance with the provisions hereof at least five (5) days prior to such sale, disposition or action shall constitute reasonable notice to Trustor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Beneficiary to the payment of the Indebtedness in such priority and proportions as Beneficiary in its discretion shall deem proper.

Trustor shall notify Beneficiary and Trustee of any change in name, identity, structure or state of formation of Trustor and shall promptly execute, file and record, at its sole cost and expense, such Uniform Commercial Code forms as are necessary to maintain the priority of the lien of Beneficiary upon and security interest in the Collateral. In addition, Trustor shall promptly execute, file and record such additional Uniform Commercial Code forms or continuation statements as Beneficiary shall deem necessary and shall pay all expenses and fees in connection with the filing and recording thereof, provided that no such additional documents shall increase the obligations of Trustor under the Guaranty, this Deed of Trust or the other Loan Documents. Trustor hereby grants to Beneficiary an irrevocable power of attorney, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Beneficiary, as secured party, in connection with the Collateral covered by this Deed of Trust.

(b) That portion of the Trust Property consisting of personal property and equipment, shall be owned by Trustor and shall not be the subject matter of any lease or other transaction whereby the ownership or any beneficial interest in any of such property is held by any person or entity other than Trustor nor shall Trustor create or suffer to be created any security interest covering any such property as it may from time to time be replaced, other than the security interest created herein.

28. Authority.

(a) Trustor has full power, authority and legal right to execute this Deed of Trust, and to deed, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate and assign and grant a security interest in the Trust Property pursuant to the terms hereof and to keep and observe all of the terms of this Deed of Trust on Trustor's part to be performed.

(b) **INTENTIONALLY OMITTED.**



(c) Trustor represents and warrants to Beneficiary that Trustor is a limited partnership organized and existing under the laws of the State of California.

29. Actions and Proceedings. Beneficiary and Trustee shall have the right to appear in and defend any action or proceeding brought with respect to the Trust Property and to bring any action or proceeding, in the name and on behalf of Trustor, which Beneficiary and/or Trustee, in their reasonable discretion, shall decide should be brought to protect their respective interests in the Trust Property.

30. Further Acts, Etc. Trustor will, at the sole cost of Trustor, and without expense to Beneficiary or Trustee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, assignments, notices of assignments, transfers and assurances as Beneficiary or Trustee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto Beneficiary and/or Trustee the property and rights hereby given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Beneficiary and/or Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust and, on demand, will execute and deliver within five (5) business days after request of Beneficiary or Trustee, and if Trustor fails to so deliver, hereby authorizes Beneficiary or Trustee thereafter to execute in the name of Trustor without the signature of Trustor to the extent Beneficiary and/or Trustee may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Trust Property. Trustor grants to Beneficiary and Trustee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary and Trustee at law and in equity, including without limitation such rights and remedies available to Beneficiary and Trustee pursuant to this Paragraph 30.

31. Recording of Deed of Trust, Etc. Trustor forthwith upon the execution and delivery of this Deed of Trust, will cause this Deed of Trust, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Trust Property, to be filed, registered or recorded and, thereafter, from time to time, each such other instrument of further assurance to be filed, registered or recorded, all in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interests of Beneficiary and Trustee in, the Trust Property. Trustor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Deed of Trust, any deed of trust supplemental hereto, any security instrument with respect to the Trust Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the making, execution, delivery and/or recording of this Deed of Trust, any deed of trust supplemental hereto, any security instrument with respect to the Trust Property or any instrument of further assurance, except where prohibited by law so to do. Trustor shall hold harmless and indemnify Beneficiary, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making, execution, delivery and/or recording of this Deed of Trust, any deed of trust



supplemental hereto, any security instrument with respect to the Trust Property or any instrument of further assurance.

32. Usury Laws. This Deed of Trust and the Guaranty are subject to the express condition that at no time shall Trustor be obligated or required to pay interest on the principal balance due under the Note at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Trustor is permitted by law to contract or agree to pay. If by the terms of this Deed of Trust or the Guaranty, Trustor is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of such maximum rate, the rate of interest under the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction in the outstanding balance of the Note.

33. Sole Discretion of Beneficiary. Wherever pursuant to this Deed of Trust, Beneficiary exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Beneficiary, the decision of Beneficiary to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Beneficiary and shall be final and conclusive, except as may be otherwise specifically provided herein.

34. Recovery of Sums Required To Be Paid. Beneficiary shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Indebtedness as the same become due, without regard to whether or not the balance of the Indebtedness shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Trustor existing at the time such earlier action was commenced.

35. Marshalling and Other Matters. Trustor waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Trust Property or any part thereof or any interest therein. Further, Trustor expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of Trustor, and on behalf of each and every person acquiring any interest in or title to the Trust Property subsequent to the date of this Deed of Trust and on behalf of all persons to the extent permitted by applicable law.

36. Waiver of Notice. Trustor shall not be entitled to any notices of any nature whatsoever from Beneficiary or Trustee except with respect to matters for which this Deed of Trust specifically and expressly provides for the giving of notice by Beneficiary or Trustee to Trustor and except with respect to matters for which Beneficiary or Trustee is required by applicable law to give notice, and Trustor hereby expressly waives the right to receive any notice from Beneficiary or Trustee with respect to any matter for which this Deed of Trust does not specifically and expressly provide for the giving of notice by Beneficiary or Trustee to Trustor.



37. **Remedies of Trustor.** In the event that a claim or adjudication is made that Beneficiary or Trustee has acted unreasonably or unreasonably delayed acting in any case where by law or under the Guaranty, this Deed of Trust or the other Loan Documents, it has an obligation to act reasonably or promptly, Beneficiary or Trustee shall not be liable for any monetary damages, and Trustor's remedies shall be limited to injunctive relief or declaratory judgment.

38. **Reporting Requirements.** At the request of Beneficiary or Trustee, Trustor shall supply or cause to be supplied to Beneficiary either (a) a copy of a completed Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Proceeds prepared by Trustor's attorney or other person responsible for the preparation of such form, together with a certificate from the person who prepared such form to the effect that such form has, to the best of such person's knowledge, been accurately prepared and that such person will timely file such form or (b) a certification from Trustor that the Note is a refinancing of the Trust Property or is otherwise not required to be reported to the Internal Revenue Service pursuant to Section 6045(e) of the Code. Trustor hereby indemnifies, defends and holds Beneficiary and Trustee harmless from and against all loss, cost, damage and expense (including without limitation, reasonable attorneys' fees and disbursements and costs incurred in the investigation, defense and settlement of claims) that Beneficiary or Trustee may incur, directly or indirectly, as a result of or in connection with the assertion against Beneficiary or Trustee of any claim relating to the failure of Beneficiary or Trustee to comply with this Paragraph 38.

39. **Hazardous Materials.**

(a) Trustor represents and warrants that (i) the Trust Property is now and at all times during Trustor's ownership thereof has been free of contamination from any petroleum product and all hazardous or toxic substances, wastes or substances, any substances which because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any asbestos (whether or not friable) and any asbestos-containing materials, Mold (defined as the presence of any form of (i) multicellular fungi that live on plant or animal matter and an indoor environment (including without limitation Cladosporium, Penicillium, Alternaria, Aspergillus, Fusarium, Trichoderma, Memmoniella, Mucor, and Stachybotrys chartarum (SC) often found in water damaged building materials), (ii) spores, scents or byproducts produced or released by fungi, including mycotoxins and (iii) microbial matter which reproduces through mold, mildew and viruses, whether or not such microbial matter is living (collectively "Mold")), waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, lead (whether in water, paint or soil), urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials or any hazardous or toxic wastes or substances which are included under or regulated by any federal, state or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments ("Hazardous Materials"), including, without limitation, the Comprehensive Environmental Response,



Compensation and Liability Act of 1980, 42 U.S.C. section 9601 *et seq.* (“CERCLA”); The Federal Resource Conservation and Recovery Act, 42 U.S.C. section 6901 *et seq.* (“RCRA”); Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499 (“SARA”); Toxic Substances Control Act, 15 U.S.C. section 2601 *et seq.* (“TSCA”); the Hazardous Materials Transportation Act, 49 U.S.C. section 1801 *et seq.*; and any other state superlien or environmental clean-up or disclosure statutes (all such laws, rules and regulations being referred to collectively as “Environmental Laws”), (ii) Trustor has not caused or suffered to occur any discharge, spill, uncontrolled loss or seepage of any Hazardous Materials onto any property adjoining the Trust Property, (iii) Trustor has not received any complaint, notice, letter, or other communication from occupants, tenants, guests, employees, licensees or any other person regarding odors, poor indoor quality, toxic Mold, or any activity, condition, event or omission that causes or facilitates the growth of toxic Mold and Trustor further represents to the best of its knowledge that no toxic Mold or any activity, condition, event or omission that causes or facilitates the growth of toxic Mold exists at the property and (iv) neither the Trustor nor any tenant or occupant of all or part of the Trust Property is now or has been involved in operations at the Trust Property which could reasonably be expected to lead to liability for Trustor or any other owner of the Trust Property or the imposition of a lien on the Trust Property under any Environmental Law.

(b) At its sole cost and expense, Trustor shall comply with and shall cause all tenants and other occupants of the Trust Property to comply with all Environmental Laws now in effect or hereafter enacted with respect to the discharge, generation, removal, transportation, storage and handling of Hazardous Materials. Trustor shall promptly notify Beneficiary if Trustor shall become aware of any Hazardous Materials on or near the Trust Property (except materials which (1) were disclosed in the Environmental Report and (2) are ordinarily and customarily used in the regular operation of the Trust Property as a hotel by the Trustor or any current tenant or any future tenant, which tenant and its Lease have been approved by the Beneficiary if such approval is required by this Deed of Trust, and are used, stored, disposed of and handled in compliance with and in quantities permitted by all applicable Environmental Laws) and/or if Trustor shall become aware that the Trust Property is in direct or indirect violation of any Environmental Laws and/or if Trustor shall become aware of any condition on or near the Trust Property which shall pose a threat to the health, safety or welfare of humans. If required by Environmental Laws Trustor shall promptly remove all Hazardous Materials from the Trust Property, such removal to be performed in accordance with all applicable federal, state and local laws, statutes, rules and regulations. Trustor shall pay immediately when due the cost of removal of any Hazardous Materials and shall keep the Trust Property free of any lien imposed pursuant to any Environmental Laws now in effect or hereinafter enacted.

(c) Trustor grants Beneficiary and its employees and agents an irrevocable and non-exclusive license, subject to the rights of tenants, after the occurrence of an Event of Default that is continuing or in the event that Beneficiary has formed a reasonable belief that Hazardous Materials may be present on, in or near the Trust Property, to enter the Trust Property to conduct testing and to remove any Hazardous Materials, and the costs of such testing and removal shall immediately become due to Beneficiary and shall be secured by this Deed of Trust. Trustor, promptly upon the request of Beneficiary, from time to time, shall provide Beneficiary with an environmental site assessment or environmental audit report, or an update of



such an assessment or report, all in scope, form and content reasonably satisfactory to Beneficiary. Trustor shall maintain the integrity of all storage tanks and drums on or under the Trust Property during the term of the Guaranty in compliance with all Environmental Laws now in effect or hereinafter enacted. Trustor shall follow an operation and maintenance program with respect to all storage tanks and drums on or under the Trust Property, which program has been approved in writing by Beneficiary.

(d) TRUSTOR SHALL INDEMNIFY BENEFICIARY AND TRUSTEE AND HOLD BENEFICIARY AND TRUSTEE HARMLESS FROM AND AGAINST ALL LIABILITY, LOSS, COST, DAMAGE AND EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS INCURRED IN THE INVESTIGATION, DEFENSE AND SETTLEMENT OF CLAIMS) THAT BENEFICIARY OR TRUSTEE MAY INCUR AS A RESULT OF OR IN CONNECTION WITH THE ASSERTION AGAINST BENEFICIARY OR TRUSTEE (WHETHER AS PAST OR PRESENT BENEFICIARY OR TRUSTEE OF THIS DEED OF TRUST, AS MORTGAGEE IN POSSESSION OR AS PAST OR PRESENT OWNER OF THE TRUST PROPERTY BY VIRTUE OF A FORECLOSURE OR ACCEPTANCE OF A DEED IN LIEU OF FORECLOSURE OR THE EXERCISE OF A POWER OF SALE) OF ANY CLAIM RELATING TO THE PRESENCE AND/OR RELEASE, THREATENED RELEASE, STORAGE, DISPOSAL, GENERATING OR REMOVAL OF ANY HAZARDOUS MATERIALS OR COMPLIANCE WITH ANY ENVIRONMENTAL LAWS NOW IN EFFECT OR HEREINAFTER ENACTED. THE OBLIGATIONS AND LIABILITIES OF TRUSTOR UNDER THIS PARAGRAPH 39 SHALL SURVIVE FULL PAYMENT OF THE INDEBTEDNESS, ENTRY OF A JUDGMENT OF FORECLOSURE OR ACCEPTANCE OF A DEED IN LIEU OF FORECLOSURE OR ANY SUBSEQUENT TRANSFER TO A THIRD PARTY. IT IS UNDERSTOOD THAT THE PRESENCE AND/OR RELEASE OF SUBSTANCES REFERRED TO IN THIS SECTION HEREOF DOES NOT PERTAIN TO A PRESENCE AND/OR RELEASE WHICH FIRST OCCURS SOLELY AFTER (A) REPAYMENT OF THE INDEBTEDNESS IN FULL IN ACCORDANCE WITH THE LOAN DOCUMENTS OR (B) ACQUISITION OF TITLE TO THE TRUST PROPERTY BY BENEFICIARY UPON A FORECLOSURE OR ACCEPTANCE OF A DEED IN LIEU OF FORECLOSURE OR THE EXERCISE OF A POWER OF SALE AND SURRENDER OF POSSESSION AND OCCUPANCY OF THE TRUST PROPERTY BY TRUSTOR, ITS AGENTS, AFFILIATES, EMPLOYEES AND INDEPENDENT CONTRACTORS. TRUSTOR SHALL HAVE THE BURDEN OF PROVING THAT THE CONDITIONS IN THIS SUBPARAGRAPH (D) WERE SATISFIED BY CLEAR AND CONVINCING EVIDENCE AND SHALL CONTINUE TO DEFEND WITH COUNSEL SATISFACTORY TO BENEFICIARY AND SHALL INDEMNIFY AND HOLD BENEFICIARY HARMLESS FOR ALL MATTERS SET FORTH IN THIS PARAGRAPH 39, UNLESS AND UNTIL A COURT OF COMPETENT JURISDICTION FINDS THAT TRUSTOR HAS MET SUCH BURDEN.

(e) Nothing contained herein shall constitute or be construed as a waiver of any statutory or judicial federal, state or local law which may provide rights or remedies to Beneficiary against Trustor or others in connection with any claim relating to the Trust Property and pertaining to the presence and/or release, threatened release, storage, disposal, generating or removal of any Hazardous Materials or to the failure to comply with any Environmental Laws now or hereafter enacted.



40. Asbestos. Trustor shall not install or permit to be installed in the Trust Property, friable asbestos or any substance containing asbestos. With respect to any such material currently present in the Trust Property, Trustor, at Trustor's expense, shall promptly comply with and shall cause all occupants of the Trust Property to comply with all present and future applicable federal, state or local laws, rules, regulations or orders relating to asbestos, friable asbestos and asbestos containing materials. In the event any asbestos, friable asbestos or asbestos containing material is discovered at the Trust Property, Trustor shall obtain a comprehensive asbestos report prepared by a licensed engineer or asbestos consultant acceptable to Beneficiary describing the form, extent, location and condition of such asbestos and recommending methods of removal or abatement. Trustor shall promptly comply at its sole cost and expense with the recommendations contained in such report, such compliance to be performed in accordance with all applicable federal, state and local laws, statutes, rules and regulations. Trustor shall indemnify Beneficiary and Trustee and hold Beneficiary and Trustee harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Beneficiary or Trustee may incur as a result of or in connection with the assertion against Beneficiary or Trustee (whether as past or present beneficiary or trustee of this Deed of Trust, as mortgagee in possession, or as past or present owner of the Trust Property by virtue of a foreclosure or acceptance of a deed in lieu of foreclosure or the exercise of a power of sale) of any claim relating to the presence or removal of any asbestos substance referred to in this Paragraph 40, or compliance with any federal, state or local laws, rules, regulations or orders relating thereto. The obligations and liabilities of Trustor under this Paragraph 40 shall survive full payment of the Indebtedness, foreclosure or the acceptance of a deed in lieu of foreclosure.

41. Bankruptcy or Insolvency. In the event that Trustor or any Guarantor or, if Trustor or any Guarantor is a general or limited partnership, any general partner of any such entity (a) admits in writing its inability to pay its debts generally as they become due, or does not pay its debts generally as they become due, (b) commences as debtor any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, or seeks or consents to the appointment of a receiver, conservator, trustee, custodian, manager, liquidator or similar official for it or the whole or any substantial part of its property, (c) has a receiver, conservator, trustee, custodian, manager, liquidator, or similar official appointed for it or the whole or any substantial part of its property, by any governmental authority with jurisdiction to do so, (d) makes a proposal or any assignment for the benefit of its creditors, or enters into an arrangement or composition or similar plan or scheme with or for the benefit of creditors generally occurring in circumstances in which such entity is unable to meet its obligations as they become due or (e) has filed against it any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law which (i) is consented to or not timely contested by such entity, (ii) results in the entry of an order for relief, appointment of a receiver, conservator, trustee, custodian, manager, liquidator or similar official for such entity or the whole or any substantial part of its property or (iii) is not dismissed within sixty (60) days, an Event of Default shall have occurred and as a result, all obligations under the Guaranty and the other Loan Documents shall become immediately due and payable at the option of Beneficiary without notice to Trustor and Beneficiary may exercise any remedies available to it hereunder, under the Guaranty or any other Loan Document, at law or in equity.



42. Compliance with ERISA and State Statutes on Governmental Plans.

(a) Beneficiary represents and warrants to Trustor that, as of the date of this Deed of Trust and throughout the term of this Deed of Trust, the source of funds from which Beneficiary extends this Deed of Trust is its general account, which is subject to the claims of its general creditors under state law.

(b) Trustor represents and warrants that, as of the date of this Deed of Trust and throughout the term of this Deed of Trust, (i) Trustor is not an “employee benefit plan” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), which is subject to Title I of ERISA and (ii) the assets of such Trustor do not constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. § 2510.3-101.

(c) Trustor represents and warrants to Beneficiary that, as of the date of this Deed of Trust and throughout the term of this Deed of Trust (i) Trustor is not a “governmental plan” within the meaning of Section 3(32) of ERISA and (ii) transactions by or with Trustor or any Trustor are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

(d) Trustor covenants and agrees to deliver to Beneficiary such certifications or other evidence from time to time throughout the term of this Deed of Trust, as requested by Beneficiary in its sole discretion, that (i) Trustor is not an “employee benefit plan” or a “governmental plan”, (ii) Trustor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans, and (iii) one or more of the following circumstances is true:

- (A) Equity interests in Trustor are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);
- (B) Less than 25 percent of all equity interests in such Trustor are held by “benefit plan investors” within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or
- (C) Trustor qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

(e) Any of the following shall constitute an Event of Default under this Deed of Trust, entitling Beneficiary to exercise any and all remedies to which it may be entitled under this Deed of Trust, and any other Loan Documents (i) the failure of any representation or warranty made by any Trustor under this Paragraph 42 to be true and correct in all respects, (ii) the failure of any Trustor to provide Beneficiary with the written certifications and evidence referred to in this Paragraph 42 or (iii) the consummation by Trustor or any one Trustor of a transaction which would cause this Deed of Trust or any exercise of Beneficiary’s rights under this Deed of Trust, or the other Loan Documents to constitute a non-exempt prohibited transaction under ERISA or a violation of a state statute regulating governmental plans, or otherwise subjecting Beneficiary to liability for violation of ERISA or such state statute.



(f) Trustor shall indemnify Beneficiary and defend and hold Beneficiary harmless from and against all civil penalties, excise taxes, or other loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Beneficiary's sole discretion) that Beneficiary may incur, directly or indirectly, as a result of a default under this Paragraph 42. This indemnity shall survive any termination, satisfaction, foreclosure of or exercise of power of sale under this Deed of Trust.

43. Assignments. Beneficiary shall have the right to assign or transfer its rights under this Deed of Trust without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Beneficiary under this Deed of Trust.

44. Cooperation. Trustor acknowledges that Beneficiary and its successors and assigns may (a) sell this Deed of Trust, the Guaranty and other Loan Documents to one or more investors as a whole loan, (b) participate the Indebtedness to one or more investors, (c) deposit this Deed of Trust, the Guaranty and other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets or (d) otherwise sell the Indebtedness, the Guaranty or interest therein to investors (the transactions referred to in clauses (a) through (d) are hereinafter referred to as "Secondary Market Transactions"). Trustor shall, at its expense, cooperate in good faith with Beneficiary (aa) in effecting any such Secondary Market Transaction and (bb) to implement all requirements imposed by any Secondary Market Transaction including, without limitation, all structural or other changes to the Indebtedness, modifications to any documents evidencing or securing the Indebtedness, and delivery of opinions of counsel acceptable to the Beneficiary may require; provided, however, that Trustor shall not be required to modify any documents evidencing or securing the Indebtedness which would modify (i) the interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the amortization of principal of the Note or (iv) any other material economic term of the Indebtedness. Trustor shall provide such information and documents relating to Trustor, the Trust Property, the Leases and the tenants thereunder, and the Hilton Agreement as Beneficiary may reasonably request in connection with a Secondary Market Transaction. Beneficiary shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Trustor, the Trust Property and the tenants under the Leases and the Hilton Agreement. Trustor acknowledges that certain information regarding the Guaranty and the parties thereto and the Trust Property may be included in a private placement memorandum, prospectus or other disclosure documents.

45. Indemnification. Trustor hereby covenants and agrees unconditionally and absolutely to indemnify and save harmless Beneficiary, its officers, directors, shareholders, employees, agents and attorneys against all damages, losses, liabilities, obligation, claims, litigation, demands or defenses, judgments, suits, proceedings, fines, penalties, costs, disbursements and expenses of any kind or nature whatsoever (including without limitation reasonable attorneys' fees reasonably incurred), which may at any time be imposed upon, incurred by or asserted or awarded against Beneficiary and arising from the Guaranty, this Deed of Trust or the other Loan Documents.



This indemnity shall survive any foreclosure of this Deed of Trust, the taking of a deed in lieu thereof, the exercise of any power of sale, or any other discharge of the obligations of the Trustor hereunder or a transfer of the Trust Property, even if the indebtedness secured hereby is satisfied in full. Trustor agrees that the indemnification granted herein may be enforced by Beneficiary without resorting to or exhausting any other security or collateral or without first having recourse to the Guaranty or the Trust Property covered by this Deed of Trust through foreclosure proceedings or otherwise; provided, however, that, nothing herein contained shall prevent Beneficiary from suing on the Guaranty or foreclosing this Deed of Trust or exercising any power of sale or from exercising any other rights under the Loan Documents.

46. INTENTIONALLY OMITTED

47. Notices. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Deed of Trust, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by notice to the other party specify) :

To Beneficiary:

Sumitomo Mitsui Banking Corporation
1-1-2 Marunouchi, Chiyoda-ku,
Tokyo 100-0005,
Japan
Attention: Michio Katsube, General Manager

To Trustor:

Roppongi-Tahoe LP
2200 Pacific Coast Highway, Suite 301
Hermosa Beach, CA 90254
Attention: Masaru Saito, Vice President, Tahoe-KN, Inc.,
General Partner of Trustor

To Trustee:

Chicago Title Company
700 S. Flower Street, Suite 800
Los Angeles, CA 90017
Attention: Terri Gervasi

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the day such material is sent, or (iii) if delivered by certified mail, on the third day after the same is deposited with the United States Postal Service



as provided above. Either party may change their address for notice purposes upon giving fifteen (15) days prior notice thereof in accordance with this paragraph.

48. **Non-Waiver.** The failure of Beneficiary to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Deed of Trust. Trustor shall not be relieved of Trustor's obligations hereunder by reason of (a) failure of Beneficiary to comply with any request of Trustor to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions hereof or of the Loan Agreement or the other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Trust Property, or of any person liable for the Indebtedness or portion thereof or (c) any agreement or stipulation by Beneficiary extending the time of payment or otherwise modifying or supplementing the terms of the Guaranty, this Deed of Trust or the other Loan Documents. Beneficiary may resort for the payment of the Indebtedness to any other security held by Beneficiary in such order and manner as Beneficiary, in its discretion, may elect. Beneficiary may take action to recover the Indebtedness, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Beneficiary thereafter to foreclose this Deed of Trust. The rights of Beneficiary under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Beneficiary shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded by law.

49. **Joint and Several Liability.** If there is more than one party comprising Trustor, then the obligations and liabilities of each party under this Deed of Trust shall be joint and several.

50. **Severability.** If any term, covenant or condition of the Guaranty, this Deed of Trust or any other Loan Document is held to be invalid, illegal or unenforceable in any respect, the Guaranty, this Deed of Trust and any other Loan Document shall be construed without such provision.

51. **Duplicate Originals.** This Deed of Trust may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

52. **Indemnity and Beneficiary's Costs.** TRUSTOR AGREES TO PAY ALL COSTS, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES, INCURRED BY BENEFICIARY OR TRUSTEE IN ENFORCING THE TERMS HEREOF AND/OR THE TERMS OF ANY OF THE OTHER LOAN DOCUMENTS OR THE GUARANTY, WHETHER OR NOT SUIT IS FILED AND WAIVES TO THE FULL EXTENT PERMITTED BY LAW ALL RIGHT TO PLEAD ANY STATUTE OF LIMITATIONS AS A DEFENSE TO ANY ACTION HEREUNDER. TRUSTOR AGREES TO INDEMNIFY AND HOLD BENEFICIARY AND TRUSTEE HARMLESS FROM ANY AND ALL LIABILITY, LOSS, DAMAGE OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS) THAT BENEFICIARY OR TRUSTEE MAY OR MIGHT INCUR HEREUNDER OR IN CONNECTION WITH THE ENFORCEMENT



OF ANY OF THEIR RIGHTS OR REMEDIES HEREUNDER, ANY ACTION TAKEN BY BENEFICIARY OR TRUSTEE HEREUNDER, OR BY REASON OR IN DEFENSE OF ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER THAT MAY BE ASSERTED AGAINST BENEFICIARY OR TRUSTEE ARISING OUT OF THE TRUST PROPERTY; AND SHOULD BENEFICIARY OR TRUSTEE INCUR ANY SUCH LIABILITY, LOSS, DAMAGE OR EXPENSE, THE AMOUNT THEREOF WITH INTEREST THEREON AT THE DEFAULT RATE SHALL BE PAYABLE BY TRUSTOR IMMEDIATELY WITHOUT DEMAND, SHALL BE SECURED BY THIS DEED OF TRUST, AND SHALL BE A PART OF THE INDEBTEDNESS.

53. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust shall be used interchangeably in singular or plural form. The word "Trustor" shall mean Trustor and/or any subsequent owner or owners of the Trust Property or any part thereof or interest therein. The word "Beneficiary" shall mean Beneficiary or any subsequent holder of the Guaranty. The word "Trustee" shall mean Trustee and any successor or substitute Trustee. The word "Guaranty" shall mean, the Guaranty or any other evidence of indebtedness or obligation secured by this Deed of Trust. The word "Loan Agreement" shall mean, the Loan Agreement pursuant to which Beneficiary agreed to make the Loan to Trustor. The words "Loan Documents" shall mean the Guaranty, the Loan Agreement, the Note, this Deed of Trust, any security agreements between Trustor and Beneficiary, any escrow agreements between Trustor and Beneficiary, the assignment of contracts, if any, made by Trustor to Beneficiary, any other deed of trust or mortgage securing the Guaranty and any other agreement, instrument, affidavit or document executed by Trustor, any guarantor or any indemnitor and delivered to Beneficiary in connection with the Indebtedness. The word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority or other entity.

The words "Trust Property" shall include any portion of the Trust Property or interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

54. No Oral Change. This Deed of Trust, and any provisions hereof, 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 any one Trustor or Beneficiary or Trustee, 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.

55. No Foreign Person. Trustor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department Regulations, including temporary regulations.

56. Separate Tax Lot. The Trust Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Trust Property or any portion thereof.



57. **Right to Release Any Portion of the Trust Property.** Beneficiary or Trustee may release or reconvey any portion of the Trust Property for such consideration as Beneficiary may require without, as to the remainder of the Trust Property, in any way impairing or affecting the lien or priority of this Deed of Trust, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Beneficiary for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Beneficiary may require without being accountable for so doing to any other lienholder. This Deed of Trust shall continue as a lien and security interest in the remaining portion of the Trust Property.

58. **INTENTIONALLY OMITTED**

59. **Administrative Fees.** Beneficiary may charge reasonable administrative fees and be reimbursed for all costs and expenses, including reasonable attorneys' fees and disbursements, associated with reviewing and processing post-closing requests of Trustor.

60. **Disclosure.** Trustor represents and warrants that (a) it has fully disclosed to Beneficiary all facts material to the Trust Property and the operation and tenants thereof, the Trustor, the Trustor's business operations, any indemnitor of environmental liabilities and any other guarantor and any principal of any of them and the background, creditworthiness, financial condition and business operations of each, (b) all material information submitted in connection with the Loan transaction is true, correct and complete, (c) the financial and operating statements and other accounting information submitted in connection with the Loan transaction are true, correct, complete, and fairly present the financial condition of the Trustor, any guarantors and indemnitors and their respective principals and have been prepared consistent with proper accounting standards; and (d) there is no litigation, action, claim, or other proceeding, pending or threatened which might, in any way, materially and/or adversely affect the Trustor, any guarantor, any indemnitor or the principals of any of them, or the Trust Property, Beneficiary's lien thereon, or the financial condition of the Trust Property or any of the aforementioned persons, and a misrepresentation or breach of any representation, warranty or covenant shall be an Event of Default under the Loan Documents.

61. **Headings, Etc.** The headings and captions of various paragraphs of this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

62. **Address of Real Property.** The street address of the Real Property is as follows: 4130 Lake Tahoe Boulevard, South Lake Tahoe, California.

63. **Method of Payment.** Upon the occurrence of an Event of Default, Trustor, upon written demand by Beneficiary, shall execute such other documents and agreements as may be required so that all payments of principal and interest and other amounts due under this Deed of Trust shall be paid to Beneficiary by Automated Clearing House debit against Trustor's account.



64. **Publicity.** Trustor agrees that Beneficiary, at its expense, may publicize the financing of the Trust Property in trade and similar publications.

65. **Relationship.** The relationship of Beneficiary to Trustor under this Deed of Trust is strictly and solely that of lender and guarantor and nothing contained in this Deed of Trust or any other Loan Document is intended to create, or shall in any event or under any circumstance be construed to create, a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between Beneficiary and Trustor other than that of lender and guarantor.

66. **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Land as against the collection of the Indebtedness, or any part hereof.

67. **No Third Party Beneficiaries.** Nothing contained herein is intended or shall be deemed to create or confer any rights upon any third person not a party hereto, whether as a third-party beneficiary or otherwise, except as expressly provided herein.

68. **Compliance with Regulation U.** Trustor represents, warrants and covenants that no part of the proceeds of the Note will be used for the purpose (whether immediate, incidental or ultimate) of buying or carrying any margin stock within the meaning of Regulation U (12 CFR part 221) of the Board of Governors of the Federal Reserve System of the United States or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose, or for any other purpose which might constitute the Note a "purpose credit" within the meaning of such Regulation U.

69. **Entire Agreement.** This Deed of Trust, the Guaranty and the other Loan Documents constitute the entire agreement among Trustor and Beneficiary with respect to the subject matter hereof and all understandings, oral representations and agreements heretofore or simultaneously had among the parties are merged in, and are contained in, such documents and instruments.

70. **Servicer.** Beneficiary may from time to time appoint a servicer (the "Servicer") to administer the Indebtedness, which Servicer shall have the power and authority to exercise all of the rights and remedies of Beneficiary and to act as agent of Beneficiary hereunder.

71. **Governing Law; Consent to Jurisdiction.** THIS DEED OF TRUST SHALL BE GENERALLY GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF. WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS CREATED PURSUANT TO THIS DEED OF TRUST FOR ANY PORTION OF THE TRUST PROPERTY LOCATED IN THE STATE OF NEVADA, THIS DEED OF TRUST SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEVADA (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF). EACH TRUSTOR, ENDORSER AND GUARANTOR HEREBY



SUBMITS TO PERSONAL JURISDICTION IN SAID STATE AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SAID STATE (AND ANY APPELLATE COURTS TAKING APPEALS THEREFROM) FOR THE ENFORCEMENT OF SUCH TRUSTOR'S, ENDORSER'S OR GUARANTOR'S OBLIGATIONS HEREUNDER, UNDER THE GUARANTY AND THE OTHER LOAN DOCUMENTS, AND WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAW OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR THE PURPOSES OF SUCH ACTION, SUIT, PROCEEDING OR LITIGATION TO ENFORCE SUCH OBLIGATIONS OF SUCH TRUSTOR, ENDORSER OR GUARANTOR. EACH TRUSTOR, ENDORSER AND GUARANTOR HEREBY WAIVES AND AGREES NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DEED OF TRUST, THE GUARANTY, OR ANY OTHER LOAN DOCUMENT, (A) THAT IT IS NOT SUBJECT TO SUCH JURISDICTION OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN THOSE COURTS OR THAT THIS DEED OF TRUST, THE GUARANTY, AND/OR ANY OF THE OTHER LOAN DOCUMENTS MAY NOT BE ENFORCED IN OR BY THOSE COURTS OR THAT IT IS EXEMPT OR IMMUNE FROM EXECUTION, (B) THAT THE ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR (C) THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER. IN THE EVENT ANY SUCH ACTION, SUIT, PROCEEDING OR LITIGATION IS COMMENCED, TRUSTOR, ENDORSER AND GUARANTOR AGREE THAT SERVICE OF PROCESS MAY BE MADE, AND PERSONAL JURISDICTION OVER SUCH TRUSTOR, ENDORSER OR GUARANTOR OBTAINED, BY SERVICE OF A COPY OF THE SUMMONS, COMPLAINT AND OTHER PLEADINGS REQUIRED TO COMMENCE SUCH LITIGATION UPON SUCH TRUSTOR, ENDORSER OR GUARANTOR AT THE ADDRESS FOR TRUSTOR SET FORTH IN PARAGRAPH 47 ABOVE.

72. **Title Acts by Trustee.** At any time upon written request of Beneficiary, payment of its fees and presentation of this Deed of Trust and the Guaranty for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the Indebtedness, Trustee shall (a) consent to the making of any map or plat of the Trust Property, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof or (d) reconvey, without warranty, all or any part of the Trust Property. The Trustee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor agrees to pay a reasonable Trustee's fee for full or partial reconveyance, together with a recording fee if Trustee, at its option, elects to record said reconveyance.

73. **Successor Trustee.** At the option of Beneficiary, with or without any reason, a successor or substitute trustee may be appointed by Beneficiary without any formality other than a designation in writing of a successor or substitute trustee, who shall thereupon become vested with and succeed to all the powers and duties given to Trustee herein named, the same as if the successor or substitute trustee had been named original Trustee herein; and such



right to appoint a successor or substitute trustee shall exist as often and whenever Beneficiary desires.

74. **Authorization Regarding Trustee.** Trustee (and any successor or substitute trustee) may act hereunder and may sell and convey the Trust Property, or any part thereof, although the Trustee (or successor or substitute trustee) has been, may now be, or is hereafter the attorney or agent of Beneficiary with respect to the Indebtedness, or with respect to any other matter or business whatsoever.

75. **WAIVER OF JURY TRIAL.** TRUSTOR AND BENEFICIARY DO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DEED OF TRUST, THE GUARANTY SECURED HEREBY, ANY OF THE OTHER LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN) OR ANY ACTION OF EITHER PARTY ARISING OUT OF OR RELATED IN ANY MANNER TO THIS DEED OF TRUST, THE GUARANTY SECURED HEREBY, THE INDEBTEDNESS SECURED HEREBY, THE OTHER LOAN DOCUMENTS OR THE PREMISES ENCUMBERED BY THIS DEED OF TRUST (INCLUDING WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS DEED OF TRUST AND ANY CLAIMS OR DEFENSES ASSERTING THAT THIS DEED OF TRUST WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE DELIVERY AND ACCEPTANCE OF THIS DEED OF TRUST AND SHALL SURVIVE ANY TERMINATION OF THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS.

76. **INTENTIONALLY OMITTED.**

PART II - CALIFORNIA STATE PROVISIONS

77. In the event of any inconsistencies between the terms and conditions of Part I, Part II, and Part III of this Deed of Trust, the terms of Part II shall control and be binding.

78. The following provision is hereby added to the end of Paragraph 6 of this Deed of Trust:

"Trustor hereby specifically, unconditionally and irrevocably waives all rights of a property owner granted under California Code of Civil Procedure Section 1265.225(a), which provides for allocation of condemnation proceeds between a property owner and a lienholder, and any other law, including case law, or successor statute of similar import."

79. The following provision is hereby added to Paragraph 3 of this Deed of Trust as subparagraph (g):



"(g) Trustor hereby specifically, unconditionally and irrevocably waives all rights it may have under any California case and/or statutory law, heretofore or hereafter in effect, which provides that a lender on a debt secured by improved real property must demonstrate that its security has been impaired as a result of a casualty before requiring that any or all insurance proceeds be used to reduce the debt."

80. The following provision is hereby added to Paragraph 7 of this Deed of Trust as subparagraph (f):

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

81. The following provision is hereby added to Paragraph 22 of this Deed of Trust as subparagraph (i):

"(i) Foreclosure By Power of Sale Pursuant to California Civil Code Sections 2924-2924I.

(i) Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Guaranty and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(ii) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as is then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Trust Property at the time and place of sale fixed by Trustee in said Notice of Sale, either as a whole, or in separate lots or parcels or items, and in such order as Beneficiary may direct Trustee so to do, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matter or fact shall be conclusive proof of the truthfulness thereof. Any person including, without limitation, Trustor, Trustee or Beneficiary may purchase



at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers. Beneficiary shall provide Trustee with its instructions, if any, for bidding at said sale in United States Dollar amounts, which amounts may include such adjustments as Beneficiary may deem appropriate to reflect changes in the Japanese Yen/United States Dollar exchange rate as provided in subsection (iv) below.

(iii) Upon nonjudicial foreclosure of this Deed of Trust, Beneficiary shall be entitled to credit bid up to and including the entire amount of the obligations and indebtedness secured hereby. If Beneficiary makes a combined credit and cash bid and is the successful bidder, Trustee shall apply the cash bid first to pay the holders of liens subordinate hereto and encumbering the Trust Property, in their respective order of priority; then to pay delinquent taxes, if any; and shall pay any remaining balance to Trustor; or, if such order of payment shall be prohibited by law, then in such other order or priority as is required by law. If a third party is the successful bidder at such public auction, upon receipt of cash from such bidder: Trustee shall apply the cash bid received from the third party, after deducting all costs, fees and expenses of Beneficiary and of the Trustee, including costs of evidence of title in connection with the sale, (i) first to pay all sums due and owing by Trustor, with accrued interest at the Default Rate, under this Deed of Trust and the other Loan Documents and to the satisfaction of all of Trustor's other obligations under this Deed of Trust and the other Loan Documents, and (ii) the remainder, if any, to the person or persons legally entitled thereto.

(iv) For purposes of foreclosure by power of sale under Paragraph 22 of this Deed of Trust, obligations secured hereby shall be stated and computed in United States Dollars. The exchange rate applicable to said computation shall be the rate offered to Beneficiary for the purchase of Japanese Yen in exchange for United States Dollars in the interbank market for Japanese Yen selected by Beneficiary ("Exchange Rate"). Said default shall be cured, if at all, by payment in United States Dollars of (i) the United States Dollar amount stated in said Notice of Default, together with (ii) subsequent arrearages, (iii) such adjustments as Beneficiary may deem appropriate to reflect any difference between the Exchange Rate on the date of such cure and the Exchange Rate used in preparing the Notice of Default, and (iv) other costs and fees allowed by law. In the event that the default specified in the Notice of Default is not cured as permitted by law, and Beneficiary instructs Trustee to prepare a Notice of Trustee's Sale, Trustee shall prepare said Notice of Trustee's Sale, which shall specify in United States Dollars the unpaid balance due under obligations secured by this Deed of Trust. In the event that the Exchange Rate applicable on the date Beneficiary delivers its instructions to Trustee to prepare the Notice of Trustee's Sale differs from the Exchange Rate used in preparing the Notice of Default, Beneficiary may include in such instructions the instruction that the dollar amount of indebtedness specified in the Notice of Trustee's Sale and Beneficiary's credit bid by computed at the Exchange Rate applicable to the date of Beneficiary's delivery to Trustee of instructions to prepare the Notice of Trustee's Sale or applicable to the date of Beneficiary's credit bid, as the case may be.

(v) Subject to California Civil Code Section 2924g, Trustee may postpone sale of all or any portion of the Trust Property by public announcement at such



time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(vi) A sale of less than the whole of the Trust Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein; and subsequent sales may be made hereunder until all obligations secured hereby have been satisfied, or the entire Trust Property sold, without defect or irregularity."

82. The following clause is hereby added to the end of Paragraph 25 of this Deed of Trust:

Trustor hereby expressly (a) waives any right it may have under California Civil Code § 2954.10 to prepay, pursuant to the Guaranty, the Note in whole or in part, without premium (i) prior to the time allowed under the Note or (ii) upon acceleration of the Maturity Date; and (b) agrees that if a prepayment of any or all of the Note is made (i) prior to the time allowed under the Note or (ii) following any acceleration of the Maturity Date of the Note by Beneficiary on account of any transfer or disposition prohibited or restricted by the Note or by this Deed of Trust or for any other reason, Trustor shall be obligated to pay, concurrently therewith, the prepayment amount, if any, that would be required under the Note. By initialing this provision in the space provided below, Trustor hereby declares that Beneficiary's agreement to enter into the Guaranty constitutes adequate consideration, given individual weight by the undersigned, for this waiver and agreement.

Initials of Masaru Saito, Duly Authorized Representative of Trustor

83. The following provision is hereby added to the end of Paragraph 26 of this Deed of Trust:

"Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the date of confirmation of sale of the Trust Property or a sale of the Trust Property under the power of sale herein contained, unless such receivership is sooner terminated."

84. The following three paragraphs are hereby added to the end of Paragraph 27 of this Deed of Trust:

"With respect to fixtures, Beneficiary or Trustee may elect to treat same as either real property or personal property and proceed to exercise such rights and remedies applicable to the categorization so chosen. Beneficiary may proceed against the items of real property and any items of Collateral separately or together in any order whatsoever, without in any way affecting or waiving Beneficiary's rights and remedies under the California Uniform Commercial Code, this Deed of Trust or the Guaranty. Trustor acknowledges and agrees that Beneficiary's rights and remedies under this Deed of Trust and the Guaranty shall be cumulative and shall be in



addition to every other right and remedy now or hereafter existing at law, in equity, by statute or by agreement of parties.

Trustor agrees that this Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of jurisdiction in which the Real Property is located, with respect to any and all fixtures included within the term "Trust Property" or "Collateral" as used herein and with respect to any goods and other personal property that may now be or hereafter become fixtures. The names and mailing addresses of the debtor (Trustor) and the secured party (Beneficiary) are set forth on the first page of this Deed of Trust. Trustor is the record owner of the Trust Property. The personal property described above is the collateral covered by this financing statement. Any reproduction of this Deed of Trust or any other security agreement or financing statement shall be sufficient as a financing statement."

It is the express understanding and intent of the parties hereto that upon the occurrence of an Event of Default hereunder, Beneficiary or Trustee, as appropriate and in their sole discretion, may proceed in any sequence under Article 9 of the California Uniform Commercial Code (the "Code") in accordance with the Code as to any personal property or fixtures and separately as to its remedies with respect to real property and fixtures, or may proceed in any sequence as to some or all of the real property and some or all of the personal property and fixtures in accordance with its rights and remedies in respect of the real property, as specifically permitted under Section 9604 of the Code, and treat both the real property and the personal property or fixtures as one parcel of security. Beneficiary and Trustee may aggregate their rights in any real property, fixtures and/or personal to create such parcels of security to be sold pursuant to the power of sale herein or by judicial foreclosure. A sale of a parcel of security including real and personal property may be conducted by the Trustee.

85. The following clause is hereby added after the words "section 1801 et seq.;" in Paragraph 39 of this Deed of Trust:

"the Porter-Cologne Water Control Act; the Waste Management Act of 1980; the Toxic Pit Cleanup Act; the Underground Tank Act of 1984; the California Water Quality Improvement Act; California Health and Safety Codes §§ 25117 and 25316 and other laws and statutes that could cause the Trust Property or any part thereof to be classified as "border zone property" thereunder;"

86. The following paragraph is hereby added to the end of Paragraph 40 of this Deed of Trust:

"Without limiting any of the remedies provided in the Loan Documents, Trustor acknowledges and agrees that the provisions of Paragraph 39 and 40 of this Deed of Trust are environmental provisions (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by the Trustor relating to the real property security (the "Environmental Provisions"). Trustor's breach or a failure to comply with the Environmental Provisions shall constitute a breach of contract entitling Beneficiary to all remedies provided under Section 736 of the California Code of Civil Procedure ("Section 736") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an



action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Section 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure. Other than the remedy provided under Section 736, all remedies provided for by the Loan Documents are separate and distinct causes of action that are not abrogated, modified, limited or otherwise affected by the remedies provided under Section 736(a) of the California Code of Civil Procedure."

87. The following four paragraphs are hereby added to the end of Paragraph 48 of this Deed of Trust:

"Trustor has read and hereby approves the Guaranty, this Deed of Trust, the other Loan Documents and all other agreements and documents relating thereto. Trustor acknowledges that it has been represented by counsel of its choice to review this Deed of Trust, the Guaranty, the other Loan Documents and all other documents relating thereto and said counsel has explained and Trustor understands the provisions thereof, or that Trustor has voluntarily declined to retain such counsel.

Trustor hereby expressly waives diligence, demand, presentment, protest and notice of every kind and nature whatsoever (unless as otherwise required under this Deed of Trust) and waives any right to require Beneficiary to enforce any remedy against any guarantor, endorser or other person whatsoever prior to the exercise of its rights and remedies hereunder or otherwise. Trustor waives any right to require Beneficiary to: (i) proceed or exhaust any collateral security given or held by Beneficiary in connection with the Indebtedness; (ii) give notice of the terms, time and place of any public or private sale of any real or personal property security for the Indebtedness or other guaranty of the Indebtedness; or (iii) pursue any other remedy in Beneficiary's power whatsoever.

Until all Indebtedness shall have been paid in full, Trustor: (i) shall not have any right of subrogation to any of the rights of Beneficiary against any guarantor, maker or endorser; (ii) waives any right to enforce any remedy which Beneficiary now has or may hereafter have against any other guarantor, maker or endorser; (iii) waives any benefit of, and any other right to participate in, any collateral security for the Indebtedness or any guaranty of the Indebtedness now or hereafter held by Beneficiary.

Trustor hereby authorizes and empowers Beneficiary in its sole discretion, without any notice or demand and without affecting the lien and charge of this Deed of Trust, to exercise any right or remedy which Beneficiary may have available to it, including, but not limited to, judicial foreclosure, exercise of rights of power of sale without judicial action as to any collateral security for the Indebtedness, whether real, personal or intangible property. Trustor expressly waives suretyship defenses that Trustor may have under California law and the laws of any other state. Without limiting the foregoing, Trustor specifically agrees that any action maintained by Beneficiary for the appointment of any receiver, trustee or custodian to collect rents, issues or profits or to obtain possession of the Trust Property shall not constitute an "action" within the meaning of § 726 of the California Code of Civil Procedure."

88. The following paragraph is hereby added to this Deed of Trust:



"Notwithstanding anything to the contrary set forth herein, this Deed of Trust shall not be deemed to secure the obligations of Trustor under that certain Indemnification Agreement dated as of the date hereof (the "Indemnification Agreement")."

PART III - NEVADA STATE PROVISIONS

89. **Principles of Construction.** In the event of any inconsistencies between the terms and conditions of Part I and Part III of this Deed of Trust as these provisions relate to the creation, perfection and enforcement of the liens created pursuant to this deed of trust for the portion of Trust Property located in the State of Nevada, the terms of Part III shall control and be binding.

90. **Appointment of a Receiver.** Upon any Event of Default hereunder, to the extent permitted by applicable law, Beneficiary may have a receiver appointed as a matter of right without regard to the sufficiency of the Trust Property or any other security or guaranty and without any showing as required by NRS 107.100.

91. **Incorporation of Statutory Covenants.** To the extent not inconsistent with the provisions hereof, covenants 1, 3, 4 (interest at the Default Interest Rate), 5, 6, 7 (reasonable counsel fees), 8 and 9 of NRS 107.030 are hereby adopted by reference and made a part hereof.

92. **Foreclosure Sale and Other Matters.** The sale by Trustee of less than the whole of the Trust Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Trust Property shall be sold and, if the proceeds of such sale of less than the whole of the Trust Property shall be less than the aggregate of the Indebtedness secured hereby and the expense of executing this trust as provided herein, this Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Trust Property just as though no sale had been made; provided, however, that Trustor shall never have any right to require the sale of less than the whole of the Trust Property but Beneficiary shall have the right, at its sole election, to request Trustee to sell less than the whole of the Trust Property. The power of sale granted herein shall not be exhausted by any sale held hereunder by Trustee or his substitute or successor, and such power of sale may be exercised from time to time and as many times as Beneficiary may deem necessary until all of the Trust Property has been sold and all secured indebtedness has been fully paid. In the event any sale hereunder is not completed or is defective in the opinion of Beneficiary, such sale shall not exhaust the power of sale hereunder and Beneficiary shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds given by Trustee or any successor or substitute appointed hereunder as to nonpayment of the Indebtedness secured hereby, or as to the occurrence of any Event of Default, or as to Beneficiary having declared all of such indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to the refusal, failure or inability to act of Trustee or any substitute or successor, or as to the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done by Beneficiary or by such



Trustee, substitute or successor, shall be taken as conclusive evidence of the truth of the facts so stated and recited. Trustee, his successor or substitute, may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee, including the posting of notices and the conduct of sale, but in the name and on behalf of Trustee, his successor or substitute. In the event of a default in the payment of any part of the Indebtedness, Beneficiary shall have the right to proceed with foreclosure of the liens and security interests evidenced hereby without declaring the entire Indebtedness due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Indebtedness; and any such sale shall not in any manner affect the unmatured part of the indebtedness, but as to such unmatured part, this Deed of Trust shall remain in full force and effect just as though no sale had been made. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the indebtedness. To the full extent Trustor may do so, Trustor, for Trustor and Trustor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Trust Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of intent to accelerate, notice of acceleration, and all rights to a marshaling of the assets of Trustor, including the Trust Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created.

The Beneficiary or its assigns may, at any time, by instrument in writing, appoint a successor or successors to Trustee named herein or action hereunder, which instrument, executed and acknowledged by Beneficiary, and recorded in the Office of the County Recorder of the county (or counties) wherein the Trust Property is situated, shall be conclusive proof of the proper substitution of such successor or trustee, who shall have all of the estate, power, duty and trust in the premises vested in or conferred on the original Trustee. If there be more than one trustee, either may act alone and execute this trust upon the request of the Beneficiary and the trustee's acts shall be deemed to be the acts of all trustees, and the recital in any conveyance executed by such sole trustee of such requests shall be conclusive evidence thereof, and of the authority of such sole trustee to act.

This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisee, administrators, executors, successors and assigns.

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

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 to be secured or to declare default for failure so to pay.

93. **No Partnership.** That notwithstanding anything to the contrary contained herein or otherwise (a) the relationship between Trustor and Beneficiary hereunder and otherwise shall be deemed, construed and treated by Trustor and Beneficiary for all purposes to be solely that of debtor/creditor; (b) the various consent, approval and other rights afforded to Beneficiary under this Deed of Trust have been granted and designed solely to protect the value of the Trust Property and to assure Trustor's payment of the Indebtedness and all of such rights are stomarily



granted beneficiaries in a secured lending transactions; (c) Trustor and Beneficiary hereby expressly disclaim any sharing of liabilities, losses, costs or expenses with respect to the ownership or operation of all or any portion of the Trust Property, or otherwise; and (d) the terms contained herein are not intended by Trustor and Beneficiary and shall not for any purpose be deemed, construed or treated by Trustor and Beneficiary so as (i) to create a partnership or joint venture between Beneficiary and Trustor or between Beneficiary and any other party, or (ii) to cause Beneficiary to be or become liable in any way for the debts and obligations of Trustor (including any losses attributable to Trustor's operation of the Trust Property) or any other party.

94. **Indemnity.** IT IS THE EXPRESS INTENTION OF TRUSTOR AND TRUSTOR HEREBY AGREES THAT THE INDEMNITIES SET FORTH IN THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS WILL APPLY TO AND FULLY PROTECT EACH INDEMNIFIED PARTY EVEN THOUGH ANY CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENAL TIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS FEES) THEN THE SUBJECT OF INDEMNIFICATION MAY HAVE BEEN CAUSED BY, ARISE OUT OF, OR ARE OTHERWISE ATTRIBUTABLE TO, DIRECTLY OR INDIRECTLY, THE NEGLIGENCE IN WHOLE OR IN PART OF SUCH INDEMNIFIED PARTY AND/OR ANY OTHER PARTY; PROVIDED, HOWEVER, THAT TRUSTOR SHALL NOT HAVE ANY OBLIGATION TO INDEMNIFY BENEFICIARY TO THE EXTENT THAT IT IS FINALLY JUDICIALLY DETERMINED THAT THE SUBJECT OF INDEMNIFICATION AROSE FROM THE GROSS NEGLIGENCE, ILLEGAL ACTS, FRAUD OR WILLFUL MISCONDUCT OF BENEFICIARY.

95. **Conflicts with Nevada Gaming Laws.** All rights, remedies and powers provided in this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provision of the Gaming Laws, and all provisions of this Deed of Trust are intended to be subject to all applicable mandatory provisions of the Nevada Gaming Laws which may be controlling and to be limited to the extent necessary so that they will not render this Deed of Trust invalid or unenforceable, in whole or in part.

96. **Security Agreement.** This Deed of Trust shall constitute a security agreement pursuant to the Nevada Uniform Commercial Code (the "UCC") for any portion of the Trust Property, which, under applicable law, may be subject to a security interest pursuant to the UCC (hereinafter referred to as "Personal Property"), and Trustor hereby grants to Beneficiary a security interest in the Personal Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Beneficiary shall have all of the rights and remedies of a secured party under the UCC, as well as other rights and remedies available at law or in equity.

97. **Fixture Filing.** To the extent permitted by law, Trustor and Beneficiary agree that with respect to all property, which is or may become fixtures on the Real Property, this Deed of Trust, upon recording or registration in the real estate records of the property office, shall constitute a "fixture filing" within the meaning of NRS Sections 104.9334 and 104.9502.

98. **Incorporation by Reference.** The terms, covenants and provisions of the Guaranty and the other Loan Documents have been incorporated into this Deed of Trust by this



reference. All persons from time to time having an interest in all or any portion of the Trust Property are hereby placed on notice of all of the terms, covenants and provisions of the instruments incorporated herein and that copies of same may be obtained by those having an appropriate interest in the Trust Property or any portion thereof upon written request to the Beneficiary at the address set forth on the cover page of this Deed of Trust. Any such request shall include the name and address of the requesting party and also contain a brief explanation of the nature and reason for such request.

PART IV - COUNTERPARTS

99. **Counterparts.** This Deed of Trust shall be executed in counterparts and shall be recorded in the official records of the County of El Dorado, State of California and in the official records of the County of Douglas, State of Nevada.

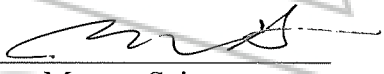
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IN WITNESS WHEREOF, Trustor has duly executed and delivered this Deed of Trust.

ROPPONGI-TAHOE LP,
a California limited partnership

By: Tahoe-KN, Inc.,
a Delaware corporation,
its general partner

By: 
Name: Masaru Saito
Title: Vice President

Organizational ID Number: 200032000012
Federal Taxpayer ID Number: 95-4828894



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Los Angeles

On 1-23-13 before me, Rashid Bani Shoraka Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Masaru Saito
Name(s) of Signer(s)

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: Rashid Bani Shoraka
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

- | | |
|--|--|
| <input type="checkbox"/> Corporate Officer — Title(s): _____ | <input type="checkbox"/> Corporate Officer — Title(s): _____ |
| <input type="checkbox"/> Individual | <input type="checkbox"/> Individual |
| <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General | <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General |
| <input type="checkbox"/> Attorney in Fact | <input type="checkbox"/> Attorney in Fact |
| <input type="checkbox"/> Trustee | <input type="checkbox"/> Trustee |
| <input type="checkbox"/> Guardian or Conservator | <input type="checkbox"/> Guardian or Conservator |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Other: _____ |

RIGHT THUMBPRINT OF SIGNER

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RIGHT THUMBPRINT OF SIGNER

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Signer Is Representing: _____

Signer Is Representing: _____



**EXHIBIT "A"
LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SOUTH LAKE TAHOE, COUNTY OF EL DORADO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL 1, AS SHOWN ON THE PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE EL DORADO COUNTY RECORDER, ON MAY 11, 1990 IN BOOK 41 OF PARCEL MAPS, PAGE 149.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR PURPOSES RELATED TO CONSTRUCTION AND FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS, ACCESS, SIGNAGE, LANDSCAPING AND OTHER PURPOSES, AS SET FORTH IN THE DOCUMENT RECORDED MAY 10, 1990 IN BOOK 3347 PAGE 604, OFFICIAL RECORDS OF COUNTY OF EL DORADO, STATE OF CALIFORNIA AND ALSO RECORDED MAY 10, 1990, IN BOOK 590, PAGE 1628, OFFICIAL RECORDS OF COUNTY OF DOUGLAS, STATE OF NEVADA AS CONVEYED BY ASSIGNMENT OF EASEMENT FROM KOAR-TAHOE PARTNERS, L.P., A CALIFORNIA LIMITED PARTNERSHIP TO ROPPOINGI-TAHOE, L.P., A CALIFORNIA LIMITED PARTNERSHIP, DATED DECEMBER 15, 2000, RECORDED DECEMBER 20, 2000, AS INSTRUMENT NO. 505382, IN BOOK 1200, PAGE 4212, OFFICIAL RECORDS OF COUNTY OF DOUGLAS, STATE OF NEVADA.

APN: 029-190-27, 029-190-32, 029-190-33

*Douglas County Easement A portion of
APN: 1318-27-002-003*