

FIRST AMERICAN TITLE

DOUGLAS COUNTY, NV      **2024-1011066**  
Rec:\$40.00  
\$40.00      Pgs=38      **08/16/2024 04:02 PM**  
FIRST AMERICAN TITLE INSURANCE COMPANY -  
SHAWNYNE GARREN, RECORDER

APN: 1320-30-701-030

WHEN RECORDED RETURN TO:

Spencer Fane LLP  
1000 Walnut, Suite 1400  
Kansas City, Missouri 64106  
(816) 474-8100

Mail Property Tax Statements to:

HIGHWAY 88 CARWASH LP  
4300 East Camelback Road, Suite 450  
Phoenix, Arizona 85018

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THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FILINGS FOR DOUGLAS COUNTY, NEVADA AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS WHICH ARE, OR WHICH ARE TO BECOME, FIXTURES, UNDER THE NAMES OF HIGHWAY 88 CARWASH LP AS "DEBTOR" AND ENTERPRISE BANK & TRUST AS "SECURED PARTY." GRANTOR'S ORGANIZATIONAL NUMBER IS ARIZONA NUMBER S2029143. INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED FROM LENDER AT THE ADDRESS SET FORTH BELOW.

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

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (as the same may be amended or supplemented at any time, the "Deed of Trust") is made as of July 31, 2023, by and among: **HIGHWAY 88 CARWASH, LP**, an Arizona limited partnership, having an address at 4300 East Camelback Road, Suite 450, Phoenix, Arizona 85018, as grantor (together with, its successors and assigns permitted under the Loan Documents, "Grantor"); **FIRST AMERICAN TITLE INSURANCE COMPANY**, having an address at 2555 E. Camelback Road, Suite 350, Phoenix, AZ 85016, as trustee ("Trustee"); and **ENTERPRISE BANK & TRUST**, a Missouri chartered trust company, having an office at 3900 East Camelback Road, Suite 180, Phoenix, Arizona 85018, as beneficiary (together with its successors, and any subsequent holder or holders of the Note, "Lender").

## RECITALS

- A. Certain capitalized terms used in these Recitals and elsewhere herein are defined in Section 22.7 of this Deed of Trust. Other terms are defined throughout the text of this Deed of Trust or, if not defined herein, are used herein as defined in the Loan Agreement.
- B. Grantor has requested Lender to make the Loan to Borrower.
- C. Lender will not make the Loan unless Grantor grants this Deed of Trust to Trustee and Lender as security for payment and performance of the Obligations, and Grantor is willing to do so.

## GRANTS AND AGREEMENTS

NOW, THEREFORE, in consideration of Lender's agreement to make the Loan secured hereby upon and subject to the terms of the Loan Documents, and of the payment of ten dollars (\$10.00) and other good and valuable consideration given by Lender to Grantor, the receipt and sufficiency of which are hereby acknowledged by Grantor, at all times until the Obligations are fully paid and performed, Grantor hereby acts, and covenants, promises and agrees with Trustee and Lender, as follows:

### 1. GRANTING CLAUSES.

1.1. Grant of the Real Estate Security. Grantor, to secure the payment and performance of the Obligations, hereby grants, bargains, sells, mortgages, warrants, assigns, conveys, transfers and confirms with warranty to the Trustee, in trust with power of sale and with right of entry and possession, all of the following described property:

(a) The Land, together with all right, title and interest in and to the Improvements; the easements, rights of way, privileges, hereditaments, gores, streets, alleys, passages, ways, waters, watercourses, rights and appurtenances belonging or appertaining to the Land; the streets and ways adjacent to the Land; all reversions and remainders pertaining to the Land; and all air rights, development rights, water rights and mineral rights appurtenant or belonging to the Land or relating to the Land; and

(b) The Fixtures, and

(c) The Leases and the Rents and all the other benefits of any of the Land, Improvements and Fixtures; and

(d) All proceeds of the conversion, voluntarily or involuntarily, of any of the property described in this Section 1.1 into cash or liquidated claims, including proceeds of insurance and Condemnation Awards.

TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, his/her/its successors and assigns, forever.

UNDER AND SUBJECT to Permitted Encumbrances.

IN TRUST HOWEVER, for the purpose of securing in such order of priority as Lender shall elect, the payment and performance of the Obligations, in accordance with their respective terms.

1.2. Grant of Security Interest and Assignment. Grantor, as debtor, to secure payment and performance of the Obligations, hereby transfers and assigns to Lender, as secured party, and grants to Lender a security interest under the Code in and to, the following described property, whether now owned or hereafter acquired by Grantor:

(a) All of the Fixtures and all other property described in 1.1 hereof which, under any applicable law, may be deemed to be personal property or fixtures, the creation and perfection of a lien on which is governed by the Code;

(b) All of the Intangibles;

(c) All of the Collateral;

(d) Any and all of the Developer Rights;

(e) All right, title and interest of Grantor in and to all amounts now or hereafter held in escrow and reserve accounts or on deposit with Lender under any provisions of the Loan Documents; and

(f) All the proceeds of any of the property described in this Section 1.2.

This Deed of Trust creates a security interest in the Personal Property Security, and shall constitute a Security Agreement under the Code.

1.3. Assignment of Leases and Rents.

(a) Present Assignment. Grantor hereby absolutely and unconditionally assigns, transfers, pledges, grants a lien upon and encumbers in favor of Lender all of the Leases and Rents, as security for the prompt and timely payment and performance of the Obligations. This assignment is in addition to any absolute assignment made pursuant to any separate lease assignment. Lender shall apply any amounts received pursuant to this assignment to the payment and performance of the Obligations, and/or to the operation and Maintenance of the Mortgaged Property, in such order as Lender may elect, without regard to the adequacy of the security or the solvency of Grantor. Notwithstanding such assignment, Lender hereby grants to Grantor a revocable license to collect and retain the Rents for Grantor's own account, provided, however, that at any time an Event of Default exists, the revocable license herein granted to Grantor to collect the Rents shall at Lender's option, terminate. Grantor shall apply any Rents collected in accordance with the terms of the Loan Agreement. This assignment of Rents to Lender is intended to be an absolute assignment from Grantor to Lender and not merely the passing of a security interest. The Rents are hereby assigned absolutely by Grantor to Lender subject only to Grantor's license to collect such amounts while no Event of Default exists.

(b) Representations and Warranties. As of the date hereof, Grantor hereby represents and warrants to Lender: (a) that Grantor has full right and power to assign the Leases and Rents to

Lender, and has not executed any prior and now existing assignment of any of its rights under any Lease or to any portion of the Rents to any person other than Lender; (b) that Grantor has not done any act or thing which might prevent Lender from enjoying the benefits of the Leases and Rents assigned hereby; (c) that each of the Leases is valid and enforceable; (d) that neither Grantor nor, to the best knowledge of Grantor, the tenants are in default under any of the terms of any of the Leases; and (e) that no Rents have been collected or accepted by Grantor more than one month in advance of the time when the same become due under the terms of the Leases, except Rents collected at the execution of a Lease, which are to be applied to the Rents at the beginning of the term of the Lease, or as security for the performance of the tenant's obligations under the Lease.

(c) Affirmative Covenants. Grantor hereby covenants, promises and agrees that Grantor will: (a) observe, fulfill and perform each and every condition, covenant and provision of the Leases to be fulfilled or performed by Grantor; (b) enforce at the sole cost and expense of Grantor the performance or observance of each and every material covenant and condition of each of the Leases; (c) at the sole cost and expense of Grantor, appear in and defend any action growing out of or in any manner connected with any of the Leases, Rents or the obligations or liabilities of Grantor or any party thereunder; (d) from time to time, upon request by Lender, execute and deliver to Lender, acknowledge when appropriate and record or file in the public records when appropriate, any and all writings, including without limitation further assignments of any Lease or Leases, financing statements and other writings that Lender may deem necessary or desirable to carry out the purpose and intent of this assignment, or to enable Lender to enforce any right or rights hereunder; and (e) from time to time, upon request by Lender, furnish to Lender a true copy of any Lease.

(d) Negative Covenants. Grantor will not, without the prior written consent of Lender: (a) modify or alter any of the terms or provisions of any of the Leases; (b) terminate the term of, or accept a surrender of, any of the Leases; (c) accept Rents for more than one calendar month prior to the accrual thereof under the terms of the Leases; (d) waive, or release any party under any of the Leases; (e) pledge, transfer, mortgage or otherwise encumber or assign the Leases or the Rents; (f) permit any Lease to be subordinated to any deed of trust or mortgage junior in lien to the Deed of Trust encumbering the leased premises; (g) in any other manner impair the value of the Leases or Rents or the security of the assignment thereof as provided herein; or (h) execute any Lease except for actual occupancy by the lessee thereunder.

1.4. Fixture Filing. From the date of its recording, this Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all the Fixtures. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

HIGHWAY 88 CARWASH LP, an Arizona limited partnership  
Address: as set forth above.

(b) Name and Address of Secured Party:

ENTERPRISE BANK & TRUST, a Missouri chartered trust company  
Address: as set forth above.

- (c) Grantor's organizational identification number is S2029143.

This document covers goods which are or are to become, or may be or become, fixtures. This document is to be filed in the real estate records. A description of the real estate is attached hereto as Exhibit A. Grantor is the record owner of the real estate.

2. COVENANTS AS TO PAYMENT, PERFORMANCE AND TITLE; WARRANTIES; REPRESENTATIONS.

2.1. Payment of Note. Grantor shall pay to Lender the entire Obligations, punctually as and when the same shall become due, without offset, counterclaim or defense. Grantor will fully and faithfully observe and perform all of the provisions of the Loan Documents. The Loan Documents are incorporated herein by this reference.

2.2. Defeasance. If all the Obligations shall be paid in full then the Trustee or Lender shall deliver to Grantor, at Grantor's expense, a release of this Deed of Trust in recordable form.

2.3. Warranty of Title. Grantor warrants that: (a) Grantor has good and marketable title to an indefeasible estate in fee simple in and to the Land and the Improvements; (b) Grantor has good title to all of the rest of the Mortgaged Property; and (c) this Deed of Trust is a Lien on and security interest in the Mortgaged Property, subject to no encumbrances except Permitted Encumbrances. Grantor shall not, without the prior written consent of Lender, install in or locate on the Mortgaged Property any equipment or fixtures which are subject to any Lien other than Permitted Encumbrances. None of the Rents is subject to any previous assignment, nor will any of the Rents be assigned hereafter, except to Lender as security for any of the Obligations.

2.4. Agreement to Defend. Grantor shall preserve Grantor's title and interest in the Mortgaged Property as described in Section 2.3, and will forever warrant and defend the validity and priority of the lien, security interest and assignment created hereby against the claims of all persons whomsoever, subject only to Permitted Encumbrances.

2.5. Additions to the Mortgaged Property. All right, title and interest of Grantor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by, or released to, Grantor, or constructed, assembled or placed by Grantor on the Land, immediately upon such acquisition, release, construction, assembling or placement, and in each such case, without any further act by Grantor, shall become subject to the lien and security interest of this Deed of Trust as though they were now owned by Grantor and specifically described in the granting clauses hereof.

2.6. Easements Outside the Land. In the event any easements or rights in common or otherwise (other than revocable rights) in any lands not covered by the lien of this Deed of Trust are granted as an appurtenance to the use and operation of any of the Mortgaged Property, then this Deed of Trust shall attach to and be a lien on such easements and rights in such other lands, and the lien hereof shall spread to cover such easements and rights with the same force and effect as though specifically described in the granting clauses hereof.

2.7. Further Assurances. Promptly upon request of Lender, Grantor shall do all acts and things, including but not limited to the execution and delivery of any further deeds, conveyances, mortgages, assignments, financing statements, continuation statements, and further assurances, deemed necessary or desirable by Lender (in Lender's reasonable discretion) to establish, confirm, maintain and continue the Lien and security interest created and intended to be conferred hereby and the priority thereof. Grantor hereby appoints Lender as attorney-in-fact for Grantor to execute, deliver and file any and all such documents, writings, and other instruments as Lender may require, in order to perfect and maintain the priority of such Lien and security interest, upon the expiration of ten (10) days following a written request from Lender to Grantor to execute and deliver any such documents, writings, and other instruments and Grantor's failure to do so.

2.8. Representations and Warranties Regarding Mortgaged Property. Grantor hereby represents and warrants to Lender as follows:

(a) The Mortgaged Property is owned by Grantor, free and clear of all liens and encumbrances except Permitted Encumbrances.

(b) To Grantor's knowledge, the Mortgaged Property (and the present and intended use of the Mortgaged Property) complies, in all material respects with all applicable laws, ordinances, and regulations of all Governmental Authorities having jurisdiction over the Mortgaged Property, including without limitation all zoning ordinances and laws, and the Americans With Disabilities Act, 42 U.S.C. §12101, et seq., and all laws, ordinances and regulations affecting protected wetlands.

(c) The Mortgaged Property constitutes one or more zoning lots separate and apart from all adjoining property, and is assessed separately from all other lands for tax purposes.

(d) The Mortgaged Property is serviced by all necessary utilities, including electricity, water, sewer, gas and telephone. All utility lines servicing the Mortgaged Property are either located in a public right-of-way adjacent to such Mortgaged Property, or provided through public utility company rights-of-way (or those of a governmental or quasi-governmental authority or agency) or over private easements which are not subject to termination by foreclosure of any mortgages or deeds of trust of record encumbering the property subject to such easements.

(e) Grantor has not entered into any agreements with any other person or entity for the management, leasing or operation of any of the Mortgaged Property, except for those agreements a true and complete copy of which have been furnished to Lender. All fees under any such agreement are subordinated to the Loan, and each such agreement is by its terms or pursuant to a subordination agreement, terminable without cause at any time on not more than thirty (30) days' notice following any foreclosure or sale of the portion of the Mortgaged Property which is the subject of the agreement.

(f) If access between the Mortgaged Property and a public street is provided by an easement, Grantor's easement rights therein are encumbered by the Deed of Trust, and such easement is not subject to being cut off by a foreclosure of any mortgages or deeds of trust encumbering the property which is subject to it.

(g) Except for Permitted Encumbrances, there are no: (1) liens or notices (including, without limitation, federal or state tax liens, judgment liens, real estate broker liens, appraiser liens, and title examination liens) affecting the Mortgaged Property, except real estate taxes and assessments not yet due and payable; (2) unpaid city, county, state, Federal or other governmental or association taxes or assessments of any kind on the Mortgaged Property; (3) amounts owed by Grantor (or any affiliate of Grantor) to any real estate broker or sales person, real estate appraiser or title examiner with respect to the Mortgaged Property, nor any agreement, written or oral, which may be the basis for a broker's, appraiser's or title examiner's lien; or (4) except as disclosed in Lender's title commitment, improvements to the Mortgaged Property (or property adjacent thereto) which may be the basis for a special assessment.

(h) Grantor has not received any notice of any violations of any covenants, conditions, restrictions or plat building lines affecting the Mortgaged Property, and to Grantor's knowledge, no such violations exist in any material respect.

(i) To Grantor's actual knowledge, there are no undisclosed underground storage tanks or above-ground storage tanks presently on the Mortgaged Property.

(j) No one other than Grantor (1) is in possession of any of the Mortgaged Property, (2) has any possessory interest in any of the Mortgaged Property, or (3) except for Permitted Encumbrances, has any interest, right or estate in the Mortgaged Property, or (4) has any right or option to purchase, sell or encumber any of the Mortgaged Property, including any right of first refusal with respect to the purchase of all or any part of the Mortgaged Property.

### 3. COVENANTS AS TO IMPOSITIONS.

3.1. Payment of Impositions. Grantor will pay and discharge all Impositions prior to the date on which the same shall become delinquent.

3.2. Escrow Deposits. If an Event of Default shall exist and Lender shall have so requested by written notice to Grantor, Grantor will deposit with Lender within ten (10) days after such notice is given, a sum of money equal to the amount needed to pay the annual real estate taxes and assessments and premiums for insurance required by Section 4.1 hereof by the next Escrow Date for such taxes, assessments, and premiums, less the amount to be deposited under the next sentence hereof between the date such escrow deposits commence and such Escrow Date (such amount to be calculated separately for taxes and for insurance premiums, if the Escrow Date for them is different). If Lender requires Grantor to make the foregoing escrow deposits, Grantor shall also deposit with Lender contemporaneously with each monthly payment coming due thereafter under the Note, a sum equal to one-twelfth (1/12) of Lender's reasonable estimate from time to time of the amount needed to pay the annual real estate taxes and assessments and premiums for insurance required by Section 4.1 hereof by the Escrow Date for such taxes, assessments and premiums. Lender shall deposit all such amounts in a non-interest bearing account separate and apart from Lender's general assets, for application to the real estate taxes, assessments and insurance premiums as the same come due. If any Event of Default shall exist, Lender shall have the right, at its election, to apply any amounts in such account against all or any part of the Obligations secured by this Deed of Trust. If the real estate taxes and assessments and insurance premiums for which deposits are required to be escrowed pursuant to this Section 3.2 shall at any

time exceed the estimate therefor and the amounts paid into escrow under this Section 3.2, Grantor shall on demand make good the deficiency. Grantor will furnish to Lender tax and insurance bills in sufficient time to enable Lender to pay such taxes and premiums, before interest and penalties accrue thereon. All determinations of the amount so payable and of the fractional part thereof to be deposited with Lender from time to time, so that the aggregate of such deposits shall be sufficient to pay the real estate taxes, assessments and insurance premiums, shall be made by Lender in its reasonable discretion. Nothing herein contained shall be deemed to affect any right or remedy of Lender under any other provisions of this Deed of Trust or under any statute or rule of law to pay any such amount and to add the amount so paid, together with interest at the Default Rate, to the Obligations.

3.3. Evidence of Payment. Within thirty (30) days after the date when any Impositions which are or could become a Lien on any part of the Mortgaged Property would become delinquent, Grantor will furnish to Lender official receipts of the appropriate Governmental Authorities to which the Impositions are payable, or other evidence reasonably satisfactory to Lender evidencing the payment thereof, unless Lender has paid such Impositions from the sums deposited under Section 3.2 hereof. The certificate, advice or bill of the appropriate official designated by law to receive payment of any Imposition indicating non-payment of such Imposition shall be conclusive evidence (as between Lender and Grantor) that such Imposition is due and unpaid, and Lender may rely thereon.

#### 4. INSURANCE.

4.1. Insurance Required. Grantor will obtain, keep in force and maintain, or cause to be obtained, kept in force and maintained, the following insurance coverages at all times until this Deed of Trust is satisfied of record:

(a) Property Insurance. To the extent any Improvements are now or hereafter located on the Land, a standard property insurance policy on the "Special" or "all-risk" form, covering the Mortgaged Property, and providing coverage against such other risks as Lender may from time to time reasonably require, in the amount of the full replacement cost (insurable value) thereof, without reduction for depreciation, but in no event less than the maximum principal amount of the Note. Property insurance policies shall include either an agreed amount endorsement or a waiver of any co-insurance provisions, sufficient to insure that no co-insurance requirements apply.

(b) Builder's Risk. During the period of any construction, renovation, demolition or alteration work on the Mortgaged Property, a completed value, "All Risk" Builders Risk form or "Course of Construction" insurance policy in non-reporting form, in an amount reasonably approved by Lender, including without limitation such endorsements as Lender may reasonably require, insuring Lender against damage to the Mortgaged Property. Such policy shall also provide coverage for collapse and theft, and shall contain a "permission to occupy on completion" endorsement or equivalent.

(c) Flood Insurance. If the Improvements or any part thereof are situated in an area now or subsequently designated by FEMA as a special flood hazard area, a policy of flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance



of the Obligations if replacement cost coverage is not available for the type of building insured); or (ii) the maximum insurance available under the appropriate National Flood Insurance program. The maximum deductible shall be \$3,000 per building or a higher minimum amount as required by FEMA or other applicable law.

(d) Liability Insurance. A CGL Policy, with coverage on an “occurrence” basis, in such form, amounts and with such companies as Lender may from time to time reasonably require, pursuant to the terms of this Deed of Trust. Such CGL Policy shall have an annual general aggregate limit of not less than \$2,000,000, and a “per occurrence” limit of not less than \$1,000,000, and, if it covers more than one location, shall contain a “per location” or “per project” limit of not less than \$2,000,000. Additional coverages beyond those provided by the standard ISO CGL Policy form (such as liquor liability, automobile, aircraft/watercraft, pollution legal and remediation, garage keepers’ legal liability, and others) shall be provided if Lender so reasonably requires. Lender shall be named as an additional insured with Grantor on all CGL Policies. Policies providing excess coverage and/or umbrella coverage over the CGL Policy shall be provided, in an amount not less than \$5,000,000. All policies required by this Section 4.1(d) shall name Lender as an additional insured under an endorsement satisfactory to Lender.

(e) Boiler and Machinery Coverage. Boiler and machinery insurance coverage, if steam boilers or other pressure-fired vessels are in operation at the Mortgaged Property, or as otherwise reasonably required by Lender. Minimum liability coverage per accident must equal the replacement cost (insurable value) of the Improvements housing such boiler or pressure-fired machinery. If one or more large HVAC units is in operation at the Mortgaged Property, “Systems Breakdowns” coverage shall be required, as reasonably determined by Lender. Minimum liability coverage per accident must equal the value of such unit(s).

(f) Ordinance or Law Coverage. If any of the Mortgaged Property constitutes a legal non-conforming use under applicable building, zoning or land use laws or ordinances, Grantor shall provide an ordinance or law coverage endorsement to the property insurance policies, which will contain: Coverage A: “Loss Due to Operation of Law” (with a minimum liability limit equal to Replacement Cost With Agreed Value Endorsement), Coverage B: “Demolition Cost”, and Coverage C: “Increased Cost of Construction” coverages, and such other coverage as Lender may reasonably require.

(g) Business Income Insurance. Business income coverage with respect to the Mortgaged Property, covering loss of rents and “extra expense”, in an amount at least equal to the estimated aggregate Rents (such estimate to be subject to Lender’s reasonable approval) for a period of at least twelve months, and such coverage amount shall be adjusted annually to reflect the anticipated Rents payable in the following twelve months.

(h) Workmen’s Compensation. When required by any applicable law, ordinance or other regulation, Worker’s Compensation and Employer’s Liability Insurance covering all persons subject to the workers’ compensation laws of the state in which the Mortgaged Property is located.

(i) Other Insurance. Such other insurance with respect to the Mortgaged Property as may from time to time be reasonably required by Lender against other insurable hazards or casualties (including, without limitation, sinkhole, mine subsidence, war risk, terrorism risk,

earthquake and environmental insurance including, without limitation, insurance against contamination of the Mortgaged Property by third parties) which at the time are commonly insured against in the case of property similarly situated, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

4.2. Requirements Re: Insuring Companies, Policies, Mortgagee Clause, Coverage Increases, Deductibles, Etc. All policies of insurance required herein: (a) shall be issued by and maintained with financially sound and reputable insurance companies licensed to do business in the Mortgaged Property State, and having a rating of A- VII or better by the A.M. Best Company and which are not affiliates of Grantor; (b) contain the complete address (or legal description) of the Mortgaged Property; (c) be for terms of at least one year with premium prepaid; (d) be subject to the reasonable approval of Lender as to insurance companies, amounts, content, forms of policies, method by which premiums are paid, expiration dates and all other respects; and (e) include a provision naming Lender, its successors and assigns as their interests may appear: (1) as an additional insured under all liability insurance policies, (2) as the first mortgagee on all property insurance policies under a standard non-contributory mortgagee clause (or lender's loss payable clause), and (3) as the lender's loss payee on all loss of rents or loss of business income insurance policies. Each insurance policy: (i) shall provide for at least thirty (30) days' prior written notice to Lender prior to any policy reduction or cancellation for any reason other than non-payment of a premium and at least ten (10) days' prior written notice to Lender prior to any cancellation due to non-payment of premium; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Lender in accordance with the terms of such policy notwithstanding any act, omission or negligence of Grantor which might otherwise result in forfeiture of such insurance; and (iii) shall waive all rights of subrogation against Lender. Such policies shall provide, among other things, that all proceeds of the policies are payable directly to Lender (and not to Lender and Grantor jointly). All policies must be reasonably satisfactory to Lender in all material respects, and shall have such endorsements as may be required by Lender from time to time. Lender shall have the right to periodically review the amount of the CGL Policy coverage and the coverage amounts of all other insurance policies required hereunder, and to require an increase in such coverage amounts if Lender reasonably deems such an increase to be reasonably prudent under then existing circumstances. Deductibles and self-insured retentions under insurance policies required hereby shall not exceed \$10,000 without written consent of Lender.

4.3. Lender Not Responsible for Insurance. Lender, by approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, shall not incur any liability for the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment of lawsuits and expenses, and Grantor hereby expressly assumes full responsibility therefor and for any liability, if any, thereunder, except to the extent Grantor is making deposits with Lender to pay the same pursuant to Section 3.2 hereof and Lender fails to pay the same prior to the due date thereof.

4.4. Proceeds on Foreclosure. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Mortgaged Property in extinguishment of the Obligations, all right, title and interest of Grantor in and to all proceeds of any insurance policies required hereby then in force shall pass to the purchaser or grantee.

4.5. Delivery of Policies; Renewals. Grantor, as of the date hereof, shall deliver to Lender evidence that the insurance policies required hereby have been prepaid as required above and either duplicate originals of such policies, if required by Lender, or certified copies of such insurance policies and original certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance, and reasonably satisfactory to Lender. Grantor shall renew all such insurance and deliver to Lender certificates and policies evidencing such renewals at least thirty (30) days before any such insurance shall expire.

4.6. Blanket Policies. Any insurance policies required hereby may be in the form of a blanket policy provided that the blanket policy must properly identify and fully protect the Mortgaged Property as if a separate policy were issued for full replacement cost (insurable value) thereof, without reduction for depreciation, at the time of loss and otherwise meet all of Lender's insurance requirements set forth in this Section 4. Grantor hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Mortgaged Property or by any other action not relating to the Mortgaged Property which would otherwise permit the issuer thereof to cancel the coverage thereof, would require the Mortgaged Property to be insured by a separate, single-property policy.

4.7. Maintenance of Other Insurance. Grantor shall not obtain insurance for the Mortgaged Property in addition to that required by Lender and contributing, in the event of loss, with any insurance required hereby, without the prior written consent of Lender, which consent will not be unreasonably withheld, conditioned, or delayed provided that: (a) Lender is a named insured or a first mortgagee-loss payee on such insurance, as applicable, (b) Lender receives complete copies of all policies evidencing such insurance, and (c) such insurance complies with all of the requirements set forth herein.

4.8. Compliance with Insurance Conditions. Grantor shall not bring or keep any article, or permit any article to be brought to or kept on, the Mortgaged Property, or cause or allow any condition to exist, if the presence of such article or the occurrence of such condition could reasonably cause the invalidation of any insurance required by this Section 4 or would otherwise be prohibited by the terms thereof.

4.9. Lender's Right to Insure. If Grantor fails to at all required times maintain the insurance coverages required hereby, or fails to deliver to Lender the policies and evidences of insurance and renewals thereof required hereby, or if Lender receives notice that any insurance required hereby will be cancelled, Lender may purchase insurance at Grantor's expense to protect Lender's interests in the Mortgaged Property. This insurance may, but need not, protect Grantor's interests. The coverage that Lender purchases may not pay any claim that Grantor makes or any claim that is made against Grantor in connection with the Mortgaged Property. Grantor may later cancel any insurance purchased by Lender, but only after providing evidence that Grantor has obtained insurance as required by this Deed of Trust. If Lender purchases insurance for the Mortgaged Property, Grantor will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance Grantor may be able to obtain on its own.

5. MAINTENANCE AND REMOVAL; PERMITTED USES.

5.1. Permitted Removal; Waste. Except in connection with changes or alterations to the Improvements permitted under §7 hereof, Grantor will not cause or permit any Improvement to be removed or demolished. No Fixture shall be removed, severed or destroyed, without the prior written consent of Lender, unless simultaneously with, or prior to, any such permitted removal such Fixture has been replaced with another Fixture of at least equal value. By such removal and replacement Grantor shall be deemed to have subjected such Fixtures to the Lien of this Deed of Trust. Grantor will not abandon, or cause or permit any waste to, the Mortgaged Property.

5.2. Maintenance. Throughout the term of this Deed of Trust, Grantor will keep the Mortgaged Property in good order and condition, and do all necessary Maintenance, reasonable normal wear and tear excepted. All Maintenance shall be equal in quality and class to the original work. The standard for Maintenance required shall be that which is appropriate for facilities and buildings of similar construction and class, provided that Grantor shall in any event do all Maintenance necessary to avoid any structural damage or injury to the Improvements, to comply, in all material respects, with all Legal Requirements and to keep the Improvements in a proper condition for their Permitted Uses (as defined below). Grantor will not permit any condition to exist on the Mortgaged Property which would wholly or partially invalidate the insurance thereon.

5.3. Inspection of Lender. Subject to the rights of tenants under Leases, if any, and upon notice to Grantor if no Event of Default exists and otherwise without such notice, Lender and Lender's representatives may during normal business hours, enter the Mortgaged Property to inspect the same; provided, however, Lender shall have no obligation to make any such inspections nor any responsibility to Grantor or any other Person, for any deficiency in construction or other problems which may be revealed by any such inspection, whether or not discovered by Lender. While an Event of Default exists, Lender may, at its option, subject to the rights of tenants under Leases, if any, enter the Mortgaged Property to protect, restore or do Maintenance on any part thereof. Lender shall not be liable for any such entry upon the Mortgaged Property, except as may arise out of the gross negligence or willful misconduct of Lender as determined by a final, non-appealable judgment of a court of competent jurisdiction.

5.4. Permitted Uses. Grantor will use the Mortgaged Property solely for Permitted Uses.

6. COMPLIANCE WITH LAWS, ORDINANCES, ETC.

Except for Contested Matters, Grantor shall promptly comply in all material respects with all present and future Legal Requirements, ordinary or extraordinary, foreseen or unforeseen, and all provisions of all instruments of record affecting the Mortgaged Property. Grantor will not make any application to any federal, state or local Governmental Authority for a change in zoning affecting the Mortgaged Property, nor will Grantor consent to any such change, without the prior written consent of Lender.

7. CHANGES AND ALTERATIONS BY GRANTOR.

Grantor shall have the right from time to time to make changes and alterations in or to the Improvements, at Grantor's expense, subject, however, to the condition that no structural change

or alteration, or change which would impair the value of the Mortgaged Property, and no other change or alteration involving an estimated cost of more than \$100,000 or \$250,000 in the aggregate, shall be undertaken without the prior written consent of Lender.

8. MECHANICS' AND OTHER LIENS; FIXTURES.

Except for Contested Matters, Grantor will pay, from time to time when the same shall become due, all claims and demands of contractors, subcontractors, architects, mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a Lien on any of the Mortgaged Property. Grantor will not create or permit to accrue or suffer to exist any Lien, except Permitted Encumbrances and Contested Matters, upon any of the Mortgaged Property, including the Leases and Rents, and shall promptly cause any other Lien whatsoever to be paid and discharged. Except for Contested Matters, Grantor shall pay all Liens included in Permitted Encumbrances in accordance with their terms, when and as the same become due. All equipment, furnishings, and fixtures to be affixed to or attached to the Mortgaged Property by Grantor shall be owned by Grantor in Grantor's own name.

9. DAMAGE OR DESTRUCTION.

9.1. Notice of Casualty; Proof of Loss; Adjustment of Claims. If any Casualty shall occur, Grantor shall promptly give written notice thereof to Lender, describing the damage and the Casualty and shall promptly make proof of loss to the insurers; provided, however, Lender may itself make proof of loss if Lender gives written notice to Grantor electing to make such proof of loss. Grantor shall not adjust or compromise any claim under any insurance required hereby without the written consent of Lender, not to be unreasonably withheld, conditioned or delayed; provided however, notwithstanding anything to the contrary contained herein, with respect to any Minor Claim, Grantor may compromise and settle such claim and receive such proceeds directly, provided that Grantor shall apply such proceeds toward Restoration

9.2. Application of Proceeds. All insurance proceeds, other than those related to a Minor Claim, shall be paid to Lender and applied by Lender first to payment of the actual and reasonable out-of-pocket costs, fees and expenses, if any, incurred by Lender in connection with proof of and adjustment of the loss and settlement with the insurance company. The Net Insurance Proceeds (other than those related to a Minor Claim) shall be applied by Lender: (a) to the extent that Grantor does not satisfy the Restoration Disbursement Conditions, to the payment and/or performance of the Obligations; or (b) subject to Grantor's satisfaction of the Restoration Disbursement Conditions, to the payment of any of the cost of the Restoration.

9.3. Covenant to Rebuild. Regardless of the damage resulting from any Casualty, but only to the extent of Net Insurance Proceeds made available by Lender to Grantor, Grantor shall promptly commence the Restoration, and prosecute it with diligence and continuity to completion.

9.4. Disbursement of Proceeds. If Net Insurance Proceeds are to be applied to the Restoration, Lender shall hold such Net Insurance Proceeds, together with any Restoration Deficiency Deposit (as defined below), and advance the same for costs of the Restoration from time to time as the Restoration progresses, upon written request of Grantor, subject to the

satisfaction of the following terms and conditions: (collectively, the “Restoration Disbursement Conditions”):

- (a) No Event of Default shall exist.
- (b) Funds shall be disbursed not more frequently than once each month.
- (c) If at any time the amount of the Net Insurance Proceeds or Net Condemnation Award remaining available for the Restoration shall not be sufficient to complete such Restoration as certified by an architect or engineer approved by Lender, then Grantor shall deposit funds with Lender in the amount of such the deficiency (“Restoration Deficiency Deposit”).
- (d) With respect to any Major Restoration, (i) Lender shall have approved in writing the plans and specifications for the Restoration and any amendments thereto made during the period of Restoration, (ii) prior to any disbursement, an inspecting engineer/architect of Lender’s choice, whose fees shall be paid by Grantor, shall certify completion or work in place in accordance with approved plans and specifications, and in accordance with all applicable Legal Requirements and (iii) Grantor shall provide Lender with executed lien waivers and releases from all contractors and suppliers performing work or providing materials for the Restoration with respect to all amounts previously paid to such contractor or material supplier.
- (e) Grantor shall provide Lender with final, unconditional lien waivers from all contractors who worked on the Restoration in connection with the final disbursement of the Net Insurance Proceeds or Net Condemnation Award.
- (f) Grantor shall meet such other conditions as would customarily be required by Lender under the terms of construction loans made by Lender or are otherwise reasonable.
- (g) Lender shall have the option of applying, at par, any surplus from the Net Insurance Proceeds or Net Condemnation Award which remains after Restoration is completed, to the reduction of the then outstanding principal balance of the Loan.

9.5. Amounts Deposited With Lender. Lender shall have, and Grantor hereby grants to and creates in favor of Lender, a first lien on and security interest in and right of set-off against any Restoration Deficiency Deposit as security for the payment and performance of the Obligations.

## 10. CONDEMNATION.

10.1. Notice of Condemnation; Participation. Grantor shall give Trustee and Lender immediate notice of any actual or threatened Condemnation. In the event that any of the Mortgaged Property shall be taken in Condemnation proceedings, Lender may participate in such Condemnation proceedings. Grantor shall not adjust, contest, accept, reject or compromise any proposed Condemnation Award without approval of Lender. Lender may collect the Condemnation Award and endorse any drafts therefor. All Condemnation Awards, other than any award related to a Minor Claim (which shall be received directly by Grantor for use in connection with Restoration), shall be deposited with Lender. Grantor will execute any and all further

documents that may be required in order to facilitate collection of any Condemnation Award and the payment of any Condemnation Award to Lender.

10.2. Condemnation. If a Condemnation shall occur (other than a Condemnation relating to a Minor Claim), the Net Condemnation Award received by Lender shall (i) to the extent that Grantor does not satisfy the Restoration Disbursement Conditions, be applied to the payment and/or performance of the Obligations, or (ii) to the extent that Grantor satisfies the Restoration Disbursement Conditions, be held by Lender and applied and paid over toward the cost of Restoration. Any such Net Condemnation Award that shall be applied toward the cost of Restoration shall be advanced from time to time as the Restoration progresses, upon written request of Grantor, subject to the Restoration Disbursement Conditions.

10.3. Expenses of Collection. Trustee and Lender shall be entitled as a first priority to reimbursement out of any Condemnation Award for all actual and reasonable out-of-pocket costs and fees of, expenses incurred by, and reimbursements to, the Trustee and Lender with respect to the determination and collection of any Condemnation Award.

10.4. Voluntary Condemnations. Neither Grantor nor any Person controlled by or under common control with Grantor, will obtain or exercise any power of Condemnation or eminent domain with respect to any of the Mortgaged Property, directly or indirectly, or enter into any agreement with any Person or Governmental Authority with respect to the Condemnation of any of the Mortgaged Property, without the prior written consent of Lender.

## 11. EVENTS OF DEFAULT AND REMEDIES.

11.1. Events of Default Defined. The occurrence of any "Event of Default" as defined in the Loan Agreement shall constitute an Event of Default under this Deed of Trust.

### 11.2. Remedies Upon an Event of Default.

(a) Acceleration of Obligations. Upon the occurrence of an Automatic Acceleration Event of Default, the entire unpaid Obligations (principal, interest and otherwise), shall automatically become immediately due and payable without notice or demand. Upon the occurrence of any other Event of Default, at Lender's option, the entire unpaid Obligations (principal, interest and otherwise), shall become immediately due and payable without notice or demand.

(b) Other Remedies. While any Event of Default exists, Lender and/or Trustee may immediately undertake any one or more of the following:

(1) Foreclosure. Institute an action to foreclose this Deed of Trust, or take such other action as the law may allow, at law or in equity, for the enforcement thereof and realization on the Mortgaged Property, and proceed thereon to final judgment and judicial sale or execution thereon for the entire unpaid balance of the Obligations, including interest at the rates and pursuant to the methods of calculation specified in the Note, together with all actual and reasonable out-of-pocket costs of suit, interest at the Default Rate on any judgment obtained by Lender from and after the date of any judicial sale of the Mortgaged Property until actual payment is made to Lender of the

full amount due Lender, and actual and reasonable out-of-pocket attorneys' fees for collection, any usage or custom to the contrary notwithstanding.

(2) Entry. Lender personally, or by its agents or attorneys, may enter into and upon any of the Mortgaged Property and may exclude Grantor and its agents wholly therefrom without liability for trespass, damages or otherwise and Grantor agrees to surrender possession to Lender on demand during the continuance of any Event of Default. Upon such an entry, Lender may: (i) use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its agents or receivers and exercise all rights and powers of Grantor with respect thereto either in the name of Grantor or otherwise as Lender shall deem best; (ii) restore the Mortgaged Property; (iii) complete the construction of any Improvements under construction or renovation and in the course of such completion may make such changes in the contemplated or completed Improvements as Lender may deem desirable and may insure the same; and (iv) do all such Maintenance as to Lender may deem advisable. Lender shall be entitled to collect and receive all Rents following the revocation of the license thereof in favor of Grantor, and after deducting the expenses of conducting the business thereof and of all necessary Maintenance and amounts necessary to pay for Impositions, premiums for insurance and other proper charges upon any of the Mortgaged Property, as well as just and reasonable compensation for the services of Lender and for all attorneys and agents properly engaged and employed by Lender, Lender shall apply the remaining Rents in such order as Lender may elect, to the payment and/or performance of the Obligations, and the payment of any other sums required to be paid by Grantor under any of the Loan Documents. Lender shall be liable to account only for Rents actually received by Lender.

(3) Receivership. Lender may have a receiver appointed to enter into possession of the Mortgaged Property, collect the Rents and apply the same as the court may direct. Lender shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of Grantor or any other Person who may be liable to pay and/or perform any of the Obligations and Grantor and each such Person shall be deemed to have waived such proof and to have consented to the appointment of such receiver. Should Lender or any receiver collect Rents, the moneys so collected shall not be substituted for payment of the Obligations nor can they be used to cure the Event of Default, without the prior written consent of Lender. Grantor hereby expressly consents to the appointment of a receiver for the Mortgaged Property while any Event of Default exists, and waives any requirement for the posting of any bond or other security in connection with such appointment and such receiver, and for any hearing in connection with such appointment.

(4) Sale of personal property. Lender shall also have such rights and remedies in respect of any of the Personal Property Security and Fixtures as are provided by the Code and such other rights and remedies in respect thereof which Lender may have at law or in equity or under any of the Loan Documents, including the right to take possession of the Personal Property Security and Fixtures wherever located and to sell all or any portion thereof at public or private sale, without prior notice to Grantor, except as otherwise required by law (and if notice is required by law, after 10 days' prior written notice), at such place or places and at such time or times and in such manner and upon such terms, whether for cash or on credit, as Lender in its sole discretion may determine. Lender shall apply the proceeds of any such sale first to the payment of the actual and reasonable costs and expenses incurred by Lender in connection with such sale or collection, including actual and reasonable attorney's fees and legal expenses, and second to the payment and



performance of the Obligations, and then to pay the balance, if any, as required by law. While any Event of Default exists, Grantor, upon demand by Lender, shall promptly assemble any personal property and Fixtures included in the Mortgaged Property and make it available to Lender at the site of the Mortgaged Property or a place designated by Lender that is reasonably convenient to Lender and Grantor. Both Grantor and Lender shall be eligible to purchase any part or all of such property at any such disposition.

(5) Power of Sale for the Mortgaged Property. Lender may elect to cause any of the Mortgaged Property to be sold as follows:

(A) Lender may proceed as if all of the Mortgaged Property were real property, or Lender may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Land and Improvements without causing structural damage thereto as if the same were personal property and dispose of the same in accordance with this Deed of Trust or applicable law, separate and apart from the sale of real property, the remainder of the Mortgaged Property being treated as real property.

(B) Should Lender request and direct Trustee to sell the Mortgaged Property or any part thereof which is real property or which Lender has elected to treat as real property, upon such election, Trustee may proceed to foreclose this Deed of Trust in respect of said real property in the following manner: Trustee at the request of Lender shall proceed to take possession and to sell any of the Mortgaged Property, in whole or in one or more parcels, at public venue, to the highest bidder, for cash, at a front door (to be designated by Trustee) of the building then appointed for holding of foreclosure sales by the Circuit Court of the county of the Mortgaged Property State in which the Land is situate. Trustee may in the Trustee's discretion set the time of any such sale at any commercially reasonable time. Upon such sale, Trustee shall execute and deliver a deed of conveyance of the property sold to the purchaser or purchasers thereof. Trustee shall receive the proceeds of said sale out of which the Trustee shall pay (i) the costs and expenses of executing this trust, including lawful compensation to the Trustee for his services as provided by statute, and a reasonable attorney's fee, which shall be immediately due upon first publication of sale; (ii) to Lender, upon the usual vouchers therefor, any of the Obligations, including money advanced for ground rents, Impositions, insurance, Maintenance, abstracts, title reports, judgments upon statutory lien claims and any other advances hereunder and interest thereon at the Default Rate, as herein provided; (iii) the amount unpaid on the Obligations, including the interest accrued thereon at the Default Rate; (iv) the remaining Obligations; and (v) the balance of such proceeds, if any, shall be paid as required by law. The purchaser at any foreclosure sale shall not be obligated to look to the application of the proceeds thereof. If Lender should become the purchaser, it shall be entitled to credit any of the unpaid balance of the Obligations against the amount of the purchase price. The Trustee covenants faithfully to perform the Trust herein created. The purchaser at any sale or foreclosure sale hereunder may disaffirm any easement granted or Lease made in violation of any provision of this Deed of Trust, and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement or Lease. Grantor hereby expressly waives any right which Grantor may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto. In the event of a sale or other disposition of any of the Mortgaged Property, and the execution of a deed or other conveyance pursuant thereto, the recitals in such deed or conveyance of facts, such as default, the giving of notice of default and notice of sale, terms of sale, purchaser, payment of purchase money,

and any other fact affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein. In case of any sale under this Deed of Trust by virtue of judicial proceedings, or under the power of sale, the Mortgaged Property may be sold in one parcel and as an entirety or in such parcels, manner or order as Lender in its sole discretion may elect. Notwithstanding anything to the contrary contained herein, Trustee shall (to the extent permitted by applicable law) allocate or apply the proceeds of sale (including the amount of any credit bid) in such manner and in such priority as Lender may elect in its sole and absolute discretion.

(C) Lender may cause any such sale or other disposition to be conducted immediately, or Lender may delay any such sale or other disposition for such period of time as Lender deems to be in its best interest. Should Lender desire that more than one such sale or other disposition be conducted, Lender may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Lender may deem to be in its best interest.

(c) Set Aside Acceleration. Lender may set aside any declared acceleration of maturity of the Note, whereupon the terms and provisions therein stated and the covenants, terms and conditions in this Deed of Trust shall revive and continue with the same force and effect as if such acceleration had not occurred.

(d) Pursuance of Remedies. While any Event of Default exists, Lender in pursuance of the foregoing remedies, or in addition thereto, shall be entitled to resort to its several securities for the payment of the sums secured hereby in such order and manner as Lender may think fit without impairing Lender's lien in, or rights to, any of such securities and without affecting the liability of any Person for the Obligations.

### 11.3. Waivers and Releases.

(a) Consent to Jurisdiction, Venue, etc. Grantor hereby consents to the jurisdiction of the courts of the Mortgaged Property State in and for the county in which the Mortgaged Property is located with respect to any action, suit or other legal proceeding commenced by Lender pursuant to any of the Loan Documents, and hereby waives any right to transfer any such action to any other court.

(b) Waiver of Redemption. Grantor hereby wholly waives the period of redemption and any right of redemption of any of the Mortgaged Property after sale under this Deed of Trust, or sale upon foreclosure of this Deed of Trust, as provided under any law of the Mortgaged Property State now or hereafter in effect.

(c) Waiver of Marshaling, etc. Grantor, for itself and its successors in title, hereby waives all rights at law or in equity to have the Mortgaged Property marshaled in the event of the foreclosure of this Deed of Trust. Grantor will not at any time insist upon, plead, or in any manner whatsoever claim or take any benefit or advantage of any present or future laws pertaining to the administration of the estates of decedents, exempting any of the Mortgaged Property from attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment, or providing for the valuation or appraisal of any

of the Mortgaged Property prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court. Grantor hereby covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Lender, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

(d) Waiver of Notices. Except as prohibited by applicable law, Grantor hereby waives all notices not herein elsewhere specifically required, of Grantor's default or of Lender's exercise, or election to exercise, any option or election under this Deed of Trust.

(e) Waiver of Homestead Exemptions. Grantor hereby fully and absolutely waives and releases all rights and claims it may have in or to any of the Mortgaged Property as a homestead exemption.

(f) Waiver of Personal Service. Grantor hereby waives personal service of process in any action or proceeding at any time commenced to enforce this Deed of Trust, and agrees that such process shall be deemed properly and adequately served if sent to Grantor in the manner provided in Section 12 hereof.

(g) Foreclosure Subject to Leases. In the event that Lender shall have the right to foreclose this Deed of Trust, Grantor authorizes Lender at its option to foreclose subject to the rights of any tenants, and the failure to make any such tenants parties to any such foreclosure proceeding and to foreclose their rights will not be asserted by Grantor as a defense to any proceeding instituted by Lender to collect any of the Obligations or any deficiency after foreclosure.

## 12. NOTICES.

All notices, demands, requests and consents required under this Deed of Trust shall be in writing, and shall be deemed properly given if given in the manner provided for the giving of notices under the Loan Agreement.

## 13. CERTAIN SECURITY AGREEMENT PROVISIONS.

13.1. Status of Grantor. Grantor's exact legal name is correctly set forth at the end of this Deed of Trust. Grantor is an organization of the type specified in the first paragraph of this Deed of Trust and is incorporated, organized or formed under the laws of the State referenced in said first paragraph. Grantor will not cause or permit any change to be made in its name, identity or corporate, limited liability company or partnership structure unless Grantor shall have first notified Lender in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by Lender for the purpose of perfecting or protecting the lien and security interest of Lender. Grantor's principal place of business and chief executive office, and the place where Grantor keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Grantor) and will continue to be the address of Grantor set forth above (unless Grantor notifies Lender in writing at least 30 days prior to the date of such change). Grantor's organizational identification number, if any, assigned by the state of incorporation or organization

is correctly set forth in Section 1.4 of this Deed of Trust. Grantor shall promptly notify Lender of any change in its organizational identification number. If Grantor does not now have an organizational identification number and later obtains one, Grantor promptly shall notify Lender of such organizational identification number.

13.2. Authorization to File Financing Statements; Power of Attorney. Grantor hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of Grantor as authorized by applicable law, as applicable to all or part of the Mortgaged Property, including without limitation a financing statement describing the Mortgaged Property as “all assets of the Debtor, whether now owned or hereafter acquired, and proceeds thereof” or words of similar import. For purposes of such filings, Grantor agrees to furnish any information reasonably requested by Lender promptly upon request by Lender. Grantor also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this security instrument. Grantor hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Grantor or in Grantor’s own name to execute in Grantor’s name any documents and otherwise to carry out the purposes of this Section 13.2, to the extent that Grantor’s authorization above is not sufficient. This power of attorney is coupled with an interest and shall be irrevocable.

#### 14. NON WAIVER, ETC.

14.1. Waiver Not Affecting Deed of Trust. No failure by Lender to insist upon the strict performance by Grantor of any of the provisions hereof shall be deemed to be a waiver of any of the provisions hereof, and Trustee and Lender, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Grantor of all of the provisions of this Deed of Trust. Neither Grantor nor any other Person liable for the payment or performance of the Obligations, nor any Person giving security for the Obligations, shall be relieved of any of such respective obligations, nor shall any security given by any of them be released, nor the position of any subordinate lienholder be improved, by reason of: (a) any failure by Lender to comply with any request by Grantor or of any other Person so obligated to foreclose or otherwise enforce this Deed of Trust; (b) the release, regardless of consideration, of any of the security held for payment and/or the performance of the Obligations; (c) any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Lender extending the time of payment or modifying the terms of the Note or any of the Loan Documents; (d) any grant of forbearance or extension of time for the payment or performance of the Obligations; (e) Lender’s acceptance of any other or additional security for the payment or performance of the Obligations; (f) Lender’s waiver of or failure to exercise any right granted herein or in any of the Loan Documents; (g) any changes hereafter made in any of the terms, covenants, conditions or agreements of this Deed of Trust or in any other Loan Document; (h) Lender’s giving of consent to the filing of any map, plat, replat or condominium declaration affecting any of the Mortgaged Property; (i) Lender’s giving of consent to the granting of any easement or other right affecting the Mortgaged Property; or (j) Lender’s making or consenting to any agreement subordinating the lien hereof.

14.2. Right to Cure Defaults. If Grantor shall fail to fully and timely perform any of the Obligations, Lender shall be under no obligation to take action to correct such failures. However,

at its option, while an Event of Default exists, Lender may take such action and expend such sums as Lender deems necessary to correct such failures and/or any consequences thereof. Such action or payment by Lender shall not constitute a waiver by Lender of the performance of said act, and Lender may treat Grantor's failure to perform such act as a default (and, upon expiration of any applicable grace period, an Event of Default) notwithstanding Lender's having undertaken (or completed) the performance of the act. Grantor will repay to Lender within five (5) days following demand any amounts expended by Lender to correct each such failure and/or any consequences thereof, and all actual and reasonable out-of-pocket expenses of Lender in taking such action, with interest at the Default Rate from the expiration of such five (5) day period. The repayment of such amounts to Lender shall be secured by this Deed of Trust.

15. GENERAL COVENANTS.

15.1. Lender and Trustee Expenses. Grantor shall promptly pay within ten (10) days following Lender's request all actual and reasonable expenses and costs incurred by Lender or Trustee, including reasonable attorney's fees, together with interest thereon at the Default Rate following the expiration of such ten (10) day period until paid, in connection with:

(a) any action, proceeding, litigation or claim instituted or asserted by or against Lender and/or Trustee or in which Lender and/or Trustee becomes engaged, wherein it becomes necessary in the reasonable opinion of Lender and/or Trustee to protect Lender's or Trustee's interests in the Mortgaged Property or the security afforded hereby, or by any of the Loan Documents, or to defend or uphold the Lien of this Deed of Trust, or the validity or effectiveness of any assignment of any claim, award, payment, insurance policy or any other right or property conveyed, encumbered or assigned by Grantor to Trustee or Lender under this Deed of Trust, or the priority of any of the same, except to the extent the same is caused by the gross negligence or willful misconduct of Lender as determined by a final, non-appealable judgment of a court of competent jurisdiction;

(b) any further assurances requested by Lender under Section 2.7, or any other provision hereof, including all filing and recording costs and costs of searches;

(c) the negotiation, preparation, execution and delivery of the Loan Documents, and any amendments and supplements thereto at any time entered into;

(d) all taxes, fees and other assessments, including stamp taxes, if any, upon any documents or transactions contemplated by this Deed of Trust or in connection with the recording and filing of any Loan Document;

(e) the collection and/or enforcement of the Obligations, including the realization upon any of the Mortgaged Property or other security for the Obligations; and

(f) the collection and application of any insurance proceeds and Condemnation Awards.

All such expenses and costs, with interest thereon at the Default Rate following the expiration of the five (5) day period set forth above, shall be added to and become part of the Obligations and be secured by this Deed of Trust; provided, however, that in any action to foreclose this Deed of

Trust or to recover or collect the sums due hereunder, the provisions of law and of this Deed of Trust relative to the recovery of costs, disbursements, commissions, allowances and attorneys' fees, shall prevail over any conflicting requirements of this Section 15.1. The provisions of this Section 15.1 shall survive payment and performance of the Obligations and any release of, or reconveyance under, this Deed of Trust.

15.2. Taxation of Deed of Trust. In the event of the passage after the date of this Deed of Trust of any law deducting from the value of the Mortgaged Property for the purpose of taxation any Lien thereon, or changing in any way the laws now in force for the taxation of mortgages or deeds of trust, or debts secured thereby, so as to adversely affect the interest of Lender, then Grantor shall bear and pay the full amount of such taxes, provided that if payment by Grantor of any such new or additional taxes would be unlawful or would render the Obligations wholly or partially usurious, Lender may, at Lender's option, declare the whole sum secured by this Deed of Trust, with interest thereon, to be due and payable (without prepayment penalty or premium) on a date to be specified in a written notice to Grantor, which shall be not less than 60 days after the date such notice is given.

15.3. Amendments. No provision of this Deed of Trust shall be changed, altered, modified or released except by an agreement in writing signed by Grantor and Lender. No compliance with or failure to comply with any provision of this Deed of Trust shall be waived or excused except by a written instrument executed by Lender.

15.4. Usury Savings Provision. It is the intention of the parties to conform strictly to the Usury Laws. All agreements contained in the Loan Documents are expressly limited so that in no contingency or event whatsoever, whether by reason of the making of advances on account of the Loan, or under any of the Loan Documents, or acceleration of maturity of the unpaid principal balance of the Loan or otherwise, shall the amount paid or agreed to be paid by or on behalf of Grantor to Lender for the use, forbearance or detention of money exceed the highest lawful rate permissible under any applicable Usury Law. If, from any circumstances whatsoever, compliance with any of the Loan Documents, at the time performance thereunder shall be due, shall involve transcending the limit of validity under any Usury Law then, *ipso facto*, the obligations to be fulfilled shall be reduced to the limit of such validity. If Lender shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note (without prepayment penalty or premium) and not to the payment of interest. This provision shall control every other provision of all agreements between Grantor and Lender; provided, however, that there shall be no automatic reduction of such payments or obligations as to any party barred by law from availing itself in any action or proceeding of the defense of usury, or any party barred or exempted from the operation of any Usury Law, or in the event and to the extent the Loan, because of its amount or purpose or for any other reason, is exempt from the operation of the Usury Law. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of or for the Obligations outstanding from time to time shall, to the extent permitted by applicable law, and to the extent necessary to preclude exceeding the limit of validity prescribed by law, be amortized, prorated, allocated and spread from the earliest date of disbursement of any of the proceeds of the Note until payment in full of the principal balance of the Obligations so that the actual rate of interest on account of such Obligations is uniform throughout such term.

15.5. Subrogation. Lender shall be subrogated, notwithstanding their release of record, to any Liens, superior titles, rights, equities and charges of all kinds heretofore or hereafter existing on the Mortgaged Property to the extent that the same are paid or discharged from the proceeds of the Loan or are otherwise paid by Lender.

15.6. Application of Moneys. Whenever in this Deed of Trust Lender is to apply, or shall elect to apply, any sum of money to payment or performance of any of the Obligations, Lender may so apply such sums to principal, interest, costs and expenses, or otherwise, all in such order of priority as Lender may elect, unless a different order of priority is required by applicable law.

15.7. Lender Not Liable; Indemnity. Neither Trustee nor Lender shall be responsible or liable in any way for any condition in or upon any of the Mortgaged Property (whether or not discovered by Lender), including any condition relating to the presence on the Mortgaged Property of any Hazardous Substance, or any defects in any of the Mortgaged Property or any personal injury, death, damage to property, loss, cost, liability, damage or expense in any way arising out of or connected with the condition or Maintenance of any of the Mortgaged Property or any construction or other work thereon, or Grantor's use and occupancy of the Mortgaged Property, in each case except to the extent the same is caused by or arises out of the gross negligence or willful misconduct of Lender as determined by a final, non-appealable judgment of a court of competent jurisdiction. Grantor will indemnify, defend and hold Lender and the Trustee harmless from and against all such liability and responsibility, except to the extent the same is caused by or arises out of the gross negligence or willful misconduct of Lender as determined by a final, non-appealable judgment of a court of competent jurisdiction. The provisions of this Section 15.7 shall survive the payment and performance of the Obligations, release of this Deed of Trust and the reconveyance of the Mortgaged Property.

## 16. PROHIBITED TRANSFERS.

Lender has made the Loan in reliance in part upon the management and development skills of Grantor. Accordingly, without the prior written approval of Lender, Grantor shall not make or permit any Prohibited Transfer, except for Permitted Transfers (as defined in the Loan Agreement). References in this Deed of Trust to proceeds of any of the Mortgaged Property are not intended as a consent to, and do not authorize, any Prohibited Transfer.

## 17. LEASES.

17.1. New Leases. Notwithstanding anything seemingly to the contrary contained herein or in any other Loan Document, Grantor shall not enter into or execute any Lease of any portion of the Mortgaged Property without the prior written approval of such Lease by Lender, such approval not to be unreasonably withheld, conditioned or delayed. Grantor hereby acknowledges and agrees that all Leases must be in form, substance and with tenants, in each case, reasonably satisfactory to Lender.

17.2. Lease Priority. This Deed of Trust shall not be subordinate to any Lease, unless Lender enters into a separate agreement with the tenant for such subordination.

17.3. Subordination/Attornment. Each lease of any portion of the Improvements shall be absolutely subordinate to the lien of this Deed of Trust, but shall contain a provision satisfactory

to Lender that in the event of the exercise of the private power of sale or a judicial foreclosure under such lease, at the option of the purchaser at such sale, such lease shall not be terminated and the tenant thereunder shall attorn to such purchaser and, if requested to do so, shall enter into a new lease for the balance of the then-remaining term of such lease, upon the same terms and conditions. Each such lease shall, at the request of Lender, be assigned to Lender and each such assignment shall be recorded and acknowledged by the tenant thereunder.

18. CONCERNING THE TRUSTEE.

18.1. Duties and Obligations of Trustee. Grantor agrees that: (a) the duties and obligations of Trustee shall be determined solely by the express provisions of this Deed of Trust, Trustee shall not be obligated to perform any duties except those specifically set forth herein, and no implied covenants or obligations shall be imposed upon Trustee; (b) no provision of this Deed of Trust shall require Trustee to expend or risk its own funds, or otherwise incur any financial obligation in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers; (c) Trustee may consult with counsel of its own choosing and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in reliance thereon; and (d) Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Deed of Trust. Trustee hereby agrees with Lender that Trustee will act for a nominal consideration in routine matters (e.g., execution of partial release of security, extension agreements, modification agreements or satisfactions) with respect to this Deed of Trust. In the event of foreclosure, Trustee will serve for a Trustee's commission in an amount to be agreed upon and mutually satisfactory to Trustee and to Lender. If Lender determines that there shall be a substitute Trustee for any reason, or for no reason, Trustee will supply a recordable resignation at the request of Lender. Trustee shall also have the right to resign hereunder at any time by written notice of resignation given to Lender and Grantor.

18.2. Successor Trustee. Except as may be prohibited by law, Lender is hereby granted full power at any time to appoint a successor or substitute Trustee by instrument properly executed, acknowledged and filed for record in the office where this Deed of Trust is to be recorded for any reason satisfactory to Lender, and such successor or substitute Trustee, from and after the making of such appointment, shall have and possess all of the powers, authorities, duties and obligations vested in and upon the Trustee designated in this Deed of Trust. The authority hereby granted shall extend to the appointment of other successor and substitute trustees successively until the Obligations have been fully paid and performed.

18.3. Indemnity to Trustee. Grantor shall indemnify, defend and hold the Trustee harmless, from and against any and all loss, damage, liability, cost and expense, including reasonable attorney's fees, suffered or incurred by Trustee in connection with any act or omission to act of Trustee under this Deed of Trust, and in connection with any action or proceeding in which Trustee shall be made a party or shall join, relating to any of the Mortgaged Property, this Deed of Trust, or any of the transactions contemplated by the Loan Documents. The provisions of this Section 18.3 shall survive payment and performance of the Obligations, and the release of this Deed of Trust and reconveyance of the Mortgaged Property.

19. FUTURE ADVANCES.



In addition to the indebtedness evidenced by the Note and all other Obligations, this Deed of Trust, to the fullest extent permitted by the law of the Mortgaged Property State, shall secure also and constitute a Lien on the Mortgaged Property for all future advances made by Lender to Grantor and future obligations incurred by Grantor to Lender in connection with the Mortgaged Property or the Loan to the same extent as if such future advances were made or such future obligations incurred on the date of the execution of this Deed of Trust. The total amount of the indebtedness that may be secured by this Deed of Trust shall not exceed a maximum principal amount equal to \$10,000,000.00 plus future advances and/or future obligations made or incurred for the reasonable protection of the security or to enable completion of a contemplated improvement.

20. ENVIRONMENTAL MATTERS.

20.1. Reserved.

20.2. Reserved.

20.3. No CERCLA Claim Against Lender. Grantor hereby waives, releases and agrees not to make any claim or bring any cost recovery action against Lender under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted, nor for contribution or indemnity from Lender.

20.4. No Control of Grantor by Lender. Grantor hereby acknowledges and agrees that Lender has not participated, and shall not participate, in the management of Grantor and that any indicia of ownership which Lender may have in and to the Mortgaged Property by virtue of this Deed of Trust and the other Loan Documents (and the rights granted to Lender therein) is primarily to protect Lender's security interest and lien in and to the Mortgaged Property.

20.5. Right to Inspect, etc. Upon reasonable notice so long as no Event of Default has occurred, Lender, in person or by agent, shall have the right, but not the obligation, at any time and from time to time to enter upon the Mortgaged Property (subject to the rights of tenants under Leases), take samples, review Grantor's books and records, interview Grantor's employees and officers, and conduct similar activities to ascertain the status of Grantor's compliance with this Section 20. Grantor shall cooperate in the conduct of such an audit. Such entry may be made at any time or times upon not less than forty eight (48) hours' notice (which may be oral notice) to Grantor. In addition, Lender may have tests (which may include drilling and sampling, among other things) and audits of the Mortgaged Property done for the purpose of testing for evidence of noncompliance if Lender reasonably believes such noncompliance exists. If at the time such tests or audits are done, an Event of Default exists, or if such tests or audits done at any time show that Grantor is not in compliance with this Section 20, or if Lender reasonably believes that Grantor is in default under this Section 20, then all of Lender's actual out of pocket costs, fees and expenses incurred in connection with such tests and audits shall be paid for by Grantor.

21. RIGHT TO CONTEST.

Grantor may contest, in good faith and by appropriate legal proceedings timely commenced and diligently prosecuted with continuity to completion, the validity and applicability of any Legal Requirement, and the validity or amount of any Imposition or mechanic's or materialmen's Lien,

provided that: (a) no Event of Default shall exist; (b) Grantor provides Lender with prompt written notice of such contest, and any additional information Lender reasonably requests thereafter with respect thereto; (c) Grantor shall provide to Lender such cash or other security assuring compliance with the Legal Requirement or the payment of the Imposition or Lien contested, with interest and penalties, if any, in amounts reasonably satisfactory to Lender, as Lender may request, to the extent that sufficient funds do not remain within the applicable line item in the Cost Certificate to pay the same (subject to reallocations permitted pursuant to this Agreement); (d) such contest operates as a stay of or prevents enforcement of any contested Legal Requirement, Imposition or Lien (or any judgment based thereon) against the Mortgaged Property; (e) Grantor shall pay all fees and expenses of Lender reasonably incurred in connection with any such contest or proceeding, including without limitation reasonable attorney's fees and expenses; (f) such contest operates to prevent any interruption of occupancy of the Mortgaged Property as a result of the contested Legal Requirement, Imposition or Lien not being complied with or paid; (g) Lender shall have the right to pay or require payment of any such Imposition or Lien and to require compliance with such Legal Requirement at any time when Lender reasonably believes that continuation of such contest or failure to comply with such Legal Requirement or pay such Imposition or Lien could jeopardize or impair the value or safety of Lender's security; and any amount so paid by Lender shall be added to the Obligations and shall be secured by this Deed of Trust; and (h) if such contest is terminated adversely to the contest or discontinued, Grantor shall immediately comply with such Legal Requirement and pay such Imposition and any such Lien

## 22. DEFINITIONS, CONSTRUCTION AND INTERPRETATION.

22.1. Governing Law. Notwithstanding that the Note is governed by the laws of the State of Arizona, this Deed of Trust shall be construed and enforced in accordance with the internal laws (without regard to the conflict of laws rules) of the Mortgaged Property State. Notwithstanding anything to the contrary contained in this Deed of Trust or in any other document described herein, Grantor expressly consents to jurisdiction in the courts and laws of the Mortgaged Property State, and consents to the applicability of the laws of the Mortgaged Property State, with respect to any personal liability and any action for a deficiency judgment, whether before or after any exercise of a power of sale or any judicial foreclosure.

22.2. Successors and Assigns. All of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall run with the Land, and shall apply to, bind and inure to the benefit of, the successors of Grantor and any subsequent owner of the Land or the Improvements, and the successors of Lender and any subsequent holder of the Note.

22.3. Provisions Severable. If any term or provision of this Deed of Trust or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Deed of Trust shall be valid and be enforced to the fullest extent permitted by law.

22.4. Multiple Counterparts. This Deed of Trust may be executed in any number of counterparts and by the parties hereto on different counterparts. Each such counterpart shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one

and the same Deed of Trust. Executed signature pages to any counterpart instrument may be detached and affixed to a single counterpart, which single counterpart with multiple executed signature pages affixed thereto constitutes the original counterpart instrument. All of these counterpart pages shall be read as though one and they shall have the same force and effect as if all of the parties had executed a single signature page.

22.5. Other Interpretive Provisions. As used herein, the following words and phrases shall have the following meanings: (i) “including” shall mean “including but not limited to”; (ii) “provisions” shall mean “provisions, terms, covenants and/or conditions”; (iii) “any of” shall mean all or any part of or interest in that with respect to which such phrase is used.

22.6. Miscellaneous Provisions. Whenever used herein, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. If any provision of this Deed of Trust shall conflict with any provision of any other Loan Document, the provision of the document which shall enlarge the interest of Lender in the Mortgaged Property, afford Lender greater financial security in the Mortgaged Property and/or assure payment and performance of the Obligations in full, shall control. Except as otherwise expressly stated herein, with respect to any matters which, under this Deed of Trust, Lender shall have the right to approve, consent to, be satisfied with, exercise its judgment with regard to or calculate, the decisions of Lender with respect to such matters shall be made in the sole discretion of Lender, may be given or withheld without regard to reasonableness, and shall be final and conclusive. The headings and captions in this Deed of Trust are for convenience only, and are not to be construed as defining or limiting in any way the scope or intent of the provisions of this Deed of Trust. The granting of consent by Lender to any matter as to which such consent is required by the provisions hereof shall not be deemed a waiver of the right to require consent to future or successive matters. If any of the Mortgaged Property could, under applicable law, be treated either as personal property or as a part of the real estate, or if it is unclear whether such property is real property or personal property, it is the intention of Grantor and Lender that such property be treated for all purposes hereunder as real estate. Each of the parties have participated in the negotiation and preparation of this Deed of Trust, with the advice of counsel, and this Deed of Trust shall not be construed against any party by reason of that party having prepared the initial draft, or subsequent versions, of this Deed of Trust.

22.7. Definitions. As used herein, each of the following terms shall have the meaning indicated below, unless the context clearly requires otherwise:

“Automatic Acceleration Event of Default” shall mean an “Automatic Acceleration Event of Default” as defined under the Loan Agreement.

“Borrower” shall mean DINAH SHORE DRIVE CARWASH, LP, an Arizona limited partnership.

“Casualty” shall mean any damage, destruction, or loss to or of any of the Mortgaged Property resulting from fire, any peril insured against, or any other cause except a Condemnation.

“CERCLA” shall mean the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and

Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986), and as now or hereafter amended.

“CGL Policy” shall mean a Commercial General Liability insurance policy meeting the requirements of Section 4.1(d) hereof.

“Code” shall mean the Uniform Commercial Code as adopted and in effect in the Mortgaged Property State on the date hereof and as amended or supplemented at any time hereafter.

“Collateral” shall mean collectively the “Accounts”, “Chattel Paper”, “Deposit Accounts”, “Documents”, “Equipment”, “General Intangibles”, “Goods”, “Instruments”, “Inventory”, “Investment Property” and “Letter-of-Credit Rights” as such terms are defined in the Code, and all Personal Property, Records, Intellectual Property, and other assets, tangible or intangible, now owned or hereafter acquired by Grantor, and the Proceeds of each thereof.

“Condemnation” shall mean any condemnation or taking of any of the Mortgaged Property or the use thereof by any Governmental Authority or other Person pursuant to the power of eminent domain or condemnation, and any conveyance of any of the Mortgaged Property in lieu of condemnation.

“Condemnation Award” shall mean any and all awards, damages and other sums of money at any time owed or becoming payable, or paid, with respect to any Condemnation, including any payments for any conveyance in lieu of Condemnation, and awards for changes of grade of any streets.

“Contested Matters” shall mean “Contested Matters” as defined in the Loan Agreement.

“Default Rate” shall mean the “Default Rate” as defined in the Note.

“Environmental Activity” (whether one or more), shall mean any one or more of the following: (1) any present or future storage, holding, existence, release, emission, discharge, generation, abatement, disposition, handling or transportation of any Hazardous Substance from, on, under or otherwise relating to the Mortgaged Property or any Migration Tract, or the use, operation or occupancy thereof, or any threat of any such activity, including but not limited to any failure of all “hazardous waste” (as defined in RCRA) generated or removed from the Mortgaged Property to be removed and disposed of at sites and transported by carriers which maintain valid permits under RCRA and any other applicable Environmental Requirements; (2) any failure of any Person, including without limitation Grantor, to comply with any of the Environmental Requirements relating to the Mortgaged Property or the ownership, use, operation or occupancy thereof, or any Migration Tract, including but not limited to any failure by any Person to properly obtain or file any notices, permits, licenses or similar authorizations, if any, required under any Environmental Requirements in connection with the Mortgaged Property or the ownership, use, operation or occupancy thereof; (3) any investigation, inquiry, order or proceeding by any Governmental Authority, and/or any remedial obligations of Grantor or any Person under any Environmental Requirements relating to the Mortgaged Property or any Migration Tract; (4) any failure of any representation or warranty set forth in the Indemnity Agreement to be true and

correct in all material respects when made; and (5) any failure of Grantor to perform, or cause to be performed, any covenant in the Indemnity Agreement or Section 20 of this Deed of Trust.

“Environmental Claim” or “Environmental Claims” shall mean any and all claims, demands, actions or causes of action that are asserted at any time against any Indemnified Party which directly or indirectly relate to or arise from any Environmental Activity which occurs during the Indemnity Period.

“Environmental Requirements” shall mean, collectively: CERCLA; RCRA; the Hazardous Materials Transportation Act (49 U.S.C. §1802 et seq.); the Federal Water Pollution Prevention and Control Act (33 U.S.C. §1251 et seq.); the Safe Drinking Water Act (42 U.S.C. §300f et seq.); the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); the Clean Air Act (42 U.S.C. §7401 et seq.); the Clean Water Act (33 U.S.C. §1251 et seq.); all international treaties, compacts, conventions and agreements having the force of law in the United States of America and all federal, state or local statutes, ordinances, codes, rules, regulations, orders and decrees, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter in effect, each as now or hereafter amended; and any and all judgments, orders, decrees, permits, licenses, authorizations, concessions, grants, franchises, agreements or other governmental restrictions or requirements relating to the environment or to any Hazardous Substance or to any Environmental Activity.

“Escrow Date” shall mean: (a) when used in relation to real estate taxes and assessments on the Mortgaged Property, the thirtieth (30th) day before any of such taxes and assessments are first due and payable in each year; and (b) when used with respect to insurance premiums, the thirtieth (30th) day before such premiums are due.

“Event of Default” shall mean an Event of Default as defined in Section 11.1 hereof.

“FEMA” shall mean the Federal Emergency Management Agency, and its successors.

“Fixtures” shall mean all of Grantor’s right, title, and interest in and to fixtures, equipment, apparatus, machinery, fittings and appliances, chattels, building materials and tangible personal property of every kind and character, now or at any time hereafter affixed to or attached to or placed upon or used in any way in connection with the complete and comfortable use, enjoyment, occupancy, operation and/or Maintenance of the Improvements or the Land, including such of the foregoing as may be used in connection with the generating or distributing of air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the removal of dust, refuse or garbage, and all renewals, replacements and substitutions thereof, additions and accessions thereto, and all spare parts for any of the same.

“Governmental Authority” shall mean any nation or government, any Federal, state, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantors” shall mean “Guarantors” as defined in the Loan Agreement.

“Guaranty” shall mean “Guaranty” as defined in the Loan Agreement.

“Hazardous Substance” shall mean: (a) any “hazardous substance” as such term is presently defined in CERCLA; (b) any additional substances or materials which are hereafter incorporated in or added to the definition of “hazardous substance” for the purposes of CERCLA; (c) any element, substance, compound or mixture, including disease-causing agents, now or hereafter designated as, or containing components designated as, hazardous, dangerous, toxic, harmful, and/or subject to regulation by any Environmental Requirement, including asbestos in any form and any substance containing asbestos, urea formaldehyde foam insulation, transformers or other equipment which contains dielectric fluid or polychlorinated biphenyls, flammable explosives, lead, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials; (d) any waste, substance or material now or hereafter regulated by any Environmental Requirement; (e) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §2014, as now or hereafter amended; (f) any lead-based paint; and (g) mold, fungus, microbacterial contamination or pathogenic organisms; but expressly excluding therefrom any substances of kinds and in amounts ordinarily and customarily used or stored in properties similar to the Mortgaged Property for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Requirements.

“Impositions” shall mean all taxes and assessments of every kind and nature now or hereafter assessed against or levied upon any of the Mortgaged Property or the revenues, rents, issues or profits thereof by any Governmental Authority, including real and personal property taxes, general and special assessments, inspection and license fees, water and sewer rents and charges

“Improvements” shall mean the buildings, structures and other improvements now or hereafter located on the Land.

“Indemnified Parties” shall mean collectively Lender, its successors, any subsequent holder(s) of the Note, and any nominee(s) or designee(s) of Lender who shall purchase the Mortgaged Property (or any part thereof) at a sale upon foreclosure of this Deed of Trust, or who shall succeed to title to any or all of the Mortgaged Property by deed in lieu of foreclosure, and their respective agents, directors, officers, partners, members, shareholders, attorneys and employees.

“Indemnity Agreement” shall mean that certain Environmental Indemnity Agreement of even date herewith given by Grantor and the Guarantors to Lender, and any amendments thereto hereafter made.

“Indemnity Period” shall mean that period of time commencing with the beginning of time and ending on the earlier of: (i) one (1) year after the date on which Grantor’s title to the Mortgaged Property is transferred through foreclosure (judicial or by power of sale) of the lien of this Deed of Trust or by deed in lieu thereof (a “Foreclosure”) or (ii) so long as no Foreclosure has occurred, the Full Satisfaction of the Loan (as defined in the Loan Assumption Agreement).

“Intangibles” shall mean all goodwill, trademarks, trade names, option rights, purchase contracts, computer records and software, books and Records and general intangibles of Grantor relating to any of the Mortgaged Property, all Intellectual Property, all rights of Grantor under or with respect to all accounts, contract rights, instruments, chattel paper and other rights of Grantor for payment of money for property sold or lent, for services rendered, for money lent, or for advances or deposits made, all rights of Grantor to plans and specifications, designs, drawings, models and other matters prepared for any construction or renovation on the Land, all rights of Grantor under any contracts executed by Grantor as owner with any provider of goods or services in connection with any construction or renovation undertaken on, or services performed or to be performed in connection with, any part of the Mortgaged Property, and all other intangible property of Grantor related to or used in connection with any of the Mortgaged Property, and shall specifically include, without limiting the foregoing, all trade insignia and logos (including goodwill related thereto), if any, used in connection with the operation of the Mortgaged Property.

“Intellectual Property” shall mean all patents, trademarks, trade names, and service marks, and related goodwill, now or hereafter acquired by Grantor.

“ISO” shall mean the Insurance Services Office.

“Land” shall mean all of the real property and rights and interests in real property described on Exhibit A attached to and incorporated into this Deed of Trust as intended to be subject to the lien hereof.

“Leases” shall mean all agreements for use and occupancy of any part of the Land and Improvements, now existing or hereafter entered into, including (i) the entire lessor’s interest in all present and future leases (including subleases), licenses and concessions (including rights in respect of tenants holding over and tenancies following attornment) covering any portion of the Land and Improvements, (ii) any and all guaranties of the performance of any lessee or party under any such Lease, (iii) all cash or securities deposited with Grantor, or its agent, to secure performance of the tenant’s obligations under such Lease, (v) any and all extensions, modifications, renewals or supplements to any lease, license or concession (including any guaranty or other item included in this definition of “Leases”).

“Legal Requirements” shall mean collectively (i) all present and future laws, ordinances, orders, rules, regulations and requirements of all Governmental Authorities, including those with respect to zoning, subdivision, building, safety, fire protection, wetlands protection, historical preservation, access for the handicapped or disabled, ecological or environmental matters; and (ii) all covenants, restrictions and conditions now or hereafter of record that may apply to any of the Mortgaged Property or the use, occupancy, possession, Maintenance, Restoration or enjoyment thereof.

“Lien” shall mean any mortgage, deed of trust, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement, any capitalized lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

“Loan” shall mean the loan in the Loan Amount to be made by Lender to Borrower pursuant to the Loan Agreement.

“Loan Agreement” shall mean that certain Loan Agreement dated the date hereof between Borrower and Lender, and any amendments, extensions and supplements thereto made at any time.

“Loan Amount” shall mean the maximum aggregate principal amount of the Loan, which is TWO MILLION ONE HUNDRED THOUSAND AND 00/100 DOLLARS (U.S. \$2,100,000.00).

“Loan Documents” shall mean collectively the Loan Agreement, the Note, this Deed of Trust, the Guaranty, the Security Agreement, financing statements and any other documents necessary or appropriate to perfect the security interests created by the other Loan Documents, and each other instrument, document or agreement now or hereafter evidencing, securing or supporting the Loan, and any amendments and supplements to any of the same hereafter made.

“Maintenance” shall mean all repairs, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property (whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen), that are necessary to keep the Mortgaged Property in good order, condition and repair, consistent with the standard described in Section 5.2 and suitable for the Permitted Uses.

“Major Restoration” shall mean any Restoration for which the Net Insurance Proceeds or Net Condemnation Award exceed \$500,000.00.

“Migration Tract” shall mean any property other than the Land, from which any Hazardous Substance may move or migrate onto, into or under the Land (including the groundwater thereunder), and any property other than the Land into, onto or under which any Hazardous Substance may move or migrate from the Land (including the groundwater thereunder).

“Minor Claim” shall mean any insurance claim arising from a Casualty for which the Restoration required therefor is reasonably estimated by both Lender and Grantor to cost less than \$500,000.00.

“Mortgaged Property” shall mean, collectively, all the real and personal property and rights in property, tangible and intangible, described or referred to in Sections 1.1, 1.2 and 1.3 hereof, as intended to be subject to the lien hereof, whether now owned or hereafter acquired by Grantor.

“Mortgaged Property State” shall mean the State of Nevada, the State in which the Mortgaged Property is situated.

“Net Condemnation Award” shall mean a Condemnation Award, less the actual and reasonable out-of-pocket costs and expenses, including actual and reasonable out-of-pocket attorney’s fees, incurred by Lender and/or Trustee in connection with such Condemnation Award and the Condemnation to which it relates.

“Net Insurance Proceeds” shall mean all of the proceeds and sums of money owed or becoming due or paid under any policy of insurance upon any of the Mortgaged Property, including



any sums paid in settlement of any claim under any such insurance policy, less the actual and reasonable out-of-pocket costs and expenses, including actual and reasonable out-of-pocket attorney's fees, incurred by Lender and/or Trustee in connection with such insurance proceeds and the Casualty to which they relate.

"Note" shall mean that certain Term Note executed by Borrower in the original principal amount of \$2,100,000.00, as amended, modified, supplemented, replaced, exchanged, extended, renewed, increased, refunded or restated from time to time.

"Obligations" shall mean "Obligations" as defined in the Loan Agreement.

"Permitted Encumbrances" shall mean "Permitted Encumbrances" as such term is defined in the Loan Agreement.

"Permitted Uses" shall mean use solely as a car wash, and activities incidental thereto.

"Person" shall mean any natural person, corporation, general partnership, limited partnership, limited liability partnership, limited liability company, unincorporated association, business association, firm, joint venture, Governmental Authority, trust or any other legal entity.

"Personal Property" shall mean all tangible personal property now owned or hereafter acquired by Grantor.

"Personal Property Security" shall mean, collectively, the Fixtures, Intangibles, and all other property described in Section 1.2 hereof, whether now owned or hereafter acquired by Grantor.

"Proceeds" shall mean all "Proceeds" as defined in the Code, with respect to the Collateral or Mortgaged Property, and includes without limitation proceeds of insurance payable by reason of loss or damage to Collateral or Mortgaged Property.

"Prohibited Transfer" shall mean: (i) with respect to any Grantor's interest in the Mortgaged Property, any sale, assignment, lease, transfer or conveyance (whether voluntarily, involuntarily, by operation of law or otherwise) of any of Grantor's interest in the Mortgaged Property, or any agreement by Grantor to do any of the same; and (ii) with respect to any ownership interest (whether stock, membership, partnership interest, or otherwise) of any Person in Grantor, any sale, assignment, conveyance, transfer, grant of a security interest in or encumbrance of any of such interest, or any agreement by any such Person to do so.

"RCRA" shall mean the Resources Conservation and Recovery Act of 1976, as now or hereafter amended (42 U.S.C. §6901 et seq.) and any regulations promulgated thereunder.

"Records" shall mean all "Records" as defined in the Code, now owned or hereafter acquired by Grantor, and includes without limitation all books, records, computer records and software relating to any part of the Mortgaged Property.

"Rents" shall mean all rentals, security deposits and other sums of money due or becoming due to Grantor under the Leases, all of the rents, royalties, income, receipts, revenues, issues and

profits now due or which may hereafter become due to Grantor, its successors and assigns, under any Lease or arising from the use and enjoyment of the Mortgaged Property, all moneys due and to become due to Grantor under any Lease for services, materials or installations supplied, all moneys payable in consideration of cancellation or early termination of any Lease (which cancellation or termination is not permitted without Lender's prior written consent), and all rights and remedies which Grantor may have against any party under the Leases or others in possession of any portion of the Mortgaged Property for the collection or recovery of moneys so assigned hereby, and the proceeds of all such Rent, both cash and noncash, including but not limited to any minimum rents, additional rents, percentage rents, parking and common area maintenance, insurance and tax contributions, any damages following default by any party under any Lease, any penalties or premiums payable by any party under any Lease and the proceeds of any policy of insurance covering loss of rents or business interruption resulting from destruction or damage to any portion of the Premises; and "Rents" shall include all such Rents whether earned or accruing before or during or after any bankruptcy proceeding involving the Mortgaged Property or Grantor.

"Restoration" shall mean the restoration, repair, rebuilding, alteration and/or replacement of any of the Mortgaged Property made necessary by any Casualty or Condemnation, to a condition as nearly as possible to its condition prior to such Casualty or Condemnation (but with such changes as Grantor may make pursuant to Section 7 hereof), and includes demolition, temporary repairs and the protection of the Mortgaged Property pending the completion of Restoration.

"Usury Law" shall mean any law or regulation of any Governmental Authority having jurisdiction, limiting the amount of interest that may be paid for the loan, use or detention of money and applicable to the Obligations.

23. WAIVER OF TRIAL BY JURY.

EACH OF GRANTOR AND LENDER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR THE TRANSACTIONS CONTEMPLATED HEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH OF GRANTOR AND LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH OF GRANTOR AND LENDER WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

24. NEVADA SPECIFIC COVENANTS.

24.1. Covenants numbered 1, 3, 4, 5, 6, 7, 8 and 9 of Nevada Revised Statutes ("NRS") Section 107.030 are incorporated herein by reference. The rate of interest for Covenant Number 4 shall be the Default Rate. The percent of counsel fees under Covenant No. 7 shall be reasonable. Except for Covenants Numbers 6, 7 and 8, to the extent that any terms of this Deed of Trust are

inconsistent with such statutory covenants, the terms of this Deed of Trust will control. Covenants Numbers 6, 7 and 8 shall control over the express terms of any inconsistent terms of this Deed of Trust.

24.2. The five (5) day grace period for payment referenced in Section 14.2 above shall run concurrently with the thirty-five (35) day statutory cure period under NRS Section 107.080(2)(a)(2).

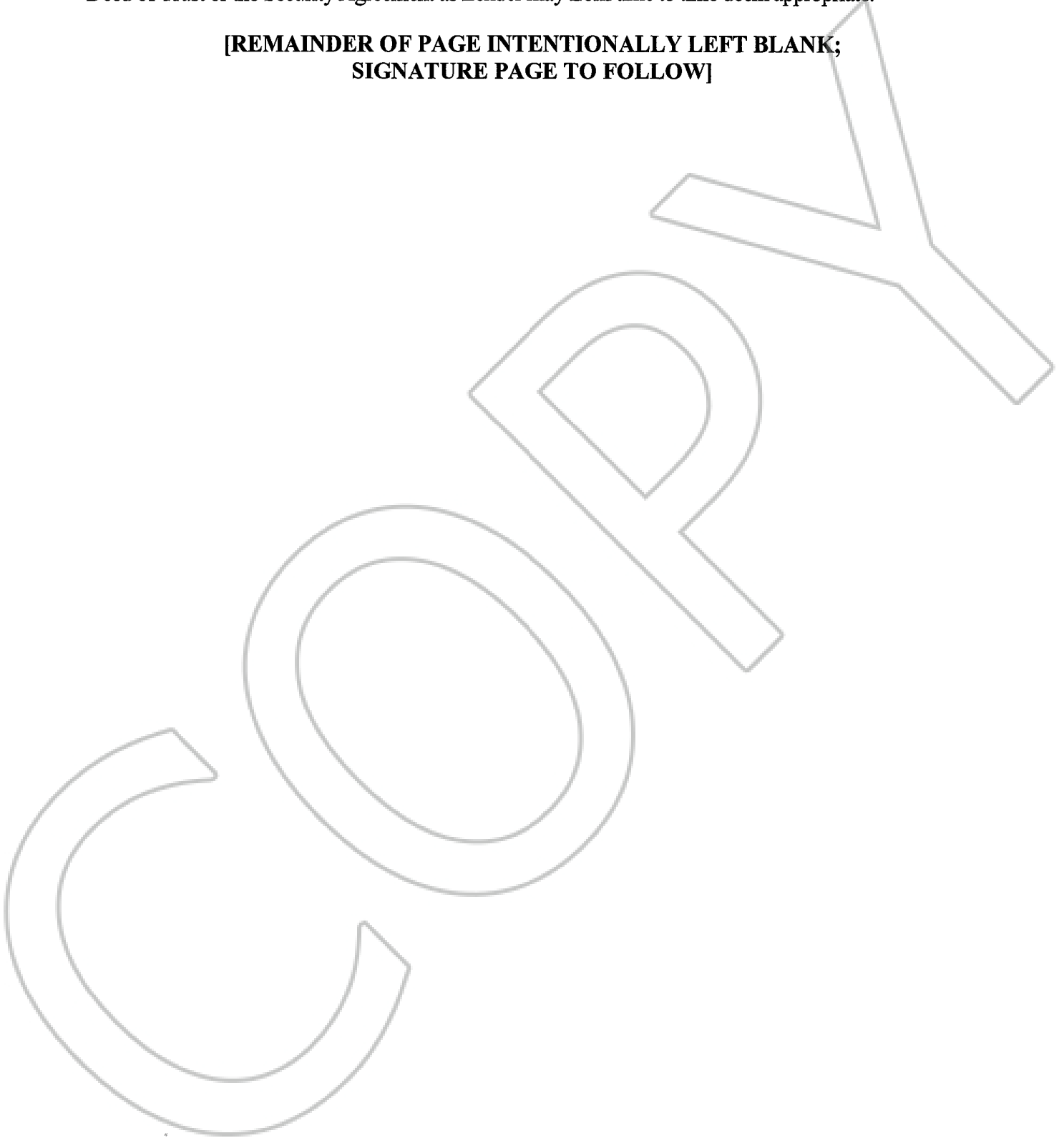
24.3. Supplementing the provisions of Section 11.2 of this Deed of Trust: Should Lender have elected to accelerate the indebtedness secured hereby, Lender may initiate foreclosure of the Mortgaged Property by requesting the Trustee to effectuate a non-judicial foreclosure sale. Trustee shall give and record such notice as the law then requires as a condition precedent to a trustee's sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Mortgaged Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Lender in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Lender shall have the right to direct the order in which the Mortgaged Property is sold. Subject to requirements and limits imposed by law, Trustee may, from time to time, postpone the sale of all or any portion of the Mortgaged Property by public announcement at such time and place of sale, and from time to time may postpone the sale by public announcement at the time and place fixed by the preceding postponement. A sale of less than the whole of the Mortgaged Property on any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein. Trustee shall deliver to the purchaser at such sale a deed conveying the Mortgaged Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Lender shall have the right to become the purchaser at any sale held by any Trustee or substitute or successor Trustee, or by any receiver of public officer. Any Lender purchasing at any such sale shall have the right to credit the secured indebtedness owing to such Lender upon the amount of its bid entered at such sale to the extent necessary to satisfy such bid. Said Trustee may appoint an attorney-in-fact to act in its stead as Trustee to conduct sale as hereinbefore provided. Trustor binds himself to warrant and forever defend the title of such purchaser or purchasers when so made by the Trustee, and agrees to accept proceeds of said sale, if any, which are payable to Trustee as provided herein.

24.4. Without limiting the generality of this Deed of Trust, Grantor agrees that Lender shall have the same right, power and authority to enter and inspect the Mortgaged Property as is granted to a secured lender under NRS Section 40.507, and that Lender will have the right to appoint a receiver to enforce the right to enter and inspect the Mortgaged Property to the extent such authority is provided under Nevada law, including, without limitation, the authority granted to a secured lender under NRS Section 32.015.

24.5. Supplementing the provisions of Section 1.2 this Deed of Trust, this Deed of Trust shall constitute a fixture filing pursuant to NRS Section 104.9502, as amended from time to time. Some or all of the Collateral may be or become a fixture in which Lender has a security interest under the security agreement provided for in Section 1.2 above (the "Security Agreement"). However, nothing herein shall, or shall be deemed to, create any lien or interest in favor of the Trustee in any Collateral which is not a fixture. The rights, remedies and interests of Lender are independent and cumulative, and there shall be no merger of any lien hereunder with any security interest created by the Security Agreement.

Lender may elect to exercise or enforce any of its rights, remedies or interests under either or both this Deed of Trust or the Security Agreement as Lender may from time to time deem appropriate.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE TO FOLLOW]**





**EXHIBIT A**  
**Legal Description**

PARCEL 1:

PARCEL F-1 AS SHOWN ON THAT CERTAIN PARCEL MAP DP-19-0348 FOR EH FERNLEY II, LLC, RECORDED IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY, NEVADA ON DECEMBER 18, 2019, AS DOCUMENT NO. 2019-939800.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR VEHICULAR AND PEDESTRIAN INGRESS, EGRESS, AND ACCESS, UTILITY EASEMENTS, AND ALL OTHER EASEMENTS AS DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MINDEN GATEWAY CENTER RECORDED MAY 08, 2008 IN BOOK 508 AT PAGE 1598 AS INSTRUMENT NO. 722796 IN THE OFFICE OF THE DOUGLAS COUNTY RECORDER, AS AMENDED AND RESTATED IN THAT CERTAIN AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MINDEN GATEWAY CENTER, DATED AUGUST 23, 2013, RECORDED AUGUST 27, 2013 IN BOOK 813, PAGE 7137 AS INSTRUMENT NO. 829608 OF OFFICIAL RECORDS, THAT CERTAIN FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND GRANT OF EASEMENTS DATED NOVEMBER 21, 2017, RECORDED NOVEMBER 22, 2017 AS INSTRUMENT NO. 2017-907242, OF OFFICIAL RECORDS, AND THAT CERTAIN SECOND AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF MINDEN GATEWAY CENTER DATED DECEMBER 11, 2017, RECORDED DECEMBER 15, 2017 AS INSTRUMENT NO. 2017-908098 IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY, NEVADA.