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AFTER RECORDING RETURN TO:

K&L GATES LLP  
925 Fourth Avenue, Suite 2900  
Seattle, Washington 98104-1158  
Attention: Shannon J. Skinner  
NCS-714280

E# 2736307 PG 1 OF 64  
Leann H. Kilts, WEBER COUNTY RECORDER  
19-May-15 09:23 AM FEE \$139.00 DEP S  
REC FOR: FIRST AMERICAN TITLE INSURANCE COI  
ELECTRONICALLY RECORDED

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

Loan No. 527130:11

TRUSTOR/BORROWER: PINEBROOK, L.L.C.

GRANTEE/BENEFICIARY: JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.)

GRANTEE/TRUSTEE: FIRST AMERICAN TITLE INSURANCE COMPANY

LOCATION OF PROPERTY:

Pinebrook Apartments  
381 North Washington Boulevard  
Ogden, Utah 84404

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THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust"), made as of the 19<sup>th</sup> day of May, 2015, by PINEBROOK, L.L.C., a Utah limited liability company, having its principal place of business at c/o Bach Corporation, 11650 South State Street, Suite 300, Draper, Utah 84020 ("Trustor"), to FIRST AMERICAN TITLE INSURANCE COMPANY, having its principal place of business at 215 South State Street, Suite 380, Salt Lake City, Utah 84111 ("Trustee"), for the benefit of JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.), a Michigan corporation, having an address at 197 Clarendon Street, C-3, Boston, Massachusetts 02116 ("Beneficiary").

### WITNESSETH:

To secure the payment of an indebtedness in the principal sum of Fourteen Million Two Hundred Fifty Thousand and No/100 Dollars (\$14,250,000.00), lawful money of the United States of America, to be paid with interest and all other sums and fees payable according to a certain deed of trust note dated the date hereof made by Trustor to Beneficiary (the deed of trust note, together with all extensions, renewals or modifications thereof, being hereinafter collectively called the "Note"; and the loan evidenced by the Note being hereinafter referred to as the "Loan") and all indebtedness, obligations, liabilities and expenses due hereunder and under any other Loan Document (as hereinafter defined) (the indebtedness, interest, other sums, fees, obligations and all other sums due under the Note and/or hereunder and/or any other Loan Document being collectively called the "Indebtedness"), Trustor hereby irrevocably grants, bargains, sells and conveys to Trustee in trust, with power of sale and right of entry and possession, the following property and rights, whether now owned or held or hereafter acquired (collectively, the "Trust Property") and Trustor further grants to Trustee a security interest in the Trust Property.

### GRANTING CLAUSE ONE

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

### GRANTING CLAUSE TWO

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

### GRANTING CLAUSE THREE

Any and all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located on the Land

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or any part thereof (collectively, the "Improvements"; the Land, the Additional Land and the Improvements hereinafter collectively referred to as the "Real Property").

#### GRANTING CLAUSE FOUR

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

#### GRANTING CLAUSE FIVE

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

#### GRANTING CLAUSE SIX

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

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

#### GRANTING CLAUSE SEVEN

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

#### GRANTING CLAUSE EIGHT

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

#### GRANTING CLAUSE NINE

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

#### GRANTING CLAUSE TEN

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



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**GRANTING CLAUSE ELEVEN**

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

**GRANTING CLAUSE TWELVE**

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

**GRANTING CLAUSE THIRTEEN**

All plans and specifications, maps, surveys, studies, reports, contracts, subcontracts, service contracts, management contracts, franchise agreements and other agreements, franchises, trade names, trademarks, symbols, service marks, approvals, consents, permits, special permits, licenses and rights, whether governmental or otherwise, respecting the use, occupation, development, construction and/or operation of the Real Property or any part thereof or the activities conducted thereon or therein, or otherwise pertaining to the Real Property or any part thereof.

**GRANTING CLAUSE FOURTEEN**

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

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

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

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

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

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

### PART I - GENERAL PROVISIONS

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

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

3. **Insurance; Casualty.**

(a) Trustor, at its sole cost and expense, shall keep the Trust Property insured during the term of this Deed of Trust for the mutual benefit of each Trustor, Trustee and Beneficiary against loss or damage by any peril covered by a standard "special perils" or "all-risk-of-physical-loss" insurance policy including, without limitation, riot and civil commotion, acts of terrorism, vandalism, malicious mischief, burglary, theft and mysterious disappearance in an amount (i) equal to at least one hundred percent (100%) of the then "full replacement cost" of the Improvements and Equipment, without deduction for physical depreciation and (ii) such that the insurer would not deem Trustor a coinsurer under such policies. The policies of insurance carried in accordance with this Paragraph 3 shall be paid annually in advance and shall contain the "Replacement Cost Endorsement" with a waiver of depreciation, and shall have a deductible no greater than \$10,000 unless so agreed by Beneficiary. In addition, Beneficiary may, at its option, retain the services of a firm to

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monitor the policies of insurance for conformance with this Deed of Trust, the cost of which shall be borne by Trustor.

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

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

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

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

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

(v) Such other insurance (including, without limitation, earthquake insurance) as may from time to time be reasonably required by Beneficiary in order to protect its interests or, in the event of a Secondary Market Transaction, as required by the Rating Agencies (as such terms are hereinafter defined).

(c) All policies of insurance (the "Policies") required pursuant to this Paragraph 3 (i) shall be issued by an insurer satisfactory to Beneficiary (and, in the event of a Secondary Market Transaction, to the Rating Agencies), (ii) shall contain the standard New York mortgagee non-contribution clause, or other mortgagee clause from the applicable insurer reasonably satisfactory to Beneficiary, naming Beneficiary as the person to which all

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payments made by such insurance company shall be paid, (iii) shall be maintained throughout the term of this Deed of Trust without cost to Beneficiary, (iv) shall be delivered to Beneficiary, (v) shall contain such provisions as Beneficiary deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Trustor, Trustee, Beneficiary nor any other party shall be a co-insurer under such Policies and that Beneficiary shall receive at least thirty (30) days prior written notice of any modification or cancellation and (vi) shall be satisfactory in form and substance to Beneficiary (and, in the event of a Secondary Market Transaction, to the Rating Agencies) and shall be approved by Beneficiary (and, in the event of a Secondary Market Transaction, by the Rating Agencies) as to amounts, form, risk coverage, deductibles, loss payees and insureds. All amounts recoverable thereunder are hereby assigned to Beneficiary. Not later than thirty (30) days prior to the expiration date of each of the Policies, Trustor will deliver to Beneficiary satisfactory evidence of the renewal of each of the Policies.

(d) If the Improvements shall be damaged or destroyed, in whole or in part, by fire or other casualty, Trustor shall give prompt notice thereof to Beneficiary and prior to the making of any repairs thereto. Following the occurrence of fire or other casualty, Trustor, regardless of whether insurance proceeds are payable under the Policies or, if paid, are made available to Trustor by Beneficiary, shall promptly proceed with the repair, alteration, restoration, replacement or rebuilding of the Improvements as near as possible to their value, utility, condition and character prior to such damage or destruction. Such repairs, alterations, restoration, replacement and rebuilding are herein collectively referred to as the "Restoration." The Restoration shall be performed in accordance with the following provisions:

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

(ii) Trustor shall furnish Beneficiary, within thirty (30) days of the casualty, evidence reasonably satisfactory to Beneficiary of the cost to complete the Restoration.

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

(iv) If the estimated cost of the Restoration shall exceed ten percent (10%) of the original principal amount of the Loan in the aggregate, at the request of

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Beneficiary, Trustor, before commencing any work, shall cause to be furnished to Beneficiary a surety bond or bonds, in form and substance reasonably satisfactory to Beneficiary, naming Trustor and Beneficiary as co-obligees, in an amount that is not less than the estimated cost of the Restoration, issued by a surety company or companies reasonably satisfactory to Beneficiary.

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

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

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

(viii) An Event of Default (as hereinafter defined) shall be deemed to have occurred under this Deed of Trust if Trustor, after having commenced demolition or construction of any Improvements, shall abandon such demolition or the construction work or shall fail to complete such demolition and construction within a reasonable time after the commencement thereof.

(e) Trustor and Beneficiary shall jointly adjust and settle all insurance claims, provided, however, if an Event of Default shall have occurred and be continuing, Beneficiary shall have the right to adjust and settle such claims without the prior consent of Trustor. In the event of any insured loss, the payment for such loss shall be made directly to Beneficiary. Any insurance proceeds payable under any of the Policies may, at the option of Beneficiary, be used in one or more of the following ways: (w) applied to the Indebtedness, whether such Indebtedness then be matured or unmatured (such application to be without prepayment fee or premium, except that if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred and remains uncured, then such application shall be subject to the applicable premium computed in accordance with the Note), (x) used to fulfill any of the covenants contained herein as Beneficiary may determine, (y) used to replace or restore the property to a condition satisfactory to Beneficiary, or (z) released to Trustor. Notwithstanding the foregoing, provided (i) not more than ten percent (10%) of the gross area of the Improvements is directly

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affected by such damage, destruction or loss and the amount of the loss does not exceed ten percent (10%) of the original principal amount of the Loan, (ii) no Event of Default or event that with the passage of time or giving of notice or both would constitute a default has occurred hereunder, under the Note or under any of the other Loan Documents and remains uncured at the time of such application, (iii) the insurer does not deny liability to any named insured, (iv) each major and/or anchor tenant (as determined by Beneficiary) whose Lease permits termination thereof as a result of such insured loss, agrees in writing to continue its Lease, (v) rental loss insurance is available and in force and effect to offset in full any abatement of rent to which any tenant may be entitled as a result of such damage, destruction or loss, (vi) the remaining Improvements continue at all times to comply with all applicable building, zoning and other land use laws and regulations, (vii) in Beneficiary's judgment, the Restoration is practicable and can be completed within one (1) year after the damage, destruction or loss and at least one (1) year prior to the Maturity Date (as such term is defined in the Note) and (viii) rebuilding of the Improvements to substantially identical size, condition and use as existed prior to the casualty is permitted by all applicable laws and ordinances, then all of such proceeds shall be used for Restoration. Any application of insurance proceeds to the Indebtedness shall be to the unpaid installments of principal due under the Note in the inverse order of their maturity, such that the regular payments under the Note shall not be reduced or altered in any manner. In the event the above criteria are satisfied (including that no Event of Default or event that, with the passage of time or giving of notice or both, would constitute a default has occurred hereunder, under the Note or other Loan Documents) or Beneficiary otherwise elects to allow the use of such proceeds for the Restoration, such proceeds shall be disbursed in accordance with the following provisions:

(i) Each request for an advance of insurance proceeds shall be made on seven (7) days' prior notice to Beneficiary and shall be accompanied by a certificate of the Architect, if one be required under Paragraph 3(d)(iii) above, otherwise by an executive officer or managing general partner or managing member of Trustor, stating (A) that all work completed to date has been performed in compliance with the approved plans and specifications and in accordance with all provisions of law, (B) the sum requested is properly required to reimburse Trustor for payments by Trustor to, or is properly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Restoration (giving a brief description of such services and materials), and that when added to all sums, if any, previously disbursed by Beneficiary, does not exceed the value of the work done to the date of such certificate and (C) that the amount of such proceeds remaining in the hands of Beneficiary will be sufficient on completion of the work to pay the same in full (giving, in such reasonable detail as Beneficiary may require, an estimate of the cost of such completion).

(ii) Each request for an advance of insurance proceeds shall, to the extent permitted under applicable law, be accompanied by waivers of liens satisfactory to Beneficiary covering that part of the Restoration previously paid for, if any, and by a search prepared by a title company or by other evidence reasonably satisfactory to Beneficiary

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including without limitation a title endorsement satisfactory to Beneficiary if available in the state where the Real Property is located, that there has not been filed with respect to the Real Property any mechanic's lien or other lien or instrument and that there exist no encumbrances on or affecting the Real Property other than the Permitted Encumbrances or otherwise approved by Beneficiary. In addition to the foregoing, the request for the final advance shall be accompanied by (A) any final occupancy permit which may be required for the Improvements, (B) all other governmental permits, certificates and approvals and all other permits necessary for the occupancy and operation of the Real Property, (C) Tenant estoppels from tenants whose space was affected and (D) final lien waivers from all contractors, subcontractors and materialmen.

(iii) No advance of insurance proceeds shall be made if there exists an Event of Default or event which with the passage of time or the giving of notice or both would constitute a default on the part of Trustor under this Deed of Trust, the Note or any other Loan Document.

(iv) If the cost of the Restoration (as reasonably estimated by Beneficiary) at any time shall exceed the amount of the insurance proceeds available therefor, insurance proceeds shall not be advanced until Trustor, before commencing the Restoration or continuing the Restoration, as the case may be, shall deposit the full amount of the deficiency (or other assurances reasonably satisfactory to Beneficiary) with Beneficiary and the amount so deposited shall first be applied toward the cost of the Restoration before any portion of the insurance proceeds is disbursed for such purpose.

Upon completion of the Restoration and payment in full therefor, or upon failure on the part of Trustor promptly to commence or diligently to continue the Restoration, or at any time upon request by Trustor, Beneficiary may apply the amount of any such proceeds then or thereafter in the hands of Beneficiary to the payment of the Indebtedness; provided, however, that nothing herein contained shall prevent Beneficiary from applying at any time the whole or any part of such proceeds to the curing of any default that has not been cured within the applicable cure period under this Deed of Trust, the Note or any other Loan Document.

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

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4. Payment of Taxes, Etc.

(a) Trustor shall pay all taxes, assessments, water rates and sewer rates and assessments, now or hereafter levied or assessed or imposed against the Trust Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including, without limitation, vault charges and license fees (collectively, "Other Charges") for the use of vaults, chutes and similar areas adjoining the Real Property, as same become due and payable. Trustor will deliver to Beneficiary, promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Taxes and Other Charges have been so paid and are not then delinquent. Trustor shall not suffer or permit any lien or charge (including, without limitation, any mechanic's lien) against all or any part of the Trust Property and Trustor shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Trust Property. Trustor shall promptly pay for all utility services provided to the Trust Property. In addition, Beneficiary may, at its option, retain the services of a firm to monitor the payment of Taxes, the cost of which shall be borne by Trustor.

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



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5. Reserve Fund.

(a) Tax and Insurance Fund. If required by Beneficiary, Trustor shall pay to Beneficiary on the first day of each calendar month such amounts as Beneficiary from time to time estimates to be sufficient to create and maintain a reserve fund from which (i) to pay the Taxes and Other Charges, at least thirty (30) days prior to the date they are due without the payment of any penalties or interest, and (ii) to pay, at least thirty (30) days prior to their due date for the renewal of the coverage afforded by the Policies upon the expiration thereof, the insurance premiums for the Policies estimated by Beneficiary to be payable on such due date, (said amounts in (i) and (ii) above hereafter called the "Tax and Insurance Fund").

Notwithstanding the foregoing, Trustor will not be required to fund and maintain a reserve fund for real estate taxes and hazard insurance premiums so long as each and all of the following conditions are satisfied:

(i) No Event of Default has occurred and is continuing beyond any applicable notice or cure period;

(ii) Pinebrook, L.L.C. ("Original Trustor") remains the owner of the Trust Property;

(iii) Trustor complies with all obligations set forth herein or in any other Loan Document regarding real estate taxes and insurance, including without limitation, providing Beneficiary with timely evidence that (1) the required real estate taxes and other charges are paid at least thirty (30) days prior to the date they are due and prior to the assessment of any penalties or interest, (2) the required insurance is in place for the Trust Property and is never delinquent or suspended, and (3) all insurance premiums are paid in full.

Unless expressly provided for herein or in any other Loan Document, the foregoing provision does not affect the obligation of Trustor to fund and maintain a reserve fund for any other item specified herein or in any other Loan Document.

(b) Replacement Reserve Fund. If required by Beneficiary, Trustor shall enter into a Replacement Reserve Agreement which shall require Trustor to pay to Beneficiary on the first day of each calendar month one twelfth (1/12) of the amount reasonably estimated by Beneficiary to be due for the replacements and capital repairs required to be made to the Trust Property during each calendar year (the "Replacement Reserve Fund"). Beneficiary shall make disbursements from the Replacement Reserve Fund for items specified in the Replacement Reserve Agreement as set forth in such Agreement. Beneficiary may require an inspection of the Trust Property prior to making a disbursement in order to verify completion of replacements and repairs. Beneficiary reserves the right to make any disbursement from the Replacement Reserve Fund directly to the party furnishing materials and/or services.

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(c) Tenant Improvement and Leasing Commission Reserve. If required by Beneficiary, Trustor shall enter into a Tenant Improvement and Leasing Commission Agreement which shall require Trustor to pay to Beneficiary on the first day of each calendar month deposits for tenant improvements and leasing commissions in amounts determined by Beneficiary in its sole discretion, for payment of costs and expenses incurred by Trustor in connection with the performance of work to refit and release space in the Improvements that is currently vacant or anticipated to be vacated during the term of the Loan, and for payment of leasing commissions incurred by Trustor in connection with the releasing of space in the Improvements that is currently vacant or anticipated to be vacated during the term of the Loan (the "Tenant Improvement and Leasing Commission Reserve Fund"), all according to the Tenant Improvement and Leasing Commission Agreement.

(d) Repair and Remediation Reserve Fund. If required by Beneficiary, Trustor shall enter into a Reserve Agreement for Repairs and shall pay to Beneficiary the estimated cost to complete any required repairs (the "Repair and Remediation Reserve Fund") as more fully set forth in said Agreement.

The amounts in (a), (b), (c) and (d) above shall hereinafter be collectively called the "Reserve Fund." Trustor hereby pledges to Beneficiary any and all monies now or hereafter deposited as the Reserve Fund as additional security for the payment of the Indebtedness. Beneficiary may apply the Reserve Fund to payments of Taxes, Other Charges, insurance premiums and, as applicable, payments for replacements and capital repairs, tenant improvements and leasing commissions and repairs and remediations required to be made by Trustor pursuant to the terms hereof or pursuant to the terms of any other Loan Documents (even though subsequent owners of the Trust Property may benefit thereby); provided, however, if there is an Event of Default which is continuing, then Beneficiary may credit such Reserve Fund against the Indebtedness in such priority and proportions as Beneficiary in its discretion shall deem proper. If the Reserve Fund is not sufficient to fully pay for the Taxes, Other Charges and/or the insurance premiums or, as applicable, amounts for replacements and capital repairs, tenant improvements and leasing commissions and repairs and remediation when due, Trustor shall promptly pay to Beneficiary, upon demand, an amount which Beneficiary shall estimate as sufficient to make up the deficiency. The Reserve Fund shall not constitute a trust fund and may be commingled with other monies held by Beneficiary. No earnings or interest on the Reserve Fund shall be payable to Trustor.

6. Condemnation. Trustor shall promptly give Beneficiary and Trustee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Beneficiary and Trustee copies of any and all papers served in connection with such proceedings. Following the occurrence of a condemnation, Trustor, regardless of whether an award is available, shall promptly proceed to restore, repair, replace or rebuild the Improvements to the extent practicable to be of at least equal value and of substantially the same character as prior to such condemnation, all to be effected in accordance with applicable law. Notwithstanding any taking by any public or quasi-public

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authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Trustor shall continue to pay the Indebtedness at the time and in the manner provided for its payment in the Note, in this Deed of Trust and the other Loan Documents and the Indebtedness shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Beneficiary to the discharge of the Indebtedness. Trustor shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Trustor, to be paid directly to Beneficiary. Beneficiary may, at Beneficiary's election, use the award in any one or more of the following ways: (a) apply any such award or payment (for purposes of this Paragraph 6, the award or payment that may be made in any condemnation or eminent domain proceeding shall mean the entire award allocated to Trustor in any capacity) to the discharge of the Indebtedness whether or not then due and payable (such application to be without prepayment fee or premium, except that if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the applicable premium computed in accordance with the Note), (b) use the same or any part thereof to fulfill any of the covenants contained herein as Beneficiary may determine, (c) use the same or any part thereof to replace or restore the Trust Property to a condition satisfactory to Beneficiary, or (d) release the same to Trustor. If the Trust Property is sold, through foreclosure or otherwise, prior to the receipt by Beneficiary of such award or payment, Beneficiary shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment or a portion thereof sufficient to pay the Indebtedness.

7. Leases and Rents.

(a) Trustor does hereby absolutely and unconditionally assign to Beneficiary Trustor's right, title and interest in all current and future Leases and Rents and all proceeds from the sale, cancellation, surrender or other disposition of the Leases, it being intended by Trustor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Beneficiary shall not be construed to bind Beneficiary to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise to impose any obligation upon Beneficiary. Trustor agrees to execute and deliver to Beneficiary such additional instruments in form and substance satisfactory to Beneficiary, as may hereafter be requested by Beneficiary to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Paragraph 7, Beneficiary grants to Trustor a revocable license to operate and manage the Trust Property and to collect the Rents. Trustor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Indebtedness, in trust for the benefit of Beneficiary for use in the payment of such sums. The grant of the foregoing license is subject to the provisions of Paragraph 1 of the separate Assignment of Leases and Rents of even date herewith granted by Trustor as "Assignor" to Beneficiary as "Assignee" with respect to the Trust Property ("Assignment of Leases and Rents"). Upon the occurrence of an

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Event of Default, the license granted to Trustor herein shall be automatically revoked and Beneficiary shall immediately be entitled to possession of all Rents, whether or not Beneficiary enters upon or takes control of the Trust Property. Beneficiary is hereby granted and assigned by Trustor the right, at its option, upon the revocation of the license granted herein to enter upon the Trust Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Indebtedness in such priority and proportion as Beneficiary in its discretion shall deem proper. It is further the intent of Trustor and Beneficiary that the Rents hereby absolutely assigned are no longer, during the term of this Deed of Trust, property of Trustor or property of any estate of Trustor as defined in Section 541 of the Bankruptcy Code and shall not constitute collateral, cash or otherwise, of Trustor. The term "Rents" as used herein shall mean the gross rents without deduction or offsets of any kind.

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

Upon foreclosure of this Deed of Trust (whether pursuant to the power of sale which is available under this Deed of Trust or pursuant to foreclosure of this Deed of Trust as a mortgage), no lease then affecting the Trust Property shall be terminated by application of the doctrine of merger, or as a matter of law, or as a result of such foreclosure, unless Beneficiary or the purchaser at the foreclosure sale shall so elect in writing. No act by or on behalf of Beneficiary, Trustee, or any such purchaser shall constitute or result in termination of any such lease unless Beneficiary or such purchaser shall give written notice of such termination to the tenant or lessee thereunder.

(c) Trustor shall not, without the prior consent of Beneficiary, (i) lease all or any part of the Trust Property, (ii) alter or change the terms of any Lease or cancel or terminate, abridge or otherwise modify the terms of any Lease, (iii) consent to any assignment of or subletting under any Lease not in accordance with its terms, (iv) cancel, terminate, abridge or otherwise modify any guaranty of any Lease or the terms thereof, (v) collect or accept prepayments of installments of Rents for a period of more than one (1) month in advance or (vi) further assign the whole or any part of the Leases or the Rents; provided, however, the actions described in subparagraphs (i)-(iv) above may be taken if the taking of such action is in the ordinary course of Trustor's business for Leases for less than 1,300 square feet and terms of less than two (2) years and all such actions are still subject to Paragraph 1 of the separate Assignment of Leases and Rents pertaining to Termination Amounts.

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(d) With respect to each Lease, Trustor shall (i) observe and perform each and every provision thereof on the lessor's part to be fulfilled or performed under each Lease and not do or permit to be done anything to impair the value of the Lease as security for the Loan, including surrender or voluntary termination of any Lease, (ii) promptly send to Beneficiary copies of all notices of default which Trustor shall send or receive thereunder, (iii) enforce all of the terms, covenants and conditions contained in such Lease upon the lessee's part to be performed, short of termination thereof, (iv) execute and deliver, at the request of Beneficiary, all such further assurances, confirmations and assignments in connection with the Trust Property as Beneficiary shall, from time to time, require and (v) upon request, furnish Beneficiary with executed copies of all Leases; provided, however, the notice to Beneficiary referenced in subparagraph (ii) above and the restriction on termination of a Lease in connection with the enforcement of its terms, covenants and conditions set forth in (iii) above shall not be required or apply, as the case may be, for residential leases for less than 1,300 square feet and terms of less than two (2) years in an apartment complex or mobile home facility. Upon the occurrence of any Event of Default under this Deed of Trust, Trustor shall pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of the Trust Property or part of the Trust Property as may be occupied by Trustor or any one Trustor and upon default in any such payment Trustor shall vacate and surrender possession of the Trust Property to Beneficiary or to such receiver and, in default thereof, Trustor may be evicted by summary proceedings or otherwise.

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

8. **Maintenance and Use of Trust Property.** Trustor shall, at its sole cost and expense, keep and maintain the Trust Property, including, without limitation, parking lots and recreational and landscaped portions thereof, if any, in good order and condition. The

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

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shall become a nonconforming use, Trustor will not cause or permit such nonconforming use to be discontinued or abandoned without the express consent of Beneficiary. Trustor covenants and agrees that it shall operate the Trust Property at all times as a first-class apartment complex.

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

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

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

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or any indemnitor of environmental liabilities, is an entity, whether one of the above-mentioned entities or not, any change in the ownership or control of such entity, any merger, consolidation or dissolution or syndication affecting such entity, or the transfer, sale, assignment or pledge of any interest in such entity or in any person, directly or indirectly, controlling such entity or in any general partner or managing member thereof, whether at one time or in a series of related transactions.

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

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

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

(f) Notwithstanding the foregoing, Beneficiary shall permit a one-time sale or transfer of the Trust Property, provided that:

(i) no Event of Default, or event which with the giving of notice or passage of time would constitute an Event of Default, has occurred and remains uncured;

(ii) the proposed transferee ("Transferee"), the proposed guarantors of Recourse Obligations, any other proposed guarantors, and the proposed indemnitors of environmental liabilities shall be reputable entities or persons of good character, creditworthy, with sufficient financial worth considering the obligations assumed and undertaken, as evidenced by financial statements and other information reasonably requested by Beneficiary;

(iii) the Transferee and its property manager shall have sufficient experience in the ownership and management of properties similar to the Trust Property, and



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Beneficiary shall be provided with reasonable evidence thereof (and Beneficiary reserves the right to approve the Transferee without approving the substitution of the property manager);

(iv) Beneficiary has received a written request for approval from Trustor at least sixty (60) days prior to the proposed transfer (including a description of the proposed terms of the transfer), together with a diagram showing the legal structure of the Transferee, the proposed guarantors of Recourse Obligations, any other guarantors, and the proposed indemnitors of environmental liabilities and all of the constituent entities of each, after the contemplated transfer, and a list of the names, types of interests and ownership percentages of all persons to have ownership interests in any of the foregoing or any constituent entity thereof, financial statements for all such entities and an administrative fee of \$5,000, which shall be deemed fully earned on the date of receipt and shall be retained by Beneficiary regardless of whether or not the transfer occurs and whether or not approval is given;

(v) Beneficiary and its counsel have received (aa) certification from Trustor and the Transferee that the proposed terms of the transfer described in subparagraph 9(f)(iv) are the actual terms of the transfer, (bb) evidence of casualty insurance and other applicable insurance, (cc) all corporate, partnership or other entity documents and (dd) all other certificates, legal opinions, title materials and other documents which Beneficiary may require, all in form and substance satisfactory to Beneficiary, at least thirty (30) days prior to the proposed transfer;

(vi) the debt service coverage ratio for the Loan is not less than 1.56:1.0, as calculated to the satisfaction of Beneficiary, and the loan-to-value ratio of the Loan to the Trust Property does not exceed 62.00%, calculated to the satisfaction of Beneficiary;

(vii) Beneficiary be provided satisfactory evidence concerning the effect of any change in the real estate taxes to result from the sale and the effect of such change on the ability of the Trust Property to generate a cash flow sufficient to pay the debt service on the Loan and to maintain a debt service coverage ratio satisfactory to Beneficiary;

(viii) to the extent applicable, Beneficiary shall have received in writing evidence from the Rating Agencies to the effect that such transfer will not result in a re-qualification, reduction or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction together with such legal opinions as may be requested by the Rating Agencies. The term "Rating Agencies" as used herein shall mean each of Standard & Poor's Ratings Group, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., Fitch Investors Service, Inc. or any other nationally-recognized statistical rating agency who shall then be rating the certificates or securities issued in connection with the Secondary Market Transaction;

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(ix) the Transferee and its constituent entities shall comply with all of the Single Purpose Entity/Separateness requirements set forth in Paragraph 19 hereof;

(x) the Transferee shall have executed and delivered to Beneficiary an assumption agreement in form and substance acceptable to Beneficiary, evidencing such Transferee's agreement to abide and be bound by the terms of the Note, this Deed of Trust and the other Loan Documents, together with an executed guaranty of Recourse Obligations and any other guaranty from an approved guarantor and an executed separate environmental indemnity agreement from an approved indemnitor, both in form and substance acceptable to Beneficiary, and such legal opinions and title insurance endorsements as may be reasonably requested by Beneficiary;

(xi) Beneficiary shall have received an assumption fee equal to one percent (1%) of the then unpaid principal balance of the Note in addition to the payment of all costs and expenses incurred by Beneficiary in connection with such assumption (including reasonable attorney's fees and costs); and

(xii) the Transferee shall be able to make the representations and warranties set forth in Paragraph 18(h) of this Deed of Trust.

In the event all of the foregoing conditions are satisfied and Beneficiary consents to the sale or transfer, Beneficiary agrees to release (aa) the transferor Trustor and the prior guarantors of Recourse Obligations with respect to matters first arising solely after the transfer, and (bb) the prior indemnitors of environmental liabilities with respect to a presence and/or release which first occurs solely after the transfer; provided, however, the transferor Trustor, the prior guarantors and the prior indemnitors, respectively, shall have the burden of proving that all the conditions in this Paragraph 9 (including, without limitation, the time as to which matters described herein arose) were satisfied by clear and convincing evidence and shall continue to defend with counsel satisfactory to Beneficiary and shall indemnify and hold Beneficiary harmless for all matters set forth in Paragraph 39 and in the Recourse Obligations unless and until a court of competent jurisdiction finds that such transferor Trustor, prior guarantors or prior indemnitors, respectively, met such burden.

(g) Notwithstanding the foregoing, as long as all of the Internal Transfer Conditions (as defined below) are satisfied prior to and after any of the following transfers, it shall not be a default hereunder for any member of Trustor to transfer ownership interests in Trustor for estate planning purposes (the "Internal Transfers").

The term "Internal Transfer Conditions" shall mean that all of the following are satisfied:

1. No uncured Event of Default shall have occurred under the Loan Documents;

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2. After taking into account any prior transfers pursuant to this Paragraph 9, whether to the proposed transferee or otherwise, no such transfer (or series of transfers) shall result in the proposed transferee, an Affiliate (as defined below) of such transferee and his/her Family Member owning (directly or indirectly) more than 49% of the interest in Trustor (except as to D-VIII Family LLC and Dale L. Rindlisbacher);

3. No such transfer of interest shall result in a change of control of Trustor or the day-to-day operations of the Trust Property and Dale L. Rindlisbacher shall continue to own at least 51% direct or indirect ownership interests in Trustor and shall continue to control Trustor and the day-to-day operations of the Trust Property;

4. Without limiting the foregoing, no such transfer, either singly or in the aggregate with other transfers, will result in a violation of the special purpose entity provisions under the Loan Documents hereof or Trustor's organizational documents;

5. Trustor shall provide to Beneficiary with (a) prior written notice of each such transfer; (b) a diagram showing the structure of the Trustor and all constituent entities after the contemplated transfer; (c) a list of the names, types of interest and percentages of ownership of all owners of interests in the Trustor and any constituent entities after such transfer; and (d) an administrative fee of \$5,000, which shall be deemed fully earned upon receipt; and

6. Trustor shall pay all fees and costs in connection with such transfer, including without limitation Beneficiary's attorneys' fees.

"Family Member" shall mean an individual's immediate family members (spouse, brothers and sisters (whether by the whole or half blood), and ancestors or lineal descendants by birth or adoption) and/or any (i) trusts for the benefit of any immediate family member, (ii) partnership in which an immediate family member is a general partner, (iii) limited partnership in which an immediate family member is a general partner, (iv) limited liability company in which an immediate family member is a managing member, or (v) corporation in which an immediate family member is an officer, director, or controlling (as defined below) shareholder.

The term "control" or "controlling" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities or other interests, by contract or otherwise.

"Affiliate" shall mean in the case of a corporate grantor, any person or entity other than the special purpose, bankruptcy remote corporation serving as the Grantor (the

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“Corporation”), (i) which owns beneficially, directly or indirectly, any outstanding shares of the Corporation’s stock, or (ii) which controls or is under common control with the Corporation. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

“Affiliate” shall mean in the case of a corporate general partner of a limited partnership grantor (the “Partnership”), any person or entity other than the special purpose, bankruptcy remote corporate general partner of the Partnership (the “Corporation”), (i) which owns beneficially, directly or indirectly, any outstanding shares of the Corporation’s stock or any partnership interest in the Partnership, or (ii) which controls or is under common control with the Corporation or the Partnership. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

“Affiliate” shall mean in the case of a corporate member of a limited liability company grantor (“LLC”), any person or entity other than the special purpose, bankruptcy remote corporation serving as a member of the LLC (the “Corporation”), (i) which owns beneficially, directly or indirectly, any outstanding shares of the Corporation’s stock or any membership interest in the LLC, or (ii) which controls or is under common control with the Corporation or the LLC. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

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

#### 10. Estoppel Certificates.

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

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(b) Trustor, after request by Beneficiary, will obtain and furnish (within the time periods, if any, provided in the applicable Leases or if no time period is so specified, within ten (10) business days after request) Beneficiary from time to time with estoppel certificates from any tenants under then existing Leases, which certificates shall be in form and substance as required by such Leases, or if not required, then in form and substance reasonably satisfactory to Beneficiary.

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

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

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

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

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

16. **Books and Records.**

(a) Trustor will maintain full, accurate and complete books of accounts and other records reflecting the results of the operations of the Trust Property as well as its other operations and will furnish, or cause to be furnished, to Beneficiary the following:

(i) within ninety (90) days after the end of each fiscal year, Trustor will furnish to Beneficiary, a statement of Trustor's financial condition, including a balance sheet and profit and loss statement, and a statement of annual income and expenses satisfactory in form and substance to Beneficiary in connection with the operation of the Trust Property, in detail satisfactory to Beneficiary, prepared by, audited and certified by a certified public accountant who is a member of the American Institute of Certified Public Accountants and, in addition, within forty-five (45) days after the end of each fiscal quarter of Trustor, Trustor shall provide the above information except that it may be prepared and certified by the financial officer of Trustor who is responsible for the preparation of such annual financial statements. Notwithstanding the foregoing, until an Event of Default exists which has not been cured within the applicable cure period (provided a cure period exists), Beneficiary will accept the statement of annual income and expense described above prepared and certified by Trustor, Trustor's accountant or a financial officer of Trustor, provided that the statement certified by a public accountant is not available.

(ii) accompanying the submission of the certified statements of annual and quarterly income and expenses, when the Trust Property is a mobile home park, multi-family property, congregate care property or a self-storage facility, shall be a certified current rent roll, which shall include, among other things, each building designation, unit number, type of unit, tenant names, lease commencement and expiration dates, monthly rent collected, asking market rent and any and all other fees paid by tenants, including but not limited to utility reimbursements and security deposits currently held.

(iii) accompanying the submission of the certified statements of annual and quarterly income and expenses shall be such additional financial information as Beneficiary shall require.

(b) Beneficiary shall have the right, upon five (5) days' prior notice to Trustor, to inspect and make copies of Trustor's books and records and income tax returns and notices.

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(c) In the event of a Secondary Market Transaction, Trustor shall furnish from time to time such information relating to Trustor and the Trust Property as shall be requested by the Rating Agencies.

(d) If any of the materials described in Paragraph 16(a) and (b) that are required to be delivered to Beneficiary is not timely delivered, Trustor shall promptly pay to Beneficiary, as a late charge, the sum of \$500 per item. In addition, Trustor shall promptly pay to Beneficiary an additional late charge of \$500 per item for each full month during which such item remains undelivered following written notice from Beneficiary. Trustor acknowledges that Beneficiary will incur additional expenses as a result of any such late deliveries, which expenses would be impracticable to quantify, and that Trustor's payments under this Paragraph are a reasonable estimate of such expenses.

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

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

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

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

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

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(d) The Trust Property is not subject to any Leases other than the Leases described in the rent roll delivered to Beneficiary in connection with this Deed of Trust. No person has any possessory interest in the Trust Property or right to occupy the same except under and pursuant to the provisions of the Leases. Except as otherwise disclosed in writing to Beneficiary, the current Leases are in full force and effect and there are no defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. Except as otherwise disclosed in writing to Beneficiary, all presently existing Leases are subordinate to this Deed of Trust.

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

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

(g) The Amended and Restated Property Management Agreement dated March 31, 2008 (the "Management Agreement") between Trustor and Bach Property Management Services, LLC ("Manager") pursuant to which Manager operates the Trust Property (a true, correct and complete copy of which has been delivered to Beneficiary) is in full force and effect and there is no default or violation by any party thereunder. The fee due under the Management Agreement, and the terms and provisions of the Management Agreement, are subordinate to this Deed of Trust and the Manager shall attorn to Beneficiary. Trustor shall not terminate, cancel, modify, renew or extend the Management Agreement, or enter into any agreement relating to the management or operation of the Trust Property with Manager or any other party without the express written consent of Beneficiary, which consent shall not be unreasonably withheld. If at any time Beneficiary consents to the appointment of a new manager, such new manager and Trustor shall, as a condition of Beneficiary's consent, execute a Manager's Consent and Subordination of Management Agreement in the form then used by Beneficiary.

(h) Improper Financial Transactions.

(i) Trustor is, and shall remain at all times, in full compliance with all applicable laws and regulations of the United States of America that prohibit, regulate or restrict financial transactions, and any amendments or successors thereto and any applicable regulations promulgated thereunder (collectively, the "Financial Control Laws"), including



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but not limited to those related to money laundering offenses and related compliance and reporting requirements (including any money laundering offenses prohibited under the Money Laundering Control Act, 18 U.S.C. Sections 1956, 1957 and the Bank Secrecy Act, 31 U.S.C. Sections 5311 *et seq.*) and the Foreign Assets Control Regulations, 31 C.F.R. Section 500 *et seq.*

(ii) Trustor represents and warrants that: (i) Trustor is not a Barred Person (hereinafter defined); (ii) Trustor is not owned or controlled, directly or indirectly, by any Barred Person; and (iii) Trustor is not acting, directly or indirectly, for or on behalf of any Barred Person.

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

(iv) Under any provision of this Deed of Trust or any of the other Loan Documents where Beneficiary shall have the right to approve or consent to any particular action, including without limitation any (i) sale, transfer, assignment of the Trust Property or of any direct or indirect ownership interest in Trustor, (ii) leasing of the Trust Property, or any portion thereof, or (iii) incurring of additional financing secured by Trust Property, or any portion thereof or by any direct or indirect ownership interest in the Trustor, Beneficiary shall have the right to withhold such approval or consent, in its sole discretion, if the granting of such approval or consent could be construed as a violation of any of the Financial Control Laws.

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

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

19. Single Purpose Entity/Separateness. Trustor represents, warrants and covenants as follows:

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(a) The purpose for which Trustor is organized shall be limited solely to (A) owning, holding, selling, leasing, transferring, exchanging, operating and managing the Trust Property, (B) entering into the Loan with Beneficiary, (C) refinancing the Trust Property in connection with a permitted repayment of the Loan, and (D) transacting any and all lawful business for which a Trustor may be organized under the laws of the state of its formation that is incident, necessary and appropriate to accomplish the foregoing.

(b) Trustor does not own and will not own any asset or property other than (i) the Trust Property, and (ii) incidental personal property necessary for and used in connection with the ownership or operation of the Trust Property.

(c) Trustor will not engage in any business other than the ownership, management and operation of the Trust Property.

(d) Trustor will not enter into any contract or agreement with any affiliate of Trustor, any constituent party of Trustor, any owner of Trustor, the Guarantors (as hereinafter defined) or any affiliate or any constituent party of Guarantor, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties not affiliated with Trustor or any constituent party of Trustor or any owner of Trustor.

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

(f) Trustor has not made and will not make any loans or advances to any entity or person (including any affiliate or any constituent party of Trustor or any owner of Trustor, any Guarantor or any affiliate or any constituent party of Guarantor), and shall not acquire obligations or securities of its affiliates or any constituent party.

(g) Trustor is and intends to remain solvent and Trustor will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(h) Trustor has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Trustor will not, nor will Trustor permit any constituent party of Trustor or any owner of Trustor or any Guarantor to amend, modify or otherwise change the partnership certificate, partnership agreement, articles

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of incorporation and bylaws, operating agreement, trust or other organizational documents of Trustor or such constituent party or Guarantor without the written consent of Beneficiary.

(i) Trustor will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. Trustor's assets will not be listed as assets on the financial statement of any other entity. Trustor shall have its own separate financial statement, provided, however, that Trustor's assets may be included in a consolidated financial statement of its parent companies if inclusion on such a consolidated statement is required to comply with the requirements of generally accepted accounting principles ("GAAP"), provided that such consolidated financial statement shall contain a footnote to the effect that Trustor's assets are owned by Trustor and that they are being included on the financial statement of its parent solely to comply with the requirements of GAAP, and further provided that such assets shall be listed on Trustor's own separate balance sheet. Trustor will file its own tax returns and will not file a consolidated federal income tax return with any other corporation. Trustor shall maintain its books, records, resolutions and agreements as official records.

(j) Trustor will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Trustor, any constituent party of Trustor, any Guarantor or any affiliate or any constituent party of Guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize separate telephone numbers, stationery, invoices and checks.

(k) Trustor has and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(l) Neither Trustor nor any constituent party will seek the dissolution, winding up, liquidation, consolidation or merger, in whole or in part, or the sale of material assets of Trustor.

(m) Trustor will not commingle the funds and other assets of Trustor with those of any affiliate or any constituent party of Trustor or any owner of Trustor, any Guarantor, or any affiliate or any constituent party of Guarantor, or any other person, and will not participate in a cash management system with any such party.

(n) Trustor will not commingle its assets with those of any other person or entity and will hold all of its assets in its own name.

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(o) Trustor will not guarantee or become obligated for the debts of any other entity or person and does not and will not hold itself out as being responsible for the debts or obligations of any other person.

(p) Trustor shall allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate.

(q) The stationery, invoices and checks utilized by Trustor or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being its agent.

(r) Trustor shall not pledge its assets for the benefit of any other person or entity, and other than with respect to the Loan.

(s) Trustor shall correct any known misunderstanding regarding its separate identity.

(t) Trustor shall not identify itself as a division of any other person or entity.

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

(a) if (i) any installment of interest or principal is not paid within five (5) days after the same is due, (ii) the entire Indebtedness is not paid on or before the Maturity Date (or if the Maturity Date has been accelerated, upon such acceleration), or (iii) any other payment or charge due under the Note, this Deed of Trust or any other Loan Documents is not paid when due;

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

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

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

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

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

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

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

(i) if any Guaranty (as hereinafter defined) is terminated or any event or condition occurs which, in the sole judgment of Beneficiary, may impair the ability of any Guarantor to perform its obligations under any Guaranty, any default occurs under any Guaranty that is not cured as may be provided therein, or any Guarantor attempts to withdraw, cancel or disclaim any Guaranty;

(j) if a default by Trustor under any of the other terms, covenants or conditions of the Note, this Deed of Trust or any other Loan Document shall occur and such default shall not have been cured within thirty (30) days after notice from Beneficiary, provided that if such default is not susceptible of being cured within such thirty (30) day period and Trustor shall have commenced the cure of such default within such thirty (30) day period and thereafter diligently pursues such cure to completion, then such thirty (30) day period shall be extended for a period of ninety (90) days from the occurrence of the default, provided, further, that the notice and grace period set forth in this subparagraph (j) shall not apply to any other Event of Default expressly set forth in this Paragraph 20 or to any other Event of Default defined as such in any other Loan Document or to any other covenant or condition with respect to which a grace period is expressly provided elsewhere; or

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

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

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

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

**21. Additional Remedies.**

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

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shall continue as a lien on the remaining portion of or estate in the Trust Property, or (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note or any other Loan Document, or (vi) recover judgment on the Note or any Guaranty either before, during or after any proceedings for the enforcement of this Deed of Trust, or (vii) pursue such other remedies as Beneficiary may have under applicable law.

For purposes of *Utah Code Annotated* Section 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premium and similar amounts, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Trust Property, and (ii) Beneficiary may add all default interest, late charges, any prepayment premium and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Trust Property pursuant to this Deed of Trust.

(b) The purchase money proceeds or avails of any sale made under or by virtue of this Paragraph 21, together with any other sums which then may be held by Beneficiary under this Deed of Trust, whether under the provisions of this Paragraph 21 or otherwise, shall be applied as follows:

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

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

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

Fourth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same or, at Trustee's discretion (if the sale in question was made by Trustee), any surplus may be deposited with the Clerk of the District Court for the county in which the sale took place.

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

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(c) All procedural matters relating to exercise of the power of sale available under this Deed of Trust (such as the manner of giving notice of default and notice of sale, the forms employed for such purpose, the persons to receive notice, the time which must elapse between various stages of the proceeding, and the manner in which the sale is conducted) shall be governed by the statutory law that is in effect at the time said power is exercised. In the event some or all of such procedural matters are not covered by then-effective legislation, the matters not covered shall be governed by the law which is in effect at the time this Deed of Trust is executed. Beneficiary may adjourn or postpone from time to time any sale by Trustee to be made under or by virtue of this Deed of Trust by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Beneficiary, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by Trustee under or by virtue of this Paragraph 21, Trustee, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or other instrument, or good and sufficient deed or other instruments, conveying, assigning and transferring the property and rights sold. Each such deed or other instrument from Trustee may contain recitals of compliance with any requirements of applicable law relating to exercise of the power of sale or to the sale. Such recitals shall constitute conclusive evidence of such compliance in favor of bona fide purchasers and encumbrancers for value and prima facie evidence thereof in favor of all other persons. Each such deed or other instrument from Trustee shall operate to convey to the grantee or transferee, not subject to any right of redemption, the Trustee's title and all right, title, interest and claim of Trustor, of its successors in interest, and of all persons claiming by, through, or under them, in and to that part of the Trust Property sold, including any and all right, title, interest or claim in and to such part which may have been acquired by Trustor or its successors in interest subsequent to the execution of this Deed of Trust. Any sale or sales made under or by virtue of this Paragraph 21, whether made by Trustee under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Trustor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Trustor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Trustor.

(e) In the event of any sale made under or by virtue of this Paragraph 21 (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale) the entire Indebtedness, if not previously due and payable, immediately thereupon shall, anything in the Note, this Deed of Trust, any Guaranty or any other Loan Document to the contrary notwithstanding, become due and payable.



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(f) Upon any sale made under or by virtue of this Paragraph 21 (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Beneficiary may bid for and acquire the Trust Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust.

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

(h) Trustor hereby authorizes Trustee, upon its being presented with an Affidavit signed by Beneficiary setting forth facts showing an Event of Default under this Deed of Trust, to accept as true and conclusive all facts and statements contained therein and to rely and act thereon.

(i) If this Deed of Trust is foreclosed judicially, as a mortgage, Beneficiary shall be entitled to possession of the property sold during any period of redemption. Trustor hereby waives any right it or its successors in interest may have in the event of acceleration or entry of a decree of foreclosure to obtain a partial release of the Trust Property from the lien of this Deed of Trust by paying less than the entire amount then secured hereby or to partially redeem the Trust Property by paying less than the amount necessary to effect redemption in full.

**22. Right to Cure Defaults.** Upon the occurrence of any Event of Default or if Trustor fails to make any payment or to do any act as herein provided, Beneficiary may, but without any obligation to do so and without notice to or demand on Trustor and without releasing Trustor from any obligation hereunder, make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Without limiting the foregoing, Beneficiary may enter upon the Trust Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Trust Property, and the cost and expense thereof (including, without limitation, attorneys' fees and disbursements to the extent permitted by law), with interest as provided in this Paragraph 22, shall be immediately due and payable to Beneficiary upon demand by Beneficiary therefor. All such costs and expenses incurred by Beneficiary in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (as such term is defined in the Note), for the period from the date that such cost or expense was incurred to the date of payment to Beneficiary. All such costs and expenses, together with interest thereon at the Default Rate, shall be added to the Indebtedness and shall

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be secured by this Deed of Trust. If the principal sum of the Note or any other amount required to be paid on the Maturity Date under the Note shall not be paid on the Maturity Date, interest shall thereafter be computed and paid at the Default Rate.

23. **Late Payment Charge.** If any monthly principal and interest payment is not paid in accordance with the Note, a late charge (the "Late Charge") shall be due as provided for in the Note.

24. **Prepayment.** The Indebtedness may be prepaid only in accordance with the terms of the Note.

25. **Prepayment After Event of Default.** A tender of the amount necessary to satisfy the entire indebtedness, paid at any time following an Event of Default or acceleration (which acceleration shall be at Beneficiary's sole option), including at a foreclosure sale or during any subsequent redemption period, if any, shall be deemed a voluntary prepayment, which payment shall include a premium, the calculation of which shall be in accordance with the terms of the Note and shall depend upon whether the Event of Default or acceleration first occurred (i) prior to the time, if any, the prepayment of the principal balance is not permitted pursuant to the terms of the Note and prior to the date on which the full amount of the balance of principal and interest then remaining unpaid shall be due or (ii) on or after the date on which prepayment of the principal balance is permitted pursuant to the terms of the Note.

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

27. **Security Agreement.**

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

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and shall cover all items of the Collateral that are or are to become fixtures. Information concerning the security interest(s) herein granted may be obtained from Beneficiary upon request.

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

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

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

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**28. Authority.**

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

(b) Trustor represents and warrants to Beneficiary that Trustor is not a "foreign person" and covenants with Beneficiary that Trustor will not, throughout the term of the Note, become a "foreign person" within the meaning of §1445 and §7701 of the Internal Revenue Code of 1986, (26 USC §§1445, 7701) and the related Treasury Department regulations, including, without limitation, temporary regulations (hereinafter collectively the "Code"); that is, such Trustor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code.

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

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

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

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limitation such rights and remedies available to Beneficiary and Trustee pursuant to this Paragraph 30.

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

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

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

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

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

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

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

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

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and costs incurred in the investigation, defense and settlement of claims) that Beneficiary or Trustee may incur, directly or indirectly, as a result of or in connection with the assertion against Beneficiary or Trustee of any claim relating to the failure of Beneficiary or Trustee to comply with this Paragraph 38.

**39. Hazardous Materials.**

(a) Trustor represents and warrants that (i) the Trust Property is now and at all times during Trustor's ownership thereof has been free of contamination from any petroleum product and all hazardous or toxic substances, wastes or substances, any substances which because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any asbestos (whether or not friable) and any asbestos-containing materials, Mold (defined as the presence of any form of (A) multicellular fungi that live on plant or animal matter and an indoor environment (including without limitation Cladosporium, Penicillium, Alternaria, Aspergillus, Fusarium, Trichoderma, Memnoniella, Mucor, and Stachybotrys chartarum (SC) often found in water damaged building materials), (B) spores, scents or byproducts produced or released by fungi, including mycotoxins and (C) microbial matter which reproduces through mold, mildew and viruses, whether or not such microbial matter is living (collectively "Mold")), waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials or any hazardous or toxic wastes or substances which are included under or regulated by any federal, state or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments ("Hazardous Materials"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. section 9601 et seq. ("CERCLA"); The Federal Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq. ("RCRA"); Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499 ("SARA"); Toxic Substances Control Act, 15 U.S.C. section 2601 et seq. ("TSCA"); the Hazardous Materials Transportation Act, 49 U.S.C. section 1801 et seq.; and any other state superlien or environmental clean-up or disclosure statutes (all such laws, rules and regulations being referred to collectively as "Environmental Laws"), (ii) Trustor has not caused or suffered to occur any discharge, spill, uncontrolled loss or seepage of any Hazardous Materials onto any property adjoining the Trust Property, (iii) Trustor has not received any complaint, notice, letter, or other communication from occupants, tenants, guests, employees, licensees or any other person regarding odors, poor indoor quality, Mold, or any activity, condition, event or omission that causes or facilitates the growth of Mold and Trustor further represents to the best of its knowledge that no Mold or any activity, condition,

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event or omission that causes or facilitates the growth of Mold exists at the Trust Property and (iv) neither Trustor nor any tenant or occupant of all or part of the Trust Property is now or has been involved in operations at the Trust Property which could lead to liability for Trustor or any other owner of the Trust Property or the imposition of a lien on the Trust Property under any Environmental Law.

(b) At its sole cost and expense, Trustor shall comply with and shall cause all tenants and other occupants of the Trust Property to comply with all Environmental Laws now in effect or hereafter enacted with respect to the discharge, generation, removal, transportation, storage and handling of Hazardous Materials. Trustor shall promptly notify Beneficiary if Trustor shall become aware of any Hazardous Materials on or near the Trust Property and/or if Trustor shall become aware that the Trust Property is in direct or indirect violation of any Environmental Laws and/or if Trustor shall become aware of any condition on or near the Trust Property which shall pose a threat to the health, safety or welfare of humans. Trustor shall promptly remove all Hazardous Materials from the Trust Property, such removal to be performed in accordance with all applicable federal, state and local laws, statutes, rules and regulations. Trustor shall pay immediately when due the cost of removal of any Hazardous Materials and shall keep the Trust Property free of any lien imposed pursuant to any Environmental Laws now in effect or hereafter enacted.

(c) Trustor grants Beneficiary and its employees and agents an irrevocable and non-exclusive license, subject to the rights of tenants, to enter the Trust Property to conduct testing and to remove any Hazardous Materials, and the costs of such testing and removal shall immediately become due to Beneficiary and shall be secured by this Deed of Trust. Trustor, promptly upon the request of Beneficiary, from time to time, shall provide Beneficiary with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content satisfactory to Beneficiary. Trustor shall maintain the integrity of all storage tanks and drums on or under the Trust Property during the term of the Loan in compliance with all Environmental Laws now in effect or hereafter enacted. Trustor shall follow an operation and maintenance program with respect to all storage tanks and drums on or under the Trust Property, which program has been approved in writing by Beneficiary.

(d) "Intentionally deleted."

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



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40. **Asbestos.** Trustor shall not install or permit to be installed in the Trust Property, friable asbestos or any substance containing asbestos. With respect to any such material currently present in the Trust Property, Trustor, at Trustor's expense, shall promptly comply with and shall cause all occupants of the Trust Property to comply with all present and future applicable federal, state or local laws, rules, regulations or orders relating to asbestos, friable asbestos and asbestos containing materials. In the event any asbestos, friable asbestos or asbestos containing material is discovered at the Trust Property, Trustor shall obtain a comprehensive asbestos report prepared by a licensed engineer or asbestos consultant acceptable to Beneficiary describing the form, extent, location and condition of such asbestos and recommending methods of removal or abatement. Trustor shall promptly comply at its sole cost and expense with the recommendations contained in such report, such compliance to be performed in accordance with all applicable federal, state and local laws, statutes, rules and regulations. The obligations and liabilities of Trustor under this Paragraph 40 shall survive full payment of the Loan, foreclosure or the acceptance of a deed in lieu of foreclosure.

41. **Bankruptcy or Insolvency.** In the event that Trustor or any Guarantor or, if Trustor or any Guarantor is a general or limited partnership or limited liability company, any general partner, manager or member of any such entity (a) admits in writing its inability to pay its debts generally as they become due, or does not pay its debts generally as they become due, (b) commences as debtor any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, (c) has appointed for it or the whole or any substantial part of its property, a receiver, conservator, trustee, custodian, manager, liquidator, or similar official by any governmental or judicial authority, (d) makes a proposal or any assignment for the benefit of its creditors, or enters into an arrangement or composition or similar plan or scheme with or for the benefit of creditors generally occurring in circumstances in which such entity is unable to meet its obligations as they become due or (e) has filed against it any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law which (i) is consented to or not timely contested by such entity, or (ii) is not dismissed within sixty (60) days, or (f) by reason of the operation of federal bankruptcy, state insolvency, or similar creditor's rights laws, asserts or has filed against Trustor or any guarantor a claim that the transaction creating a lien of this Deed of Trust is either (i) a fraudulent conveyance or fraudulent transfer, or (ii) a preferential transfer, an Event of Default shall have occurred and as a result, the entire principal balance of the Note and all obligations under any Guaranty shall become immediately due and payable at the option of Beneficiary without notice to Trustor or any Guarantor and Beneficiary may exercise any remedies available to it hereunder, under any other Loan Document, at law or in equity.

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

(a) Beneficiary represents and warrants to Trustor that, as of the date of this Deed of Trust and throughout the term of this Deed of Trust, the source of funds from

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which Beneficiary extends this Deed of Trust is its general account, which is subject to the claims of its general creditors under state law.

(b) Trustor represents and warrants that, as of the date of this Deed of Trust and throughout the term of this Deed of Trust, (i) Trustor is not an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA and (ii) the assets of such Trustor do not constitute "plan assets" of one or more such plans within the meaning of ERISA Section 3(42) and 29 C.F.R. § 2510.3-101.

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

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

(A) Equity interests in Trustor are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of all equity interests in such Trustor are held by "benefit plan investors" within the meaning of ERISA Section 3(42); or

(C) Trustor qualifies as a "venture capital operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(d) or (e).

(e) Any of the following shall constitute an Event of Default under this Deed of Trust, entitling Beneficiary to exercise any and all remedies to which it may be entitled under this Deed of Trust, and any other Loan Documents (i) the failure of any representation or warranty made by any Trustor under this Paragraph 42 to be true and correct in all respects, (ii) the failure of any Trustor to provide Beneficiary with the written certifications and evidence referred to in this Paragraph 42 or (iii) the consummation by Trustor or any one Trustor of a transaction which would cause the establishment or maintenance of this Deed of Trust or the other Loan Documents, or any exercise of Beneficiary's rights under this Deed of Trust, or the other Loan Documents to constitute a

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non-exempt prohibited transaction under ERISA or a violation of a state statute regulating governmental plans, or otherwise subjecting Beneficiary to liability for violation of ERISA or such state statute.

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

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

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

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45. Intentionally Deleted

46. Exculpation and Recourse. The obligations and liability of Trustor pursuant to the following subparagraphs (a) and (b) are collectively referred to as "Recourse Obligations."

(a) Limited Recourse Obligations. Subject to subsection (b) below, any claim based on or in respect of any liability of Trustor under the Note or under this Deed of Trust or any other Loan Document shall be enforced only against the Trust Property and any other collateral now or hereafter given to secure the Loan and not against any other assets, properties or funds of Trustor; provided, however, that Trustor shall be personally liable for amounts under the Loan Documents to the extent of, but limited to the amount of, any loss, costs or damage arising out of the matters described below, which liability shall not be limited solely to the Trust Property and other collateral now or hereafter given to secure the Loan but shall include all of the assets, properties and funds of Trustor, and Trustor shall be liable for (i) fraud, misrepresentation and waste, (ii) any rents, issues or profits collected more than one (1) month in advance of their due dates, (iii) any misappropriation of rents, issues or profits, security deposits and any other payments from tenants or occupants (including, without limitation, lease termination fees) insurance proceeds, condemnation awards, or other sums of a similar nature, (iv) personalty or fixtures removed or allowed to be removed by or on behalf of Trustor and not replaced by items of equal or greater value or functionality than the personalty or fixtures so removed, (v) failure to pay taxes, assessments or ground rents prior to delinquency, or to pay charges for labor, materials or other charges which can create liens on any portion of the Trust Property and any sums expended by Beneficiary in the performance of or compliance with the obligations of Trustor under the Loan Documents, including, without limitation, sums expended to pay taxes or assessments or hazard insurance premiums or bills for utilities or other services or products for the benefit of the Trust Property, (vi) the unauthorized sale, conveyance or transfer of title to the Trust Property or encumbrance of the Trust Property, (vii) the failure of Trustor to maintain its status as a single purpose entity pursuant to its organizational documents and the Loan Documents, (viii) a violation of the provisions of Paragraph 18(h) of this Deed of Trust, and (ix) attorney's fees, court costs and other expenses incurred by Beneficiary in connection with its enforcement of its remedies under the Loan Documents, including, but not limited to, in connection with any bankruptcy proceeding or reorganization brought by or against Trustor or any of its principals. Nothing herein shall be deemed (w) to be a waiver of any right which Beneficiary may have under any bankruptcy law of the United States or the state where the Trust Property is located including, but not limited to, Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code, to file a claim for the full amount of the indebtedness secured by this Deed of Trust or to require that all of the collateral securing the indebtedness secured hereby shall continue to secure all of the indebtedness owing to Beneficiary under the Note, this Deed of Trust and the other Loan Documents; (x) to impair the validity of the indebtedness secured by this Deed of Trust; (y) to impair the right of Beneficiary as Beneficiary or secured

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party or the Trustee to commence an action to foreclose any lien or security interest; or (z) to modify, diminish or discharge the liability of any Guarantor under any Guaranty.

(b) Full Recourse Obligations. Notwithstanding anything to the contrary contained in this Deed of Trust or the other Loan Documents, the exculpation provisions of subparagraph (a) above will BECOME NULL AND VOID and the Loan will be FULLY RECOURSE to Trustor and any guarantor under any guaranty in the event that (A) Trustor, any guarantor under any guaranty or any indemnitor under any indemnity agreement (i) commences as debtor any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, (ii) seeks to have appointed, or there is appointed at the initiative of any party or court, for Trustor or the whole or any substantial part of its property (other than upon the petition or filing of Beneficiary) a receiver, conservator, trustee, custodian, manager, liquidator, or similar official by any governmental or judicial authority; (iii) makes a proposal or any assignment for the benefit of its creditors, or enters into an arrangement or composition or similar plan or scheme with or for the benefit of creditors generally occurring in circumstances in which such entity is unable to meet its obligations as they become due; (iv) has filed against it any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law which (aa) is consented to or not timely contested by such entity, or (bb) is not dismissed within sixty (60) days; or (v) if required to do so under the terms of this Deed of Trust or the other Loan documents, fails to maintain its status as a single purpose entity pursuant to its organizational documents and this Deed of Trust and the other Loan Documents; or (B) any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, is asserted by any party to the effect that the transaction creating the lien of this Deed of Trust is either (aa) a fraudulent conveyance or fraudulent transfer, or (bb) a preferential transfer.

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

To Beneficiary:

John Hancock Life Insurance Company (U.S.A.)  
Real Estate Finance Group  
197 Clarendon Street, C-3  
Boston, Massachusetts 02116  
Re: Loan No. 527130:11

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and with a copy concurrently to:

John Hancock Life Insurance Company (U.S.A.)  
Real Estate Law  
197 Clarendon Street, C-3  
Boston, Massachusetts 02116  
Attention: Jaime Hertel Dasque, Esq.

To Trustor:

Pinebrook, L.L.C.  
c/o Bach Corporation  
11650 South State Street, Suite 300  
Draper, Utah 84020

and with a copy concurrently to:

James T. Dunn, PC  
1108 West South Jordan Parkway, Suite A  
South Jordan, Utah 84095

To Trustee:

First American Title Insurance Company  
215 South State Street, Suite 380  
Salt Lake City, Utah 84111

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

Notwithstanding the foregoing provisions or any other provision of this Deed of Trust, any notice of default required by law or notice of sale required by law, in either case given in anticipation of or preparation for Trustee's exercise of the power of sale under this Deed of Trust, shall be given in the manner, at the time, and to the persons required by the Utah Trust Deed Act. Trustor hereby requests that a copy of any such notice of default and a copy of any such notice of sale be mailed to Trustor at the address for Trustor set forth at the outset of this Deed of Trust.

48. Non-Waiver. The failure of Beneficiary to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Deed of Trust. Trustor

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

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

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

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

52. **Indemnity and Beneficiary's Costs.** Trustor agrees to pay all costs, including, without limitation, attorneys' fees and expenses, incurred by Beneficiary or Trustee in enforcing the terms hereof and/or the terms of any of the other Loan Documents or the Note or any Guaranty, and in protecting, defending, preserving or enforcing the lien and security interest of this Deed of Trust or any other Loan Documents or any interest in the Trust Property, whether or not suit is filed and waives to the full extent permitted by law all right to plead any statute of limitations as a defense to any action hereunder. Trustor agrees to indemnify and hold Beneficiary and Trustee harmless from any and all liability, loss, damage or expense (including, without limitation, attorneys' fees and disbursements) that Beneficiary or Trustee may or might incur hereunder or in connection with the enforcement of any of their rights or remedies hereunder, any action taken by Beneficiary or Trustee hereunder, or by reason or in defense of any and all claims and demands whatsoever that may be asserted against Beneficiary or Trustee arising out of the Trust Property; and should Beneficiary or

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Trustee incur any such liability, loss, damage or expense, the amount thereof with interest thereon at the Default Rate shall be payable by Trustor immediately without demand, shall be secured by this Deed of Trust, and shall be a part of the Indebtedness.

**53. Certain Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust shall be used interchangeably in singular or plural form. The word "Trustor" shall mean Trustor and/or any subsequent owner or owners of the Trust Property or any part thereof or interest therein. The word "Beneficiary" shall mean Beneficiary or any subsequent holder of the Note. The word "Trustee" shall mean Trustee and any successor or substitute Trustee. The word "Guaranty" shall mean any Guaranty of Payment, Guaranty of Completion, Guaranty of Collection, Environmental Indemnity or any other guaranty or indemnity given at any time to or for the benefit of Beneficiary in connection with the Loan. The word "Guarantor" shall mean any person giving or making any Guaranty. The word "Note" shall mean the Note or any other evidence of indebtedness secured by this Deed of Trust. The word "Loan Documents" shall mean the Note, this Deed of Trust, the Additional Funding Loan Agreement, any other loan agreement, if any, between Trustor and Beneficiary, the security agreement, if any, between Trustor and Beneficiary, the assignment of leases and rents, if any, made by Trustor to Beneficiary, any reserve agreements between Trustor and Beneficiary, any escrow agreements between Trustor and Beneficiary, the assignment of contracts, if any, made by Trustor to Beneficiary, any other deed of trust or mortgage securing the Note and any other agreement, instrument, affidavit or document executed by Trustor, and delivered to Beneficiary in connection with the Loan. Loan Documents shall not include any Guaranty. The word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority or other entity. The words "Trust Property" shall include any portion of the Trust Property or interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

**54. No Oral Change.** This Deed of Trust, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Trustor or any one Trustor or Beneficiary or Trustee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

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

**56. Separate Tax Lot.** The Trust Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or



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improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Trust Property or any portion thereof.

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

58. **Subrogation.** Beneficiary shall be subrogated for further security to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the Loan secured by this Deed of Trust. This Deed of Trust is intended to create a first lien on the Trust Property. Trustor and Beneficiary agree that this Deed of Trust shall have, and Beneficiary intends and expects to have, the priority of any security instrument that has been paid and discharged with the proceeds of the loan secured by this Deed of Trust.

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

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

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

62. **Address of Real Property.** The street address of the Real Property is as follows: 381 North Washington Boulevard, Ogden, Utah 84404.

63. **Method of Payment.** All payments of principal and interest and other amounts due under this Deed of Trust shall be paid to Beneficiary by Automated Clearing House debit against Trustor's account. Trustor agrees to provide all necessary authorizations.

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

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

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

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

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

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

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

71. **Book Entry.** Trustor hereby appoints Beneficiary as its agent for the purpose of maintaining a registration book in which the ownership of the Note shall be recorded. In addition to any provisions set forth in the Loan Documents, the Note may be sold, transferred or assigned only upon notification by the holder to Beneficiary at the address indicated below that a sale, transfer or assignment of the Note has been duly executed by the holder.

Notice of any sale, transfer or assignment of the Note is to be provided to:

John Hancock Life Insurance Company (U.S.A.)  
c/o Book Entry Agent  
Real Estate Finance Group  
197 Clarendon Street, C-3  
Boston, Massachusetts 02116  
Attention: Arthur J. Francis

72. **Governing Law; Consent to Jurisdiction.** THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE IN WHICH THE TRUST PROPERTY IS LOCATED WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF. EACH TRUSTOR, ENDORSER AND GUARANTOR HEREBY SUBMITS TO PERSONAL JURISDICTION IN SAID STATE AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SAID STATE (AND ANY APPELLATE COURTS TAKING APPEALS THEREFROM) FOR THE ENFORCEMENT OF SUCH TRUSTOR'S, ENDORSER'S OR GUARANTOR'S OBLIGATIONS HEREUNDER, UNDER THE NOTE, THE GUARANTY AND THE OTHER LOAN DOCUMENTS, AND WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAW OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR THE PURPOSES OF SUCH ACTION, SUIT, PROCEEDING OR LITIGATION TO ENFORCE SUCH OBLIGATIONS OF SUCH TRUSTOR, ENDORSER OR GUARANTOR. EACH TRUSTOR, ENDORSER AND GUARANTOR HEREBY WAIVES AND AGREES NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DEED OF TRUST, THE NOTE, ANY GUARANTY OR ANY OTHER LOAN DOCUMENT, (A) THAT IT IS NOT SUBJECT TO SUCH JURISDICTION OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN THOSE COURTS OR THAT THIS DEED OF TRUST, THE NOTE, THE GUARANTY AND/OR ANY OF THE OTHER LOAN DOCUMENTS MAY NOT BE ENFORCED IN OR BY THOSE COURTS OR THAT IT IS EXEMPT OR IMMUNE FROM EXECUTION, (B) THAT THE ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN

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INCONVENIENT FORUM OR (C) THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER. IN THE EVENT ANY SUCH ACTION, SUIT, PROCEEDING OR LITIGATION IS COMMENCED, TRUSTOR, ENDORSER AND GUARANTOR AGREE THAT SERVICE OF PROCESS MAY BE MADE, AND PERSONAL JURISDICTION OVER SUCH TRUSTOR, ENDORSER OR GUARANTOR OBTAINED, BY SERVICE OF A COPY OF THE SUMMONS, COMPLAINT AND OTHER PLEADINGS REQUIRED TO COMMENCE SUCH LITIGATION UPON SUCH TRUSTOR, ENDORSER OR GUARANTOR AT 11650 SOUTH STATE STREET, SUITE 300, OGDEN, UTAH 84020.

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

74. **Successor Trustee.** Beneficiary may at any time appoint a successor Trustee to act hereunder. All matters relating to the method of effecting a substitution of Trustee shall be governed by the statutory law which is in effect at the time substitution takes place. In the event then-effective legislation does not cover some or all of the matters relating to the method of accomplishing a substitution of Trustee, the matters not covered shall be governed by the law which is in effect at the time this Deed of Trust is executed. From the time a substitution of Trustee is accomplished, the new Trustee shall succeed to all the power, duties, authority and title of the Trustee named herein and of any successor Trustee.

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

76. **Acceptance of Trust.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party to this Deed of Trust of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee is a party, unless brought by Trustee.

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77. **Additional Funding.** Trustor reserves the one-time right to request from Beneficiary additional loan proceeds in an amount not less than \$2,000,000.00 ("Additional Funding") between the end of the tenth (10<sup>th</sup>) Loan Year (as such term is defined in the Note) and the end of the twentieth (20<sup>th</sup>) Loan Year, all as further set forth in the Additional Funding Loan Agreement ("Additional Funding Loan Agreement") of even date herewith between Trustor and Beneficiary.

[remainder of page intentionally left blank]

[signature on next page]

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IN WITNESS WHEREOF, Trustor has duly executed and delivered this Deed of Trust as of the day and year first above written.

**TRUSTOR:**

PINEBROOK, L.L.C., a Utah limited liability company

By D-VIII Family, LLC, a Utah limited liability company, its Managing Member

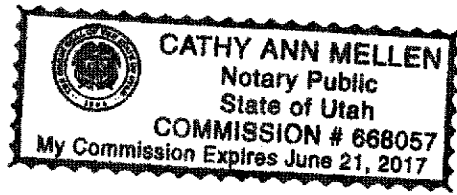
By Dale L. Rindlisbacher  
Dale L. Rindlisbacher  
Its Managing Member

STATE OF UTAH )  
COUNTY OF Washington ) ss.

The foregoing instrument was acknowledged before me this 13 day of May, 2015, by Dale L. Rindlisbacher, Managing Member of D-VIII Family, LLC, a Utah limited liability company, Managing Member of Pinebrook, L.L.C., a Utah limited liability company.

My Commission Expires:  
June 21, 2017

[Signature]  
Notary Public  
Residing at: St George, Utah



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**EXHIBIT A**  
**DESCRIPTION OF LAND**

PARCEL 1:

A PARCEL OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, WEBER COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP MONUMENT MARKING THE CENTERLINE INTERSECTION OF HARRISVILLE AVENUE AND NORTH STREET, FROM WHICH A BRASS CAP MONUMENT AT THE INTERSECTION OF WASHINGTON BOULEVARD AND NORTH STREET BEARS NORTH 89°09'45" EAST A DISTANCE OF 1341.21 FEET; THENCE SOUTH 89°09'45" EAST 373.91 FEET AND SOUTH 24.27 FEET TO THE REAL POINT OF BEGINNING; THENCE NORTHEASTERLY A DISTANCE OF 39.68 ALONG THE ARC OF A 189.54 FOOT RADIUS CURVE TO THE LEFT, SAID CURVE HAVING A CENTRAL ANGLE OF 11°59'46", SUBTENDED BY A CHORD THAT BEARS NORTH 71°52'35" EAST A DISTANCE OF 39.61 FEET; THENCE NORTH 65°52'42" EAST A DISTANCE OF 82.58 FEET TO A POINT OF CURVATURE OF A 214.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY A DISTANCE OF 45.71 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 12°14'20", SUBTENDED BY A CHORD THAT BEARS NORTH 71°59'52" EAST A DISTANCE OF 45.63 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE SOUTH 89°31'54" EAST A DISTANCE OF 51.50 FEET; THENCE SOUTH 00°03'18" WEST A DISTANCE OF 189.46 FEET; THENCE SOUTH 13°13'08" EAST A DISTANCE OF 301.29 FEET; THENCE SOUTH A DISTANCE OF 195.69 FEET; THENCE NORTH 89°29'45" WEST A DISTANCE OF 289.88 FEET; THENCE NORTH 24°54'45" WEST A DISTANCE OF 317.01 FEET; THENCE NORTH 64°51'17" EAST A DISTANCE OF 197.26 FEET; THENCE NORTH 20°26'15" WEST A DISTANCE OF 111.00 FEET; THENCE NORTH 02°49'57" EAST A DISTANCE OF 140.99 FEET TO THE REAL POINT OF BEGINNING.

*11-035-0049 ✓ epb*

PARCEL 2:

A PARCEL OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, WEBER COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP MONUMENT MARKING THE CENTERLINE INTERSECTION OF WASHINGTON BOULEVARD AND NORTH STREET, FROM WHICH A BRASS CAP MONUMENT AT THE CENTERLINE OF HARRISVILLE AVENUE AND NORTH STREET BEARS NORTH 89°9'45" WEST, 1,341.21 FEET; THENCE NORTH 89°9'45" WEST, A

Loan No. 527130:11

DISTANCE OF 66.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF WASHINGTON BOULEVARD; THENCE NORTH 0°50'15" EAST ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 42.99 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 0°50'15" WEST ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 601.52 FEET TO A FOUND IRON PIN; THENCE NORTH 89°16'31" WEST A DISTANCE OF 210.11 FEET TO A FOUND IRON PIN ON THE WEST EDGE OF CANAL; THENCE SOUTH 25°23'36" WEST ALONG SAID WEST EDGE OF CANAL, A DISTANCE OF 85.50 FEET TO A FOUND IRON PIN; THENCE NORTH 89°29'45" WEST, A DISTANCE OF 369.66 FEET; THENCE NORTH 0°0'0" WEST, A DISTANCE OF 195.69 FEET; THENCE NORTH 13°13'08" WEST, A DISTANCE OF 301.29 FEET; THENCE NORTH 0°03'18" EAST, A DISTANCE OF 189.46 FEET; THENCE SOUTH 89°31'54" EAST, A DISTANCE OF 693.94 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING FROM PARCEL 2 THE FOLLOWING:

A PARCEL OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, WEBER COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP MONUMENT, MARKING THE CENTERLINE INTERSECTION OF WASHINGTON BOULEVARD AND NORTH STREET, FROM WHICH, A BRASS CAP MONUMENT MARKING THE CENTERLINE INTERSECTION OF HARRISVILLE AVENUE AND NORTH STREET, BEARS NORTH 89°09'45" WEST A DISTANCE OF 1341.21 FEET; THENCE NORTH 89°09'45" WEST, A DISTANCE OF 66.00 FEET TO THE WEST RIGHT-OF-WAY OF WASHINGTON BOULEVARD; THENCE NORTH 00°50'15" EAST ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 42.99 FEET TO THE REAL POINT OF BEGINNING; THENCE SOUTH 00°50'15" WEST ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 69.23 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY OF PROPOSED NORTH STREET; THENCE ALONG SAID SOUTH RIGHT-OF-WAY THE FOLLOWING 3 COURSES AND DISTANCES, 1) NORTH 80°54'57" WEST A DISTANCE OF 63.14 FEET TO A POINT OF CURVATURE TO THE RIGHT; 2) THENCE ALONG THE ARC OF SAID CURVE, A DISTANCE OF 43.20 FEET, SAID CURVE HAVING A RADIUS OF 220.00 FEET, A CENTRAL ANGLE OF 11°15'03", SUBTENDED BY A CHORD THAT BEARS NORTH 75°17'27" WEST A DISTANCE OF 43.13 FEET TO THE CURVE END; 3) THENCE NORTH 69°39'57" WEST, A DISTANCE OF 144.66 FEET; THENCE SOUTH 89°31'54" EAST, A DISTANCE OF 240.73 FEET TO THE REAL POINT OF BEGINNING.

*11-035-0040 v Spr 6*

Said property is also known by the street address of:  
381 North Washington Boulevard  
Ogden, Utah 84404