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Skagit County Auditor

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Drafted, drawn & prepared for or by,  
Recording Requested by  
and when recorded return to:

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Commercial Mortgage Origination  
MAC# A0194-093  
45 Fremont Street, 9<sup>th</sup> Floor  
San Francisco, California 94105-2204  
Attention: CMO Loan Administration

Loan No.: 41-0907746  
MERS No.: 8000101-0000007047-3

CHICAGO TITLE CO.  
1044074

**DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF RENTS AND  
LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING)**

Parties to the Document:

GRANTOR or BORROWER: SAVE ON STORAGE, LLC, a Washington limited  
liability company

TRUSTEE: CHICAGO TITLE INSURANCE COMPANY, a  
Washington corporation

BENEFICIARY or LENDER: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,  
INC., a Delaware corporation, as nominee for Wells  
Fargo Bank, National Association

Property: Save-on Storage-Mount Vernon, WA

Commonly Known Address: 2329 Market Street, Mount Vernon, Washington  
98273

Parcel Identification No.: 8007-000-004-0003  
340418-1-004-0000  
8007-000-002-0001

TRACT 4, MOUNT VERNON BINDING SITE PLAN NO. MV 1-91, SEE EXHIBIT "A"

**DEED OF TRUST  
and  
ABSOLUTE ASSIGNMENT OF RENTS  
AND LEASES  
and  
SECURITY AGREEMENT  
(AND FIXTURE FILING)**

Grantor: SAVE ON STORAGE, LLC, A WASHINGTON LIMITED LIABILITY COMPANY  
Grantee (Beneficiary): Wells Fargo Bank, National Association  
Grantee (Trustee): CHICAGO TITLE INSURANCE COMPANY, A WASHINGTON CORPORATION  
Legal Description (abbreviated): Tract 4, MOUNT VERNON BINDING SITE PLAN NO. MV 1-91, The North 3/4 of the North 1/2 of the Northeast quarter of the Northeast quarter of Section 18, Township 34 North, Range 4 East, W.M.; and Tract 2, MOUNT VERNON BINDING SITE PLAN NO. MV 1-91

Assessor's Tax Parcel ID#: 8007-000-004-0003, 340418-1-004-0000 and, 8007-000-002-0001

The parties to this DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Deed of Trust"), dated as of December 21, 2007, are SAVE ON STORAGE, LLC, a Washington limited liability company ("Grantor"), with a mailing address at 224 Stewart Road, Mount Vernon, Washington 98273, CHICAGO TITLE INSURANCE COMPANY, a Washington corporation ("Trustee"), with a mailing address at 425 Commercial Street, Mount Vernon, Washington, 98273, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation ("MERS" or "Beneficiary"), with a mailing address at MERS Commercial, P.O. Box 2300, Flint, Michigan 45801-2300.

**RECITALS**

A. SAVE ON STORAGE, LLC, a Washington limited liability company ("Borrower") proposes to borrow from Wells Fargo Bank, National Association ("Lender") and Lender proposes to lend to Borrower, the principal sum of TWO MILLION NINE HUNDRED THOUSAND AND NO/100 Dollars (\$2,900,000.00) ("Loan"). The Loan is evidenced by a promissory note ("Note") executed by Borrower, dated the date of this Deed of Trust, payable to the order of Lender in the principal amount of the Loan. The loan documents include this Deed of Trust, the Note and any other documents described in the Note as Loan Documents ("Loan Documents"). The Maturity Date of the Loan is January 1, 2018.

**ARTICLE 1. DEED OF TRUST**

1.1 **GRANT.** For the purposes of and upon the terms and conditions of this Deed of Trust, Grantor absolutely and irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of



sale, all estate, right, title and interest which Grantor now has or may hereafter acquire in, to, under or derived from any or all of the following: (a) that real property ("Land") located in Mount Vernon, Skagit County, Washington, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference; (b) all buildings, improvements, personal property, equipment and fixtures now or hereafter located on the Land; (c) all additions, accretions, rents, issues, profits, royalties, appurtenances, easements, water, water rights, water stock, minerals, oil rights, gas rights, air rights and other rights now or hereafter appurtenant or related to the Land; and (d) all licenses, permits, authorizations, rights, powers, and privileges relating to the foregoing. All of the foregoing property is hereinafter collectively defined as the "Property". The listing of specific rights or property shall not be interpreted as a limitation of general terms.

## ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Grantor makes the foregoing grant and assignment for the purpose of securing the following obligations ("Secured Obligations"): (a) payment to Beneficiary of all sums at any time owing under the Note; (b) payment and performance of all other obligations of Borrower or Grantor under the Loan Documents, including, without limitation, all advances made to protect the Property; (c) payment and performance of all future advances and other obligations that the then record owner of the Property may agree to pay or perform for the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; (d) all interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees; and (e) all modifications, extensions and renewals of any of the obligations secured hereby. The rate of interest on one or more Secured Obligation may vary from time to time.

## ARTICLE 3. ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

- 3.1 **ASSIGNMENT.** Grantor absolutely and irrevocably assigns to Beneficiary all of Grantor's right, title and interest in, to and under: (a) all present and future leases of the Property, all licenses and agreements relating to the management, leasing or operation of the Property, and all other agreements of any kind relating to the use or occupancy of the Property, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("Leases"); and (b) all rents, income, issues, revenues and profits and proceeds arising or derived from the Property or any business conducted by Grantor thereon and the Leases and any renewals thereof and together with all rents, income, issues and profits from the use, enjoyment and occupancy of the Property (including, but not limited to, minimum rents, additional rents, percentage rents, deficiency rents, security deposits, all fees, sums or charges payable in connection with a modification, termination or settlement of a Lease or related Lease guaranty, all liquidated damages following default under any Leases, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Property, all of Grantor's rights to recover monetary amounts from any tenant (as hereinafter defined) in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejection of a Lease, together with any sums of money that may now or at any time hereafter be or become due and payable to Grantor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas and mining Leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Grantor under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Property. The term "Leases" shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder (collectively, "Payments"). This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of the Property. This assignment shall not cause Beneficiary to be: (c) a mortgagee in possession; (d) responsible for the management, care or condition of the Property or the performance of any obligations under the Leases; or (e) under any duty to produce rents or profits.



3.2

**LICENSE.** Beneficiary confers upon Grantor a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All Payments thereafter collected by Grantor shall be held by Grantor as trustee under a constructive trust for the benefit of Beneficiary. Grantor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Grantor hereby relieves the tenants from any liability to Grantor by reason of relying upon and complying with any such notice or demand by Beneficiary. Beneficiary may apply, in its sole discretion, any Payments to any Secured Obligation or any other obligation of Borrower, Grantor or any other person or entity, under any document or instrument now or hereafter executed in connection with the Loan Documents. Collection of any Payments by Beneficiary shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice. If and when no Default exists, Lender shall re-confer the license upon Borrower until the occurrence of another Default.

3.3

**COVENANTS.** Grantor shall, at Grantor's sole cost and expense: (a) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce all obligations of the tenants under the Leases; (b) use reasonable efforts to keep the Property leased at all times at market rents (including free or discounted rents to the extent the market so requires); (c) promptly upon Beneficiary's request, deliver to Beneficiary a copy of each requested Lease; and (d) promptly upon Beneficiary's request, execute and record any additional assignments of landlord's interest under any Lease to Beneficiary and any subordinations of any Lease to this Deed of Trust, in form and substance satisfactory to Beneficiary. Unless Beneficiary consents in writing, Grantor shall not: (e) grant any tenant under any Lease any option, right of first refusal or other right to purchase the Property under any circumstances; (f) grant any tenant under any Lease any right to prepay rent more than 1 month in advance; (g) except upon Beneficiary's request, execute any assignment of landlord's interest in any Lease; (h) collect rent or other sums due under any commercial Lease in advance, other than to collect rent 1 month in advance of the time when it becomes due. Any attempted action in violation of this Section shall be void. Within 30 days after request by Beneficiary, Grantor shall deliver to Beneficiary and to any party designated by Beneficiary, estoppel certificates executed by Grantor and by each of the tenants, in form and substance satisfactory to Beneficiary, relating to any commercial Leases.

3.4

**RIGHT OF SUBORDINATION.** Beneficiary may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Deed of Trust to any Lease, without consent of, or notice to, Grantor, any tenant or any other person. No such subordination shall constitute a subordination to any lien or other encumbrance.

3.5

**TERMINATION, MODIFICATION OR SETTLEMENT FEES.** Grantor shall deposit with Beneficiary any sums received by Grantor in consideration of any termination, modification or amendment, or settlement of any Lease or any release or discharge of any tenant under any Lease from any obligation thereunder and any such sums received by Grantor shall be held in trust by Grantor for such purpose. Within one (1) business day of Grantor's receipt of such sums, Grantor shall pay all such sums to Beneficiary for application (in Beneficiary's sole and absolute discretion) to either pay down the then outstanding indebtedness under the Loan or for deposit by Beneficiary into an impound account pledged to Beneficiary pursuant to an escrow agreement in form and substance acceptable to Beneficiary.

#### ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

4.1

**SECURITY INTEREST.** Grantor grants and assigns to Beneficiary a security interest to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Grantor now or at any time hereafter has any interest ("Collateral"):



All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to the Absolute Assignment of Rents and Leases); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Grantor; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Grantor with respect to the Property; all advance payments of insurance premiums made by Grantor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any Loan Document; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

As to all of the above-described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Washington Uniform Commercial Code, as amended or recodified from time to time ("UCC") naming Grantor as debtor and Beneficiary as secured party.

- 4.2 **DISPOSITION.** Grantor acknowledges and agrees that 5 days' prior notice of any disposition of the Collateral by Beneficiary is commercially reasonable notice. Beneficiary shall have no obligation to process or prepare the Collateral for disposition. In disposing of the Collateral, Beneficiary may disclaim all warranties of title, possession, quiet enjoyment and the like.
- 4.3 **POWER OF ATTORNEY.** Grantor hereby irrevocably appoints Beneficiary as Grantor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Beneficiary may, without the obligation to do so, in Beneficiary's name or in the name of Grantor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to the Collateral, and upon a Default, take any other action required of Grantor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.
- 4.4 **NOTICE.** Grantor agrees not to change its name, or, as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized, without giving Beneficiary at least 30 days' prior written notice thereof.

## ARTICLE 5. REPRESENTATIONS AND WARRANTIES

- 5.1 **REPRESENTATIONS AND WARRANTIES.** Grantor represents and warrants to Beneficiary that, to Grantor's current actual knowledge, the following statements are true and correct as of the date this Deed of Trust is recorded:
- a. **Legal Status.** Borrower and all entities having a direct or indirect interest in Borrower are duly organized and existing and in good standing under the laws of the state(s) in which Borrower and such entities are organized. Borrower and such entities are qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required.



- b. **Authorization and Validity.** The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Borrower or the party which executed the same, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity.
- c. **Violations.** The execution, delivery and performance of the Loan Documents by Borrower do not violate the provisions of any contract or instrument by which Borrower is bound.
- d. **Subordination.** There is no contract or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations under the Note to an obligation owed to another party.
- e. **Litigation.** There are no pending or threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect: (i) the financial condition or operations of Borrower; or (ii) the value, marketability or intended use of the Property, other than those previously disclosed in writing by Borrower to Beneficiary.
- f. **Financial Statements.** The financial statements of Borrower, each general partner of Borrower (if Borrower is a partnership), each member of Borrower (if Borrower is a limited liability company) and each guarantor, if any, previously delivered to Beneficiary in connection with the Loan: (i) are materially complete and correct; and (ii) disclose all liabilities that are required to be reflected or reserved against. Since the date of such financial statements, there has been no material adverse change in such financial condition, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered except as previously disclosed in writing to Beneficiary and approved in writing by Beneficiary.
- g. **Reports.** All reports, documents, instruments and information delivered to Beneficiary in connection with the Loan: (i) are correct and sufficiently complete to give Beneficiary accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.
- h. **Leases.** All Leases are in full force and effect and are enforceable in accordance with their respective terms. No material breach or default by any party exists under any Lease. None of the landlord's right, title or interest under any of the Leases has been transferred or assigned. No rent or other payment under any commercial Lease has been paid by any tenant for more than 1 month in advance. No tenant under any Lease has any option, right of first refusal or other right to purchase the Property under any circumstances.
- i. **Condition of Property.** Except as shown in the property condition survey or other engineering reports, if any, previously delivered to or obtained by Beneficiary, the Property is in good condition and repair and is free from any damage that would materially and adversely affect the value, marketability or intended use of the Property.
- j. **Hazardous Materials.** Except as previously disclosed in writing by Grantor to Beneficiary, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of oil or other petroleum products, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials (collectively, "Hazardous Materials"). No Hazardous Materials Claims (defined below) are pending or threatened.



- k. **Encroachments.** Except as shown in the survey, if any, previously delivered to Beneficiary, none of the improvements on the Property lies outside of the boundaries or building restriction lines of the Property and no improvements on adjoining properties encroach upon the Property.
- l. **Compliance With Laws.** The Property complies in all material respects with all applicable federal, state and local laws, rules and regulations.
- m. **Permits.** Grantor holds all permits, franchises, licenses and other authorizations necessary to enable Grantor to own and operate Property in compliance with applicable law.
- n. **Condemnation.** No proceeding for the total or partial condemnation of the Property is pending or threatened.
- o. **Collateral.** Grantor has good title to the existing Collateral, free and clear of all liens and encumbrances except those, if any, previously disclosed to Beneficiary by Grantor in writing specifically referring to this representation and warranty. Grantor's chief executive office (or principal residence, if applicable) is located at the address shown on page two of this Deed of Trust. Grantor is an organization organized solely under the laws of the State of Washington. All organizational documents of Grantor delivered to Beneficiary are complete and accurate in every respect. Grantor's legal name is exactly as shown on page one of this Deed of Trust.
- p. **Separate Tax Parcel(s).** The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.
- q. **Utilities; Water; Sewer.** The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service. The Property is served by public water and sewer systems.
- r. **ERISA Matters.** Grantor 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, nor a Plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (each of the foregoing hereinafter referred to individually and collectively as "Plan"). Grantor's assets do not constitute "plan assets" of any plan within the meaning of Department of Labor Regulation Section 2510.3-101. Grantor will not transfer or convey the Property to a Plan or to a person or entity whose assets constitute such "plan assets", and Grantor will not be reconstituted as a Plan or as an entity whose assets constitute "plan assets". No Lease is with a Plan or an entity whose assets constitute such "plan assets", and Grantor will not enter into any Lease with a Plan or an entity whose assets constitute such "plan assets." With respect to the Loan, Grantor is acting on Grantor's own behalf and will not on account of or for the benefit of any Plan.

5.2 **REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING STATUS (LEVEL I SPE).** Grantor hereby represents, warrants and covenants to Beneficiary as follows:

- a. such entity was organized solely for the purpose of owning the Property;
- b. such entity has not and will not engage in any business unrelated to the ownership of the Property;
- c. such entity has not and will not have any assets other than the Property (and personal property incidental to the ownership and operation of the Property);
- d. such entity has not and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, or amendment of its articles of incorporation, articles



of organization, certificate of formation, operating agreement or partnership agreement, as applicable;

- e. such entity, without the unanimous consent of all of its directors, general partners or members, as applicable, shall not file or consent to the filing of any bankruptcy or insolvency petition or otherwise institute insolvency proceedings;
- f. such entity has no indebtedness (and will have no indebtedness) other than (i) the Loan; and (ii) unsecured trade debt not to exceed 2% of the Loan amount in the aggregate, which is not evidenced by a note and is incurred in the ordinary course of its business in connection with owning, operating and maintaining the Property and is paid within 30 days from the date incurred;
- g. such entity has not and will not fail to correct any known misunderstanding regarding the separate identity of such entity;
- h. such entity has maintained and will maintain its accounts, books and records separate from any other person or entity;
- i. such entity has maintained and will maintain its books, records, resolutions and agreements as official records;
- j. such entity (i) has not and will not commingle its funds or assets with those of any other entity; and (ii) has held and will hold its assets in its own name;
- k. such entity has conducted and will conduct its business in its own name;
- l. such entity has maintained and will maintain its accounting records and other entity documents separate from any other person or entity;
- m. such entity has prepared and will prepare separate tax returns and financial statements, or if part of a consolidated group, is shown as a separate member of such group;
- n. such entity has paid and will pay its own liabilities and expenses out of its own funds and assets;
- o. such entity has held and will hold regular meetings, as appropriate, to conduct its business and has observed and will observe all corporate, partnership or limited liability company formalities and record keeping, as applicable;
- p. such entity has not and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity;
- q. such entity has not and will not acquire obligations or securities of its shareholders, partners or members, as applicable;
- r. such entity has allocated and will allocate fairly and reasonably the costs associated with common employees and any overhead for shared office space and such entity has used and will use separate stationery, invoices and checks;
- s. such entity has not and will not pledge its assets for the benefit of any other person or entity;
- t. such entity has held and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other person or entity;
- u. such entity has not made and will not make loans to any person or entity;



- v. such entity has not and will not identify its shareholders, partners or members, as applicable, or any affiliates of any of the foregoing, as a division or part of it;
- w. such entity has not entered into and will not enter into or be a party to, any transaction with its shareholders, partners or members, as applicable, or any affiliates of any of the foregoing, except in the ordinary course of its business pursuant to written agreements and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;
- x. if any such entity is a corporation, the directors of such entity shall consider the interests of the creditors of such entity in connection with all corporate action;
- y. such entity has paid and will pay the salaries of its own employees and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;
- z. such entity has maintained and will maintain adequate capital in light of its contemplated business operations; and
- aa. if any such entity is a partnership with more than one general partner, its partnership agreement requires the remaining partners to continue the partnership as long as one solvent general partner exists.

#### ARTICLE 6. RIGHTS AND DUTIES OF THE PARTIES

- 6.1 **PRESERVATION OF THE PROPERTY.** Grantor shall: (a) keep the Property in good condition and repair; (b) complete or restore the Property promptly and in a workmanlike manner after any damage or destruction; (c) comply and cause the Property to comply in all material respects with all laws, ordinances, rules, regulations, standards, covenants, conditions, restrictions, equitable servitudes and insurance requirements affecting the Property; (d) operate and manage the Property at all times in a professional manner; and (e) execute and acknowledge all documents and instruments which Beneficiary deems necessary or advisable to preserve the benefits of this Deed of Trust. Grantor shall not: (f) remove or demolish all or any material part of the Property; (g) materially alter the type of occupancy or use of the Property; (h) commit or permit waste of the Property; or (i) without the prior written consent of Beneficiary modify or amend the provisions of any easement, covenant, condition, restriction or other right, or seek to modify or amend (or acquiesce in any change of) any zoning or use classification or requirement or building restriction, applicable to the Property, or change the current use of the Property.
- 6.2 **INTENTIONALLY OMITTED.**
- 6.3 **TAXES.** Grantor shall pay when due all taxes, assessments and other charges applicable to the Property or Collateral. Grantor authorizes Beneficiary to obtain, at Grantor's expense, a tax service contract under which Beneficiary shall receive tax information on the Property during the term of the Loan.
- 6.4 **INSURANCE AND CONDEMNATION.**
- a. **Insurance Coverage.** Grantor shall obtain and maintain all insurance coverage required pursuant to that certain Agreement Regarding Required Insurance dated as of the date hereof by and between Grantor and Lender.
- b. **Assignment of Claims.** Grantor absolutely and irrevocably assigns to Beneficiary all of the following rights, claims and amounts (collectively, "Claims"), all of which shall be paid to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation; (ii) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use; (ii)



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all other claims and awards for damages to or decrease in value of the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to the Property; and (iv) all interest which may accrue on any of the foregoing. Grantor shall give Beneficiary prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for the condemnation of, the Property. Beneficiary may commence, appear in, defend, prosecute, adjust, compromise and settle any Claims but shall not be responsible for any failure to do so.

c. **Application of Proceeds; No Default.** So long as no Default has occurred and is continuing at the time of Beneficiary's receipt of the proceeds of the Claims ("Proceeds") and no Default occurs thereafter, the following provisions shall apply:

- (i) **Condemnation.** If the Proceeds are the result of Claims described in clauses 6.4(b)(i) or (ii) above, or interest accrued thereon, Beneficiary shall apply the Proceeds in the following order of priority: First, to Beneficiary's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the portion of the Property, if any, not condemned or proposed for condemnation and not otherwise the subject of a claim or award; and Third, to the Secured Obligations in any order without suspending, extending or reducing any obligation of Grantor to make installment payments.
- (ii) **Insurance.** If the Proceeds are the result of Claims described in clause 6.4(b)(iii) above or interest accrued thereon, Beneficiary shall apply the Proceeds in the following order of priority: First, to Beneficiary's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to Grantor if the repair or restoration of the Property has been completed, but to the Secured Obligations in any order without suspending, extending or reducing any obligation of Grantor to make installment payments if the repair or restoration of the Property has not been completed.
- (iii) **Restoration.** Notwithstanding the foregoing Sections 6.4(c)(i) and (ii), Beneficiary shall have no obligation to make any Proceeds available for the repair or restoration of all or any of the Property unless and until all the following conditions have been satisfied: (aa) delivery to Beneficiary of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (bb) establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary; (cc) delivery to Beneficiary in form and content acceptable to Beneficiary of all of the following: (1) plans and specifications for the work; (2) a contract for the work, signed by a contractor acceptable to Beneficiary; (3) a cost breakdown for the work; (4) evidence of the continuation of all Leases unless consented to in writing by Beneficiary; (5) evidence that, upon completion of the work, the value of the Property and the income from the Property will be at least as great as the value and income which existed immediately before the damage or condemnation occurred; (6) evidence that the work can reasonably be completed on or before that date which is 6 months prior to the Maturity Date; and (7) evidence of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect Beneficiary's security.

d. **Application of Proceeds; Default.** If a Default has occurred and is continuing at the time of Beneficiary's receipt of the Proceeds, or if a Default occurs at any time thereafter, Beneficiary may, at Beneficiary's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Beneficiary's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order, and may release all or any part of the Proceeds to Grantor upon any conditions Beneficiary chooses.



6.5

**IMPOUNDS.** Any impounds payable by Borrower under the Note ("Impounds") shall be deposited into one or more segregated or commingled accounts maintained by Beneficiary or its servicing agent. Except as otherwise provided in the Note, such account(s) shall not bear interest. Beneficiary shall not be a trustee, special depository or other fiduciary for Grantor with respect to such account. If no Default exists, Beneficiary shall apply all Impounds in accordance with the Note. If a Default exists, Beneficiary may apply any or all Impounds to any Secured Obligation or to cure such Default, whereupon Grantor shall promptly restore all Impounds so applied and cure all Defaults not cured by such application. The obligations of Grantor hereunder shall not be diminished by Grantor's deposits of Impounds, except to the extent that such obligations are actually satisfied by Beneficiary's application of such Impounds. Upon any assignment of this Deed of Trust, Beneficiary may assign all Impounds in its possession to Beneficiary's assignee, whereupon Beneficiary and Trustee shall be released from all liability with respect to such Impounds. Within 60 days following full repayment of the Secured Obligations (other than as a consequence of foreclosure or conveyance in lieu of foreclosure) or at such earlier time as Beneficiary may elect, Beneficiary shall pay to Grantor all Impounds in its possession, and no other party shall have any right or claim thereto. Grantor shall deliver to Beneficiary, promptly upon receipt, all bills for taxes and insurance for which Beneficiary has required Impounds.

6.6

**DUE ON SALE/ENCUMBRANCE.**

a. **Definitions.** The following terms shall have the meanings indicated:

"**Control**" shall mean the power to direct the management and policies of a Restricted Party, directly or indirectly, whether through the ownership of voting securities or other entity or beneficial interests, by contract or otherwise.

"**Restricted Party**" shall mean each of (i) Borrower, (ii) Grantor, (iii) any entity obligated under any guaranty or indemnity made in favor of Lender in connection with the Loan and (iv) any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower, Grantor or any entity obligated under a guaranty or indemnity made in favor of Lender in connection with the Loan.

"**Transfer**" shall mean any sale, installment sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law or otherwise.

b. **Property Transfers.**

(i) **Prohibited Property Transfers.** Grantor shall not cause or permit any Transfer of all or any part of or any direct or indirect legal or beneficial interest in the Property or the Collateral (collectively, a "Prohibited Property Transfer"), including, without limitation, (A) a Lease of all or a material part of the Property for any purpose other than actual occupancy by a space tenant; and (B) the Transfer of all or any part of Grantor's right, title and interest in and to any Leases or Payments.

(ii) **Permitted Property Transfers.** Notwithstanding the foregoing, none of the following Transfers shall be deemed to be a Prohibited Property Transfer: (A) a Transfer which is expressly permitted under the Note; (B) a Lease which is permitted under Article 3; and (C) the sale of inventory in the ordinary course of business.

c. **Equity Transfers.**

(i) **Prohibited Equity Transfers.** Grantor shall not cause or permit any Transfer of any direct or indirect legal or beneficial interest in a Restricted Party (collectively, a "Prohibited Equity Transfer"), including without limitation, (A) if a Restricted Party is a corporation,



any merger, consolidation or other Transfer of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (B) if a Restricted Party is a limited partnership, limited liability partnership, general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Transfer of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; (C) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Transfer of a non-managing membership interest or the creation or issuance of new non-managing membership interests; or (D) if a Restricted Party is a trust, any merger, consolidation or other Transfer of any legal or beneficial interest in such Restricted Party or the creation or issuance of new legal or beneficial interests.

(ii) **Permitted Equity Transfers.** Notwithstanding the foregoing, none of the following Transfers shall be deemed to be a Prohibited Equity Transfer: (A) a Transfer by a natural person who is a member, partner or shareholder of a Restricted Party to a revocable inter vivos trust having such natural person as both trustor and trustee of such trust and one or more immediate family members of such natural person as the sole beneficiaries of such trust ("Revocable Family Trust"); (B) a Transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party; and (C) a Transfer, in one or a series of transactions, of not more than 49% of the stock, limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, no such Transfers shall result in a change in management control in the Restricted Party.

(iii) **SPE Status.** Nothing contained in this Section 6.6c shall be construed to permit any Transfer which would result in a breach of any representation, warranty or covenant of Grantor under Section 5.2 above.

d. **Certificates of Ownership.** Grantor shall deliver to Lender, at any time and from time to time, not more than 5 days after Lender's written request therefor, a certificate, in form acceptable to Lender, signed and dated by Borrower and Grantor, listing the names of all persons and entities holding direct or indirect legal or beneficial interests in the Property or any Restricted Party and the type and amount of each such interest.

6.7 **INDEMNITY.** Grantor shall defend, indemnify and hold harmless Trustee and each member of the Lender Group (defined below) from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) any failure of Grantor or Borrower to perform Grantor's or Borrower's obligations under the Loan Documents; (b) any inaccuracy in any representation or warranty of Grantor or Borrower under the Loan Documents; (c) any alleged obligation on the part of Trustee or any member of the Lender Group to pay or perform any obligations contained in any other document related to the Property (other than this Deed of Trust); or (d) any act or omission by Grantor or any contractor, agent, employee or representative of Grantor with respect to the Property. The foregoing notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of Trustee or any member of the Lender Group. "Lender Group", as used herein, shall mean: (f) Beneficiary and Lender under the Note (including, without limitation, any purchaser or assignee of or participant in the Loan); (g) any entity controlling, controlled by or under common control with Beneficiary; (h) the directors, officers, employees and agents of Beneficiary and such other entities; and (i) the successors, heirs and assigns of the entities and persons described in foregoing clauses (f) through (h). Grantor shall pay immediately upon Trustee's or Beneficiary's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as



specified therein. Grantor agrees to use legal counsel reasonably acceptable to the Lender Group in any action or proceeding arising under this indemnity.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION AND RECONVEYANCE OF THIS DEED OF TRUST, BUT GRANTOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE LIMITED LIABILITY PROVISIONS OF THE NOTE.

- 6.8 **RIGHT OF ENTRY.** Beneficiary and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time for the purpose of: (a) inspecting the Property or any work for which Impounds are required, (b) ascertaining Grantor's compliance with the terms of this Deed of Trust, or (c) determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.
- 6.9 **ACCOUNTING RECORDS.** Grantor shall maintain and cause Borrower to maintain adequate books and records. Grantor shall permit and shall cause Borrower to permit any representative of Beneficiary, at any reasonable time and from time to time, to inspect, audit and examine such books and records and make copies of same.
- 6.10 **SALE OR PARTICIPATION OF LOAN.** Beneficiary may at any time sell, assign or participate all or any portion of Beneficiary's rights and obligations under the Loan Documents to any person or entity, including, without limitation, one or more financial institutions or private investors in connection with a securitization. Beneficiary may disseminate to any actual or potential purchasers, assignees or participants (and to any investment banking firms, rating agencies, accounting firms, law firms and other third party advisory firms and investors involved with the Loan and the Loan Documents or the applicable sale, assignment, participation or securitization) all documents and financial and other information then possessed by or known to Beneficiary with respect to: (a) the Property and its operation; (b) any party connected with the Loan (including, without limitation, Borrower, any partner or member of Borrower, any constituent partner or member of Borrower, any guarantor and any non-borrower grantor). Grantor shall, within 15 days after request by Beneficiary; (c) deliver to Beneficiary such information and documents relating to Grantor, the Property and its operation and any party connected with the Loan as Beneficiary or any rating agency may request; (d) deliver to Beneficiary an estoppel certificate for the benefit of Beneficiary and any other party designated by Beneficiary verifying the status and terms of the Loan, in form and content satisfactory to Beneficiary; (e) enter into such amendments to the Loan Documents as may be requested in order to facilitate any such sale, assignment, participation or securitization without impairing Grantor's rights or increasing Grantor's obligations; and (f) if, as a condition to the closing of the Loan, Grantor was required to be a special-purpose bankruptcy-remote entity, enter into such amendments to the organizational documents of Grantor as any rating agency may request to preserve or enhance Grantor's special-purpose bankruptcy-remote status.
- 6.11 **RECONVEYANCE.** Upon Beneficiary's written request, and upon surrender of this Deed of Trust or certified copy thereof and any note, instrument or instruments setting forth all obligations secured hereby to Trustee for cancellation, Trustee shall reconvey the Property, without warranty. The recitals of any facts in any reconveyance shall be conclusively deemed true. To the extent permitted by law, the reconveyance may describe the grantee as the person or persons legally entitled thereto. The full reconveyance of the Property shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.

#### ARTICLE 7. DEFAULT

- 7.1 **DEFAULT.** For all purposes hereof, "Default" shall mean either an "Optional Default" (defined below) or an "Automatic Default" (defined below).



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a. **Optional Default.** An "Optional Default" shall occur, at Lender's option, upon the occurrence of any of the following events: (i) Borrower or Grantor shall fail to (aa) pay when due any sums which by their express terms require immediate payment without any grace period or sums which are payable on the Maturity Date, or (bb) pay within 5 days when due any other sums payable under the Note, this Deed of Trust or any of the other Loan Documents, including, without limitation, any monthly payment due under the Note; (ii) Borrower or Grantor shall fail to observe, perform or discharge any of Borrower's or Grantor's obligations, covenants, conditions or agreements, other than Borrower's or Grantor's payment obligations, under the Note, this Deed of Trust or any of the other Loan Documents, and (aa) such failure shall remain uncured for 30 days after written notice thereof shall have been given to Borrower or Grantor, as the case may be, by Lender or Beneficiary or (bb) if such failure is of such a nature that it cannot be cured within such 30-day period, Borrower or Grantor shall fail to commence to cure such failure within such 30-day period or shall fail to diligently prosecute such curative action thereafter; (iii) any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Borrower, Grantor, or a guarantor, if any, to Lender or in connection with any of the Loan Documents, or as an inducement to Lender to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished; (iv) the condemnation, seizure or appropriation of any material portion of the Property (as reasonably determined by Lender); (v) the sequestration or attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided under any of the Loan Documents, or any material portion of the other assets of Borrower or Grantor, which sequestration, attachment, levy or execution is not released or dismissed within 45 days after its occurrence; (vi) the sale of any assets affected by any of the foregoing; (vii) the occurrence of an uninsured casualty with respect to any material portion of the Property, as reasonably determined by Lender; or (viii) a Transfer shall occur without Lender's written consent as described in Section 6.6 of this Deed of Trust.

b. **Automatic Default.** An "Automatic Default" shall occur automatically upon the occurrence of any of the following events: (i) Borrower's filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"); (ii) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Borrower or the Property or the petition's material allegations regarding Borrower's insolvency; (iii) Borrower's making a general assignment for the benefit of creditors; (iv) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; (v) the filing by or against Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower; (vi) Borrower's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law that is filed against Borrower or in any way restrains or limits Borrower or Lender or Beneficiary regarding the Loan or the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition or 45 days after the date of filing of the petition; or (vii) the occurrence of an event specified in any of clauses (i) through (vi) as to Grantor, any general partner, entity manager or managing member of Borrower or Grantor, or any guarantor or other person or entity in any manner obligated to Lender under the Loan Documents.

7.2 **RIGHTS AND REMEDIES.** Upon the occurrence of an Optional Default, Beneficiary may, at its option, declare all sums owing to Beneficiary under the Note and the other Loan Documents immediately due and payable. Upon the occurrence of an Automatic Default, all sums owing to Beneficiary under the Note and the other Loan Documents shall automatically become immediately due and payable. In addition, at any time after any Default, Beneficiary shall have all of the following rights and remedies:

a. **Entry on Property.** Beneficiary shall have the right to enter upon the Property from time to time, with or without notice, and do such other acts and things as Beneficiary deems necessary or



desirable, in order to inspect, investigate, assess and protect the security hereof or to cure any Default.

- b. **Appointment of Receiver.** Beneficiary shall have the right to apply to a court of competent jurisdiction for and obtain appointment of a receiver, trustee, liquidator or conservator of the Property, with or without notice or hearing, for any purpose, including, without limitation, to enforce Beneficiary's rights to collect Payments and to enter on and inspect the Property for Hazardous Materials, as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; (iii) the filing of a notice of default; or (iv) the solvency of Borrower, Grantor or any guarantor or other person or entity in any manner obligated to Beneficiary under the Loan Documents.
- c. **Judicial Foreclosure; Injunction.** Beneficiary shall have the right to commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder. For the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations.
- d. **Nonjudicial Foreclosure.** Beneficiary shall have the right to cause Trustee to execute a written notice of such Default and of the election to cause the Property to be sold to satisfy the Secured Obligations. Trustee shall give and record such notice as the law then requires as a condition precedent to a trustee's sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale; provided, however, that Beneficiary may credit bid all or any portion of the Secured Obligations at such sale. A sale of less than the whole of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals of any facts in any trustee's deed shall be conclusively deemed true.
- e. **Multiple Foreclosures.** Beneficiary shall have the right to resort to and realize upon the Property and Collateral and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or nonjudicial proceedings, or both.

All rights and remedies of Beneficiary under this Deed of Trust are cumulative and in addition to such other rights as Beneficiary may have at law or in equity or pursuant to the Loan Documents. Beneficiary may enforce any one or more remedies or rights hereunder successively or concurrently

- 7.3 **WAIVER OF MARSHALING RIGHTS.** Grantor, for itself and for all parties claiming through or under Grantor, and for all parties who may acquire a lien on or interest in the Property or the Collateral, waives all rights to a sale in inverse order of alienation or to have the Property, the Collateral or any other security for any Secured Obligation, marshaled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations.
- 7.4 **NO WAIVER.** Beneficiary's acceptance of late payment or performance of any Secured Obligation shall not be construed to waive Beneficiary's right to require prompt payment or performance in the future. Beneficiary's failure to exercise any right or remedy hereunder after a Default shall not be construed to prejudice Beneficiary's rights or remedies after any other Default. No delay by Beneficiary in exercising any such right or remedy shall preclude Beneficiary from the exercise thereof at any time while that



Default is continuing. Beneficiary's delivery of any notice or demand to Grantor shall not of itself entitle Grantor to any notice or demand in similar circumstances.

- 7.5 **EXCULPATION.** Beneficiary shall not be directly or indirectly liable to Grantor or any other person as a consequence of: (a) the exercise or failure to exercise any of the rights or remedies granted to Beneficiary in this Deed of Trust (b) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Grantor under any agreement related to the Property or under any Loan Document; (c) any loss, claim, cause of action, liability, indebtedness, damage or injury to any person or property arising from the occupancy or use of the Property by Grantor or any other person or entity; or (d) any loss resulting from any act or omission of Beneficiary in managing the Property after a Default unless the loss is caused by the willful misconduct and bad faith of Beneficiary.

## ARTICLE 8. MISCELLANEOUS PROVISIONS

- 8.1 **CONSENTS AND APPROVAL.** Wherever Beneficiary's consent, approval, acceptance or satisfaction is required under any provision of this Deed of Trust or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Beneficiary unless such provision expressly so provides.
- 8.2 **ATTORNEYS' FEES.** If any legal action, suit or proceeding is commenced between Grantor and Beneficiary regarding their respective rights and obligations under any Loan Document, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, reasonable attorneys' fees and court costs (including, without limitation, expert witness fees).
- 8.3 **RELATIONSHIP OF PARTIES.** The relationship of Grantor and Beneficiary under the Loan Documents is, and shall at all times remain, solely that of borrower and lender (the role of MERS hereunder being solely that of nominee as set forth in Section 8.13 below and not that of a lender).
- 8.4 **SEVERABILITY.** If any term of any Loan Document, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of the Loan Document, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of the Loan Document shall be valid and enforceable to the fullest extent permitted by law.
- 8.5 **JOINT AND SEVERAL LIABILITY.** If more than one person has executed this Deed of Trust as "Grantor", the obligations of all such persons hereunder shall be joint and several.
- 8.6 **SEPARATE AND COMMUNITY PROPERTY.** Any married person who executes this Deed of Trust as a "Grantor" agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon any separate property or community property of that person.
- 8.7 **INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Beneficiary in writing. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.
- 8.8 **SUCCESSORS IN INTEREST.** The terms, covenants and conditions contained herein and in the other Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the



parties hereto. The foregoing sentence shall not be construed to permit Grantor to assign the Loan except as permitted under the Loan Documents.

8.9 **GOVERNING LAW.** This Deed of Trust was accepted by Beneficiary in the State of California and the proceeds of the Note were disbursed from the State of California, which state the parties agree has a substantial relationship to the parties and the Loan. Accordingly, in all respects, including, without limitation, matters of construction, validity, enforceability and performance, all Loan Documents shall be governed by, and construed in accordance with, the laws of the State of California applicable to contracts made and performed in such state and any applicable law of the United States of America, except that at all times the provisions for enforcement of Beneficiary's STATUTORY POWER OF SALE and all other remedies granted hereunder and the creation, perfection and enforcement of all security interests created pursuant hereto and to the other Loan Documents in any Collateral which is located in the state where the Property is located shall be governed by and construed in accordance with, the laws of the state where the Property is located.

8.10 **CONSENT TO JURISDICTION.** Grantor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the State of California over any suit, action, or proceeding, brought by Grantor against Beneficiary, arising out of or relating to the Loan or any Loan Document; (b) any state or federal court sitting in the state where the Property is located or the state in which Grantor's principal place of business is located over any suit, action or proceeding, brought by Beneficiary against Grantor, arising out of or relating to the Loan or any Loan Document; and (c) any state court sitting in the county of the state where the Property is located over any suit, action, or proceeding, brought by Beneficiary to exercise its STATUTORY POWER OF SALE under this Deed of Trust or any action brought by Beneficiary to enforce its rights with respect to the Collateral.

8.11 **ADDRESSES; REQUEST FOR NOTICE.** All notices and other communications that are required or permitted to be given to a party under the Loan Documents shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission to the addressee or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission. The addresses of the parties are set forth on page 2 of this Deed of Trust and the facsimile numbers for the parties are as follows:

Beneficiary:

MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.  
FAX No. : (703) 748-0183

Trustee:

FAX NO. : (360) 424-4458

Grantor :

SAVE ON STORAGE, LLC  
FAX No. : (360) 424-3548

Grantor's principal place of business is at the address set forth on page 2 of this Deed of Trust.

Any Grantor whose address is set forth on page 2 of this Deed of Trust hereby requests that a copy of notice of default and notice of sale be delivered to it at that address. Failure to insert an address shall constitute a designation of Grantor's last known address as the address for such notice. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving 30 days notice to the other parties in the manner set forth above.

8.12 **ADVERTISING.** In connection with the Loan, Grantor hereby agrees that Wells Fargo & Company and its subsidiaries (together, "Wells Fargo") may publicly identify details of the Loan in Wells Fargo



advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail or internet advertising or communications. Such details may include the name of the Property, address of the Property, the Loan amount, the date of the closing and a description of the size/location of the Property.

- 8.13 **NOMINEE CAPACITY OF MERS.** MERS serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and its successors and assigns and only holds legal title to the interests granted, assigned, and transferred herein. All payments or deposits with respect to the Secured Obligations shall be made to Lender, all advances under the Loan Documents shall be made by Lender, and all consents, approvals, or other determinations required or permitted of Beneficiary herein shall be made by Lender. MERS shall at all times comply with the instructions of Lender and its successors and assigns. If necessary to comply with law or custom, MERS (for the benefit of Lender and its successors and assigns) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of this Deed of Trust. Subject to the foregoing, all references herein to "Beneficiary" shall include Lender and its successors and assigns.
- 8.14 **COUNTERPARTS.** This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.
- 8.15 **NON-AGRICULTURAL USE.** The Property is not used principally for agricultural or farming purposes.
- 8.16 **WAIVER OF JURY TRIAL.** TO THE FULLEST EXTENT NOW OR HEREAFTER PERMITTED BY APPLICABLE LAW, BENEFICIARY AND GRANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF BENEFICIARY OR GRANTOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO ENTER INTO THIS DEED OF TRUST.
- 8.17 **FINAL EXPRESSION/NO ORAL AGREEMENTS.** READ THIS DOCUMENT CAREFULLY. THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.
- THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**
- 8.18 **COMMERCIAL LOAN.** Trustor warrants that the Loan evidenced by the Note and this Deed of Trust is being made solely to acquire or carry on a business or commercial enterprise, and/or Trustor is a business or commercial organization. Trustor further warrants that all of the proceeds of the Note shall be used for commercial purposes and stipulates that the Loan evidenced by the Note shall be construed for all purposes as a commercial loan, and is made for other than personal, family or household purposes.

[END OF BODY OF DEED OF TRUST – EXECUTION OCCURS ON THE FOLLOWING PAGE]



IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the day and year set forth above.

SAVE ON STORAGE, LLC,  
a Washington limited liability company

By: \_\_\_\_\_

  
John J. Piazza, Sr.,  
Manager



200712260037

Skagit County Auditor

**ACKNOWLEDGMENT**

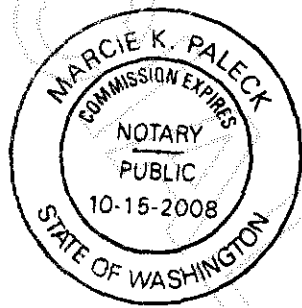
STATE OF Washington )  
 ) ss.  
COUNTY OF Skagit )

On this 20<sup>th</sup> day of December, 2007, the undersigned, a Notary Public in and for the said County and State, hereby certifies that before me personally appeared, John J. Piazza, Sr., personally known to me or proved to me on the basis of satisfactory evidence, to be the Manager of Save On Storage, LLC, a Washington limited liability company, who, having been duly authorized, executed the foregoing instrument as Manager on behalf of said limited liability company and acknowledged the due execution of the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein stated.

Witness my hand and Notarial Seal.

*Marcie K. Paleck*

Print Name: Marcie K. Paleck  
County of Skagit  
State of Washington  
My Commission Expires: October 15, 2008



UNRECORDED DOCUMENT



200712260037  
Skagit County Auditor

**EXHIBIT A**  
**Description of Land**

Exhibit A to DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Deed of Trust"), dated as of December 21, 2007, by SAVE ON STORAGE, LLC, a Washington limited liability company ("Grantor"), CHICAGO TITLE INSURANCE CORPORATION, a Washington corporation ("Trustee"), with a mailing address at 425 Commercial Street, Mount Vernon, Washington 98273, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation, as "Beneficiary".

Description of Land. The Land referred to in this Deed of Trust is situated in Mount Vernon, Skagit County, Washington and is described as follows:

**PARCEL A:**

Tract 4, MOUNT VERNON BINDING SITE PLAN NO. MV 1-91, approved April 18, 1991, and recorded April 19, 1991, in Volume 9 of Short Plats, page 350, under Auditor's File No. 9104190001, records of Skagit County, Washington; being a portion of the Northeast Quarter of the Northeast Quarter of Section 18, Township 34 North, Range 4 East of the Willamette Meridian.

Situated in Skagit County, Washington.

**PARCEL B:**

The North 3/4 of the North 1/2 of the Northeast quarter of the Northeast quarter of Section 18, Township 34 North, Range 4 East, W.M.;

EXCEPT the North 30 feet of the East 887.50 feet thereof as conveyed to the State of Washington and to the City of Mount Vernon and to Skagit County for road purposes by Deeds recorded under Auditor's File Nos. 80832 (Volume 83 of Deeds, Page 80), 293262 (Volume 172 of Deeds, Page 441) and 840582, records of Skagit County, Washington;


AND ALSO EXCEPT the North 20 feet of that portion thereof lying West of the East 887.50 feet of said Northeast quarter conveyed to Skagit County for road purposes by Deed recorded August 22, 1910, under Auditor's File No. 80832, records of Skagit County, Washington;

AND ALSO EXCEPT that portion thereof lying East of the West line of that property conveyed to the City of Mount Vernon for street and utility purposes by Deed recorded under Auditor's File No. 840582, records of Skagit County, Washington;

AND ALSO EXCEPT that portion conveyed to the State of Washington for Primary State Highway No. 1;

AND ALSO EXCEPT that portion conveyed to The City of Mount Vernon by instrument recorded July 22, 1999, under Auditor's File No. 199907220098, records of Skagit County, Washington.

AND ALSO EXCEPT those portions thereof lying within the boundaries of the following described tracts:

  
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The West 215 feet of the East 1102.5 feet of the North 202.605 feet of that portion of the Northeast quarter of the Northeast quarter of Section 18, Township 34 North, Range 4 East, W.M., lying Southerly of the County Road as it existed on June 20, 1973 which runs along the North line of said subdivision;

That portion of the Northeast quarter of the Northeast quarter of Section 18, Township 34 North, Range 4 East, W.M., lying East of the West line of the East 1102.5 feet of said subdivision.

Situated in Skagit County, Washington.

**PARCEL C:**

Tract 2, MOUNT VERNON BINDING SITE PLAN NO. MV 1-91, approved April 18, 1991, and recorded April 19, 1991, in Volume 9 of Short Plats, page 350, under Auditor's File No. 9104190001, records of Skagit County, Washington; being a portion of the Northeast Quarter of the Northeast Quarter of Section 18, Township 34 North, Range 4 East of the Willamette Meridian.

Situated in Skagit County, Washington.

**PARCEL D:**

TOGETHER WITH a 30 foot non-exclusive easement for access for the benefit of Lot 2 and 4 over and across the following described property:

The South 30 feet of Tract 1 of Binding Site Plan NO. MV 1-91, approved April 18, 1991 and recorded April 19, 1991 under auditor's File No. 9104190001 in Volume 1 of Short Plats, Page 350, records of Skagit County, Washington, being a portion of the Northeast quarter of the Northeast quarter of Section 18, Township 34 North, Range 4 East W.M., located in the County of Skagit, State of Washington.

Situated in Skagit County, Washington.

Tax Parcel ID Numbers: 8007-000-004-0003, 340418-1-004-0000 and 8007-000-002-0001



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