

EXECUTION VERSION

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Alan Spriggs, Summit County Utah Recorder

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By Coalition Title Agency, Inc.

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

Dated as of December 20, 2011

From

TALISKER EMPIRE PASS HOTEL LLC

(the "Grantor")

To

COALITION TITLE COMPANY, as Deed of Trust Trustee

(the "Trustee")

for the benefit of

SUN LIFE ASSURANCE COMPANY OF CANADA

(the "Beneficiary")

20944

Lot C created pursuant to that certain
Condominium Plat with respect to the Hotel and
Residences of Empire Canyon Resort (less
previously sold units)
City of Park City
County of Summit County, Utah

This instrument was
prepared by and when recorded
return to:
Daniel J. Favero, Esq.
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606

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Talisker Empire Pass Hotel LLC

Deed of Trust, Security Agreement, Assignment
of Leases and Rents and Fixture Filing Statement

ATTACHMENTS TO THE DEED OF TRUST:

EXHIBIT A - Legal Description of Real Property

DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING STATEMENT DATED as of December 20, 2011 (the "*Deed of Trust*" or, when referring to this agreement as a security agreement and financing statement under the Uniform Commercial Code of the State of Utah, the "*Security Agreement*"), from Talisker Empire Pass Hotel LLC, a limited liability company organized under the laws of the State of Delaware (the "*Grantor*"), having its principal office at Talisker Empire Pass Hotel LLC, c/o Talisker Mountain Inc. 1850 Sidewinder Drive, 2nd Floor, P.O. Box 4349, Park City, UT 84060, to Coalition Title Company, as Deed of Trust Trustee (the "*Trustee*") whose address is 2200 Park Avenue, Park City, Utah 84060, for the benefit of Sun Life Assurance Company of Canada (the "*Beneficiary*" or "*Secured Party*"), whose address is 300-150 King Street West, Toronto, Ontario, M5H 1J91, CANADA.

This Deed of Trust is also a Security Agreement and financing statement under the Uniform Commercial Code of the State of Utah and in compliance therewith the following information is set forth:

1. The names and addresses of the Debtor and Secured Party are:

Debtor: Talisker Empire Pass Hotel LLC
c/o Talisker Mountain Inc.
1850 Sidewinder Drive
2nd Floor
P.O. Box 4349
Park City, UT 84060
Attention: David J. Smith

Secured Party: Sun Life Assurance Company of Canada
300-150 King Street West
Toronto, Ontario
M5H 1J91
CANADA
Attention: Michael Bjelic, Director, Private
Fixed Income

2. The property covered by this Security Agreement and financing statement is described in the Granting Clauses hereof.

3. Some or all of the fixtures, equipment and other property described herein are or may become fixtures.

4. The Debtor is the record owner of the real estate described in Exhibit A attached hereto and made a part hereof, subject to the terms of the Lease (as defined herein).

RECITALS

- A. The Grantor and the Beneficiary have executed and delivered the Note Purchase Agreement dated as of December 20, 2011 (as the same may be amended, restated, replaced,

supplemented or otherwise modified from time to time, the "Note Purchase Agreement") providing for the commitment of the Beneficiary to purchase the Grantor's Senior Secured Note, in a principal amount not to exceed \$29,000,000 (the "Fixed Rate Note"), and (ii) the Grantor's Senior Secured Note, in a principal amount not to exceed \$13,500,000 (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Floating Rate Note" and together with the Fixed Rate Note, the "Notes"), to be dated the date of issue, expressed to bear interest from the date of issue until maturity at the rate or rates set forth in the Notes and will amortize as set forth in the amortization schedule attached thereto. Interest on the Notes will be computed on the basis of a 360-day year of twelve 30-day months.

B. The Grantor has leased the Property described in Granting Clause First below to DV Luxury Resort LLC, a limited liability company organized under the laws of the State of Delaware (the "Tenant"), under and pursuant to the terms of that certain Agreement of Lease dated as of May 23, 2007 (such Agreement of Lease as it may heretofore or hereafter be amended, supplemented or modified and any replacement thereof is herein referred to as the "Lease") and is assigning all of its right, title and interest in and to the Lease to the Beneficiary pursuant to this Deed of Trust as collateral security for the Notes.

C. The Notes, and all principal thereof and interest thereon, any Make-Whole Amount (as defined herein) and all additional amounts and other sums at any time due and owing from, and required to be paid by the Grantor under the terms of the Notes, the Note Purchase Agreement, this Deed of Trust and the other Operative Agreements (as defined herein) are collectively hereinafter sometimes referred to as the "Indebtedness Hereby Secured."

F. The Grantor is duly authorized under all applicable provisions of law and its Organizational Documents (as defined herein) to issue the Notes, to execute and deliver this Deed of Trust and to mortgage, convey and assign the Granted Property (as defined herein) to the Beneficiary as security for the Indebtedness Hereby Secured and all action and all consents, approvals and other authorizations and all other acts and things necessary to make this Deed of Trust the valid, binding and legal instrument for the security of the Indebtedness Hereby Secured have been done and performed.

NOW, THEREFORE, THIS DEED OF TRUST WITNESSETH: That the Grantor, in consideration of the premises, the purchase and acceptance of the Notes by the Beneficiary and of the sum of Ten Dollars received by the Grantor from the Beneficiary and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Notes according to their tenor and effect, and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, agreements and conditions contained in or incorporated by reference into the Notes, this Deed of Trust, the Note Purchase Agreement or the other Operative Agreements, the Grantor does hereby grant, warrant, mortgage, assign, pledge, demise, bargain, convey, transfer, set over and hypothecate unto the Trustee for the benefit of the Beneficiary, its successors and assigns, forever, WITH POWER OF SALE, to the extent permitted by law, and grants to the Trustee for the benefit of the Beneficiary, its successors and assigns, forever, a security interest in and to all and singular all of the Grantor's estate, right, title and interest in the following described properties, (all of which properties, rights, interests and privileges hereby mortgaged, assigned, pledged and

hypothecated or intended so to be are hereinafter collectively referred to as the "*Granted Property*"):

GRANTING CLAUSE FIRST

THE PROPERTY

The parcel(s) of land in the County of Summit County, City of Park City, State of Utah, described in Exhibit A attached hereto and made a part hereof, together with the entire interest of the Grantor in and to all buildings, structures, improvements and appurtenances now standing, or at any time hereafter constructed or placed, upon such land, including all right, title and interest of the Grantor, if any, in and to all building material, building equipment and fixtures of every kind and nature whatsoever on said land or in any building, structure or improvement now or hereafter standing on said land which are classified as fixtures under applicable law and which are used in connection with the operation, maintenance or protection of said buildings, structures and improvements as such (including, without limitation, all boilers, air conditioning, ventilating, plumbing, heating, lighting and electrical systems and apparatus, all communications equipment and intercom systems and apparatus, all sprinkler equipment and apparatus and all elevators and escalators) and the reversion or reversions, remainder or remainders, in and to said land, and together with the entire interest of the Grantor in and to all and singular the tenements, hereditaments, easements, rights of way, rights, privileges and appurtenances to said land, belonging or in anywise appertaining thereto, including, without limitation, the entire right, title and interest of the Grantor in, to and under any streets, ways, alleys, gores or strips of land adjoining said land, and all claims or demands whatsoever of the Grantor either in law or in equity, in possession or expectancy, of, in and to said land, it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or is hereafter acquired by the Grantor and is affixed or attached or annexed to said land, shall be and remain or become and constitute a portion of said land and the security covered by and subject to the lien of this Deed of Trust, together with all accessions, parts and appurtenances appertaining or attached thereto and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all thereof, and together with all rents, income, revenues, awards, issues and profits thereof, and the present and continuing right to make claim for, collect, receive and receipt for any and all of such rents, income, revenues, awards, issues and profits arising therefrom or in connection therewith, excluding, however, the Released Condominium Units (defined below) (collectively, the "*Property*").

GRANTING CLAUSE SECOND

THE LEASE, THE OTHER LEASES, RENTS AND THE LEASE GUARANTIES

The Lease, the Other Leases (defined below), and all of the Grantor's estate, right, title, interest, claim and demand as landlord in, to and under the Lease and the Other Leases, including all extensions and renewals of the term thereof, and all existing or future amendments, supplements or modifications of the Lease and the Other Leases (and to any short memorandum form of the Lease and the Other Leases executed for recording purposes), together with all rights, powers, privileges, options and other benefits of the Grantor, if any, in, to and under the

Lease Guaranties (as defined herein), if any, and all rights, powers, privileges, options and other benefits of the Grantor as landlord under the Lease and the Other Leases, including, without limitation, (a) the immediate and continuing right (whether or not an Event of Default under this Deed of Trust shall have occurred and be continuing) to receive and collect all rents (whether as fixed rent, basic rent, percentage rent, additional rent or otherwise), income, revenues, issues, profits, insurance proceeds, condemnation awards, bankruptcy claims, liquidated damages, purchase price proceeds and other payments, tenders and security payable to or receivable by the landlord under the Lease and the Other Leases; (b) if the Tenant exercises any right, or shall be required to purchase the Granted Property or the landlord's interest therein, the right and power (such power and right being coupled with an interest) to execute and deliver as agent and attorney-in-fact of the landlord under the Lease and the Other Leases, an appropriate deed or other instruments of transfer necessary or appropriate for the conveyance and transfer to the purchaser of the Granted Property or the portion thereof being so purchased, and all interest of the landlord therein and to perform in the name and for and on behalf of the landlord, as such agent and attorney-in-fact, any and all other necessary or appropriate acts with respect to any such purchase, conveyance and transfer; (c) the right to make all waivers, consents and agreements; (d) the right to give and receive copies of all notices and other instruments or communications; (e) the right to take such action upon the occurrence and during the continuance of an event of default or default under the Lease, the Other Leases and the Lease Guaranties, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease, the Other Leases, the Lease Guaranties, or by law; and (f) the right to do any and all other things whatsoever which the Grantor or any landlord is or may be entitled to do under the Lease, the Other Leases and the Lease Guaranties, or by law.

GRANTING CLAUSE THIRD

CONDEMNATION AWARDS

Any award or awards or settlements or payments heretofore made or hereafter to be made by any municipal, county, state or federal authorities to the present or any subsequent owners of the Granted Property, including without limitation any award or awards, or settlements or payments, hereafter made resulting from (i) condemnation proceedings or the taking of the Granted Property, or any part thereof, under the power of eminent domain; or (ii) the alteration of grade or the location or the discontinuance of any street adjoining the Granted Property or any portion thereof, or (iii) any other injury to or decrease in value of the Granted Property; and the Grantor hereby agrees to execute and deliver from time to time such further instruments as may be requested by the Beneficiary to confirm such assignment to Beneficiary of any such award, damage, payment or other compensation.

GRANTING CLAUSE FOURTH

PERSONAL PROPERTY

All tangible and intangible, movable and immovable, personal property now owned or at any time hereafter acquired by the Grantor of every nature and description, and used in any way in connection with the Granted Property, or any other portion of the same, including, without

limitation, all inventory; movable goods; materials; supplies; equipment; furnishings; fixtures; accounts; accounts receivable; chattel paper; documents; instruments; investment property; money; bank accounts (including, without limitation, the Escrow Reserves (as defined in the Escrow and Servicing Agreement (as defined herein)) and any accounts or reserves held by Beneficiary or by the Escrow Agent (as defined herein) under the terms of the Escrow and Servicing Agreement); deposit accounts; security deposits; claims to rebates, refunds or abatements of real estate taxes or any other taxes; contract rights, plans and specifications; permits, licenses and general intangibles; the rights of the Grantor under contracts with respect to the Granted Property or any portion thereof; signs, brochures, advertising and good will; all trademarks, service marks, trade names and other intellectual property associated with the Granted Property.

GRANTING CLAUSE FIFTH

OTHER AND AFTER-ACQUIRED PROPERTY

Any and all moneys and other property of whatever nature and kind (including each amendment or supplement to any and all instruments included in the Granted Property which may from time to time, by delivery to the Trustee or the Beneficiary or by any instrument, including this Deed of Trust, be subjected to the lien hereof by the Grantor or by anyone on the behalf of the Grantor or with the consent of the Grantor, or which may come into the possession or be subject to the control of the Trustee or the Beneficiary pursuant to this Deed of Trust, or pursuant to any instrument included in the Granted Property, it being the intention of the Grantor and the Beneficiary and it being hereby agreed by them that all property hereafter acquired by the Grantor and required to be subjected to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by the Grantor be as fully embraced within the lien of this Deed of Trust as if such property were now owned by the Grantor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto.

GRANTING CLAUSE SIXTH

PROCEEDS

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance and condemnation awards and payments and all products, additions, accessions, substitutions and replacements of any of the foregoing.

SUBJECT, HOWEVER, as to as to each and every component of the Granted Property and any of the property or rights in property at any time subject to the lien hereof (whether now owned or hereafter acquired), to the following:

- (a) The agreement of the parties hereto that any and all Improvements (as defined herein), trade fixtures, signs, furniture, furnishings, equipment, machinery or other tangible or intangible personal property located on the Granted Property not owned by the Grantor, whether or not classified as fixtures under applicable law, are expressly excluded from the lien and security interest created by this Deed of Trust, including,

without limitation, Improvements, trade fixtures, signs, furniture, furnishings and other
Granted Property owned by the Tenant or any occupant, and that the same shall in no
instance be deemed to be encompassed within the term "Granted Property";

(b) All right, title and interest of Tenant under the Lease, it being understood
that Tenant's right, title and interest pursuant to the Lease is not included within the term
Granted Property (except for any rights of reversion in the Tenant's estate upon the
expiration or earlier termination of the Lease);

(c) The Permitted Encumbrances, as defined in Section 1 hereof;

(d) No Residential Unit shall be treated as or deemed to comprise a portion of
the Granted Property following a release thereof pursuant to Section 3.2(h) hereof; and

(e) Excepted Rights, which are hereby reserved unto Grantor as set forth
herein.

TO HAVE AND TO HOLD the Granted Property unto the Trustee for the benefit of the
Beneficiary and its successors and assigns, in fee simple title forever, with the purpose of
securing performance of each agreement, covenant and warranty of the Grantor contained in the
Operative Agreements and payment of all Indebtedness Hereby Secured.

IN TRUST, NEVERTHELESS, WITH POWER OF SALE (to the extent permitted by law), upon the
terms and trusts herein set forth for the benefit and security of all present and future holders of
the Indebtedness Hereby Secured in accordance with its terms and all other sums payable
hereunder or under the Notes, and for the performance and observance of the Notes and this
Deed of Trust, all as herein set forth.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if the
Grantor performs the covenants herein contained and pays to the Beneficiary, its successors or
assigns, the full amount of all Indebtedness Hereby Secured, the estate, right and interest of the
Beneficiary in the property hereby conveyed shall cease and this Deed of Trust shall become null
and void (and Beneficiary hereto agrees to direct the Trustee to reconvey the Granted Property to
Grantor promptly following such payment), but otherwise to remain in full force and effect.

It is agreed and understood by the parties hereto that:

1. This Deed of Trust is intended to and shall constitute security for the
entire Indebtedness Hereby Secured.

2. Any part of the security herein described, and any security described in
any other mortgage, assignment of lease or other instrument now or hereafter given to
secure the indebtedness which is secured by this Deed of Trust, may be released by the
Beneficiary without affecting the lien hereof on the remainder.

3. The Grantor for itself and all who may claim through or under it waives
any and all right to have the property and estates comprising the Granted Property
marshalled upon any foreclosure of the lien hereof, or to have the Granted Property

hereunder and the property covered by any other mortgage or assignment of lease securing the Notes marshalled upon any foreclosure of any of said mortgages or assignments of leases, and agrees that any court having jurisdiction to foreclose such lien may order the Granted Property sold as an entirety.

4. Upon the occurrence and during the continuance of an Event of Default hereunder, the Beneficiary has, among other things, the right to foreclose on the Granted Property and dispose of the same in accordance with all applicable laws. To the extent permitted by law, the Trustee's deed or other instrument of conveyance, transfer or release (which, if permitted by law, may be in the name of the Beneficiary or as attorney for the Grantor and the Beneficiary hereby is irrevocably appointed) shall be effective to convey and transfer to the grantee an indefeasible title to the property covered thereby, discharged of all rights of redemption by the Grantor or any person claiming under it, and to bar forever all claims by the Grantor or the said Beneficiary to the property covered thereby and no grantee from the Beneficiary shall be under any duty to inquire as to the authority of the Beneficiary to execute the same, or to see to the application of the purchase money.

5. Subject to the Excepted Rights, the assignment made under Granting Clause Second and Section 2.18 hereof is executed as a present, unconditional and absolute assignment and not merely as collateral security, and the execution and delivery of this Deed of Trust shall not in any way impair or diminish any obligations of the Grantor as landlord under the Lease nor impair, affect or modify any of the terms and conditions of the Notes or the Note Purchase Agreement, nor shall any of such obligations be imposed upon the Trustee or the Beneficiary, including but not limited to collecting rentals or enforcing performance by the Tenant. Without limiting the generality of the foregoing, the Beneficiary shall not be obligated to perform or discharge, nor does the Beneficiary hereby undertake to perform or discharge, any obligation, duty or liability under the Lease, or under or by reason of this Deed of Trust; and it is further understood and agreed that this Deed of Trust shall not operate to place responsibility for the control, care, management or repair of the Granted Property upon the Beneficiary, nor for the carrying out of any of the terms and conditions of the Lease, nor shall it operate to make the Beneficiary responsible or liable for any waste committed on the Granted Property by the Tenant or any other parties, or for any dangerous or defective condition of the Granted Property, or for any negligence of the management, upkeep, or repair or control of the Granted Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Upon the occurrence and during the continuance of an Event of Default, the Beneficiary may, at its option, although it shall not be obligated to do so, after giving at least five (5) days written notice to the Tenant and the Grantor, perform any Lease covenant for and on behalf of the Grantor and may recover any money advanced, for any such purpose from the Grantor on demand, with interest at the Default Rate (as defined herein) (or at the maximum rate permitted by applicable law, whichever is less) from date of advancement. Upon the payment of the principal of (and premium, if any) and all interest on the Notes and of all other sums payable on the Notes or under the Note Purchase Agreement or this Deed of Trust or any other Operative Agreement and the performance and observance of the provisions thereof, this Deed of Trust shall cease and terminate and all the estate, right, title, interest,

claim and demand of the Grantor under the Lease in and to the above-described assigned property shall revert to the Grantor under the Lease, and the Beneficiary shall at the request of the Grantor deliver to the Grantor an instrument cancelling the assignment of Lease set forth in this Deed of Trust and reassigning the above-described assigned property to the Grantor.

6. Subject to the Excepted Rights, the Grantor does hereby irrevocably constitute and appoint the Beneficiary, its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acceptance for any and all rents, income and other sums which are assigned under the Granting Clauses of this Deed of Trust with full power to sue for, settle, adjust or compromise any claim thereunder as surely as the Grantor could itself do and to endorse the name of the Grantor on all commercial paper given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings either in its own name or in the name of the Grantor or otherwise, which the Beneficiary may deem necessary or appropriate to protect and preserve the right, title and interest of the Beneficiary in and to such rents and other sums and the security intended to be afforded by this Deed of Trust.

SECTION 1. DEFINITIONS.

The following terms shall have the following meanings for all purposes of this Deed of Trust (any capitalized terms not otherwise defined herein shall have the meanings set forth therefor in the Note Purchase Agreement):

"Affiliate" of any specified Person, shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, and any immediate family member of such specified Person and such family member's Affiliates.

"Bankruptcy Claims" is defined in Section 2.18(a) of this Deed of Trust.

"Bankruptcy Code" is defined in Section 2.18(a) of this Deed of Trust.

"Closing Date" is defined in the Note Purchase Agreement.

"Condominium Units" is defined in Section 3.2(b) of this Deed of Trust.

"Control," when used with respect to any specified Person means the ultimate power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms *"controlling"* and *"controlled"* have meanings correlative to the foregoing.

"Default" shall mean any event which would constitute an Event of Default if any requirement in connection therewith for the giving of notice, or the lapse of time had been satisfied.

"Default Rate" shall mean [Default Rate] per annum.

"Environmental Legal Requirement" shall mean any applicable local, state or federal law, statute, ordinance, rule or regulation relating to public health, safety or the environment, including, without limitation, relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, transportation, treatment, storage or management of solid or hazardous wastes or to exposure to toxic or hazardous materials, to the handling, transportation, discharge or release of gaseous or liquid substances and any regulation, order, notice or demand issued pursuant to such law, statute, ordinance, rule or regulation, in each case applicable to the property of the Grantor and its Subsidiaries or the operation, construction or modification of any thereof, including without limitation the following: the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Materials Transportation Act, the Solid Waste Disposal Act, all as amended, and any local, state or federal laws, statutes, ordinances, rules or regulations addressing similar matters, and any local, state or federal law, statute, ordinance, rule or regulation providing for financial responsibility for cleanup or other actions with respect to the release or threatened release of hazardous substances and any local, state or federal nuisance law, statute, ordinance, rule or regulation.

"Escrow Agent" shall mean Wells Fargo Bank Northwest, N.A., as Escrow Agent under the Escrow and Servicing Agreement, and its successors and assigns.

"Escrow and Servicing Agreement" shall mean that certain Escrow and Servicing Agreement dated as of the date hereof among the Grantor, the Beneficiary and the Escrow Agent.

"Escrow Shortfall" is defined in the Escrow and Servicing Agreement.

"Event of Default" shall mean any events specified in Section 5.1 hereof including all notice, cure and grace periods.

"Event of Loss" with respect to the Granted Property shall mean any casualty or condemnation described in the Lease.

"Excepted Rights" shall mean the Grantor's continuing right, except following the occurrence and during the continuance of an Event of Default, (1) to receive from the Tenant certificates and other documents and information that the Tenant is required to give or furnish to the Grantor in accordance with the Lease, (2) to inspect the Granted Property and all records relating thereto, and (3) collect rents, enforce Grantor's rights under the Lease, demand performance or observance by the Tenant under the Lease of the applicable terms, conditions and agreements of the Lease as allowed by law, equity or the Lease and exercise Grantor's rights and remedies under the Lease; *provided, however*, the Grantor may not (X) accelerate payment of Rent by more than thirty (30) days, or (Y) give any notice, sue or pursue any remedy or take any action under the Lease that is reasonably likely to have the effect of (A) terminating the Lease,

(B) dispossessing the Tenant, (C) declaring the Lease forfeited or terminated, (D) reducing the rent payable under the Lease or reducing in any material respect any of the Tenant's economic or other material obligations under the Lease, or (E) adversely affecting the rights of the Grantor as landlord under the Lease, the value of the Granted Property or the rights or interests of Beneficiary under the Operative Agreements, without in each instance Beneficiary's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

"Excluded Taxes" is defined in Section 2.8 of this Deed of Trust.

"Existing Guarantors" shall mean the owners of the Grantor acting as guarantors under the Indemnity and Guaranty Agreement.

"Existing Indemnitors" shall mean the owners of the Grantor acting as indemnitors under the Hazardous Material Indemnity Agreement.

"Existing Owner" is defined in Section 2.3(h) of this Deed of Trust.

"Fee Mortgagee Protection Agreement" shall mean the Fee Mortgagee Protection and Purchase Agreement, Acknowledgment of Lease Priority and Assignment and Attornment Agreement among the Beneficiary, the Tenant and the Grantor.

"Fixed Rate Note" is defined in the Recitals hereto.

"Floating Rate Note" is defined in the Recitals hereto.

"Granted Property" is defined in the Recitals hereto.

"Grantor" shall mean not only Talisker Empire Pass Hotel LLC, but also its successors and assigns.

"Hazardous Material" shall mean any hazardous, toxic or harmful chemical, substance, waste, material, byproduct, pollutant, contaminant, compound or product, including without limitation, asbestos, polychlorinated byphenyls, petroleum products (including crude oil or any fraction thereof), flammable explosives, radioactive materials, mold, mildew, infectious substances or raw materials which include hazardous constituents and any other substance or material the exposure, use, disposal or handling of which is regulated by any Environmental Legal Requirement.

"Hazardous Material Indemnity Agreement" shall mean that certain Hazardous Material Indemnity Agreement dated as of the Closing Date from the Existing Indemnitors and the Grantor in favor of the Beneficiary.

"Improvements" means all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements, improvements and appurtenances now standing, or at any time hereafter constructed or placed, upon the land described on Exhibit A hereto.

"Indebtedness" of any Person shall mean, without duplication (a) all obligations of such Person for borrowed money or which have been incurred in connection with the acquisition of,

and are payable to the grantor of, property or assets, (b) rents payable by such Person under all leases (whether or not capitalized on the books of such Person in accordance with generally accepted accounting principles) having a fixed term of two (2) years or more from the original date or which are renewable or extendible by the lessee for a period or periods aggregating one year or more from the original date, (c) all indebtedness, obligations and liabilities secured by any lien existing on property owned by such Person subject to such lien, whether or not such indebtedness, obligations or liabilities have been assumed, and (d) all guarantees (whether by discount or otherwise), endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, or otherwise acquire, or become liable upon or in respect of, the indebtedness, obligations or liabilities of any Person or other entity whether or not reflected in the balance sheet of such Person.

"Indebtedness Hereby Secured" is defined in Recital C hereto.

"Indemnified Liabilities" is defined in Section 2.24 of this Deed of Trust.

"Indemnitor" shall mean any Existing Indemnitor or any Successor Indemnitor.

"Indemnity and Guaranty Agreement" shall mean that certain Indemnity and Guaranty Agreement dated as of the Closing Date from the Existing Guarantors in favor of the Beneficiary.

"Investment Grade" shall mean a rating of "BBB" or better, as rated by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. or a rating of "Baa" or better, as rated by Moody's Investor Service, Inc.

"Lease" is defined in Recital B hereto.

"Lease Assignment" shall mean the assignment of the Lease, the Other Leases, the Lease Guaranties and Rents set forth in Granting Clause Second and Section 2.18 of this Deed of Trust.

"Lease Guarantor" is defined in Section 2.18(a) of this Deed of Trust.

"Lease Guaranty" is defined in Section 2.18(a) of this Deed of Trust.

"Loan" is defined in Section 6.12 of this Deed of Trust.

"Make-Whole Amount" is defined in the Fixed Rate Note

"Management Agreement" is defined in Section 2.14(e) of this Deed of Trust.

"Non-Recourse Person" is defined in Section 6.10 of this Deed of Trust.

"Notes" is defined in Recital A hereto.

"Note Purchase Agreement" is defined in Recital A hereto.

"Operative Agreements" shall mean, collectively, the Note Purchase Agreement, this Deed of Trust, the Hazardous Material Indemnity Agreement, the Indemnity and Guaranty

Agreement, the Fec Mortgagee Protection Agreement, the Escrow and Servicing Agreement, and the Notes.

"Organizational Documents" of any entity shall mean (a) in the case of a corporation, the articles or certificate of incorporation (or the equivalent of such items under state law) and the by-laws of such corporation, (b) in the case of a limited liability company, the certificate or articles of existence or formation and the operating agreement of such limited liability company, (c) in the case of a limited partnership, the certificate of formation and limited partnership agreement of such limited partnership and the Organizational Documents of the general partner of such limited partnership, (d) in the case of a trust, the certificate of formation (if applicable) and the trust agreement for such trust, and (e) any equivalent documents, to the foregoing under the State law where such entity was organized or formed.

"Other Leases" is defined in Section 2.18(a) of this Deed of Trust.

"Permitted Encumbrances" shall mean the liens described in clauses (a) through (i) of Section 2.17 of this Deed of Trust.

"Person" shall mean an individual, partnership, limited liability company, corporation, trust or unincorporated organization.

"Personal Property" shall mean the personal property described in Granting Clause Fourth of this Deed of Trust.

"Released Condominium Units" shall mean, from time to time, the Condominium Units previously conveyed by Grantor to purchasers thereof and any and all Condominium Units hereafter conveyed by Grantor to purchasers thereof and released from the lien of the Deed of Trust.

"Rents" is defined in Section 2.18(a) of this Deed of Trust.

"Restoration" is defined in Section 4.1 of this Deed of Trust.

"Restoration Funds" is defined in Section 4.1 of this Deed of Trust.

"Secondary Market Transaction" is defined in Section 6.12 of this Deed of Trust.

"Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"Subsidiary" shall mean any Person of which more than 50% (by number of votes) of the Voting Interest is owned and controlled by the Grantor and/or one or more Persons which are Subsidiaries of the Grantor.

"Successor Grantor" is defined in Section 2.3(g) of this Deed of Trust.

"Successor Indemnitor" is defined in Section 2.3(g) of this Deed of Trust.

"*Successor Owner*" is defined in Section 2.3(h) of this Deed of Trust.

"*Taxes*" is defined in Section 2.16 of this Deed of Trust.

"*Tenant*" shall mean not only DV Luxury Resort LLC, a Delaware limited liability company, but also its successors and assigns.

"*Trustee*" shall mean Coalition Title Company, and any successor thereto appointed pursuant to Section 6.7 of this Deed of Trust.

"*Uniform Commercial Code*" shall mean the Uniform Commercial Code as in effect in the State of Utah, as amended.

"*Voting Interest*" shall mean Securities or equity ownership interest of any class or classes of a Person, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

SECTION 2. GENERAL COVENANTS AND WARRANTIES.

From and after the Closing Date and continuing so long as the Indebtedness Hereby Secured, remains unpaid, the Grantor covenants that:

Section 2.1. Office for Notices. The Grantor will keep an office at Talisker Empire Pass Hotel LLC, c/o Talisker Mountain Inc. 1850 Sidewinder Drive, 2nd Floor, P.O. Box 4349, Park City, UT 84060, where notices, presentations and/or demands to or upon the Grantor in respect of said Notes or this Deed of Trust may be given or made, until such time as the Grantor shall so notify the Beneficiary in writing of any change of location of such office.

Section 2.2. Maintenance of Existence, Rights. The Grantor will at all times preserve and keep in full force and effect its existence and will obtain and maintain in full force and effect all franchises, privileges, rights, licenses and permits and all other consents, approvals and authorizations of any governmental authority necessary for the ownership and efficient operation and maintenance of its business and property which failure to obtain and maintain would materially and adversely affect the properties, business, prospects, profits or condition of the Grantor.

Section 2.3. Negative Covenants. The Grantor will not:

(a) engage in any business other than the ownership and development of the Granted Property, the leasing of the Granted Property to the Tenant and the financing thereof through the issuance of the Notes, as expressly contemplated by the Operative Agreements to which the Grantor is a party;

(b) be or become liable in respect of any guaranty, except for any guaranties that are part of, or permitted by the Operative Agreements;

(c) incur any Indebtedness other than (i) Indebtedness Hereby Secured, (ii) Taxes not yet due and payable and items being contested pursuant to Section 2.16(b),

(iii) trade payables incurred in the ordinary course of business not exceeding \$100,000.00 paid within sixty (60) days of date incurred, and (iv) obligations under the Lease;

(d) make, or permit to remain outstanding, any investment, loan or advance to, or own or acquire any stock or Securities of, any Person except that the Grantor may make any investment, loan or advance required to be made to satisfy its obligations under the Operative Agreements to which the Grantor is a party;

(e) pay or declare any dividend, or make any other distribution if, after giving effect thereto, an Event of Default would exist except: (i) to the extent permitted under Section 3.2(b) hereof; (ii) for funds released to Grantor from the Escrow and Servicing Agreement, or which are permitted to be paid directly to Grantor by Tenant pursuant to the terms of the Escrow and Servicing Agreement; and (iii) for funds being held in escrow as of the date hereof relating to the sale of Condominium Units prior to the date hereof which may be hereafter released to the Grantor;

(f) enter into any lease of any of the Granted Property, whether as lessor or as lessee, other than the Lease or any sublease permitted under the Lease;

(g) sell, transfer, exchange or otherwise dispose of the Granted Property or any part or portion thereof, except as expressly permitted by Sections 5.2 or 6.13 of this Deed of Trust or incident to the release of Condominium Units pursuant to Section 3.2(b) of this Deed of Trust;

(h) permit any direct or indirect holder or owner of an equity, ownership, membership, partnership, or voting interest in the Grantor (an "*Existing Owner*") to sell, transfer, exchange or otherwise dispose of such interest in the Grantor in any transaction or series of transactions that would result in a different Person or entity ultimately holding or owning, directly or indirectly, a controlling interest in the Grantor than held or owned such controlling interest on the Closing Date (each a "*Transfer*"), *provided however* that (A) nothing herein shall be deemed a limitation on the transfer, directly or indirectly, of non-controlling ownership interests in the Grantor so long as the same Person or entity ultimately holding or owning a controlling interest in the Grantor on the Closing Date continues to hold or own such controlling interest after giving effect to such transfer, (B) controlling or non-controlling interests may be transferred to family members, trusts for estate planning purposes or other entities controlled by family members from time to time any number of times but not more frequently than once every twelve month period, and (C) in addition to any sale(s) or transfer(s) permitted under clause (A), clause (B) or Section 2.3(g) above, the holder or holders of a controlling interest in the Grantor shall have the right to sell a controlling interest to another Person or entity (the "*Successor Owner*"); *provided* that in connection with such any sale under this clause (C), the following conditions are met:

(i) after giving effect to the sale, the Grantor shall be in compliance with this Deed of Trust and no Default or Event of Default shall have occurred which shall then be continuing;

(ii) the Successor Owner shall have assumed the obligations of the Existing Guarantors and Existing Indemnitors under, or entered into agreements in the same form as, the Indemnity and Guaranty Agreement and the Hazardous Material Indemnity Agreement delivered on the Closing Date;

(iii) such Successor Owner (or its parent or sponsor entity) is (i) Tenant or a special purpose entity affiliate of Tenant, (ii) an institutional investor, or (iii) any other person whose reputation, creditworthiness and experience in real estate management and development shall be reasonably acceptable to the Beneficiary; *provided, however*, it shall not be unreasonable for the Beneficiary to reject a Successor Owner that has a net worth less than \$25,000,000; and

(iv) commencing on the third (3rd) sale to occur under this clause (C) and upon each subsequent sale under clause (C), the Successor Owner shall (A) pay to the Beneficiary a fee equal to 1.00% of the then outstanding principal amount of the Notes (provided, however, up to the tenth transfer, no such fee shall be due if the Mortgaged Property is sold to family members or trusts for estate planning purposes), and (B) pay all of the reasonable legal fees and expenses of the special counsel representing the beneficial holder of the Notes in connection with the sale of such interest to the Successor Owner.

If a controlling interest in the Grantor is sold in accordance with the terms of this Section 2.3(h), then upon satisfaction of the conditions set forth therein, the Existing Owner and any Existing Guarantor or Existing Indemnitor shall be released from all liability under this Deed of Trust and the other Operative Agreements, except for obligations accruing prior to the date of such sale.

(i) A Transfer within the meaning of Section 2.3(h) shall not include transfers of ownership interests in the Grantor made by devise or descent or by operation of law upon the death of a member of the Grantor, subject however, to all the following requirements: (A) written notice of any transfer under this Section 2.3(i) whether by will, trust or other written instrument, operation of law or otherwise, is provided to Beneficiary, together with copies of such documents relating to the transfer as Beneficiary may reasonably request, (B) control over the management and operation of the Granted Property thereafter is assumed by persons who are acceptable in all respects to Beneficiary in its reasonable discretion, (C) no such transfer will release the respective estate from any liability as an Existing Indemnitor, and (D) no such transfer, death or other event has any adverse effect either on the bankruptcy-remote status of the Grantor or on the status of the Grantor as a continuing legal entity liable for the payment of the Indebtedness Hereby Secured and the performance of all other obligations secured hereby;

(j) institute proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against it, or file a petition under state law relating to bankruptcy or insolvency, or consent to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Grantor, or a substantial part of its property, or make any assignment for the benefit of

creditors, or, except as required by law, admit in writing its inability to pay its debts generally as they become due, or take any company action in furtherance of any such action; or

(k) amend or modify the Organizational Documents of the Grantor.

(l) create, organize or establish any Subsidiary; or

(m) conduct its business in any manner that would likely result in the substantive consolidation of the Grantor with its member or members in bankruptcy.

Section 2.4. Mergers and Consolidations. The Grantor will not consolidate with or be a party to a merger with any other Person.

Section 2.5. Financial Information and Reports. The Grantor will keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the Grantor in accordance with the accounting basis used for income tax purposes and will furnish to the Beneficiary:

(a) As soon as available and in any event within one hundred twenty (120) days after the close of each fiscal year of the Grantor, copies of:

(i) a balance sheet of the Grantor as of the close of such fiscal year,
and

(ii) a statement of operating income, retained earnings and cash flows
of the Grantor for such fiscal year,

in each case setting forth in comparative form the figures for the preceding fiscal year, all in reasonable detail and accompanied by a certificate of an officer of the Grantor to the effect that such financial statements have been prepared in accordance with the accounting basis used for tax purposes, are complete and correct and present fairly, in all material respects, the financial condition of the Grantor; *provided*, that if the financial statements required by this paragraph (a) shall be prepared by a firm of independent public accountants, then in lieu of a statement certified by an officer of the Grantor, copies of such statements shall be furnished to the Beneficiary at the times required by the preceding provisions of this paragraph (a);

(b) Within the periods provided in paragraph (a) above, the written statement of the Grantor, signed by an authorized officer of the Grantor, stating whether, to the best of his knowledge, there existed as of the date of such financial statements and on the date of the certificate any Default or Event of Default under this Deed of Trust, and specifying the nature and period of existence thereof and the action the Grantor is taking and proposes to take with respect thereto; and

(c) Such additional information as the Beneficiary may reasonably request concerning the Grantor.

The Grantor will permit the Beneficiary (or such Persons as the Beneficiary may designate) to visit and inspect the Granted Property under the Grantor's guidance, to examine all of its books of account, records, reports and other papers, to make copies and extracts therefrom and to discuss its affairs, finances and accounts with its officers, agents and representatives, all at such reasonable times and as often as any such holder may reasonably desire, and upon reasonable advance notice to Grantor, in each case subject to the terms and conditions set forth in the Lease, *provided*, that inspections of the Granted Property shall be requested by holder no more frequently than two (2) times per year or, following the occurrence and during the continuance of an Event of Default, as often as any holder may reasonably desire, and *provided, further*, that at any time when an Event of Default shall have occurred and be then continuing, such visit and inspection shall be at the expense of the Grantor.

Section 2.6. Notice of Default. The Grantor will, immediately upon an officer or member of the Grantor acquiring actual knowledge of a Default or Event of Default, furnish a written notice to the Beneficiary specifying the nature and period of existence of such condition or event and what action the Grantor is taking or proposes to take with respect thereto.

Section 2.7. Mortgage Title Insurance Policy. The Grantor will, within sixty (60) days following the Closing Date, at its own cost and expense, procure and deliver to the Beneficiary or its counsel an ALTA Policy issued by a title insurance company acceptable to the Beneficiary which policy shall conform to the commitment or pro forma, as applicable, for title insurance issued to the Beneficiary in the form attached as an exhibit to the Escrow Instruction Letter delivered on the Closing Date and issued by the title company which issued such commitment or pro forma (which title company shall be acceptable to the Beneficiary) which policy shall be not less than the principal amount of the Notes issued and delivered on the Closing Date covering the Granted Property showing fee title to the Granted Property to be in the Grantor, subject only to Permitted Encumbrances, which policy shall also insure the Beneficiary against all loss or damage sustained by reason of this Deed of Trust not being a first and paramount lien at the date of such policy upon title to the Granted Property and which policy shall show recordation of this Deed of Trust and the Fee Mortgagee Protection Agreement, shall be dated the Closing Date and shall otherwise be in form and substance reasonable satisfactory to the Beneficiary.

Section 2.8. Payment of Certain Taxes. The Grantor covenants and agrees to pay all taxes, assessments and governmental charges or levies imposed upon this Deed of Trust or the Notes or any other Indebtedness Hereby Secured except income taxes, franchise taxes and other similar taxes based on the income or business operations of Beneficiary (including its receipt of debt service under the Notes) ("*Excluded Taxes*").

Section 2.9. Ownership of Granted Property. The Grantor covenants and warrants that it has good and marketable title to the Granted Property hereinbefore conveyed to the Beneficiary free and clear of all liens, charges and encumbrances whatever except Permitted Encumbrances, and the Grantor has full right, power and authority to grant, warrant, mortgage, pledge, assign, sell, demise, bargain, hypothecate, convey, grant a security interest in, transfer and set over the same to the Beneficiary for the uses and purposes in this Deed of Trust set forth; and the Grantor will warrant and defend the title to the Granted Property against all claims and demands whatsoever.

Section 2.10. Further Assurances. The Grantor will, at its own expense, do, execute, acknowledge and deliver all and every further act, deed, conveyance, transfer and assurance reasonably necessary for assuring, conveying, assigning and confirming unto the Beneficiary all of the Granted Property, or property intended so to be, whether now owned or hereafter acquired.

Section 2.11. Payment of Principal and Interest. The Grantor will duly and punctually pay the principal of, and premium of, if any, and interest on the Notes secured hereby according to the terms thereof.

Section 2.12. [Intentionally omitted.]

Section 2.13. [Intentionally omitted.]

Section 2.14. Maintenance of Granted Property, Other Liens, Compliance with Laws, Etc. (a) The Grantor shall (i) subject to Sections 3 and 4 hereof, promptly repair, restore or rebuild or cause any such repair, restoration or rebuilding of, any buildings or improvements now or hereafter located on the Granted Property which may become damaged or be destroyed, (ii) keep, or cause to be kept, the Granted Property in good condition and repair, ordinary wear and tear excepted, without waste, and free from all claims, liens, charges and encumbrances other than Permitted Encumbrances, (iii) pay, or cause to be paid, when due any indebtedness which may be secured by a lien or charge on the Granted Property which does not constitute a Permitted Encumbrance, and upon request exhibit satisfactory evidence of the discharge of such lien to the Beneficiary, (iv) comply with, or cause to be complied with, all requirements of law or municipal ordinances with respect to the Granted Property and the use thereof (including, without limitation, any Environmental Legal Requirements), failure to comply with which would result in any material interference with the use or operation of the Granted Property by the Grantor, (v) promptly procure, maintain and comply with, or cause to be promptly procured, maintained and complied with, all permits, licenses and other authorizations required for the use of the Granted Property or any erection, installation, operation and maintenance of the Granted Property or any part thereof, and (vi) make no material alterations in said Granted Property except as required by law or municipal ordinance or as permitted under the Lease; *provided, however,* that so long as the Granted Property is subject to the Lease, (A) the requirements with respect to the Granted Property contained in this Section 2.14 shall be satisfied by Grantor taking all reasonable acts necessary to cause Tenant to comply with its obligations under the Lease in accordance with and to the extent provided in the Lease and (B) the exercise by the Tenant of any right granted to it under the Lease shall not give rise to a default under this Deed of Trust if such right is exercised in compliance with the Lease.

(b) The Grantor may, or may permit the Tenant as provided in the Lease to, (i) construct upon the Granted Property additional buildings, structures and other improvements and (ii) install, assemble and place upon the Granted Property any trade fixtures, signs, furniture, furnishings, equipment, machinery and other tangible personal property used or useful in the business of the Grantor or the Tenant, as the case may be, whether or not classified as fixtures under applicable law. All such buildings, structures and other improvements shall be and remain part of the realty and shall be subject to this Deed of Trust. Such buildings, structures and other improvements, trade fixtures, signs, furniture, furnishings, equipment, machinery and other tangible personal property shall

be and remain the property of the Grantor or the Tenant as the case may be, shall not be deemed part of the Granted Property for purposes of condemnation or casualty, and the Grantor or the Tenant, as the case may be, may remove the same from the Granted Property at any time prior to the expiration or earlier termination of this Deed of Trust, *provided* that the Grantor, at its expense, shall repair or shall cause the Tenant to repair any damage to the Granted Property resulting from such removal.

(c) Except to the extent permitted to be undertaken by Tenant under the Lease without Grantor's consent, any repair, restoration, rebuilding, substitution, replacement, modification, alteration of or addition to the Granted Property pursuant to this Section 2.14 must not impair the market value or usefulness of the Granted Property for use in the ordinary course of business; shall be expeditiously performed in a good and workmanlike manner and be completed in compliance with all laws, ordinances, orders, rules, regulations and requirements applicable thereto, including to the extent necessary to maintain in full force and effect the policies of insurance required by Section 2.15 hereof. All costs and expenses of each such repair, restoration, rebuilding, substitution, replacement, the discharge of all liens filed against the Granted Property arising out of the same, together with all costs and expenses necessary to obtain any permits or licenses required in connection therewith shall be promptly paid by the Grantor or the Tenant.

(d) The Grantor will only use and operate the Granted Property, or permit the same to be used and operated, for any lawful purpose. Except to the extent permitted to be undertaken by Tenant under the Lease without Grantor's consent, the Grantor will not initiate, join in, acquiesce in, or consent to any change in any legal requirements, limiting or defining the use that may be made of the Granted Property without the express written consent of the Beneficiary (which consent shall not be unreasonably withheld). If, under applicable zoning provisions, the use of all or a portion of the Granted Property is or will become a nonconforming use, the Grantor will not cause or join in any action to permit such nonconforming use to be discontinued or abandoned without the Beneficiary's prior written consent, except to the extent Grantor is required to do so under the Lease.

(e) Prior to entering into any management agreement or other agreement with respect to the property management of the Granted Property (a "*Management Agreement*"), the Grantor shall execute and deliver to Beneficiary, or cause to be executed and delivered to Beneficiary, a Subordination of Management Agreement, in form and substance reasonably satisfactory to Beneficiary, pursuant to which the party who shall act as manager of the Granted Property under such Management Agreement shall, among other things, subordinate its right to payment for services rendered in managing the Granted Property to the payment of the debt service to Beneficiary with respect to the Notes.

Section 2.15. Insurance. (a) The Grantor will continuously maintain, or will cause to be continuously maintained, the following-described insurance coverage, all of which must be reasonably satisfactory to the Beneficiary as to form of policy, amounts, deductibles, sublimits, types of coverages, exclusions and companies underwriting these coverages:

(i) Insurance with respect to the Improvements and Personal Property insuring against any peril now or hereafter included within the classification "Cause of Loss – Special Form" (sometimes referred to as "All Risk of Physical Loss"), without exclusion for terrorism and together with an "Ordinance and Law" endorsement, in amounts at all times sufficient to prevent Beneficiary from becoming a co-insurer within the terms of the policies and under applicable law, but in any event such insurance shall be maintained in an amount which, after application of deductible, shall be equal to the full insurable value of the Improvements and Personal Property, the term "full insurable value" to mean the actual replacement cost of the Improvements and Personal Property (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by an insurer, a recognized independent insurance broker or an independent appraiser selected and paid by the Grantor and in no event less than the coverage required pursuant to the terms of any Lease; and

(ii) Comprehensive public liability insurance on an "occurrence basis" or a "claims made basis" against claims for "personal injury" including without limitation bodily injury, death or property damage occurring on, in or about the Granted Property and the adjoining streets, sidewalks and passageways, provided that such insurance shall afford immediate minimum protection to a combined single limit of at least \$5,000,000 per person and accident and at least \$3,000,000 for property damage liability;

(b) Any insurance coverage maintained in accordance with Section 2.15(a) shall at all times be written by insurance companies of recognized national standing and with a rating of A- or better by A.M. Best Company or an equivalent rating by an NAIC-approved rating organization and authorized to do business in the State of Utah claims paying ability of A- or better by according to S&P (or an equivalent rating by an NAIC-approved rating organization) and authorized to do business in the State of Utah and: (A) shall name the Grantor and the Beneficiary as insureds, additional insureds or loss payee (as applicable), as their interests may appear, (B) in the case of policies covering loss or damage to the Granted Property, shall provide that such losses, if any, shall be payable solely to the Beneficiary or, at the direction of the Beneficiary, the depository under a standard mortgagee or beneficiary loss payable clause satisfactory to the Beneficiary, (C) shall provide that the Beneficiary's interest shall be insured regardless of any breach or violation by the Grantor of any warranties, declarations or conditions contained in such policies, (D) such insurance, as to the interest of the Beneficiary therein, shall not be invalidated by the use or operation of the Granted Property for purposes which are not permitted by such policies, nor by any foreclosure or other proceedings relating to the Granted Property, nor by change in title to or ownership of the Granted Property, (E) the insurers shall waive any right of subrogation of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Grantor, (F) if any premium or installment is not paid when due, or if such insurance would lapse or be canceled, terminated or materially changed for any reason whatsoever, the insurers will promptly notify the Beneficiary and any such lapse, cancellation, termination or change shall not be effective as to the

Beneficiary for thirty (30) days after receipt of such notice, (G) appropriate certification shall be made to the Beneficiary by each insurer with respect thereto, and (H) shall provide for deductibles in amounts not in excess of amounts as is customary for companies similarly situated and owning properties in the State of Utah similar to the Granted Property; *provided, however*, that notwithstanding the foregoing, (y) any insurance coverage maintained in accordance with Section 2.15(a)(i) may be maintained by the Tenant with third party insurance companies in accordance with the terms of the Lease and (z) so long as the Tenant is maintaining the insurance in the amounts and types of coverage and with the types of carriers as required in the Lease, the requirements of this Section 2.15 shall be satisfied. Provided no Default or Event of Default has occurred or is continuing, and subject to the provisions of the Lease, the loss, if any, under any policy pertaining to loss by reason of damage to or destruction of any portion of the Granted Property shall be adjusted with the insurance companies by the Grantor, subject to the reasonable approval of the Beneficiary if the loss exceeds \$250,000. The loss so adjusted shall be applied in accordance with the Lease and as to amounts payable to Grantor under the Lease shall be paid to the Beneficiary pursuant to said loss payable clause unless said loss is \$250,000 or less in which case said loss shall be paid directly to the Grantor, *provided* no Default or Event of Default has occurred and is continuing, in which event any such loss shall be paid to the Beneficiary.

(c) The Grantor shall furnish the Beneficiary with certificates or other satisfactory evidence of maintenance of the insurance required hereunder (including, without limitation, evidence of self-insurance by the Tenant, if applicable) and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal not less than thirty (30) days prior to the expiration date of the original policy or renewal policies. All such policies shall provide that the same shall not be canceled without at least thirty (30) days' prior written notice to each insured named therein.

Section 2.16. Payment of Taxes and Other Charges. (a) The Grantor will pay and discharge (if they are not otherwise paid by the Tenant under the Lease), before the same shall become delinquent, together with interest and penalties thereon, if any, (i) all taxes, assessments (including assessments for benefits from public works or improvements whenever begun or completed), levies, fees, water, sewer, electrical and other utility service rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, and whether or not within the contemplation of the parties hereto, which are at any time levied upon or assessed, except Excluded Taxes, against it or the Granted Property or any part thereof or upon this Deed of Trust or the Notes secured hereby, or upon the revenues, rents, issues, income and profits in respect of the Granted Property, or arising in respect of the occupancy, use or possession thereof, which failure to pay would result in the creation of a lien upon the Granted Property or any part thereof, or upon the revenues, rents, issues, income and profits of the Granted Property or in the diminution thereof or would result in any material interference with the use or operation of the Granted Property by the Grantor, (ii) all franchise, excise and other taxes, fees and charges assessed, levied or imposed upon Grantor in respect of its existence or its right to do business in any state, (iii) all income, excess profits, excise, sales, franchise, gross receipts and other taxes, duties or imposts, whether of a like or different nature, assessed, levied or imposed by any governmental authority on it or the Granted Property, or any portion thereof, or upon the revenues, rents, issues, income and profits of the Granted Property if the failure to pay any such

tax, duty or impost might result in the creation of a lien upon any asset of the Grantor or the Granted Property or any part thereof or upon the revenues, rents, issues, income and profits of the Granted Property or in the diminution thereof, and whether or not any such tax, duty or impost is payable directly by the Grantor or is subject to withholding at the source and (iv) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might result in the creation of a lien on the Granted Property or upon the revenues, rents, issues, income and profits of the Granted Property and, in general, will do or cause to be done everything reasonably necessary so that the lien hereof shall be fully preserved, at the cost of the Grantor, without expense to the Beneficiary (items (i) through (iv), inclusive, are collectively, the "Taxes").

(b) After prior written notice to the Beneficiary, the Grantor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, *provided* that (i) no Event of Default has occurred and is continuing under any of the Operative Agreements, (ii) such proceeding shall suspend the collection of the Taxes from the Grantor and from the Granted Property or the Grantor shall have paid all of the Taxes under protest, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Grantor is subject and shall not constitute a default thereunder, (iv) neither the Granted Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost and (v) the Grantor shall have maintained adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless the Grantor has paid all of the Taxes under protest, or the Grantor shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by the Beneficiary to insure the payment of any contested Taxes, together with all interest and penalties thereon. Nothing in this Section 2.16(b) shall prohibit the Tenant from contesting the payment of Taxes to the extent the Tenant is permitted to do so under the terms and conditions of the Lease, and the Grantor shall not be deemed in default of its obligations hereunder so long as the Tenant is diligently contesting the payment of such Taxes in compliance with the terms of the Lease.

Section 2.17. Limitation on Liens. The Grantor will not create or incur or suffer to be incurred or to exist, any mortgage, pledge, security interest, encumbrance, lien or charge of any kind upon the Granted Property, whether now owned or hereafter acquired, or upon any income or proceeds therefrom, except the following:

(a) liens for property taxes and assessments or governmental charges or levies and liens securing claims or demands of mechanics and materialmen, *provided* that payment thereof is not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings;

(b) liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Grantor shall at any time in good faith be prosecuting an appeal or proceeding for a review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;

(c) liens, charges, encumbrances and priority claims incidental to the conduct of business or the ownership of properties and assets (including warehousemen's and attorneys' liens and statutory landlords' liens) and deposits, pledges or liens to secure payment of premiums on insurance purchased in the usual course of business or in connection with self-insurance or in connection with workmen's compensation, unemployment insurance or social security legislation, or to secure the performance of bids, tenders or trade contracts, or to secure statutory obligations, surety or appeal bonds or other liens of like general nature incurred in the ordinary course of business and not in connection with the borrowing of money, *provided* in each case, the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings;

(d) minor survey exceptions or minor encumbrances, easements or reservations of, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real properties, which encumbrances, easements, reservations, rights and restrictions do not in the aggregate materially detract from the value of said properties or materially impair their use in the operation of the business of the Grantor;

(e) the lien of this Deed of Trust;

(f) any liens, rights, leasehold estate, and/or interest of the Tenant in and for the Granted Property under the Lease, subject to the Fee Mortgage Protection Agreement;

(g) the lien of any permitted sublease from the Tenant, as sublessor, to any Person, as sublessee; *provided* that the lien thereof shall be subject to the terms of the Lease;

(h) easements, rights of way, reservations, restrictive agreements, servitudes and rights of others against the Granted Property and any other matters which are listed on Schedule B to the ALTA Title Insurance Policy delivered to the Beneficiary following the issuance and delivery of the Notes, it being agreed that the exceptions to be set forth on Schedule B to the Title Insurance Policy are to be the same as are set forth in the proforma policy delivered to Beneficiary as of the date of this Deed of Trust;

(i) utility easements, rights of way or reservations granted or to be granted to service providers in connection with the development of the Granted Property, which such utility easements, rights of way or reservations do not in the aggregate materially detract from or impair the value of or use of the Granted Property; and

(j) liens permitted under the Lease or imposed upon the Granted Property as a result of the actions or omissions of Tenant under the Lease.

Section 2.18. Assignment; Obligations and Terms Respecting the Lease, the Other Leases and the Lease Guaranties.

(a) *Assignment.* In addition to, and not in contravention of, Granting Clause Second of this Deed of Trust, the Grantor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to further secure the payment and performance by the Grantor of all Indebtedness Hereby Secured hereby absolutely and unconditionally, but excluding and subject to the Excepted Rights, assigns, transfers and grants to the Beneficiary all of Grantor's right, title and interest in, to and under the following property, rights, interests and estates, whether now owned, or hereafter acquired, by the Grantor:

(i) *Lease.* The Lease.

(ii) *Other Leases and Agreements.* Grantor's right, title and interest in, to and under all other leases, subleases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Granted Property or any portion thereof now or hereafter made, together with any extension, renewal or replacement of the same (collectively, the "*Other Leases*"), this assignment of the Other Leases being effective without further or supplemental assignment.

(iii) *Rents.* All rents, additional rents, percentage rents, revenues, income, proceeds, payments, reimbursable amounts, issues and profits arising from the Lease, the Other Leases and the Lease Guaranties and any cash or security deposited in connection therewith (including, without limitation, all commissions and all oil and gas and other mineral royalties and bonuses payable by the Tenant under the Lease or any other tenant under the Other Leases or any Lease Guarantor under any Lease Guaranty or otherwise, for or in connection with the use, enjoyment and occupancy of the Granted Property (collectively, the "*Rents*").

(iv) *Bankruptcy Claims.* All of the Grantor's claims and rights (the "*Bankruptcy Claims*") to the payment of damages arising from any rejection by the Tenant of the Lease or any other tenant under the Other Leases under the Bankruptcy Code, 11 U.S.C. §101 *et seq.*, as the same may be amended (the "*Bankruptcy Code*") or under any comparable federal or state statute or law.

(v) *Lease Guaranties.* All of the Grantor's right, title and interest in and to any and all lease guaranties, letters of credit and any other credit support given in connection with the Lease and the Other Leases to the Grantor or predecessors (individually, a "*Lease Guaranty*", and, collectively, the "*Lease Guaranties*") by any guarantor (individually, a "*Lease Guarantor*," and, collectively, the "*Lease Guarantors*").

(vi) *Proceeds.* All proceeds from the sale or other disposition of the Lease, the Other Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(vii) *Other.* All rights, powers, privileges, options and other benefits of the Grantor as lessor under the Lease and the Other Leases and beneficiary under

the Lease Guaranties, including without limitation, (A) the immediate and continuing right to make claims for, receive, collect and receipt for, all Rents payable or receivable under the Lease and the Other Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Indebtedness Hereby Secured) and to do all other things which the Grantor or any lessor is or may become entitled to do under the Lease, the Other Leases or the Lease Guaranties; (B) the right to pursue and collect any claim in bankruptcy or receivership proceedings of the Tenant, any other tenant under the Other Leases or any Lease Guarantor; (C) the right to accept or reject any offer made by the Tenant, any other tenant under the Other Leases or any Lease Guarantor to purchase the Granted Property or any part thereof and any other property subject to the Lease, the Other Leases or any Lease Guaranty and to perform all other necessary or appropriate acts with respect to such purchases; (D) the right to make all waivers and agreements, to give and receive all notices, consents and releases, and to take such action upon the happening of a default beyond applicable cure periods, if any, under the Lease, the Other Leases or any Lease Guaranty as the Grantor shall have the right under the Leases, the Other Leases or any Lease Guaranty or at law to take, including the right to commence, conduct and consummate eviction proceedings; (E) the right, at Beneficiary's option to enter upon the Granted Property or any portion thereof in person, by agent or by court-appointed receiver; and (F) the Grantor's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in this Deed of Trust and any or all other actions designated by Beneficiary for the proper management and preservation of the Granted Property.

This assignment is a perfected present, absolute, direct and unconditional assignment and transfer of all the Grantor's right, title and interest in and to, but not the obligations under, the Lease, the Other Leases, the Lease Guaranties and the Rents made in consideration of the loan by Beneficiary to the Grantor and as additional security for the repayment of the Indebtedness Hereby Secured, subject to and excluding the Excepted Rights.

(b) Obligations and Terms Respecting the Lease, the Other Leases and the Lease Guaranties.

(i) At all times the Granted Property shall be leased to the Tenant under the Lease, *provided that*, to the extent permitted thereby under the Lease, the Lease may be assigned or the Granted Property sublet by the Tenant, as applicable, upon the terms and conditions set forth in the Lease. The Grantor will punctually perform all material obligations, covenants and agreements by it to be performed under the Lease, the Other Leases and the Lease Guaranties in accordance in all material respects with the terms thereof, and will at all times do all things reasonably necessary to compel performance by the Tenant, any other tenant under the Other Leases and the Lease Guarantors of all material covenants and agreements by them to be performed under the Lease, the Other Leases or the Lease Guaranties, as applicable. The Grantor will give to the Beneficiary copies of all written notices of defaults sent by Grantor to, or received from, the Tenant, any other tenant under the Other Leases or any Lease Guarantor, as applicable,

under the Lease, the Other Leases or the Lease Guaranties. Neither this Deed of Trust nor any action or inaction on the part of the Beneficiary shall constitute an assumption on the part of the Beneficiary of any obligation to the Tenant, any other tenant under the Other Leases or any Lease Guarantor or any other Person under the Lease, the Other Leases or the Lease Guaranties. No action or inaction on the part of the Grantor shall adversely affect or limit in any way the rights of the Beneficiary under this Deed of Trust, or, through this Deed of Trust, under the Lease, the Other Leases or the Lease Guaranties.

(ii) The Grantor will take no action and permit no action to be taken by other Persons which will release the Tenant, any other tenant under the Other Leases or any Lease Guarantor from any of their material obligations and liabilities under the Lease, the Other Leases or the Lease Guaranties, as applicable, or result in the termination, amendment or modification of, or impair the validity of, the Lease, the Other Leases or the Lease Guaranties, as applicable.

(iii) The Grantor will not, except with the prior written consent of the Beneficiary, take or suffer to be taken any action or consent to or permit any prepayment or discount of Rents or payment of Rents more than one month in advance, under the Lease, the Other Leases or the Lease Guaranties.

(iv) The Grantor will not, without the prior written consent of the Beneficiary:

(A) declare a default or exercise the post-default remedies of the landlord or beneficiary under, or terminate, modify (in any material respect) or accept a surrender of, or exercise any recapture rights with respect to, or offer or permit any termination, modification (in any material respect) or surrender of, the Lease, the Other Leases or the Lease Guaranties, or any reciprocal easement or restrictive covenant agreement or similar agreement running with the land or create or consent to the creation or existence of any mortgage or other lien to secure the payment of indebtedness upon the landlord's interest under the Lease or the leasehold estate created thereby, the Other Leases or the Lease Guaranties or any part thereof, subject, however, to the Tenant's rights to assign its interest in the Lease in accordance with the terms thereof;

(B) cause, or take any act or omit to take any act that would cause, a Purchase Right Trigger to occur as defined in Section 22.1 of the Lease; or

(B) other than to the Beneficiary, assign, transfer or hypothecate any Rents or other payment due or to become due under the Lease, the Other Leases or the Lease Guaranties or anticipate any Rents or other payment thereunder.

(v) The Grantor acknowledges that the Beneficiary has directed the Tenant in a letter of direction to deliver or remit directly to the Escrow Agent, all Rents (including, without limitation, all fixed rent, basic rent, percentage rent and all additional rent), income, revenues, issues, profits, insurance proceeds, condemnation awards, liquidated damages, purchase price proceeds and other payments, tenders and security now or hereafter due and payable to or receivable by the Grantor under the Lease, such amounts to be paid directly to the Escrow Agent in the manner provided therein or in such other manner as the Beneficiary may from time to time designate. All amounts received by the Escrow Agent shall be applied in the manner provided herein and in the Escrow and Servicing Agreement. The Grantor hereby agrees to send to the Beneficiary, in accordance with Section 6.3 hereof, copies of all written notices of default, elections made and/or any exercise or waiver of material rights given by the Grantor under the Lease, the Other Leases and the Lease Guaranties pursuant thereto.

(vi) Notwithstanding anything to the contrary set forth in the Fee Mortgagee Protection Agreement or any other document, the Grantor agrees that it will not enter into any agreement subordinating, amending (in any material respect), supplementing, hypothecating, discharging or terminating the Lease, the Other Leases or any Lease Guaranty or this Deed of Trust without the Beneficiary's prior written consent thereto, and that any attempted subordination, amendment (in any material respect), supplement, hypothecation, discharge or termination without such consent shall be void. The Grantor will not terminate the Lease, the Other Leases or any Lease Guaranty or take possession of the Granted Property upon an event of default without the express prior written consent of the Beneficiary. In the event that the Lease, the Other Leases or any Lease Guaranty shall be amended or supplemented as herein permitted, Grantor's interest in and under the Lease, the Other Leases and the Lease Guaranties as so amended or supplemented shall continue to be subject to the provisions of this Deed of Trust without the necessity of any further act by any of the parties hereto.

(vii) Grantor shall promptly deliver to the Beneficiary copies of all written reports delivered to the Grantor by the Tenant with respect to the Granted Property including, without limitation, any report delivered pursuant to Section 14.16.2 of the Lease.

(viii) The Lease Assignment set forth in this Section 2.18 and Granting Clause Second of this Deed of Trust shall run with the land and be good and valid against the Grantor or those claiming by, under or through the Grantor, from the date hereof and such assignment shall continue to be operative during the foreclosure or any other proceeding taken to enforce this Deed of Trust. In the event of a sale or foreclosure which shall result in a deficiency, such assignment shall stand as security during the redemption period for the payment of such deficiency. The Beneficiary shall be permitted, at its sole option, to exercise remedies under such assignment separately from remedies exercised against other portions of the Granted Property.

(c) *Excepted Rights.* Notwithstanding anything to the contrary contained in this Section 2.18, Section 2.18 is in all respects subject to the Excepted Rights of Grantor.

Section 2.19. Advances. If the Grantor shall fail to comply with the covenants contained herein or in the Note Purchase Agreement or in any other Operative Agreement and incorporated herein by reference, the Beneficiary, after five (5) Business Days' prior written notice to the Grantor, and without waiving or releasing any obligation or Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Grantor, and, subject to the applicable provisions of the Lease, may enter upon the Granted Property or any part thereof for such purpose and take all such action thereon as, in the reasonable opinion of the Beneficiary, may be necessary or appropriate therefor. All sums so paid by the Beneficiary and all costs and expenses (including without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment or incurrence, shall be secured hereby in priority to the indebtedness evidenced by the Notes and shall be paid by the Grantor to the Beneficiary on demand. The Beneficiary in making any payment authorized under this Section relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof.

Section 2.20. Recordation. The Grantor will, at its own expense, cause this Deed of Trust, the Lease (or a memorandum thereof), the Fee Mortgagee Protection Agreement, all supplements hereto and thereto, and any financing statements and continuation statements required by law, including the Uniform Commercial Code, in respect hereof and thereof at all times to be kept recorded and filed at its own expense in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Trustee and the Beneficiary hereunder and thereunder. The Grantor hereby specifically consents to any financing statements and/or financing statements and continuation statements or other filings related to this Deed of Trust being made electronically, to the extent permitted by law. Additionally, the Grantor hereby specifically consents to any other financing statements and/or financing statements and continuation statements or other filings related to this Security Agreement and/or this Deed of Trust being made electronically, to the extent permitted by law, or otherwise. The Grantor hereby authorizes the Beneficiary and/or the Trustee and its agents or counsel to file, in the name of the Grantor or otherwise, financing statements and continuation statements with regard to any filed financing statements. The Grantor hereby irrevocably appoints the Beneficiary and/or the Trustee, or any agent designated by the Beneficiary and/or the Trustee, its true and lawful attorney-in-fact, which power is coupled with an interest and with full power of substitution, to execute, acknowledge, file and deliver financing statements in the name of the Grantor. Furthermore, the Grantor hereby authorizes Mayer Brown LLP, Beneficiary and/or the Trustee and its agents or counsel to file financing statements that indicate the collateral (i) as all assets of the Grantor or words of similar effect or (ii) as being of an equal, greater or lesser scope, or with greater or lesser detail, than as set forth in this Security Agreement and/or this Deed of Trust, on behalf of the Grantor. The Grantor also hereby ratifies its authorization for Mayer Brown LLP, the Beneficiary and/or the Trustee and its agents or counsel to have filed in any jurisdiction any Uniform Commercial Code financing statements or amendments thereto if filed prior to the Closing Date. The Grantor shall not, prior to the reconveyance of the Granted Property to Grantor, terminate, amend or file a correction statement

with respect to any financing statement or fixture filing filed pursuant to this Security Agreement and/or this Deed of Trust without the Beneficiary's and/or the Trustee's prior written consent.

Section 2.21. After-Acquired Property. To the extent permitted by applicable law, including, without limitation, the Uniform Commercial Code, any and all property hereafter acquired by Grantor which is of the kind or nature described in the Granting Clauses hereof and is or intended to become a part thereof, shall ipso facto, and without any further conveyance, assignment or act on the part of the Grantor or the Beneficiary become and be, subject to the lien of this Deed of Trust as fully and completely as though specifically described herein; but nevertheless the Grantor shall from time to time, if requested by the Beneficiary, execute and deliver any and all such further assurances, conveyances and assignments thereof as the Beneficiary may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Deed of Trust any and all such property.

Section 2.22. Intentionally omitted.

Section 2.23. Separate Identity. The Grantor will maintain books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party and the Grantor will either file a consolidated tax return with a direct or indirect parent or file its own tax returns. The Grantor shall maintain its books, records, resolutions and agreements as official records. The Grantor will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of the Grantor or any constituent party of the Grantor, or any affiliate of any constituent party), and shall conduct business in its own name and shall maintain and utilize separate invoices and checks. The Grantor shall correct any known misunderstanding regarding its status as a separate entity and shall not identify itself or any of its affiliates as a division or part of the other. The Grantor will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations. Neither the Grantor nor any constituent party will seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of the Grantor. The Grantor will not commingle the funds and other assets of the Grantor with those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person. The Grantor has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person. The Grantor does not and will not hold itself out to be responsible for the debts or obligations of any other person.

Section 2.24. General Indemnity. In addition to any other indemnifications provided herein, or in the other Operative Agreements, the Grantor will, at its sole cost and expense protect, defend, indemnify and save harmless the Trustee and the Beneficiary on an after-tax basis from and against all liabilities, losses, damages, demands, claims, obligations, suits or other proceedings (including, causes of action, litigation and defenses), settlement proceeds, fines, penalties, assessments, citations, directives, judgments, fees, costs, disbursements or other expenses of any kind or of any nature whatsoever (including, reasonable attorneys', consultants', and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any demand, claim, obligation, suit or other similar proceeding, but excluding diminutions in value and lost opportunity cost (collectively, "*Indemnified Liabilities*") (except to

the extent caused solely by the gross negligence, fraud or willful misconduct of the Trustee or the Beneficiary, as applicable) which may be imposed on, incurred by or asserted or awarded against the Trustee or the Beneficiary because of (i) ownership of the Operative Agreements, the Granted Property or receipt of any Rents; (ii) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Granted Property or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) any use, non-use or condition in, on or about the Granted Property or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iv) any failure on Grantor's part to perform or comply with any of the terms of the Operative Agreements; (v) the performance of any labor or services or the furnishing of any materials or other property in respect of the Granted Property; (vi) to the extent not covered by insurance, any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to Hazardous Materials or asbestos; (vii) the Granted Property's failure to comply with any applicable legal requirements; (viii) the occupation, condition, operation, service, design, maintenance or management of the Granted Property; and (ix) any tax, duty, assessment or other charge imposed by any governmental authority on the making and recording of this Deed of Trust. Any Indemnified Liabilities payable to the Trustee or the Beneficiary because of the application of this Section 2.24 will be secured by this Deed of Trust and will become immediately due and payable and will bear interest at the Default Rate from the date such Indemnified Liability is sustained by the Trustee and/or the Beneficiary until paid, provided that the indemnification obligations of Grantor shall specifically exclude any Costs incurred from conditions first arising after foreclosure, deed in lieu of foreclosure or other taking of title to or possession of the Property by Beneficiary or its designee, or repayment in full of the Indebtedness Hereby Secured and the reconveyance of the Property by Trustee to the Grantor.

Section 2.25. No Forfeiture. The Grantor represents and warrants to the Beneficiary that, as of the Closing Date, the Grantor has not committed any act or omission affording any governmental authority the right of forfeiture against the Granted Property or any monies paid in performance of the Grantor's obligations under the Operative Agreements. The Grantor agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, the Grantor indemnifies the Trustee and the Beneficiary and agrees to defend and hold the Trustee and the Beneficiary harmless from and against any costs because of the breach of the agreements or the representations and warranties set forth in this Section 2.25.

Section 2.26. Action by Tenant. Notwithstanding anything to the contrary set forth in this Deed of Trust, so long as the Granted Property is subject to the Lease, (a) Grantor's obligations and all of the requirements with respect to the Granted Property shall be deemed satisfied by Grantor taking all reasonable acts, including, without limitation, the exercise of any self-help remedies provided under the Lease, necessary to cause Tenant to comply with its applicable obligations under the Lease in accordance with and to the extent provided in the Lease, and (b) the exercise by the Tenant of any right granted to it under the Lease shall not give rise to a default under this Deed of Trust if such right is exercised in compliance with the Lease.

SECTION 3. POSSESSION, USE AND RELEASE OF PROPERTY.

Section 3.1. The Grantor's Right of Possession. Provided no Event of Default has occurred and is continuing, the Grantor shall be permitted to remain in full possession, enjoyment and control of the Granted Property subject always to the observance and performance of the terms of this Deed of Trust and the other Operative Agreements. It is expressly understood that the use and possession of the Granted Property by the Tenant or any of its permitted subtenants under and subject to the Lease shall not constitute a violation of this Section 3.1.

Section 3.2. Release of Granted Property.

(a) *Event of Loss and Prepayment of Notes.* Upon the occurrence of any Event of Loss in respect of the Granted Property, the Grantor shall give the Beneficiary, within sixty (60) days after the occurrence thereof, written notice of such Event of Loss, which notice shall specify (a) in the case of a casualty, whether (i) the Tenant or the Grantor, as the case may be, is obligated to repair or rebuild the Granted Property as provided in the Lease, or (ii) the Tenant will terminate the Lease as provided therein and in consequence of which the Grantor will prepay the Notes in accordance with the provisions of Section 4.1 hereof, or (b) in the case of a condemnation, whether (i) the Grantor will or will cause the Tenant to restore the Granted Property as provided in the Lease and the Grantor has applied to the issuer of the policy described in Section 2.15(a)(3) hereof for payment of the amounts equal to any reduction in rent resulting from such condemnation or (ii) the Tenant will terminate the Lease as provided therein and the Grantor has applied to the issuer of the policy described in Section 2.15(a)(3) for distribution of proceeds to prepay the Notes in accordance with Section 4.1 hereof. In the event such notice specifies that the Grantor will make such prepayment, then the Trustee and Beneficiary shall execute a release in respect of the Granted Property upon receipt of such prepayment in full and all other Indebtedness Hereby Secured.

(b) *Sale of Condominium Units.* At such time, and from time to time, as Grantor is obligated under the terms of the Lease to release Tenant Units (as defined in the Lease and referred to herein as "*Condominium Units*") from the terms of the Lease upon the sale of such Condominium Units by the Tenant, and upon satisfaction of all conditions and requirements set forth in the Lease for Landlord to release such Condominium Units as may have been sold, then, upon written request of Grantor, the Trustee and Beneficiary shall execute a consent to such release by Grantor and a partial release and deed of reconveyance with respect to the Deed of Trust in respect of such Condominium Unit(s) and a partial release of the Fee Mortgagee Protection Agreement in respect of such Condominium Unit(s). Immediately following the date hereof, Beneficiary and Grantor shall use commercially reasonable efforts to create a closing escrow process with respect to the release of the Condominium Units, which such process shall include Beneficiary's reasonable approval of the form of partial release and reconveyance (collectively, the "*Closing Escrow Process*"). All out-of-pocket costs actually incurred in such negotiation of the Closing Escrow Process, including, without limitation, Beneficiary's attorneys' fees, shall be borne by the Grantor. For each partial release in the ordinary course of business following the institution of the Closing Escrow Process, and conditional upon the appropriate application and implementation of the

Closing Escrow Process, there shall be no additional out-of-pocket costs incurred by the Beneficiary and Grantor shall be responsible for preparing and recording such partial releases. Until the indebtedness evidenced by the Floating Rate Note has been paid in full, 100% of the net amounts received by Grantor from Tenant in connection with the sale of each Condominium Unit (i.e., after paying Grantor's reasonable transaction costs, including Beneficiary's costs) shall be deposited with the Escrow Agent and applied in accordance with the terms of the Escrow Servicing Agreement. Notwithstanding anything to the contrary set forth in this paragraph, following the date of payment in full of the indebtedness evidenced by the Floating Rate Note, all of the remaining Condominium Units shall be reconveyed to Grantor and released from the Deed of Trust and 100% of the net amounts received by Grantor from Tenant in connection with the sale of each Condominium Unit shall be paid to Grantor and may be distributed to its direct and/or indirect members.

Section 3.3. Eminent Domain. The Grantor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Granted Property or any portion thereof, shall notify the Beneficiary of the pendency of such proceedings. The Beneficiary may participate in any such proceedings, and the Grantor from time to time will deliver or cause to be delivered to the Beneficiary all instruments requested by it to permit such participation. Subject to the Tenant's rights under the Lease, in the event of such condemnation proceedings, the award or compensation payable to the Grantor shall be paid to the Beneficiary, and such award or compensation shall be retained by the Beneficiary as part of the Granted Property and applied in accordance with Section 4.1(a)(i) or (ii) hereof; *provided* that, if such application results in only a partial prepayment of the Notes and the Lease remains in effect, the amortization schedule on the Notes will be adjusted to take into account any reduction in rent under the Lease. The Beneficiary shall be under no obligation to question the amount of the award or compensation and the Beneficiary may accept any such award or compensation. In any such condemnation proceedings the Beneficiary may be represented by counsel, whose reasonable costs and disbursements shall be paid by the Grantor.

SECTION 4. APPLICATION OF INSURANCE AND CERTAIN OTHER MONEYS RECEIVED BY THE BENEFICIARY.

Section 4.1. Insurance Proceeds and Condemnation Awards. (a) Subject to Section 4.4 hereof and the applicable provisions of the Lease, the amounts received by or payable to the Beneficiary from time to time which constitute insurance proceeds in respect of any damage to or destruction or condemnation of the Granted Property or any part thereof, condemnation awards or compensation covering the Granted Property (less the actual costs, fees and expenses incurred in the collection thereof), proceeds from the Special Risk Policy shall be held by the Beneficiary as part of the Granted Property and shall be applied by the Beneficiary as follows:

- (i) if a casualty occurs which results in a termination of the Lease or if a condemnation occurs which results in the termination of the Lease (in either case as evidenced by a certificate of the Tenant detailing the same) and the Grantor shall be required to prepay the Notes pursuant to Section 2.12 of this Deed of Trust, such proceeds, award or compensation, as the case may be, shall

be applied in payment and satisfaction of the outstanding principal and accrued interest on the Notes to the date of payment upon the terms and in the manner provided in Section 2.12 of this Deed of Trust, and the balance, if any, of any such proceeds shall be paid to the Grantor; or

(ii) if a casualty or condemnation occurs which does not result in the termination of the Lease and the Grantor or the Tenant shall be required to repair, rebuild or restore the Granted Property as required pursuant to the Lease, all casualty insurance proceeds resulting from such casualty and/or all condemnation awards and condemnation insurance proceeds resulting from such condemnation shall be applied in accordance with the applicable provisions of the Lease and any amounts received by Beneficiary that are payable by Grantor under the Lease shall be paid over by the Beneficiary to the Grantor (or as the Grantor may direct from time to time) upon a written application of the Grantor and accompanied by such evidence in reasonable detail as may be satisfactory to the Beneficiary supporting such application for the purpose of paying, or reimbursing the Grantor for the payment of, the reasonable cost, as shown by such certificate, of repairing, rebuilding or restoring part or all of the Granted Property damaged, destroyed or taken ("*Restoration*"), but, with respect to monies to be paid to Grantor instead of to Tenant, only for and to the extent that the Grantor shows by such evidence of costs that the proceeds, award or compensation ("*Restoration Funds*") remaining on deposit with the Beneficiary, together with any additional funds irrevocably allocated or otherwise provided for in a manner satisfactory to the Beneficiary for such purpose, shall be sufficient to complete such Restoration and restore the Granted Property (as nearly as practicable) at least to the market value and condition which existed immediately prior to the damage, destruction, condemnation or taking, as the case may be, free from liens or encumbrances except Permitted Encumbrances. Except when restoration will be prosecuted by Tenant pursuant to the Lease, the Grantor shall deliver to the Beneficiary any additional funds needed to complete the Restoration prior to the disbursement of any Restoration Funds. Every such application for the payment of such proceeds, award or compensation shall state that no Event of Default has occurred and is continuing. Any proceeds in excess of the amount needed for Restoration remaining after the Restoration has been completed shall be (i) if the amount of rent payable under the Lease has been reduced as a result of such condemnation or casualty, such amounts shall be held by the Beneficiary and at the option of the Beneficiary either (y) applied to future payments on the Notes as they come due (or as otherwise required to satisfy any obligations of the Grantor under any of the Operative Agreements) to the extent necessary after the application of each rent payment thereafter received or (z) applied to the outstanding principal (without premium) and interest then due on the Notes (*provided* that, if amounts are applied to principal, the amortization schedule on the Notes shall be adjusted to, if possible, avoid a future payment default while at the same time amortize the outstanding principal on the Notes in full by the original maturity dates of the Notes) or (ii) if the amount of rent payable under the Lease has not been so reduced as a result of such condemnation or casualty and so long as no Default or Event of Default is then existing, such amounts shall be disbursed to the Grantor.

(b) Subject to Section 2.15(b) hereof with respect to adjustments of losses, any appraisal or adjustment of such loss or any settlement or payment of indemnity therefor which shall be agreed upon between the Grantor and the relevant insurance company shall be accepted by the Beneficiary.

Section 4.2. Title Insurance. Any moneys received by the Beneficiary as payment for any loss under any policy of title insurance which was delivered by the Grantor shall become part of the Granted Property and shall be paid and applied in the same manner contemplated by Section 5.3 hereof.

Section 4.3. Investment of Insurance Proceeds and Condemnation Awards or Compensation. All insurance proceeds, condemnation awards or compensation received by the Beneficiary as payment for any casualty occurrence or condemnation relating to the Granted Property under any policy of insurance or as an award or compensation for the taking in condemnation or other eminent domain proceedings relating to the Granted Property or any part thereof which is to be disbursed pursuant to Section 4.1(a) hereof shall, at the written request of the Grantor, be invested or reinvested by the Beneficiary in (a) direct obligations of the United States of America maturing in not more than ninety (90) days from the date of such investment, (b) commercial paper maturing within two hundred and seventy (270) days from the date of acquisition and rated in the highest rating classification by at least one national rating agency, or (c) certificates of deposit of commercial banks in the United States of America with capital and surplus of \$100,000,000 or more maturing in not more than five (5) days from the date of such investment. Any amounts earned on such investments shall accrue to the benefit of the Grantor and shall be disbursed in accordance with the terms of Section 4.1 hereof. Upon a written request of the Grantor in accordance with the terms of this Deed of Trust, or at any time when the Beneficiary shall determine that cash is required pursuant to Section 4.1 hereof, the Beneficiary shall sell all or any designated part of such investments at the then market price therefor and shall pay and apply the proceeds in accordance with the terms of Section 4.1.

Section 4.4. Application If Event of Default Exists. Notwithstanding anything to the contrary contained in this Section 4, if an Event of Default has occurred and is continuing to the knowledge of the Beneficiary, subject to the terms of the Lease, all amounts received by the Beneficiary under this Deed of Trust shall be applied in the manner provided for in Section 5 hereof in respect of proceeds and avails of the Granted Property.

SECTION 5. DEFAULTS AND REMEDIES THEREFOR.

Section 5.1. Events of Default. Any one or more of the following shall constitute an Event of Default as the term is used herein:

(a) Default in the payment of interest or principal or the Make-Whole Amount, if any, on the Notes when the same shall have become due and such Default shall continue for five (5) days after receipt of notice from Beneficiary, *provided, however,* that Grantor shall not be deemed to be in Default under this Section 5.1(a) to the extent sufficient monies are being held by Escrow Agent under the Escrow and Servicing Agreement for application to such payment; or

(b) Default shall occur in the observance and performance of any covenant or agreement contained in Section 2.4, 2.15 or 2.18(b)(ii), (iii) and (iv) hereof; or

(c) Default shall occur in the observance or performance of any other provision of this Deed of Trust not specifically described in the foregoing subparagraphs of this Section 5.1 which is not remedied within ten (10) days after written notice thereof from the Beneficiary or the Escrow Agent to the Grantor, *provided* that if, despite Grantor's diligent efforts, such Default cannot be cured within such ten (10) day period, Borrower shall have an additional period to effect such cure so long as Grantor continuously and diligently pursues such cure and the total cure period does not exceed one-hundred twenty (120) days in the aggregate; or

(d) Default shall occur under the Lease and such default shall continue beyond any period of notice, grace and/or cure, if any, under the Lease; *provided, however,* with respect to any such default by Tenant under the Lease that has not been cured by Tenant within any applicable period of notice, grace and/or cure, if any, under the Lease, commencing with the expiration of any such cure periods under the Lease, Grantor shall have a cure period of ten (10) days with respect to any monetary default by the Tenant and thirty (30) days with respect to any non-monetary default by the Tenant, *provided, further, however,* but without extending the cure period provided hereinbefore with respect to any individual default, that any such multiple but distinctive cure periods with respect to defaults by Tenant under the Lease shall not extend beyond a total of ninety (90) consecutive days for one or more defaults, and not beyond a total of one hundred and eighty (180) days in the aggregate for all defaults occurring over the life of the Loan; or

(e) An Escrow Shortfall shall occur under the Escrow and Servicing Agreement for five (5) days after the receipt of notice from Beneficiary or Escrow Agent; or

(f) If any statement, certification, representation or warranty made by the Grantor herein or in any other Operative Agreement, or made by the Grantor in any statement or certificate furnished by the Grantor in connection with the consummation of the issuance and sale of the Notes or furnished by the Grantor or pursuant to the Note Purchase Agreement or any other Operative Agreement, proves untrue in any material respect as of the date of the issuance or making thereof; or

(g) If any statement, certification, representation or warranty made by the Tenant or any Lease Guarantor in any Operative Agreement to which it is a party or made by the Tenant or any Lease Guarantor in any statement or certificate furnished by the Tenant or any Lease Guarantor in connection with the consummation of the issuance and sale of the Notes or furnished by the Tenant or any Lease Guarantor pursuant to any Operative Agreement proves untrue in any material respect as of the date of issuance or making thereof and such untrue statement goes to the validity or enforceability of the Lease or the Fee Mortgage Protection Agreement; or

(h) If final judgment for the payment of money in excess of \$100,000 shall be rendered against the Grantor and the Grantor shall not discharge or cause the same to be discharged within sixty (60) days from the entry thereof or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered and secure a stay of execution pending such appeal; or

(i) If the Grantor defaults under any other mortgage or security agreement covering any part of the Granted Property whether it be superior or junior in lien to this Deed of Trust and the same is accelerated as a result of such default; or

(j) The Grantor: (1) admits in writing its inability to pay its debts generally as they become due; (2) files a petition in bankruptcy or a petition to take advantage of any insolvency act; (3) makes an assignment for the benefit of creditors generally; (4) consents to, or acquiesces in, the appointment of a receiver, liquidator or trustee of itself or of the whole or any substantial part of its properties or assets; (5) files a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the federal bankruptcy laws or any other comparable federal or state statute or law; (6) has a court of competent jurisdiction enter an order, judgment or decree appointing a receiver, liquidator or trustee of the Grantor, or of the whole or any substantial part of the property or assets of the Grantor; (7) has a petition filed against it seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the federal bankruptcy laws or any other comparable federal or state statute or law and such petition shall remain undismissed for sixty (60) days; (8) under the provisions of any other law for the relief or aid of debtors, has any court of competent jurisdiction assume custody or control of the Grantor or of the whole or any substantial part of its property or assets; (9) has an attachment or execution levied against any substantial portion of any property of the Grantor which is not discharged or dissolved by a bond within ten (10) days; (10) ceases to exist, is liquidated, or is dissolved; or (11) if any of the foregoing events occurs with respect to the Tenant; or

(k) The Lease, any Other Lease, or any Lease Guaranty shall cease to be in full force and effect for any reason whatsoever, including, without limitation, a determination by any governmental body or court that such agreement is invalid, void or unenforceable or the Tenant or any Lease Guarantor shall contest or deny the validity or enforceability of any of its obligations under the Lease or applicable Lease Guaranty, as applicable; or

(l) An event of default shall occur under or with respect to any provision of, and as defined in, any Operative Agreement, which event of default is not specifically described in any other subparagraph of this Section 5.1, and such event of default shall continue beyond any period of notice, grace and/or cure, if any, provided in such Operative Agreement.

Section 5.2. Remedies. When any Event of Default (including the expiration of all applicable notice and cure periods) described in subparagraph (j) of Section 5.1 has occurred, then the Notes shall immediately become due and payable without presentment, demand or notice of any kind and when any Event of Default has occurred and is continuing, the

Beneficiary (or the Trustee if required by law) may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Beneficiary (or the Trustee if required by law) may, by notice in writing to the Grantor declare the entire unpaid balance of the Notes to be immediately due and payable; and thereupon all such unpaid balance, together with all accrued interest thereon and premium, if any, shall be and become immediately due and payable without any presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived. Upon the Notes becoming due and payable as a result of any Event of Default as aforesaid, the Grantor will forthwith pay to the Beneficiary the entire principal and interest accrued on the Notes and, to the extent permitted by law and as liquidated damages and not as a penalty, an additional amount equal to the then applicable Make-Whole Amount determined as of the date on which the Notes shall so become due and payable. No course of dealing on the part of the Beneficiary nor any delay or failure on the part of the Beneficiary to exercise any right shall operate as a waiver of such right or otherwise prejudice the Beneficiary's rights, powers and remedies. The Grantor further agrees, to the extent permitted by law, to pay to the Beneficiary and the Trustee all costs and expenses actually incurred by it in the collection of the Notes upon any default hereunder or thereon, including the reasonable compensation to the Beneficiary's attorneys and the Trustee's attorneys for all services rendered in connection therewith.

(b) Subject always to the then existing rights, if any, of the Tenant or any permitted subtenant or assignee under the Lease, the Beneficiary (or the Trustee if required by law) personally or by agents or attorneys may, to the extent permitted by law (i) enter into and take possession of all or any part of the Granted Property, and may forthwith use, operate, manage, insure, repair and improve the Granted Property and take any other action which, in the Beneficiary's judgment, is necessary or proper to conserve the value of the Granted Property, (ii) collect and receive all earnings, revenues, rents, issues, profits and income from the Granted Property or any part thereof (and for such purpose the Grantor does hereby irrevocably constitute and appoint the Beneficiary (or the Trustee if required by law) its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, the Grantor irrevocably acknowledging that any payment made to the Beneficiary hereunder shall be a good receipt and acquittance against the Grantor to the extent so made), (iii) pay all principal charges including taxes and assessments levied thereon and operating and maintenance expenses and all disbursements and liabilities of the Grantor hereunder and (iv) apply the net proceeds arising from any such operation of the Granted Property as provided in Section 5.3 hereof in respect of the proceeds of a sale of the Granted Property. The right to enter and take possession of the Granted Property and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of the Beneficiary (or the Trustee, if required by law) hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred

pursuant to the powers herein contained shall be secured hereby which the Grantor promises to pay upon demand together with interest at the Default Rate. The Beneficiary shall not be liable to account to the Grantor for any action taken pursuant hereto other than to account for any rents actually received by the Beneficiary. Without taking possession of the Granted Property, the Beneficiary (or the Trustee, if required by law) may, in the event the Granted Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Granted Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Indebtedness Hereby Secured payable upon demand with interest thereon at the Default Rate.

(c) The Beneficiary (or the Trustee, if required by law) may, if at the time such action may be lawful and always subject to compliance with any applicable legal requirements, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale to the Grantor at least thirty (30) days prior to the date of such sale and having given any other notice which may be required by law, sell and dispose of said Granted Property or any part thereof at public auction or private sale to the highest bidder, which may be the Grantor in one lot as an entirety or in separate lots (the Grantor for itself and for all who may claim by, through or under it hereby expressly waiving and releasing all rights to have the Granted Property marshalled to the extent permitted by law), and either for cash or on credit and on such terms as the Beneficiary may determine and at any place (whether or not it be the location of the Granted Property or any part thereof) designated in the notice above referred to. In accordance with applicable laws and legal requirements, any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales or for any such adjourned sale or sales, without further published notice.

(d) The Beneficiary (or the Trustee, if required by law) may proceed to protect and enforce its rights by a suit or suits in equity or at law, or for the specific performance of any covenant or agreement contained herein or in the Notes, or in aid of the execution of any power herein or therein granted, or for the foreclosure of this Deed of Trust, or for the enforcement of any other appropriate legal or equitable remedy. Upon the bringing of any suit to foreclose this Deed of Trust or to enforce any other remedy available hereunder, the plaintiff shall be entitled as a matter of right, without notice and without giving bond to the Grantor or anyone claiming under, by or through it, and without regard to the solvency or insolvency of the Grantor or the then value of the Granted Property, to apply to an appropriate court to have a receiver appointed of all the Granted Property and of the earnings, income, rents, issues, profits and proceeds thereof, with such power as the court making such appointment shall confer and the Grantor does hereby irrevocably consent to such appointment.

(e) Subject to applicable laws, in case of any sale of the Granted Property, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Deed of Trust, the Beneficiary (or the Trustee, if required by law) may bid and become the purchaser, and the purchaser or purchasers, for the purpose of making settlement for or payment of the

purchase price, shall be entitled to turn in and use the Notes and any claims for interest and premium matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Notes, including principal and interest and premium thereof, out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in actual cash. If at any foreclosure proceeding the Granted Property shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the Beneficiary shall be entitled to the entry of a deficiency decree against the Grantor and against the property of the Grantor for the amount of such deficiency.

(f) The Beneficiary (or the Trustee, if required by law) shall have any and all rights and remedies (including, without limitation, extra judicial power of sale) provided to a secured party by the Uniform Commercial Code with respect to any and all parts of the Granted Property which are and which are deemed to be governed by the Uniform Commercial Code. Without limiting the generality of the foregoing, the Beneficiary (or the Trustee, if required by law) shall, with respect to any part of the Granted Property constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code, including, without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said Uniform Commercial Code for reasonable notification shall be met by mailing written notice to the Grantor at its address set forth in Section 6.3 at least thirty (30) days prior to the sale or other event for which such notice is required.

(g) The provisions of this Section 5.2 are subject to the condition that if at any time after the Notes have been declared due and payable by reason of the occurrence of any Event of Default described in Section 5.1, then in every such case the Beneficiary may at its option by notice in writing sent to the Grantor, rescind and annul any such declaration and its consequences with respect to the Notes and in any such event the Grantor, the Trustee and the Beneficiary shall be restored to their former positions and rights hereunder, respectively; *provided* that at the time such declaration is annulled and rescinded:

(i) no judgment or decree has been entered for the payment of any monies due pursuant to the Notes or this Deed of Trust;

(ii) all arrearages of interest upon the Notes and all other sums payable under the Notes and under this Deed of Trust (except any principal, interest or premium on the Notes which has become due and payable solely by reason of such declaration under Section 5.2) shall have been duly paid; and

(iii) each and every other Default and Event of Default shall have been made good, cured or waived pursuant to Section 5.1;

and *provided further*, that no such rescission and annulment shall extend to or affect any subsequent Default or Event of Default or impair any right consequent thereto.

Section 5.3. Application of Proceeds. The purchase money proceeds and/or avails of any sale of the Granted Property, or any part thereof, and the proceeds and the avails of any remedy hereunder and/or amounts held pursuant to Section 4 hereof shall be paid to and applied as follows:

(a) first, to the payment of costs and expenses actually incurred in connection with a foreclosure or suit, if any, and/or a sale, and to the extent permitted by applicable law, the reasonable compensation of the Beneficiary, its agents, attorneys and counsel and of all proper expenses, liability and advances actually incurred or made hereunder by the Beneficiary, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made; and

(b) second, to the amount then owing or unpaid on the Notes for principal, premium, if any, and interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Notes, then to the Beneficiary, with application on the Notes to be made, first, to unpaid premium, if any, second, to the unpaid interest thereon, and third, to unpaid principal thereof; and

(c) third, to the payment of any other Indebtedness Hereby Secured; and

(d) fourth, to the payment of the surplus, if any, to the Grantor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

Section 5.4. Waiver of Extension, Appraisal and Stay Laws. The Grantor covenants that, upon the occurrence of an Event of Default and the acceleration of the Notes pursuant to Section 5.2 and to the extent that such rights may then be lawfully waived, it will not at any time thereafter insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension or moratorium law now or at any time hereafter in force, or claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Granted Property or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction or, after confirmation of any such sale or sales claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and hereby expressly waives for itself and on behalf of each and every Person, all benefit and advantage of any such law or laws which would otherwise be available to any such Person in connection with the enforcement of any of the Beneficiary's remedies hereunder; and covenants that it will not in connection with any such enforcement proceedings invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Beneficiary but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Grantor in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Grantor, its successors and assigns, and against any and all persons

claiming the property sold or any part thereof under, by or through the Grantor, its successors or assigns.

Section 5.5. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereon there shall be allowed and included as additional Indebtedness Hereby Secured in the decree for sale all reasonable expenditures and expenses actually incurred by or on behalf of the Beneficiary for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as the Beneficiary may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Granted Property, all of which expenditures shall become so much additional Indebtedness Hereby Secured which the Grantor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

Section 5.6. Delay or Omission Not a Waiver. No delay, failure or omission of the Beneficiary to exercise any right, power or remedy arising from any default on the part of the Grantor shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Beneficiary of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom, except as may be otherwise provided herein. No right, power or remedy hereunder is intended to be exclusive of any other right, power or remedy but each and every right, power and remedy shall be cumulative and in addition to any and every other right, power and remedy given hereunder or otherwise existing. Nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the Indebtedness Hereby Secured operate to prejudice, waive or affect the security of this Deed of Trust or any rights, powers or remedies hereunder; nor shall the Beneficiary be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

Section 5.7. Restoration of Positions. If the Beneficiary has instituted any proceeding to enforce any right or remedy under this Deed of Trust by foreclosure, entry or otherwise and such proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Beneficiary, then and in every such case the Grantor, the Trustee and the Beneficiary shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Beneficiary shall continue as though no such proceedings had been instituted.

Section 5.8. Notes to Become Due upon Sale. Upon any sale under or by virtue of this Deed of Trust, except as permitted under Section 2.3(g) or (h) hereof, whether pursuant to foreclosure, power of sale or otherwise, the entire unpaid principal amount of the Notes shall, if not previously declared due and payable, immediately become due and payable, together with interest accrued thereon and premium, if any, and all other Indebtedness Hereby Secured, anything contrary in this Deed of Trust, the Notes or any other instrument serving the Notes notwithstanding.

SECTION 6. MISCELLANEOUS.

Section 6.1. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, premises and agreements in this Deed of Trust contained by or on behalf of the Grantor, or by or on behalf of the Beneficiary, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

Section 6.2. Severability. The unenforceability or invalidity of any provision or provisions of this Deed of Trust shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 6.3. Addresses for Notices and Demands. All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when received (or refused) delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, or by prepaid overnight air courier, addressed as follows:

- | | |
|------------------------|---|
| If to the Grantor: | Talisker Empire Pass Hotel LLC
c/o Talisker Mountain Inc.
1850 Sidewinder Drive
2nd Floor
P.O. Box 4349
Park City, UT 84060
Attention: David J. Smith |
| With a copy to: | Talisker Empire Pass Hotel LLC
c/o Talisker Developments, Inc.
145 Adelaide Street West, Suite 500
Toronto, Ontario
M5H 4E5
CANADA
Attention: Paul Weinberger |
| And a copy to: | Paul Hastings LLP
75 East 55 th Street
New York, New York 10022
Attention: Bruce DePaola, Esq. |
| If to the Beneficiary: | Sun Life Assurance Company of Canada
300-150 King Street West
Toronto, Ontario
M5H 1J91
CANADA
Attention: Michael Bjelic,
Director, Private Fixed Income |
| With a copy to: | Sun Life Assurance Company of Canada
400-1500 King Street West |

TALISKER EMPIRE PASS HOTEL LLC

Deed of Trust, Security Agreement, Assignment
of Leases and Rents and Fixture Filings Statement

Toronto, Ontario
M5H 1J91
CANADA
Attention: Leslie Chukly, Counsel

And to:

Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606
Attention: Daniel J. Favero

or as to either party at such other address as such party may designate by notice duly given in accordance with this Section to the other party.

Section 6.4. Headings and Table of Contents. The headings of the sections of this Deed of Trust and the table of contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

Section 6.5. Release of Deed of Trust. The Beneficiary shall release and/or cause Trustee to release and reconvey to Grantor this Deed of Trust and the lien hereof by proper instrument or instruments upon payment in full of all Indebtedness Hereby Secured.

Section 6.6. Counterparts. This Deed of Trust may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Deed of Trust.

Section 6.7. Successor Trustee. The Beneficiary may, at any time, by instrument in writing, appoint a successor or successors to, or discharge and appoint a new Trustee in the place of, any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by the Beneficiary, and recorded in the office of the County Recorder of the county wherein the Granted Property is situated, shall be conclusive proof of the proper substitution of such successor or successors or new Trustee, who shall have all the estate powers, duties, rights and privileges of the predecessor Trustee.

Section 6.8. Governing Law. This Deed of Trust shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of New York (without regard to conflict of law principles), except that the creation, perfection and enforcement of the lien as to the Granted Property constituting real property shall be governed by the laws of the State of Utah.

Section 6.9. Time. Time shall be of the essence for this Deed of Trust.

Section 6.10. Limitations of Liability. Notwithstanding anything to the contrary contained in the Operative Agreements, except as set forth in the Indemnity and Guaranty Agreement and the Hazardous Material Indemnity Agreement, no Person who directly or indirectly owns any membership or other equity interest in the Grantor (each, a "Non-Recourse Person") shall have any personal liability for (i) the payment of any sum of money which is or may be payable under the Notes or any other Operative Agreement, including, but not limited to, the repayment of the Notes or (ii) the performance or discharge of any covenants, obligation or

undertakings of the Grantor under any Operative Agreement, and no monetary or deficiency judgment shall be sought or enforced against any Non-Recourse Person with respect thereto. Nothing in this Section 6.10 is intended to or shall in any way affect or invalidate any lien or security interest created by this Deed of Trust. This Section 6.10 shall not be construed to prohibit the joining of the Grantor in any foreclosure procedure involving the Granted Property. This Section 6.10 shall not in any way affect the obligations of the Tenant under the Lease, any other tenant under the Other Leases or any Lease Guarantor under any Lease Guaranty.

Section 6.11. Expenses, Stamp Tax Indemnity. Whether or not the Notes are sold, the Grantor will pay all reasonable expenses relating to the preparation, evaluation, execution and enforcement of the Operative Agreements, including but not limited to: (i) the cost of reproducing the Operative Agreements; (ii) the reasonable fees and disbursements of Mayer Brown LLP, special counsel for the beneficial holder of the Notes; (iii) the Beneficiary's reasonable out-of-pocket expenses; (iv) all recording and filing fees and stamp taxes in connection with the recordation or filing and re-recordation or re-filing of the items referred to in Section 3.1(b) of the Note Purchase Agreement; (v) the reasonable fees and disbursements of the title company referred to in Section 3.2(c) of the Note Purchase Agreement in connection with the issuance of the title insurance policy and the reasonable fees and disbursements of the civil engineer or surveyor which conducted the survey referred to in Section 3.2(b) of the Note Purchase Agreement in connection with the preparation of such survey; (vi) the reasonable fees and disbursements of (a) the Person that prepared the Environmental Assessment referred to in Section 3.2(d) of the Note Purchase Agreement and (b) the Person that prepared the appraisal referred to in Section 3.2(e) of the Note Purchase Agreement; (vii) the reasonable fees and disbursements of the Escrow Agent in connection with its duties under the Escrow and Servicing Agreement; and (viii) all reasonable expenses relating to any amendments, waivers or consents pursuant to the provisions of any of the Operative Agreements, including without limitation, any amendments, waivers or consents resulting from any work-out, restructuring or similar proceedings relating to the performance by the Grantor of its obligations under any of the Operative Agreements or relating to the performance by the Tenant of its obligations under the Lease. Beneficiary hereby acknowledges and agrees that there shall be no monthly fees and/or administrative fees incurred in connection with the administration of the Operative Documents, except as provided in Section 3.2 hereof or as may otherwise be expressly provided in the Operative Documents, including, without limitation, the escrow and servicing fees provided for in the Escrow and Servicing Agreement. The obligations of the Grantor under this Section 6.11 shall survive the payment or prepayment of the Notes and the termination of any of the Operative Agreements.

Section 6.12. Cooperation. The Grantor acknowledges that the Beneficiary and its successors and assigns may (a) sell, transfer or assign this Deed of Trust, the Notes and the Operative Agreements to one or more investors as a whole loan, in a rated or unrated public offering or private placement, (b) participate the loan (the "Loan") secured by this Deed of Trust to one or more investors in a rated or unrated public offering or private placement, (c) deposit this Deed of Trust, the Notes and the Operative Agreements with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets in a rated or unrated public offering or private placement, or (d) otherwise sell the Loan or any interest therein to investors in a rated or unrated public offering or private placement (the transactions referred to in clauses (a) through (d) are hereinafter referred to as "Secondary Market Transactions"). The

Grantor shall, at Beneficiary's expense, cooperate reasonably and in good faith with Beneficiary in effecting any such Secondary Market Transaction and shall cooperate reasonably and in good faith to implement all requirements reasonably imposed by the participants involved in any Secondary Market Transaction (including without limitation, an institutional purchaser, participant or investor) including, without limitation, all structural or other changes to the Loan, modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel reasonably acceptable to such other purchasers, participants or investors may require; *provided, however*, that the Grantor shall not be required to modify any documents evidencing or securing the Loan which would modify (i) the interest rate payable under the Notes, (ii) the stated maturity of the Notes, (iii) the amortization of principal of the Notes, or (iv) any other material terms or covenants of the Operative Agreements. The Grantor shall provide such information and documents relating to the Grantor, the Granted Property and the Tenant as Beneficiary shall reasonably request. The Grantor acknowledges that certain information regarding the Loan and the parties thereto and the Granted Property may be included in a private placement memorandum, prospectus or other disclosure documents.

Section 6.13. No Merger of Estates. There shall be no merger of the Lease or the leasehold estate created thereby with the fee estate in the Granted Property or any part thereof by reason of the same person or entity acquiring or holding, directly or indirectly, any interest in the Lease or the leasehold estate created thereby as well as the fee estate in the Granted Property. Nothing contained in this Section shall be deemed to prohibit the Tenant under the Lease from acquiring the fee interest in the Granted Property, subject, however, to the terms of the preceding sentence.

Section 6.14. [Intentionally omitted.]

Section 6.15. Permitted Fee Mortgage. Grantor and Beneficiary intend that this Deed of Trust be a Permitted Fee Mortgage (as defined in the Lease) under the Lease. Accordingly, the Grantor and the Beneficiary recognize and acknowledge that the Grantor's interest in and to the portions of the Granted Property that are subject to the Lease are and shall remain subject to the Lease, and that:

(a) as required by the Lease, the Fee Estate (as defined in the Lease) shall be fully released from the lien of this Deed of Trust upon (x) the Tenant's exercise of the Purchase Right (as defined in the Lease), and (y) receipt by the Beneficiary of an aggregate release price equal to the Fair Market Value (as defined in the Lease) of the Fee Estate or the outstanding balance of the Loan secured by this Deed of Trust, whichever is less; and

(b) as required by the Lease, the Tenant has and shall have the right to purchase the obligations secured by this Deed of Trust and receive an assignment of the Beneficiary's interest under this Deed of Trust in accordance with the provisions of the Fee Mortgage Protection Agreement.

Section 6.16. Usury Savings Clause. Interest on the Indebtedness Hereby Secured by this Deed of Trust shall not exceed the maximum amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that

maximum amount shall be credited on the principal of the Indebtedness Hereby Secured or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be cancelled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the Indebtedness Hereby Secured or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this Deed of Trust and all other Operative Agreement and instruments concerning the Indebtedness Hereby Secured.

SECTION 7. ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE.

The Trustee accepts this trust and it shall be deemed delivered when this Deed of Trust is executed. From time to time, upon written request of Beneficiary and, to the extent required by applicable law presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any of the Indebtedness Hereby Secured, Beneficiary, or Trustee at Beneficiary's direction, may, without obligation to do so or liability therefor and without notice: (a) reconvey all or any part of the Granted Property from the lien of this Deed of Trust; (b) consent to the making of any map or plat of the Granted Property; and (c) join in any grant of easement or declaration of covenants and restrictions with respect to the Granted Property, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trusts and the enforcement of its rights and remedies available under this Deed of Trust, and may obtain orders or decrees directing, confirming or approving acts in the execution of said trusts and the enforcement of said rights and remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding (including, but not limited to, actions in which Grantor, Beneficiary or Trustee shall be a party) unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it under this Deed of Trust unless the performance of the act is requested in writing and Trustee is reasonably indemnified against all losses, costs, liabilities and expenses in connection therewith.

SECTION 8. DEED OF TRUST PROVISIONS.

Section 8.1. Concerning the Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Deed of Trust, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to the Grantor and to Beneficiary. Beneficiary may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Beneficiary may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Deed of Trust is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be

required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Beneficiary. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 8.2. Trustee's Fees. The Grantor shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Deed of Trust.

Section 8.3. Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Notes, this Deed of Trust or the other Operative Agreements, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Granted Property for debts contracted for or liability or damages incurred in the management or operation of the Granted Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 8.4. Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.


Section 8.5. Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be reasonably required from the Grantor by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties as contemplated hereunder, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by the Grantor.

Section 8.6. Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

[Signatures on Next Page]

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

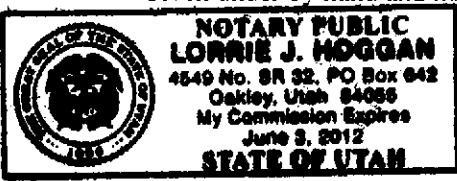
TALISKER EMPIRE PASS HOTEL LLC, a Delaware
limited liability company

By 
Name: David J. Smith
Title: Authorized Signing Officer

STATE OF Utah)
) SS
COUNTY OF Summit)

I, Lorrie J. Hoggan, a Notary Public in and for the County and State aforesaid, do hereby certify that David J. Smith to me known, who declared and acknowledged that he is the Authorized Signing Officer of TALISKER EMPIRE PASS HOTEL LLC, a limited liability company organized under the laws of the State of Delaware, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said political subdivision and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under by hand and notarial seal this 20th day of December, 2011.



Lorrie J. Hoggan
Notary Public
Lorrie J. Hoggan
Printed Name:

(Seal)
Commission expires: 6-3-12

EXHIBIT A

Order Number: 20944

LEGAL DESCRIPTION

LOT C OF THE HOTEL & RESIDENCES AT EMPIRE CANYON RESORT, ACCORDING TO THE CONDOMINIUM PLAT RECORDED IN THE OFFICE OF THE SUMMIT COUNTY RECORDER ON JANUARY 20, 2010, AS ENTRY NO. 890518, AND THE FIRST AMENDMENT TO CONDOMINIUM PLAT RECORDED JUNE 23, 2011, AS ENTRY NO. 925198 (THE "CONDOMINIUM PLAT") AND THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RESIDENCES AT EMPIRE CANYON RESORT RECORDED IN THE OFFICE OF THE SUMMIT COUNTY RECORDER ON JANUARY 20, 2010, AS ENTRY NO. 890520, IN BOOK 2018, AT PAGE 0001 AND THE FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RESIDENCES AT EMPIRE CANYON RESORT RECORDED JUNE 23, 2011, AS ENTRY NO. 925199, BOOK 2085, AT PAGE 1245 (THE "RESIDENTIAL DECLARATION") AND AS FURTHER DEFINED IN AND MADE SUBJECT TO THAT CERTAIN MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE HOTEL AND RESIDENCES AT EMPIRE CANYON RESORT RECORDED IN THE OFFICE OF THE SUMMIT COUNTY RECORDER ON JANUARY 20, 2010, AS ENTRY NO. 890519, IN BOOK 2017, AT PAGE 1884 (THE "MASTER DECLARATION") TOGETHER WITH AN UNDIVIDED INTEREST IN THE NON-EXCLUSIVE EASEMENT RIGHTS OVER THE ACCESS AREA, THE PARKING AREA, THE STORAGE AREA AND THE BALCONY/PATIO AREA APPURTENANT TO SUCH UNIT, AS DESIGNATED ON THE CONDOMINIUM PLAT.

TOGETHER WITH LANDLORD'S REAL PROPERTY INTEREST IN THAT CERTAIN AGREEMENT OF LEASE, DATED MAY 23, 2007, BY AND BETWEEN TALISKER EMPIRE PASS HOTEL LLC, A DELAWARE LIMITED LIABILITY COMPANY, ("LANDLORD"), AND DV LUXURY RESORT LLC, A DELAWARE LIMITED LIABILITY COMPANY, ("TENANT"), A 999 YEAR LEASE COMMENCING MAY 23, 2007, AS DISCLOSED BY THE MEMORANDUM OF LEASE DATED MAY 23, 2007, BY AND BETWEEN TALISKER EMPIRE PASS HOTEL LLC, A DELAWARE LIMITED LIABILITY COMPANY (LANDLORD), AND DV LUXURY RESORT LLC, A DELAWARE LIMITED LIABILITY COMPANY (TENANT), RECORDED MAY 23, 2007, AS ENTRY NO. 814188, IN BOOK 1867, AT PAGE 941, SUMMIT COUNTY RECORDER'S OFFICE.

LESS AND EXCEPTING UNITS 820, 841, 844, 845, 852, 853, 861, 930, 952, 1004, 1082, 1151 AND PS2.

EXCEPTING THEREFROM ALL MINERAL AND SUBSURFACE RIGHTS INCLUDING ALL MINE TUNNELS, INCLUDING, BUT NOT LIMITED TO, THE MINE TUNNELS CONVEYED IN THE QUIT CLAIM DEED RECORDED AUGUST 27, 2002, AS ENTRY NO. 630269, IN BOOK 1468, AT PAGE 1147

(Tax Serial No. HRECRC-1, HRECRC-2, HRECRC-3, HRECRC-4, HRECRC-5, HRECRC-6, HRECRC-7, HRECRC-8, HRECRC-9, HRECRC-10, HRECRC-601, HRECRC-733, HRECRC-740-1AM, HRECRC-771, HRECRC-801, HRECRC-802, HRECRC-807, HRECRC-808, HRECRC-821, HRECRC-830, HRECRC-831, HRECRC-840, HRECRC-850, HRECRC-851, HRECRC-860, HRECRC-863, HRECRC-864, HRECRC-880, HRECRC-881, HRECRC-883, HRECRC-886, HRECRC-901, HRECRC-902, HRECRC-905, HRECRC-906, HRECRC-920, HRECRC-921, HRECRC-933, HRECRC-940, HRECRC-941, HRECRC-944, HRECRC-945, HRECRC-950, HRECRC-951, HRECRC-953, HRECRC-960, HRECRC-961, HRECRC-962, HRECRC-963, HRECRC-980, HRECRC-981, HRECRC-983, HRECRC-984, HRECRC-1001, HRECRC-1002, HRECRC-1003, HRECRC-1005, HRECRC-1020, HRECRC-1021, HRECRC-1031, HRECRC-1032, HRECRC-1034, HRECRC-1040-1AM, HRECRC-1041-1AM, HRECRC-1042-1AM, HRECRC-1043-1AM, HRECRC-1050, HRECRC-1051, HRECRC-1052, HRECRC-1062, HRECRC-1063, HRECRC-1081, HRECRC-1083, HRECRC-1150, HRECRC-1152, HRECRC-1162, HRECRC-1182, HRECRC-1202, HRECRC-1250-1AM, HRECRC-1252-1AM, HRECRC-PS1-1AM and HRECRC-HOTEL)