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**CONSTRUCTION GROUND LEASE DEED OF TRUST
(WITH SECURITY AGREEMENT, FIXTURE FILING AND
ASSIGNMENT OF RENTS AND LEASES)**

**NOTICE: A PORTION OF THE PROCEEDS OF THE LOAN SECURED BY THIS
DEED OF TRUST WILL BE USED TO FINANCE CONSTRUCTION OF
IMPROVEMENTS ON LAND.**

By this Construction Ground Lease Deed of Trust ("**Deed of Trust**") dated March 15, 2007, the undersigned, ALAMEDA ENTERTAINMENT ASSOCIATES, L.P., a California limited partnership ("**Trustor**"), whose address is 540 Mendocino Avenue, Santa Rosa, California 95401, to secure the indebtedness and obligations hereinafter described, does hereby grant, bargain, sell, assign, transfer, and convey, unto OLD REPUBLIC TITLE COMPANY, as trustee ("**Trustee**") whose address is 1900 The Alameda, San Jose, California 95126, in trust for the benefit of COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA, a public body, corporate and politic ("**Commission**" or "**Beneficiary**"), whose address is 950 West Mall Square, Room 215, Alameda, California 94501, with power of sale and right of entry and possession, all of Trustor's estate, right, title and interest in the described land ("**Land**") set forth on the attached Exhibit A including (a) Trustor's ground leasehold interest under that certain Ground Lease dated March 15, 2007, by and between Trustor as Tenant and Beneficiary as Landlord ("**Ground Lease**"), (b) Trustor's leasehold interest under that certain Historic Theater Lease dated March 15, 2007, by and between Trustor, as Tenant, and Beneficiary, as Landlord ("**Historic Theater Lease**"), and (c) any and all addenda, amendments, modifications, extensions, subleases, and assignments heretofore, now, or hereafter entered into with respect to Trustor's leasehold interests under the Ground Lease and/or Historic Theater Lease (collectively, "**Real Property**").

TOGETHER WITH the following, whether now owned or hereafter acquired by Trustor: (a) all buildings and improvements ("**Improvements**") now or hereafter attached to placed, erected, constructed or developed on the Real Property; (b) all equipment, fixtures, furnishings, machinery, inventory, supplies, chattels, and articles of personal property (including but not limited to all items used in the operation of or in connection with a movie theater) ("**Personal Property**") now or hereafter attached to or used in or about the Improvements or which are necessary or useful for the complete and comfortable use and occupancy of the Improvements for the purposes for which they are to be constructed, and all replacements or substitutions for any of the foregoing, whether or not the same are or shall be attached to the Real Property or Improvements; (c) all building materials, machinery, and equipment now or hereafter delivered

to and intended to be installed in or on the Real Property or the Improvements; (d) all plans and specifications for the Improvements; (e) all of Trustor's rights (but not its obligations) under any contracts relating to the Real Property, the Improvements, or the Personal Property; (f) all permits, licenses, and other rights and privileges obtained in connection with the Real Property, the Improvements, or the Personal Property; (g) all proceeds arising from or by virtue of the sale, lease, sublease, licensing, assignment, or other disposition of the Real Property, the Improvements, or Personal Property; (h) all proceeds (including premium refunds) of each policy of insurance relating to the Real Property, the Improvements, or the Personal Property; (i) all proceeds from the taking of any of the Real Property, the Improvements, the Personal Property, or any rights appurtenant thereto by right of eminent domain or by private or other purchase in lieu thereof; (j) all right, title and interest of Trustor in and to all streets, roads, public places, water, water rights, water stock, minerals, development rights and credits, easements and rights-of-way, existing or proposed, public or private, adjacent to or used in connection with, belonging or pertaining to the Real Property or the Improvements; (k) all of the leases, subleases, licenses, rents, royalties, bonuses, issues, profits, revenues, or other benefits of the Real Property, the Improvements, or the Personal Property, including without limitation, cash or securities deposited pursuant to leases to secure performance by the tenants of their obligations thereunder (subject, however, to the absolute assignment of the Rents (as hereinafter defined) set forth in Article 2 below); (l) all of Trustor's interest in and to proceeds from the Commission Financial Assistance (as that term is defined in the Disposition and Development Agreement dated May 3, 2005, as amended by that certain letter agreement dated March 6, 2007, by and between Trustor and Beneficiary) (collectively, "DDA"), whether such proceeds are disbursed or not, and Trustor's own funds now or later to be held on deposit in the construction loan escrow account to be established as provided in Section 603 of the DDA; (m) all present and future deposits and payments made by Trustor with third parties in connection with the development of and construction upon the Real Property and refunds thereof and all present and future deposits and payments made with or other security given to utility companies by Trustor with respect to the Real Property or the Improvements and refunds thereof; (n) without limiting the foregoing, all goods, accounts, documents, instruments, money, deposit accounts, chattel paper and general intangibles, as those terms are defined in the Commercial Code from time to time in effect in the State of California, in any way relating to the Real Property, the Improvements, and the Personal Property (including the design, development, construction, improvement, equipping, furnishing, use, operation, management, occupancy, financing or sale thereof), and all proceeds, replacements, substitutions, products, accessions, and increases of the foregoing, including such proceeds, replacements, substitutions, products, accessions and increases within any one or more of the following types of collateral: goods, equipment, inventory, instruments, chattel paper, documents, accounts or general intangibles; (o) all rights, hereditaments and appurtenances pertaining to the foregoing; and (p) other interests of every kind and character that Trustor now has or at any time hereafter acquires in and to the Real Property, the Improvements, and the Personal Property described herein and all property described herein and all property that is used or useful in connection therewith, including rights of ingress and egress and all reversionary rights or interests of Trustor with respect to such property. The above-described property is collectively called the "**Mortgaged Property.**" Capitalized terms used above and in this Deed of Trust without definition have the meaning given to them in the DDA.

TO HAVE AND TO HOLD the Mortgaged Property, together with the rights, privileges and appurtenances thereto belonging, unto the Trustee and his substitutes or successors, forever, and Trustor hereby binds itself and its heirs, executors, administrators, personal representatives, successors and assigns to warrant and forever defend the Mortgaged Property unto the Trustee, his substitutes or successors and assigns, against the claim or claims of all persons claiming or to claim the same or any part thereof.

ARTICLE 1.

INDEBTEDNESS

This Deed of Trust is given to secure the following:

- 1.1. Note. Payment of the indebtedness evidenced by, and performance of the obligations set forth in the Promissory Note ("Note") of even date herewith, in the stated principal amount of One Million Four Hundred Thousand Dollars (\$1,400,000) executed by Trustor, payable to the order of Beneficiary and bearing interest and being payable as set forth therein, and all modifications, increases, refinancings, renewals and extensions thereof.
- 1.2. DDA. Performance of all obligations of Trustor under the DDA between Trustor and Beneficiary pertaining to the disbursement and use of the proceeds of the Commission Financial Assistance.
- 1.3. Deed of Trust. Payment of all sums advanced by Beneficiary to or for the benefit of Trustor contemplated hereby and performance of all obligations and covenants herein contained.
- 1.4. Additional Advances. Payment and performance of all other indebtedness, with all interest thereon, which may hereafter be advanced to Trustor by Beneficiary when evidenced by a promissory note reciting that it is secured by this Deed of Trust.
- 1.5. Ground Lease. Performance of all obligations of Trustor under the Ground Lease pertaining to the disbursement and use of the proceeds of the Commission Financial Assistance.
- 1.6. Historic Theater Lease. Performance of all obligations of Trustor under the Historic Theater Lease pertaining to the disbursement and use of the proceeds of the Commission Financial Assistance.
- 1.7. Completion Guaranty. That certain Completion Guaranty ("Completion Guaranty") dated March 15, 2007, by Kyle Conner and Elgina Conner, husband and wife, as Guarantor in favor of the Commission.
- 1.8. Additional Definitions. The obligations above described are hereinafter collectively called the "**Indebtedness**." This Deed of Trust, the Note, the DDA, the Ground Lease, the Historic Theater Lease, the Completion Guaranty, any other guaranty guaranteeing the payment and performance of any of the Indebtedness and performance of any obligations secured hereby, and any other instrument given to evidence or further secure the Indebtedness are hereinafter collectively called the "**Loan Documents**."

1.9. Incorporation by Reference. All terms of the Loan Documents are incorporated herein by this reference and all persons who have or may acquire an interest in the Mortgaged Property shall be deemed to have notice of such terms.

ARTICLE 2.

ASSIGNMENT OF RENTS AND LEASES

2.1. Assignment of Rents, Profits, Etc. All of the rents, royalties, bonuses, issues, profits, revenue, income, and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto and liquidated damages following default under such leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Mortgaged Property, together with any and all rights that Trustor may have against any tenant under such leases or any subtenants or occupants of any part of the Mortgaged Property ("**Rents**") are hereby absolutely and unconditionally assigned and transferred to Beneficiary to be applied by Beneficiary in payment of the Indebtedness. Notwithstanding any provision of this Deed of Trust or any other of the Loan Documents which might be construed to the contrary, the assignment in this section is an absolute assignment and not merely a security interest. However, Beneficiary's rights as to the assignment shall be exercised only upon the occurrence of an Event of Default (as hereinafter defined). Prior to an Event of Default, Trustor shall have a license to collect and receive all Rents as Trustee for the benefit of Beneficiary and Trustor, and Trustor shall apply the funds so collected first to the payment of the Indebtedness in such manner as Beneficiary elects and thereafter to the account of Trustor. All Rents not actually paid to Beneficiary to apply on the Indebtedness shall not constitute payment on the Indebtedness.

2.2. Assignment of Leases. Trustor hereby assigns to Beneficiary Trustor's interest in the Ground Lease, the Historic Theater Lease, and all existing and future leases, including subleases thereof, concession agreements, operation or management agreements, license agreements, and any and all extensions, renewals, modifications, and replacements thereof, upon any part of the Mortgaged Property ("**Leases**"). Trustor hereby further assigns to Beneficiary all guaranties of tenants' performance under the Leases. Prior to an Event of Default, Trustor shall have the right, without joinder of Beneficiary, to enforce the Leases, unless Beneficiary directs otherwise. Pursuant to Sections 4.3.B and 9.10, such assignment shall not operate to merge any interest of Trustor and Beneficiary.

2.3. Leasing. Trustor covenants and agrees that, without the prior written consent of Beneficiary, it shall not enter into any Lease of the Mortgaged Property except as expressly permitted under the Ground Lease or the Historic Theater Lease.

2.4. Beneficiary in Possession; Indemnification. Beneficiary's acceptance of this assignment shall not, prior to entry upon and taking possession of the Mortgaged Property by Beneficiary, be deemed to constitute Beneficiary a "Mortgagee in Possession," nor obligate Beneficiary to appear in or defend any proceeding relating to any of the Leases or to the Mortgaged Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits

delivered to Trustor by any tenant and not delivered to Beneficiary. Beneficiary shall not be liable for any injury or damage to person or property in or about Mortgaged Property, unless caused by Beneficiary's sole or active negligence or willful misconduct. Except to the extent caused by Beneficiary's sole or active negligence or willful misconduct, Trustor hereby indemnifies and holds Beneficiary harmless from all liability, damage or expense incurred by Beneficiary from any claims under the Leases, including, without limitation, claims by tenants for security deposits or for rental payments more than one month in advance and not delivered to Beneficiary. All amounts indemnified against hereunder, including reasonable attorneys' fees, if paid by Beneficiary shall bear interest at the maximum lawful rate and shall be payable by Trustor immediately without demand, and shall be secured hereby.

ARTICLE 3.

SECURITY AGREEMENT

3.1. Security Interest. This Deed of Trust shall be a security agreement between Trustor, as the "debtor," and Beneficiary, as the "secured party," covering the Mortgaged Property constituting personal property or fixtures pursuant to Sections 9334 and 9502(c) of the California Commercial Code ("**Commercial Code**"), and Trustor grants to Beneficiary a security interest in such portion of the Mortgaged Property. In addition to Beneficiary's other rights hereunder, Beneficiary shall have all rights of a secured party under the Commercial Code. Beneficiary is hereby authorized to file all financing statements that may in its sole discretion be necessary or appropriate to perfect Beneficiary's security interest in such portion of the Mortgaged Property and maintain the priority thereof, and Trustor shall bear all costs thereof, including all Commercial Code searches reasonably required by Beneficiary. If Beneficiary should dispose of any of the Mortgaged Property pursuant to the Commercial Code, ten (10) days written notice by Beneficiary to Trustor shall be deemed to be reasonable notice; provided, however, Beneficiary may dispose of such property in accordance with the foreclosure procedures of this Deed of Trust in lieu of proceeding under the Commercial Code.

3.2. Notice of Changes. Trustor shall give advance notice in writing to Beneficiary of any proposed change in Trustor's name, identity, or structure and will execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any of the Mortgaged Property described or referred to herein.

3.3. Fixtures. Some of the items of the Mortgaged Property described herein are goods which are or are to become fixtures related to the Real Property, and it is intended that, as to those goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated above. The mailing address of the Trustor, as debtor, is as stated above.

ARTICLE 4.

REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF TRUSTOR

Trustor does hereby covenant, warrant and represent to and agree with Beneficiary as follows:

4.1. Payment and Performance. Trustor shall make all payments on the Indebtedness when due and shall punctually and properly perform all of Trustor's covenants, obligations and liabilities under the Loan Documents.

4.2. Title to Mortgaged Property and Lien of this Deed of Trust. Trustor lawfully holds and possesses (a) the entire ground leasehold estate created by the Ground Lease, (b) the entire leasehold estate created by the Historic Theater Lease, (c) good and indefeasible title to the Improvements, and (d) good and marketable title to the Personal Property; free and clear of any liens, charges, encumbrances, security interests, and adverse claims whatsoever, except for Developer's Construction Loan and Developer's FF&E Financing (as such terms are defined in the DDA) or as otherwise provided herein. If the interest of Beneficiary in the Mortgaged Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, Trustor hereby authorizes Beneficiary, at Trustor's expense, to take all necessary and proper steps for the defense of such interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against such interest.

4.3. Ground Lease and Historic Theater Lease. With respect to the Ground Lease and the Historic Theater Lease, Trustor also agrees:

A. That the provisions hereof shall be deemed to be obligations of Trustor in addition to Trustor's obligations as Tenant under the Ground Lease or the Historic Theater Lease with respect to similar matters contained in the Ground Lease or the Historic Theater Lease; provided, however, the inclusion herein of any obligations relating to similar matters as to which Trustor is obligated under the Ground Lease shall not restrict or limit Trustor's obligations to perform promptly all of its obligations as Tenant under the Ground Lease or the Historic Theater Lease, and nothing in this Deed of Trust shall be construed as requiring Trustor or Beneficiary to take or omit to take any action which would cause a default under the Ground Lease or the Historic Theater Lease.

B. That so long as this Deed of Trust is in effect, there shall be no merger of the Ground Lease or the Historic Theater Lease, nor of the leasehold estate or other estate created hereby, with the fee estate in the Land by reason of the fact that the Ground Lease or the Historic Theater Lease, or the leasehold estate or other estate created thereby, may be held directly or indirectly by or for the account of any person or entity who or which also holds the fee estate in the Land. If Trustor acquires the fee title or any other estate, title or interest in the Land, this Deed of Trust shall attach to and be a lien upon the fee title or such other estate so acquired, and such fee title or other estate shall, without further assignment, mortgage or conveyance, become and remain subject to the lien of and covered by this Deed of Trust and, on written request by Beneficiary, Trustor shall cause to be executed and recorded all such

documents and instruments as may in the reasonable opinion of Beneficiary be required to carry out the intent and meaning hereof.

4.4. Organization, Power, and Existence. Trustor: (a) is duly organized and validly existing under applicable state laws and in good standing under the laws of the state of its formation and the laws of the State of California; (b) has complied with all conditions prerequisite to its lawfully doing business in the state where the Real Property is situated; and (c) has all requisite power and all governmental certificates of authority, license, permits, qualifications, and documentation to own, lease and operate its properties and to carry on its business as it is now being, and as it is proposed to be, conducted. All Loan Documents are within Trustor's powers, have been duly authorized by all requisite action and are not in contravention of law or the powers of Trustor's organizational documents. Trustor will preserve and keep in full force and effect its existence, rights, franchises, and trade names.

4.5. Insurance.

A. Trustor shall, at its sole cost and expense, obtain and maintain title insurance, public liability insurance, and builder's risk and casualty insurance in such forms and amounts as are required by the Loan Documents.

B. In the event of any damage or destruction or any condemnation, Beneficiary may apply any proceeds or awards received by it first toward reimbursement of all of Beneficiary's reasonable costs and expenses, if any, of recovering the proceeds or awards, including attorneys' fees. If, in any instance, each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to use the balance of such proceeds or awards ("**Net Claims Proceeds**") to pay costs of repairing or reconstructing the Mortgaged Property in the manner described below:

(1) The plans and specifications, cost breakdown, construction schedule, and Contractor for the work of repair or reconstruction must all be acceptable to Beneficiary; and

(2) Beneficiary must receive evidence satisfactory to it that after repair or reconstruction, the Mortgaged Property would be at least as valuable as it was immediately before the damage or condemnation occurred; and

(3) The Net Claims Proceeds must be sufficient in Beneficiary's determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest projected to be payable on the secured obligations until the repair or reconstruction is complete; or Trustor must provide its own funds in an amount equal to the difference between the Net Claims Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of repair or reconstruction; and

(4) No Event of Default shall have occurred and be continuing.

If Beneficiary finds that such conditions have been met, Beneficiary shall hold the Net Claims Proceeds and any funds which Trustor is required to provide in a non-interest-bearing account and shall disburse them to Trustor to pay costs of repair or

reconstruction upon presentation of evidence reasonably satisfactory to Beneficiary that repair or reconstruction has been completed satisfactorily and lien-free. However, if Beneficiary finds that one or more of such conditions have not been satisfied, Beneficiary may apply the Net Claims Proceeds to pay or prepay (without premium) some or all of the Indebtedness in such order and proportions as Beneficiary in its sole discretion may choose. If there are no Net Claims Proceeds, Trustor shall nevertheless be allowed to rebuild and restore the Mortgaged Property in accordance with the applicable provisions of this subparagraph (b).

4.6. Taxes and Assessments. Trustor shall pay when due, without extension, all taxes and assessments against or affecting the Mortgaged Property as the same become due and payable, and shall not enter into any extension of the due dates thereof, including, but not limited to, extension pursuant to Section 4216 et seq. of the California Revenue and Taxation Code, and shall pay when due all other claims and demands arising from Trustor's ownership, development, construction, use or occupancy of the Mortgaged Property. Upon request by Beneficiary, Trustor will deliver to Beneficiary such evidence of the payment thereof as Beneficiary may require, and, if Trustor fails to do so, Beneficiary may pay them, together with all costs and penalties thereon, at Trustor's expense.

4.7. Intentionally Omitted.

4.8. Condemnation. All judgments, decrees and awards for injury or damage to the Mortgaged Property, and all awards pursuant to proceedings for condemnation thereof, are hereby assigned in their entirety to Beneficiary, who may apply the same to the Indebtedness in such manner as it may elect; and Beneficiary is hereby authorized, in the name of Trustor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceedings for the condemnation of the Mortgaged Property, Trustor shall notify Beneficiary of such fact. Trustor shall then, if requested by Beneficiary, file or defend its claim thereunder and prosecute same with due diligence to its final disposition, and shall cause any awards or settlements to be paid over to Beneficiary for disposition pursuant to the terms of this Deed of Trust. Beneficiary shall be entitled to participate in and to control same and to be represented therein by counsel of its own choice, and Trustor will deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation. In the event Beneficiary, as a result of any such judgment, decree or award, reasonably believes that the payment or performance of any obligation secured by this Deed of Trust is impaired, Beneficiary may, without notice, declare all of the Indebtedness immediately due and payable.

4.9. Taxes on Note or Deed of Trust. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Note, or any part thereof, Trustor shall immediately pay all such taxes; provided, that if it is unlawful for Trustor to pay such taxes, Trustor shall prepay the Note in full after demand therefor by Beneficiary.

4.10. Statements by Trustor. At the request of Beneficiary, Trustor shall furnish promptly a written statement or affidavit, in such form as may be required by Beneficiary, stating the unpaid balance of the Note, the date to which interest thereunder has been paid and that there

are no offsets or defenses against full payment of the Note and performance of the terms of the Loan Documents, or if there are any such offsets or defenses, specifying them.

4.11. Repair, Waste, Etc. Trustor will keep every part of the Mortgaged Property in good operating order, repair and condition and shall not commit or permit any waste thereof. Trustor will make promptly all repairs, renewals and replacements necessary to such end. Trustor will discharge all claims for labor performed and material furnished therefor, and will not suffer any lien of mechanics or materialmen to attach to any part of the Mortgaged Property. Trustor shall have the right to contest in good faith the validity of any such mechanics' or materialmen's lien, provided Trustor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amount as Beneficiary shall require, and provided further that Trustor shall thereafter diligently proceed to cause such lien to be removed and discharged. Trustor will guard every part of the Mortgaged Property from removal, destruction and damage, and will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened.

4.12. No Pledge or Change of Stock or Partnership Interest. If Trustor is a corporation, the shareholders of Trustor shall not sell, pledge or assign any shares of the stock of Trustor without the prior written consent of Beneficiary. If Trustor is a partnership, limited liability company or joint venture, the partners, members or joint venturers of Trustor shall not sell, pledge or assign any of their partnership, membership or joint venture interest in Trustor and no general partners, members or joint venturers shall withdraw from or be admitted into Trustor without the prior written consent of Beneficiary, except as set forth in the DDA.

4.13. Compliance with Laws. Trustor, the Mortgaged Property, and the use thereof by Trustor or any tenant under the Leases shall comply with all laws, rules, ordinances, regulations, covenants, conditions, restrictions, orders and decrees of any governmental authority or court applicable to Trustor, the Mortgaged Property, and its use, and Trustor shall pay all fees or charges of any kind in connection therewith.

4.14. Hold Harmless. Trustor will defend, at its own cost and expense, and hold Beneficiary harmless from, any proceeding or claim in any way relating to the Mortgaged Property or the Loan Documents. All costs and expenses incurred by Beneficiary in protecting its interests hereunder, including all court costs and reasonable attorneys' fees, shall be borne by Trustor. The provisions of this section shall survive the payment in full of the Indebtedness and the release of this Deed of Trust as to events occurring and causes of action arising before such payment and release.

4.15. Further Assurances. Trustor, upon the request of Beneficiary, will execute, acknowledge, deliver, and record such further instruments and do such further acts as may be necessary, desirable or proper to carry out the purposes of the Loan Documents and to subject to the liens and security interest created thereby any property intended by the terms thereof to be covered thereby, including specifically but without limitation, any renewals, additions, substitutions, replacements, improvements, or appurtenances to the Mortgaged Property.

4.16. Payment of Debts. Trustor shall promptly pay when due all obligations regarding the ownership and operation of the Mortgaged Property except any such obligations which are

being diligently contested in good faith by appropriate proceedings and as to which Trustor, if requested by Beneficiary, shall have furnished to Beneficiary security satisfactory to Beneficiary.

4.17. Income, Expense and Financial Statement. (a) Within the time periods referenced in the Loan Documents, Trustor and such other persons specified in the Loan Documents shall deliver to Beneficiary then current financial statements of Trustor, in form and content satisfactory to Beneficiary and as set forth in the Loan Documents, and (b) within thirty (30) days following Beneficiary's request, Trustor shall cause any other party liable on the Indebtedness (or in any part thereof) to deliver to Beneficiary then current financial statements of such party, in form and content satisfactory to Beneficiary.

4.18. Modification by Subsequent Owners. Each Trustor agrees that it shall be bound by any modification of this Deed of Trust or any of the other Loan Documents made by Beneficiary and any subsequent owner of the Mortgaged Property, with or without notice to such Trustor, and no such modifications shall impair the obligations of such Trustor under this Deed of Trust or any other of the Loan Documents. Nothing in this section shall be construed as permitting any transfer of the Mortgaged Property which would constitute an Event of Default under other provisions of this Deed of Trust.

4.19. Notice of Default under Third Party Indebtedness. Trustor shall immediately notify Beneficiary of any Event of Default or notice of intent to accelerate indebtedness or acceleration of indebtedness under any instruments evidencing, governing, guaranteeing or securing any indebtedness or obligation, now or hereafter owed by Trustor ("**Third Party Indebtedness**") to any other lender or third party ("**Other Lenders**").

4.20. Entry and Inspections. Beneficiary and Trustee and their agents, attorneys, employees and contractors may enter upon any part of the Mortgaged Property at all reasonable times to attend to Beneficiary's or Trustor's interests, respectively, inspect the Mortgaged Property, or perform any act which Beneficiary or Trustor, respectively, is authorized to perform hereunder. Trustor shall cooperate in such entries and inspections as Beneficiary or Trustee may request.

ARTICLE 5.

ADDITIONAL LIENS

5.1. Additional Liens. Leasehold mortgages and leasehold deeds of trust shall be permitted prior to completion of the construction of the Developer Improvements (as that term is defined in the DDA), but only for the purpose of securing Developer's Construction Loan. Developer shall not enter into any conveyance for such financing without the prior written approval of Commission's Executive Director or any assignee of or successor to its rights, powers and responsibilities, which may be conditioned upon Commission's review and approval of all proposed documents evidencing and securing Developer's Construction Loan. In no event shall Commission's fee interest in the Land or the Historic Theater, or residual interest in the Cineplex (as those terms are defined in the DDA) be subordinated to the lien of any leasehold mortgage or leasehold deed of trust securing Developer's Construction Loan. Except as set forth above, Trustor will not, without prior written consent of Beneficiary, grant any lien, security

interest, or other encumbrance affecting any of the Mortgaged Property ("**Additional Lien**"). If Beneficiary consents to any Additional Lien, or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable, any such Additional Lien shall contain express covenants to the effect that the Additional Lien is unconditionally subordinate to this Deed of Trust and all modifications, renewals, extensions, or increases thereof. Any default under an Additional Lien shall be an Event of Default hereunder. Trustor shall promptly forward to Beneficiary any notices of default received by Trustor with respect to any Additional Lien.

ARTICLE 6.

TRUSTOR'S (TENANT'S) BANKRUPTCY

6.1. Order for Relief. Effective upon the entry of an order for relief in respect of Trustor under the Bankruptcy Act, Trustor hereby assigns and transfers to Beneficiary a non-exclusive right to apply to the bankruptcy court under Section 365(d)(4) of the Bankruptcy Act for an order extending the period during which the Ground Lease and the Historic Theater Lease may be rejected or assumed.

ARTICLE 7.

MISCELLANEOUS

7.1. Collection. If the Indebtedness shall be collected by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after default or maturity, Trustor agrees to pay the reasonable attorneys' and collection fees in the amount set forth in the Note, and such fees shall be a part of the Indebtedness.

7.2. Change in Ownership. If the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Trustor, or in the event of a change of ownership of Trustor, Beneficiary may, without notice to Trustor, deal with such successor or successors, in interest with reference to this Deed of Trust and to the Indebtedness in the same manner as with Trustor without in any way vitiating or discharging Trustor's liability hereunder or on the Indebtedness. No sale of the Mortgaged Property, and no forbearance on the part of the Beneficiary, and no extension of the time for payment of the Indebtedness, shall operate to release or affect the original liability of Trustor.

7.3. Release of Lien. If Trustor shall perform each of the covenants and agreements herein contained, then this conveyance shall become null and void and shall be released at Trustor's expense and written request to Beneficiary, and Beneficiary's written request to Trustee and Trustee shall reconvey without warranty the Mortgaged Property then held hereunder; otherwise, it shall remain in full force and effect. No release or modifications of this conveyance, or of any of the liens, security interests or assignments created and evidenced hereby, shall be valid unless executed by Beneficiary.

7.4. Waiver of Marshaling and Certain Rights. To the extent that Trustor may lawfully do so, Trustor hereby expressly waives any right pertaining to the marshaling of assets,

the exemption of homestead, the administration of estates of decedents, or other matter to defeat, reduce or affect the right of Beneficiary to sell the Mortgaged Property for the collection of the Indebtedness (without prior or different resort for collection), or the right of Beneficiary to the payment of the Indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant.

7.5. No Waiver. No waiver of any default on the part of Trustor or breach of any of the provisions of this Deed of Trust or of any other instrument executed in connection with the Indebtedness shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. Acceptance by Beneficiary of partial payments or late payments shall not constitute a waiver of the default by failure to make full payments.

7.6. Limitation on Interest. All agreements between Trustor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are hereby limited, in accordance with the Note and the other Loan Documents, so that in no contingency shall the interest contracted for, charged or received by Beneficiary exceed the maximum amount permissible under applicable law.

7.7. Successors and Assigns; Use of Terms. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, personal representatives, successors, and assigns of the parties hereto. Whenever used, the singular number shall include the plural and the plural and singular, and the use of any gender shall be applicable to all genders. The term "**Trustor**" shall include in their individual capacities and jointly all parties hereinabove named as a Trustor. The term "**Beneficiary**" shall include any lawful owner, holder, pledgee, or assignee of any of the Indebtedness.

7.8. Joint and Several Obligations. The duties, covenants, conditions, obligations, and warranties of Trustor in this Deed of Trust shall be joint and several obligations of Trustor and each Trustor, if more than one, and Trustor's heirs, executors, administrators, personal representatives, successors and assigns. Any married person who executes this Deed of Trust agrees that recourse may be had against his or her separate property. Each party who executes this Deed of Trust and each subsequent owner of the Mortgaged Property, or any part thereof (other than Beneficiary), covenants and agrees that it will perform, or cause to be performed, each term and covenant of this Deed of Trust.

7.9. Beneficiary's Consent. In any instance hereunder where Beneficiary's approval or consent is required or the exercise of Beneficiary's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Beneficiary, and Beneficiary shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner regardless of the reasonableness of either the request or Beneficiary's judgment.

7.10. Severability. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective while this Deed of Trust is in effect, the

legality, validity and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Deed of Trust a provision which is legal, valid and enforceable and as similar in terms to such illegal, invalid or unenforceable provision as may be possible. If any of the Indebtedness should be unsecured, the unsecured portion of the Indebtedness shall be completely paid prior to the payment of the secured portion of such Indebtedness, and all payments made on account of the Indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Indebtedness.

7.11. Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

7.12. No Partnership. Nothing contained in the Loan Documents is intended to create any partnership, joint venture or association between Trustor and Beneficiary, or in any way make Beneficiary a co-principal with Trustor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated.

7.13. No Homestead. With respect to each Trustor who is an individual, no part of the Mortgaged Property constitutes any part of his business or residential homestead.

7.14. Headings. The Article, Section and Subsection headings hereof are inserted for convenience of reference only and shall not alter, define, or be used in construing the text of such Articles, Sections or Subsections.

7.15. Construction Ground Lease Deed of Trust. This Deed of Trust secures an obligation incurred for the construction of the Improvements, including, if applicable, the acquisition cost of the Real Property.

7.16. Notices. Except as otherwise provided in Section 9.1.C of this Deed of Trust, all notices, demands, requests, approvals and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given (a) upon actual delivery if delivered by personal delivery or certified postage prepaid mail; or (b) on the next business day after timely and proper deposit with an overnight air courier with request for next business day delivery.

7.17. Acceptance of Trust; No Duty to Notify. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is under no obligation to notify any party hereto of any action or proceeding in which Trustor, Beneficiary or Trustee is a party, unless brought by Trustee hereunder.

7.18. Substitution of Trustees. Beneficiary may, from time to time, by written instrument executed and acknowledged by Beneficiary and recorded in the county where the Real Property is located, substitute a successor or successors to any Trustee named herein or acting hereunder.

7.19. Affidavit to Trustee. Trustee, upon presentation to it of an affidavit signed by or on behalf of Beneficiary setting forth any fact(s) showing an Event of Default by Trustor under this Deed of Trust, is authorized to accept as true and conclusive all facts and statements in such affidavit and to act hereunder in complete reliance thereon.

7.20. Governing Law. This Deed of Trust has been executed and delivered in, and is to be construed, enforced and governed according to and by the internal laws of the State of California, except to the extent federal law applies.

7.21. Waiver of Limitations. Trustor waives the pleading of any statute of limitations as a defense to the Indebtedness to the fullest extent permissible by law.

7.22. Waiver. To the extent permitted by law, Trustor waives the benefit of all laws now existing or hereafter enacted providing for any appraisal before sale of any portion of the Mortgaged Property, extension of the time for performance of the Indebtedness, or creation or extension of a period of redemption from any sale. Trustor further waives all rights and remedies which Trustor may have or be able to assert by reason of the laws or decisions pertaining to the rights and remedies of sureties.

7.23. Tax. In the event of the passage, after the date of this Deed of Trust, of any law deducting from the value of real property, for tax purposes, any lien or charge thereon, or changing in any way the laws now existing for the taxation of deeds of trust or indebtedness secured by deeds of trust for federal, state or local purposes, or changing the manner of collection of any such taxes as to affect this Deed of Trust or the Indebtedness, Trustor agrees to pay such tax arising from such new law unless it would be illegal to do so. If Trustor fails to do so, Beneficiary may, at its election and without demand or notice, declare the secured obligations immediately due and payable.

7.24. Not a Foreign Person. Trustor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended ("IRC"), Sections 1445 and 7701 (i.e., Trustor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the IRC and regulations promulgated thereunder).

7.25. Waiver of Judicial Procedural Matters. Trustor hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by the Beneficiary in connection with any of the Loan Documents, any and every right it may have to a trial by jury and to have the same consolidated with any other separate suit, action or proceeding.

7.26. Power of Attorney. Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Beneficiary may, without the obligation to do so, in Beneficiary's name or in the name of Trustor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Mortgaged Property, and upon an Event of Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

ARTICLE 8.

EVENTS OF DEFAULT

The occurrence of any one of the following shall be a default hereunder ("**Event of Default**"):

8.1. Failure to Pay Principal or Interest. Subject to applicable cure periods, any failure to pay or deposit when due or required any sum of principal or interest.

8.2. Breach of Other Monetary Obligations. Any failure to pay or deposit when due or required any sum (other than principal or interest) under the Loan Documents which is not cured within 15 days of written notice (which time period shall run concurrently with the default period described in the Note).

8.3. Breach Condition/Covenant. Any breach or failure to satisfy or perform any other condition, covenant or other provision of the Loan Documents which is not cured within thirty (30) days of written notice thereof (which time period shall run concurrently with the default period described in the Note).

8.4. False Representation. Any statement, representation or warranty in the Loan Documents, any financial statement or any other writing delivered to Beneficiary in connection with the Indebtedness or by any guarantor thereof is false, misleading or erroneous in any material respect as of the date made.

8.5. Bankruptcy or Insolvency. If the owner of the Mortgaged Property or any person obligated to pay the Indebtedness: (a) does not pay its debts as they become due or admits in writing its inability to pay its debts or makes a general assignment for the benefit of creditors; (b) commences, or involuntarily becomes the subject of, any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors; or (c) has a trustee, receiver, custodian or other similar official appointed for or take possession of all or any part of the Mortgaged Property or any other of its property, or has any court take jurisdiction of any other of its property through attachment, sequestration, or similar writ.

8.6. Transfer of the Mortgaged Property. Title to all or any part of the Mortgaged Property shall become vested in any party other than Trustor, whether by operation of law or otherwise, except as permitted under the release provisions of this Deed of Trust.

8.7. Change in Legal Status. The legal status of Trustor or any guarantor of the Loan Documents is materially amended or modified, terminated or canceled without the prior written consent of Beneficiary.

8.8. Claim of Lien. Subject to the provisions of Section 5.1 above, any claim of lien is filed against the Mortgaged Property, or notice to withhold funds is served upon Beneficiary and such lien is not removed or bonded around within 15 days thereafter.

8.9. Abandonment. Trustor abandons any of the Mortgaged Property.

8.10. Foreclosure of Other Liens. If the holder of any lien, security interest or assignment on the Mortgaged Property or any other property securing the payment or performance of any of the Indebtedness institutes foreclosure or other proceedings for the enforcement of its remedies thereunder, and such foreclosure or other proceedings are not dismissed, withdrawn, or otherwise terminated prior to conclusion within 60 days after they are instituted.

8.11. Default Under Third Party Indebtedness. Declaration of a default, initiation of a nonjudicial foreclosure by the filing of a Notice of Default as defined in Sections 2924 and 2924c of the California Civil Code, or initiation of a judicial foreclosure by the filing of a complaint as defined in Sections 725a and 726 of the California Code of Civil Procedure by any Other Lender against the Trustor with respect to any Third Party Indebtedness.

8.12. Guaranty Matters. The Completion Guaranty and any other guaranty of the Indebtedness secured hereby ceases to be in full force and effect or any guarantor asserts that the Completion Guaranty or any other guaranty is not in full force and effect.

8.13. Other Events. Any other event occurs which, under the Loan Documents, constitutes an Event of Default of Trustor or any person liable (by way of the Completion Guaranty, any other guaranty, assumption, endorsement, or others) under the Loan Documents or any other deed of trust, mortgage, lien or security agreement affecting or relating to the Mortgaged Property; or gives Beneficiary the right to declare the maturity of any obligation or note under the Loan Documents; or there occurs any event which in the reasonable discretion of Beneficiary, materially adversely affects (a) the performance by Trustor or any guarantor of the Loan Documents, (b) the priority or security of Beneficiary's lien and security interest on the Mortgaged Property, or (c) similar cure provisions to that in any other Loan Documents.

8.14. Use of Funds. Failure to perform all obligations of Trustor under any and all of the Loan Documents pertaining to the disbursement and use of the Commission Financial Assistance.

8.15. Ground Lease. Expiration or earlier termination of the Ground Lease.

8.16. Historic Theater Lease. Expiration or earlier termination of the Historic Theater Lease.

8.17. Non-Monetary Defaults. Notwithstanding any other provision of this Article, if Beneficiary determines in its reasonable judgment that the default complained of, other than a default for the payment of monies, cannot be cured within the period requiring curing as specified in Beneficiary's written notice of default, then the default shall be deemed to be cured if Trustor within the notice period shall have commenced the curing of the default and shall thereafter diligently prosecute the same to completion. If in Beneficiary's reasonable judgment Trustor fails to diligently prosecute the curing of the default or Beneficiary determines that said default is incurable, then this default shall constitute an Event of Default.

ARTICLE 9.

REMEDIES

9.1. Exercise of Specific Remedies. If an Event of Default shall occur, Beneficiary may exercise any one or more of the following remedies, without notice:

A. Acceleration. Beneficiary may declare the Indebtedness immediately due and payable, without notice, whereupon the same shall become immediately due and payable. Trustor hereby waives notice of intent to accelerate and notice of acceleration.

B. Enforcement of Assignment of Rents and Leases. Beneficiary may:

(1) terminate the license granted to Trustor to collect the Rents, collect and sue for the Rents in Beneficiary's own name, give receipts and releases therefor, and after deducting all expenses of collection, including reasonable attorneys' fees, apply the net proceeds thereof to any Indebtedness as Beneficiary may elect; and

(2) make, modify, enforce, cancel, terminate or accept surrender of any Leases, evict tenants, adjust the Rents, maintain, decorate, refurbish, repair, clean, and make space ready for renting, and otherwise do anything Beneficiary deems advisable in connection with the Mortgaged Property.

C. Foreclosure. Beneficiary may require Trustee to foreclose this Deed of Trust and sell all or part of the Mortgaged Property, at public auction, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided in accordance with the requirements of the applicable laws of the State of California in effect at the time of such sale. Upon the expiration of such time as required by law, Trustee may, without demand on Trustor, sell all or any portion of the Mortgaged Property, together or in lots or parcels, and may execute and deliver to the purchaser or purchasers of such property, good and sufficient deeds of conveyance of fee simple title without any covenant or warranty, express or implied. Trustee may postpone any sale from time to time by public announcement at the time and place of the sale as fixed by notice or by prior postponement. In no event shall Trustee be required to exhibit, present or display at any such sale, any of the personalty described herein to be sold at such sale. Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (i) first, if he shall pay the reasonable expenses of Trustee and a reasonable Trustee's fee or commission; (ii) second, if he shall pay, so far as may be possible, the Indebtedness, discharging first that portion of the Indebtedness arising under the covenants or agreements herein contained and not evidenced by the Notes; (iii) third, if he shall pay the residue, if any, to the persons legally entitled thereto. Payment of the purchase price to Trustee shall satisfy the obligation of the purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The sale or sales by Trustee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and if the proceeds of such sale or sales of less than the whole of the Mortgaged Property shall be less than the aggregate of the Indebtedness and the expenses thereof, this Deed of Trust and the lien, security interest and assignment hereof shall remain in

full force and effect as to the unsold portion of the Mortgaged Property just as though no sale or sales had been made; provided, however, that Trustor shall never have any right to require the sale or sales of less than the whole of the Mortgaged Property, but Beneficiary shall have the right, at its sole election, to request Trustee to sell less than the whole of the Mortgaged Property. If default is made hereunder, the holder of the Indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through judicial proceedings or by directing Trustee to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire Indebtedness due, and if sale is made because of default of an installment, or a part of an installment, such sale may be made subject to the unmatured part of the Indebtedness; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the Indebtedness, but as to such unmatured part, this Deed of Trust shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indebtedness. At any such sale (1) Trustor hereby agrees, in its behalf and in behalf of its heirs, executors, administrators, successors, personal representatives and assigns, that any and all recitals made in any deed of conveyance given by Trustee with respect to the identity of Beneficiary, the occurrence or existence of any default, the acceleration of the maturity of any of the Indebtedness, the request to sell, the notice of sale, the giving of notice to all debtors legally entitled thereto, the time, place, terms, and manner of sale, and receipt, distribution and application of the money realized therefrom, or the due and proper appointment of a substitute Trustee, and, without being limited by the foregoing, with respect to any other act or thing having been duly done by Beneficiary or by Trustee hereunder, shall be taken by all courts of law and equity as prima facie evidence that the statements or recitals state facts and are without further question to be so accepted, and Trustor hereby ratifies and confirms every act that Trustee or any substitute Trustee hereunder may lawfully do in the premises by virtue hereof; (2) the purchaser may disaffirm any easement granted, or rental, lease or other contract made, in violation of any provision of this Deed of Trust, or take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and rental or lease contract; and (3) Beneficiary may bid and become purchaser of all or any part of the Mortgaged Property at any trustee's or foreclosure sale hereunder, and the amount of Beneficiary's successful bid may be credited on the Indebtedness.

D. Lawsuits. Beneficiary may proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction.

E. Entry on Mortgaged Property. Upon occurrence of an Event of Default hereunder, Beneficiary may enter into and upon and take possession of all or any part of the Mortgaged Property, and may exclude Trustor, and all persons claiming under Trustor, and its or their agents or servants, wholly or partly therefrom; and holding the same, Beneficiary may use, administer, manage, operate, and control the Mortgaged Property and may exercise all rights and powers of Trustor in the name, place and stead of Trustor, or otherwise, as Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Trustor for any loss or damage thereby sustained unless due solely to the willful

misconduct or sole or active negligence of Beneficiary nor shall Beneficiary thereby be or become a "mortgagee in possession."

F. Trustee or Receiver. Beneficiary may make application to a court of competent jurisdiction, ex parte, as a matter of strict right and without notice to Trustor or regard to the adequacy of the Mortgaged Property for the payment of the Indebtedness, for appointment of a receiver of the Mortgaged Property and Trustor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply the Rents in accordance with the provisions of Section 2.1 hereof.

9.2. Tenancy at Will. In the event of a trustee's sale hereunder, if at the time of such sale Trustor occupies the portion of the Mortgaged Property so sold or any part thereof, Trustor shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property.

9.3. Substitute Trustee. If, for any reason, Beneficiary prefers to appoint a substitute Trustee hereunder, Beneficiary may, from time to time, by written instrument, appoint one or more substitute Trustees, who shall succeed to all the estate, rights, powers, and duties of the original Trustee named herein. Such appointment may be executed by any one acting in a representative capacity, and such appointment shall be conclusively presumed to have been executed with appropriate authority.

9.4. Indemnification of Trustee. Trustee shall not be liable for any act or omission or error of judgment. Trustee may rely on any document believed by him in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon. Trustor hereby indemnifies Trustee against all liability and expenses which he may incur in the performance of his duties hereunder.

9.5. Beneficiary's Right to Perform. Upon Trustor's failure to make any payment or perform any act required by the Loan Documents, then at any time thereafter, and without notice to or demand upon Trustor and without waiving or releasing any other right, remedy or recourse, Beneficiary in its sole discretion may (but shall in no event be obligated to) make such payment or perform such acts for the account of and at the expense of Trustor, and shall have the right to enter the Mortgaged Property for such purpose and to take all such action thereon as it may deem necessary or appropriate.

9.6. Reimbursement of Expenditure. If Beneficiary shall expend any money chargeable to Trustor or subject to reimbursement by Trustor under the terms of the Loan Documents, Trustor will repay the same to Beneficiary immediately at the place where the Notes are payable, together with interest thereon at the highest rate permitted by applicable law from and after the date of each such expenditure by Beneficiary.

9.7. Other. Beneficiary may exercise any and all other rights, remedies and recourses granted under the Loan Documents now or hereafter existing in equity or at law for the protection and preservation of the Mortgaged Property. The repayment of any amounts expended by Beneficiary for the account of Trustor hereunder shall be secured by this Deed of Trust as part of the Indebtedness.

9.8. Remedies Cumulative, Concurrent and Nonexclusive. Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including, without limitation, those granted by the Commercial Code and applicable to the Mortgaged Property, or any portion thereof and same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Trustor or others obligated for the Indebtedness, or any part thereof or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Trustor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive.

9.9. Rights and Remedies of Sureties. Trustor waives any right or remedy which Trustor may have or be able to assert pertaining to the rights and remedies of sureties.

9.10. No Merger or Modification. No act by Beneficiary under this Deed of Trust is intended or shall operate to merge any interest of Trustor and Beneficiary in the Mortgaged Property or under the Loan Documents. No provision of, or act by Beneficiary under, this Deed of Trust is intended or shall operate to modify the terms of any of the Loan Documents. The provisions hereof shall be deemed to be obligations of Trustor in addition to Trustor's obligations under the each of the Loan Documents, as to similar matters contained therein; provided, however, the inclusion herein of any obligations relating to similar matters as to which Trustor is obligated under each of the Loan Documents shall not restrict or limit Trustor's obligations to perform promptly all of its obligations under the Loan Documents (as applicable), and nothing in this Deed of Trust shall be construed as requiring Trustor or Beneficiary to take or omit to take any action which would cause a default under the Loan Documents.

ARTICLE 10.

HAZARDOUS MATERIALS

10.1. Trustor's Warranties. Except for Hazardous Materials of the type and in quantities to be used during the normal course of construction on the Mortgaged Property as contemplated by the DDA, Trustor hereby represents and warrants that, to the best of Trustor's knowledge, neither Trustor nor, to the best of Trustor's knowledge, any other person on Trustor's behalf has ever caused or permitted any Hazardous Materials (as defined in the DDA) to be placed, held, located or disposed of on, under or at the Mortgaged Property or any part thereof.

10.2. Trustor's Covenants. Trustor agrees (a) to give notice to Beneficiary immediately upon Trustor's acquiring knowledge of the presence of any Hazardous Materials on the Mortgaged Property (except as to such Hazardous Materials of the type and in quantities to be used during the normal course of construction) or of any release, spill or discharge of Hazardous

Materials ("**Hazardous Materials Contamination**") with a full description thereof; (b) to promptly comply with any governmental requirement requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Beneficiary with satisfactory evidence of such compliance; (c) to provide Beneficiary, within thirty (30) days after demand by Beneficiary, with a bond, letter of credit or similar financial assurance evidencing to Beneficiary's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Mortgaged Property as a result thereof; (d) upon the Beneficiary's reasonable request (based on Beneficiary's reasonable belief of the need therefor), at any time and from time to time during the existence of this Deed of Trust, to provide at Trustor's sole expense an inspection or audit of the Mortgaged Property from an engineering or consulting firm approved by the Beneficiary, indicating the presence or absence of hazardous substances and solid wastes on the Mortgaged Property. In addition, Trustor hereby authorizes Beneficiary, any prospective bidder at any foreclosure sale and their respective officers, directors, agents, employees, contractors and consultants to enter upon all or any portion of the Mortgaged Property at any time and from time to time (including without limitation, following the occurrence of an Event of Default) for the purpose of conducting such tests, inspections, inquiries, examinations, studies, analyses, samples, surveys and other information gathering activities (collectively, "**Tests and Studies**") with respect to the Mortgaged Property as any of them may from time to time deem necessary or appropriate, including without limitation, any tests or studies necessary to determine the presence or existence of asbestos or asbestos containing materials as provided below. Trustor covenants and agrees to cooperate fully with such parties in their efforts to conduct the Tests and Studies and further covenants and agrees to make available to such parties such portions of the Mortgaged Property as any of them may designate. Without limiting the generality of the foregoing, Trustor agrees that such parties will maintain the rights granted to a Beneficiary under California Civil Code §2929.5 and California Code of Civil Procedure §564(c). The results of all Tests and Studies shall be and at all times remain the property of such parties and under no circumstances shall any such party have any duty whatsoever to disclose or otherwise make available to Trustor or any other party such results or any other information obtained by them in connection with such Tests and Studies. Notwithstanding the foregoing provisions of this Section, Beneficiary reserves the right to make available, and Trustor expressly authorizes Beneficiary to provide, to any party (including any governmental agency or authority and any prospective bidder at any foreclosure sale of the Mortgaged Property) any and all information that Beneficiary may have with respect to the Mortgaged Property, whether provided by Trustor or any other party or obtained as a result of any Tests and Studies. Trustor consents to Beneficiary notifying any party (either as part of a notice of sale or otherwise) of the availability of any or all of the Tests and Studies and the information contained therein. Trustor acknowledges that Beneficiary cannot control or otherwise assure the truthfulness or accuracy of the Tests and Studies, and that the release of Tests and Studies, or any information contained therein, to prospective bidders at any foreclosure sale may have a material and adverse effect on the amount that a party may bid at such sale. Trustor agrees that Beneficiary shall have no liability whatsoever as a result of delivering any or all of the Tests and Studies or any information contained therein to any third party, and Trustor hereby releases, remises and forever discharges Beneficiary from any and all claims, damages or causes of action arising out of, connected with or incidental to the Tests and Studies or the delivery thereof to any person or entity; (e) that it will not install in the Mortgaged Property, nor

permit to be installed in the Mortgaged Property, asbestos, material containing asbestos which is or may become friable or material containing asbestos deemed hazardous by any applicable environmental law, and that, if any such asbestos or material containing asbestos exists in or on the Mortgaged Property, whether installed by Trustor or others, Trustor will remove the same (or if removal is prohibited by law, will take whatever action is required by law, including without limitation implementing any required operation and maintenance program) promptly upon discovery at its sole expense. Upon the Beneficiary's reasonable request, at any time and from time to time during the existence of this Deed of Trust, Trustor shall provide at Trustor's sole expense an inspection or audit of the Mortgaged Property from an engineering or consulting firm approved by the Beneficiary, indicating the presence or absence of asbestos or material containing asbestos on the Mortgaged Property. If Trustor fails to provide the same after ten (10) days' notice, the Beneficiary may order same, and Trustor grants to the Beneficiary and its agents, employees, contractors and consultants access to the Mortgaged Property and a license (which is coupled with an interest and irrevocable while this Deed of Trust is in effect) to perform inspections and tests.

10.3. Indemnification. Except to the extent caused by Beneficiary's sole or active negligence or willful misconduct, Trustor shall defend, indemnify and hold harmless Beneficiary and Trustee from any and all liabilities (including strict liability), actions, demands, penalties, losses, costs or expenses (including, without limitation, reasonable attorneys' fees and remedial costs), suits, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the release of this Deed of Trust) be paid, incurred or suffered by or asserted against, Beneficiary or Trustee by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Mortgaged Property of any Hazardous Materials or any Hazardous Materials Contamination or which arise out of or result from the environmental condition of the Mortgaged Property or the applicability of any governmental requirement relating to Hazardous Materials, regardless of whether or not caused by or within the control of Beneficiary or Trustee.

10.4. Beneficiary's Right to Remove Hazardous Materials. Beneficiary, in its sole discretion, may (but shall in no event be obligated to), without in any way limiting Beneficiary's other rights and remedies under this Deed of Trust, enter onto the Mortgaged Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Mortgaged Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Mortgaged Property. All reasonable costs and expenses paid or incurred by Beneficiary in the exercise of any such rights shall be secured by this Deed of Trust and shall be payable by Trustor to Beneficiary upon demand.

[Signatures follow on next page]

Dated and effective as of the date first set forth above.

TRUSTOR:

ALAMEDA ENTERTAINMENT ASSOCIATES,
L.P., a California limited partnership

By: ALAMEDA ENTERTAINMENT
MANAGEMENT CORPORATION,
a California corporation

Its: General Partner

By: 

Its: President

By: Kyle H. Conner

Its: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

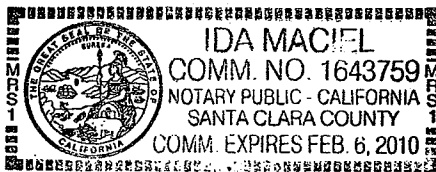
Alameda

SS.

On March 15, 2007, before me, Ida Maciel, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Kyle H. Conner,
Name(s) of Signer(s)

- ☐ personally known to me
☒ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Ida Maciel
Comm. # 1643759
Notary Public - California
Santa Clara County
Comm. Exp. February 6, 2010
(510) 272-1121

WITNESS my hand and official seal.


Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

EXHIBIT A

PARCEL ONE:

Leasehold estate as created by that certain lease dated 3/15/07, made by and between Community Improvement Commission of the City of Alameda, as lessor, and Alameda Entertainment Associates, L.P., as lessee, for the term and upon the terms and conditions contained in said lease, a memorandum thereof recorded 3/16/07.

In and to the following:

Being a portion of Parcel Two of Lot line Adjustment LLA06-0007, recorded on October 17, 2006 in Document No. 2006388298, Alameda County Records, more particularly described as follows:

Beginning at the Southwest corner of said Parcel Two, as shown on said Lot Line Adjustment;

Thence along the Northwesterly line of said parcel, North 29°50'09" East 81.20 feet to the Northeasterly line of said parcel;

Thence leaving said line and along last said line the following two (2) courses;

South 60°11'38" East 134.67 feet;

North 29°48'22" East 17.53 feet;

Thence continuing along said Northeasterly line and the prolongation thereof, South 60°11'38" East 27.31 feet;

Thence South 30°11'18" West 3.21 feet;

Thence South 02°19'32" West 3.70 feet;

Thence South 30°14'30" West 3.98 feet;

Thence South 57°54'01" West 3.57 feet;

Thence South 29°44'10" West 27.15 feet;

Thence North 60°13'31" West 1.94 feet;

Thence South 29°46'29" West 57.96 feet to the Southwesterly line of said Parcel Two;

Thence along said line, North 60°11'38" West 160.12 feet to the point of beginning.

PARCEL TWO:

Leasehold estate as created by that certain Lease dated 3/15/07, made by and between Community Improvement Commission of the City of Alameda, a public body, as lessor and Alameda Entertainment Associates, L.P., a California limited partnership, as lessee

* Memorandum

for the term and upon the terms and conditions contained in said lease, a * thereof recorded March 16, 2007, Series No. 2007- 100457, Official Records.

In and to the following:

Being a portion of Parcel Two of Lot line Adjustment LLA06-0007, recorded on October 17, 2006 in Document No. 2006388298, Alameda County Records, more particularly described as follows:

Beginning at the southeast corner of said Parcel Two, as shown on said Lot Line Adjustment;

Thence along the southwesterly line of said Parcel Two, also being the northeasterly right-of-way line of Central Avenue, North 60°11'38" West 118.43 feet;

Thence leaving said line and said right-of-way line, North 29°46'29" East 57.96 feet

Thence South 60°13'31" East 1.94 feet;

Thence North 29°44'10" East 27.15 feet;

Thence North 57°54'01" East 3.57 feet;

Thence North 30°14'30" East 3.98 feet;

Thence North 02°19'32" East 3.70 feet;

Thence North 30°11'18" East 3.21 feet;

Thence North 60°11'38" West 5.31 feet to the northwesterly line of said Parcel Two;

Thence along said line the following three (3) courses;

1. North 29°48'22" East 73.71 feet;

2. North 60°11'38" West 5.00 feet;

3. North 29°48'22" East 35.45 feet to the northeasterly line of said Parcel Two;

Thence leaving said line and along last said line the following three (3) courses:

1. South 60°11'31" East 50.48 feet;

2. North 29°50'09" East 1.89 feet;

3. South 60°11'38" East 44.23 feet to the southeasterly line of said Parcel Two;

Thence leaving said line and along last said line the following three (3) courses:

1. South 29°50'09" West 33.79 feet;

2. South 60°11'38" East 32.23 feet;

3. South 29°50'09" West 176.00 feet to the point of beginning.

PARCEL TWO-A:

A non-exclusive perpetual Easement and right of way for ingress and egress of pedestrians, appurtenant to Parcel 1 herein described.

EXCEPTING THEREFROM the Northwestern 50 feet thereof, over the following described parcel of land;

Beginning at a point on the Northeastern line of Central Avenue, 80 feet wide, distant thereon Northwesterly 90 feet from the point of intersection thereof with the Northwestern line of Park Street, 80 feet wide; running thence Northeasterly parallel with the Southeastern line of Oak Street 209.79 feet; thence Northwesterly with said line of Central Avenue 10 feet; thence Southwesterly parallel with said line of Oak Street 209.79 feet to said line of Central Avenue; thence along the last named line Southeasterly 10 feet to the point of beginning

