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2017 009446

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2017 FEB 13 AM 10:03

MICHAEL B. BROWN
RECORDER

THIS INSTRUMENT: (A) SECURES THE MAXIMUM PRINCIPAL AMOUNT OF THE FACE AMOUNT OF THE NOTE (AS DESCRIBED BELOW); (B) CONSTITUTES A CONTINUOUSLY PERFECTED UCC FIXTURE FINANCING STATEMENT FILED TO PERFECT A SECURITY INTEREST IN FIXTURES HEREIN GRANTED PURSUANT TO IND. CODE §26-1-9.1-502 AND §26-1-9.1-515 AND THE TERMS AND PROVISIONS HEREOF, AND IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS, AND ALSO TO BE INDEXED IN THE INDEX OF FIXTURE FINANCING STATEMENTS UNDER THE NAME OF THE MORTGAGOR, AS "DEBTOR", AND MORTGAGEE, AS "SECURED PARTY", AND THE ADDITIONAL INFORMATION SET FORTH HEREIN, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.



AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Mortgage") dated as of November 2, 2016, is made by 37th Avenue Carwash LP, an Arizona limited partnership, having a mailing address of 2398 East Camelback Road, Suite 615, Phoenix, AZ 85016 ("Mortgagor"), to and for the benefit of Pinnacle Diversified Private Income Limited Partnership with the following address: c/o Berry Riddell LLC, 6750 E. Camelback Road, Suite 100, Scottsdale, Arizona 85251, Attn: John A. Hink ("Mortgagee"). This Mortgage amends, restates, and supercedes the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated June 30, 2016.

WITNESSETH:

WHEREAS, pursuant to the terms and provisions contained in that certain Third Amended and Restated Consolidated Secured Promissory Note (the "Note") of even date herewith in the principal amount of Four Million Forty Thousand and 00/100ths (Canadian) Dollars (\$4,040,000.00), executed by and among Mortgagor and Mortgagee pursuant to which Mortgagor promises to pay said principal sum (or so much thereof as may be outstanding at the maturity thereof) on or before May 30, 2016, together with interest on the balance of principal from time to time outstanding and unpaid thereon at the rate and at the times specified in the Note.

NOW, THEREFORE, to secure (i) the payment when and as due and payable of the principal of and interest on the Note and (ii) the performance and observance of the covenants and agreements contained in this Mortgage, the Note, and any other instrument or document securing the Note (all of such indebtedness, obligations and liabilities identified in (i) and (ii) above being hereinafter referred to as the "indebtedness hereby secured" or "Indebtedness"), Mortgagor hereby Mortgages and Warrants unto Mortgagee, its successors and assigns and does hereby grant to Mortgagee, its successors and assigns a

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security, interest in all and singular the properties, rights, interests and privileges described below, all of same being collectively referred to herein as the "Property":

A. That certain real estate lying and being in the County of Lake and State of Indiana, more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Estate");

B. All buildings and improvements of every kind and description heretofore or hereafter erected or placed on the Real Estate and all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever now or hereafter attached to or contained in or used in connection with the Real Estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including, without limitation, all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and other equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance and protection of the Real Estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the Real Estate and for the purpose of this Mortgage to be Real Estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a Security Agreement under the provisions of the Uniform Commercial Code of the State of Indiana as presently or hereafter in effect, or as in effect from time to time (the "Code") for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor to Mortgagee, securing the indebtedness hereby secured. For purposes of Article 9 of the Code, (a) Mortgagor is the "debtor" and is a limited partnership organized under the laws of the state of Arizona, (b) the organization number assigned debtor by the state in which debtor is organized is 2026786, (c) Mortgagee is the "secured party", (d) information concerning the security interest created hereby may be obtained from Mortgagee at its address set forth on page 1 of this Mortgage, (e) Mortgagor's mailing address is set forth on page 1 hereof; and (f) this financing statement is to be recorded in the real property records for the county in which the Property is located.

C. All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil and water rights belonging or in any wise appertaining to the Real Estate and the buildings and improvements now or hereafter located hereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent or for security) under any and all leases, and all credits, deposits, privileges, rights, options to renew, extend and any other options or rights of Mortgagor under all leases and renewals thereof or under any contracts or options for the sale of all or any part of said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees that until an Event of Default (as hereinafter defined) shall occur giving

Mortgagee the right to foreclose this Mortgage, Mortgagor may collect or receive (but not more than thirty (30) days in advance) and enjoy such rents;

D. All judgments, awards of damages, settlements and other compensation hereafter made resulting from condemnation proceedings or the taking of the Real Estate or any part thereof or any building or other improvements now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively "Condemnation Awards");

E. All property and rights, if any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter by installation or writing of any kind, be subjected to the lien hereof;

F. All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the Real Estate or any part thereof;

G. All of Mortgagor's accounts, health-care insurance receivables, goods, general intangibles, chattel paper, notes, instruments, equipment, machinery, inventory, cash, cash equivalents and causes of action; and

H. Any and all additions and accessories to all of the foregoing and any and all products, proceeds, renewals, replacements and substitutions of all of the foregoing.

TO HAVE AND TO HOLD the Property and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, pledged and assigned, and in which a security interest is granted, unto Mortgagee, its successors and assigns, forever; provided, however, that this instrument is upon the express condition that if the principal of and interest on the Note shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed, then this instrument and the estate and rights hereby granted shall cease, determine and be void and this instrument shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. Payment of the Indebtedness. The indebtedness hereby secured will be promptly paid as and when the same becomes due.

2. Representation of Title and Further Assurances. Mortgagor will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this instrument and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clauses hereof or intended so to be. At the time of delivery of these presents, Mortgagor possesses a fee simple estate in the Property which constitutes real property, is the owner or lessee of the Property which constitutes personal property, and has good right, full power and lawful authority to convey, mortgage and create a security interest in the same, in the manner and form aforesaid, the same is free and clear of all liens, charges, easements,

covenants, conditions, restrictions and encumbrances whatsoever, including the personal property and fixtures, security agreements, conditional sales contracts and anything of a similar nature, and Mortgagor shall and will forever defend the fee title to the Property that constitutes real property against the claims of all persons whomsoever.

3. Compliance with Note. Mortgagor will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Note, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns. In the event of a conflict or inconsistency between the Mortgage and Note, the Note shall control.

4. Provisions of Note. The proceeds of the Note is to be disbursed by Mortgagee in accordance with the terms contained in the Note, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Mortgagor covenants that any and all monetary disbursements made in accordance with the Note shall constitute adequate consideration to Mortgagor for the enforceability of this Mortgage and the Note, and that all advances and indebtedness arising and accruing under the Note from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured by this Mortgage. Upon the occurrence of an Event of Default under the Note, Mortgagee may (but need not) declare the entire principal indebtedness and interest thereon due and payable and pursue all other remedies conferred upon Mortgagee by this Mortgage or by law upon a default. All monies so expended shall be so much additional indebtedness secured by this Mortgage and shall be payable on demand. The provisions, rights, powers and remedies contained in the Note are in addition to, and not in substitution for, those contained herein.

5. Payment of Taxes. Mortgagor shall pay before any penalty attaches all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges, of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Property or any part thereof and which, if unpaid, might by law become a lien or charge upon the Property or any part thereof, and upon request shall exhibit to Mortgagee official receipts evidencing such payments, except that, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law), after notice to Mortgagee, by appropriate proceedings which steps taken by Mortgagor shall operate to prevent the collection thereof or the sale or forfeiture of the Property or any part thereof to satisfy the same, conducted in good faith and with due diligence.

6. Payment of Taxes on Note, Mortgage or Interest of Mortgagee. Mortgagor agrees that if any tax, assessment or imposition upon this Mortgage or the interest of Mortgagee in the Property is levied, assessed or charged, then such taxes are to be paid by Mortgagor to, for or on behalf of Mortgagee as they become due and payable (which Mortgagor agrees to do upon demand of Mortgagee, to the extent permitted by law), or Mortgagee is reimbursed for any such sum advanced by Mortgagee.

7. Recordation and Payment of Taxes and Expenses Incident Thereto. Mortgagor will cause this Mortgage, all mortgages supplemental hereto and any financing statement (including, without limitation, any financing statement required under Article 9 of the Code, which has been revised by the Uniform Law Commissioners, in conjunction with the American Law Institute) or other notices of a security interest required by Mortgagee at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law for the recording and filing or for the rerecording and refileing of a mortgage, security interest, assignment or other lien or charge upon the Property, or any part thereof, in order fully to preserve and protect the rights of Mortgagee hereunder, and, without limiting the foregoing, Mortgagor will pay or reimburse Mortgagee for the payment of any and all taxes, fees or other charges incurred in connection with any such recordation or re-recordation,

including any documentary stamp tax or tax imposed upon the privilege of having this instrument or any instrument issued pursuant hereto recorded.

8. [Intentionally Omitted]

9. Damage to and Destruction of the Improvements.

(a) Notice. In case of any material damage to or destruction of any improvements which are or will be constructed on the Property or any part thereof, Mortgagor shall promptly give written notice thereof to Mortgagee, generally describing the nature and extent of such damage or destruction.

(b) Restoration. In case of any material damage to or destruction of the Property or any part thereof, Mortgagor, at Mortgagor's expense, will promptly commence and complete (subject to unavoidable delays occasioned by strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions and similar causes beyond the reasonable control of Mortgagor) the restoration, replacement or rebuilding of the Property to the extent required to permit Mortgagor to conduct its business operations or take other action to allow it to continue to conduct its business operation at other locations.

10. Eminent Domain. If all or any material part of the Property shall be damaged or taken through condemnation (which term when used herein shall include any damage or taking by any governmental authority and any transfer by private sale of lieu thereof), either temporarily or permanently, the proceeds shall be applied to the Note.

11. Construction, Repair, Waste, etc. Mortgagor shall (i) keep and maintain the Property and every part thereof in good repair and condition (ordinary wear and tear excepted) making such repairs and replacements as may from time to time be reasonably necessary or appropriate to keep the Property in the condition required to permit Mortgagor to conduct its business operations, (ii) comply in all material respects with all laws, ordinances, regulations and orders of any federal, state, county or municipal authority and with any restriction or requirement contained in any recorded instrument relating to the Property or to the use thereof, (iii) comply with any conditions and requirements necessary to maintain the insurance required under this Mortgage, (iv) maintain any and all rights, licenses, permits, privileges, franchises or concessions, whether public or private, which are or become applicable to the Property or which are granted to Mortgagor in connection with any existing or planned improvement or use of the Property to the extent reasonably required to permit Mortgagor to conduct its business operations, (v) not erect, demolish, remove or alter any improvement on the Real Estate except in the ordinary course of business or as may be required by law or as may be necessary for any repairs or replacements expressly required under this Mortgage without the written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed, (vi) not remove, sever, sell or mortgage any fixtures or personal property of Mortgagor on the Real Estate except as may be required by law or in the ordinary course of business without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed, (vii) not permit, suffer or commit any waste, impairment or deterioration of the Property or any part thereof (ordinary wear and tear excepted), (viii) not permit or conduct either the generation, treatment, storage or disposal of hazardous waste, as defined in the Resource Conservation and Recovery Act, or the disposal on the Property of petroleum or any hazardous substance, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act except to the extent required by applicable law shall perform all remedial actions necessary as the result of the presence of any such hazardous wastes, petroleum or hazardous substances on, at or near the Property, regardless of by whom caused, and (ix) to the extent it will have a Material Adverse Effect on the business or operation of Mortgagor not cause, suffer or permit the Property to be or become subject to any covenants or

restrictions not existing on the date of this Mortgage or initiate, suffer or permit any change in any existing covenant, restriction, zoning ordinance or other private or public restriction impacting upon the uses which may be made of, or the improvements which may be placed upon, the Property and shall promptly notify Mortgagee of and appear in and defend, at its sole cost and expense, any proceeding to impose or change any such covenants and restrictions but solely to the extent that Mortgagee reasonably believes that the foregoing is likely to have a Material Adverse Effect on the business or operation of Mortgagor.

Mortgagor's failure to pay taxes and/or assessments assessed against the Property, or any installment thereof, or any insurance premium upon policies covering the Property or any part thereof, as required by this Mortgage, shall constitute waste (although the meaning of the term "waste" shall not necessarily be limited to such nonpayment), and shall entitle Mortgagee to all remedies provided for therein. Mortgagor further agrees to and does hereby consent to the appointment of a receiver under such statute, should Mortgagee elect to seek such relief thereunder.

12. Liens and Encumbrances. Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created, or to remain, and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge or conditional sale or other title retention agreement with respect to the Property or any part thereof, whether superior or subordinate to the lien hereof, except for this instrument, and the lien of all other documents given to secure the indebtedness hereby secured; provided, however, that Mortgagor may contest the validity of any mechanic's lien, charge or encumbrance (other than the lien of this Mortgage or of any other document securing payment of the Note). Mortgagor agrees to prosecute and contest such lien diligently and by appropriate legal proceedings which will prevent the enforcement of the matter under contest and will not impair the lien of this Mortgage or interfere with the normal conduct of business on the Property.

13. Right of Mortgagee to Perform Mortgagor's Covenants, etc. If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter upon prior written notice to Mortgagor and failure of Mortgagor to make such payment or perform such act within any applicable cure period provided herein make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Property or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Rate, shall constitute so much additional indebtedness hereby secured and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee in making any payment authorized under this Paragraph 13 relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof.

14. [Intentionally Omitted]

15. Rents/Profits; After-Acquired Property.

(a) As additional security for the payment of the Indebtedness, insurance premiums, taxes and assessments, at the time and in the manner herein agreed, and for the performance of the covenants and agreements herein contained, pursuant to applicable law, the Mortgagor does hereby sell, assign, transfer and set over unto the Mortgagee herein, its successors and assigns, all the rents, profits and income under any lease or leases of the Property (including any extensions, amendments or renewals

thereof), whether due or to become due, including all such leases in existence or coming into existence during the period this Mortgage is in effect. This assignment of rents shall run with the land and be good and valid as against the Mortgagor herein or those claiming by, under or through the Mortgagor, from the date of the recording of this instrument. This assignment shall continue to be operative during the foreclosure or any other proceedings taken to enforce this Mortgage. In the event of a sale or foreclosure which shall result in a deficiency, this assignment shall stand as security during the redemption period for the payment of such deficiency. This assignment is given as collateral security only and shall not be construed as obligating Mortgagee to perform any of the covenants or undertakings required to be performed by Mortgagor contained in any such assigned leases. Should an Event of Default exist, the Mortgagor shall, upon written demand therefor made by the Mortgagee, deliver and surrender possession of the Real Estate to the Mortgagee who shall thereafter to the extent applicable collect the rents and income therefrom, rent or lease the Property or portion thereof upon such terms and for such time as it may deem best, terminate any tenancy and maintain proceedings to recover rents or possession of the Property from any tenant or trespasser, and apply the net proceeds of such rent and income to the following purposes: preservation of the Property; payment of taxes; payment of insurance premiums; or payment of installments of interest and principal due under the terms of the Indebtedness. In the event that the Mortgagor fails, refuses or neglects to deliver or surrender such possession, the Mortgagee shall be entitled to the appointment of a receiver of the Property hereby mortgaged and of the earnings, income, issue and profits thereof, with such powers as the court making such appointment may confer.

(b) Any and all property hereafter acquired which is of the kind or nature herein provided and related to the Real Estate or intended to be and become subject to the lien hereof, shall ipso facto, and without any further conveyance, assignment or act on the part of Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

16. Inspection by Mortgagee. Mortgagee and its agents shall have the right to inspect the Property at all reasonable times, and access thereto shall be permitted for that purpose.

17. Subrogation. Mortgagor acknowledges and agrees that Mortgagee shall be subrogated to any lien discharged out of the proceeds of the Note or out of any advance by Mortgagee hereunder, irrespective of whether or not any such lien may have been released of record.

18. Environmental Audit. Mortgagor shall provide such information and certifications which Mortgagee may reasonably request from time to time with regard to the environmental condition of the Property.

19. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) The failure, neglect or refusal of Mortgagor to perform any of the covenants or obligations on its part to be kept or performed hereunder or under any of the other agreements executed in connection herewith and (i) such failure, neglect or refusal shall continue for a period of ten (10) days after notice thereof from Mortgagee to Mortgagor or (ii) if such failure, neglect or refusal cannot, with due diligence, be cured within said period, if Mortgagor does not commence curing said failure, neglect or refusal within said ten (10) day period or does not thereafter diligently pursue the curing thereof, and, in any event, such failure, neglect or refusal is not cured within thirty (30) days of said notice from Mortgagee; or

(b) Any default (after the expiration of any applicable notice and cure period) or any Event of Default shall occur under the Note or any other document evidencing or securing the indebtedness evidenced by the Note.

20. Remedies. When any Event of Default has occurred and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument) and in addition to such other rights as may be available under applicable law or the Note, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Mortgagee may, by written notice to Mortgagor, declare the Note and all unpaid indebtedness of Mortgagor hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) Uniform Commercial Code. Mortgagee shall have, with respect to any part of the Property constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Code, all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address above set forth at least ten (10) days prior to the sale or other event for which such notice is required. The expenses of retaking, selling and otherwise disposing of said property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional indebtedness hereby secured and shall be payable upon demand with interest at the Default Rate.

(c) Foreclosure. In addition to the other remedies granted under this Mortgage, the Mortgagee may, at the Mortgagee's option, immediately commence an action to foreclose this Mortgage by advertisement or judicial proceedings pursuant to applicable law or to specifically enforce its provisions or any of the indebtedness secured hereby pursuant to the statutes in such case made and provided and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of the Mortgagee.

(d) Appointment of Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Property, be entitled to have a receiver appointed of all or any part of the Property and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Property or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise. Without limitation of the foregoing, in the event Mortgagor fails to pay any taxes, assessments or similar charges when due, or to procure and maintain any insurance all as required in Paragraphs 5 and 8 of this Mortgage or elsewhere herein, such failure shall constitute waste and shall entitle Mortgagee to the appointment by a court of competent jurisdiction of a receiver for the Property for the purpose of preventing waste, which receiver, subject to the order of the court, may collect any rents and profits and exercise control of the Property as the court shall order.

(e) Taking Possession, Collecting Rents, Etc. Mortgagee may be placed in possession pursuant to court order as mortgagee in possession or receiver as provided under applicable law, and Mortgagee pursuant to court order as mortgagee in possession or receiver as provided by law may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted:

(i) Hold, operate, manage and control all or any part of the Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(ii) Cancel or terminate any lease or sublease of all or any part of the Property for any cause or on any ground that would entitle Mortgagor to cancel the same;

(iii) Elect to disaffirm any lease or sublease of all or any part of the Property made subsequent to this Mortgage without Mortgagee's prior written consent;

(iv) Extend or modify any then existing leases and make new leases of all or any part of the Property, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness hereby secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) Make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Property as may seem judicious to Mortgagee, to insure and reinsure the Property and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

(vi) Apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Property, to the payment of taxes, insurance premiums and other charges applicable to the Property, or in reduction of the indebtedness hereby secured in such order and manner as Mortgagee shall select.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Property. The right to enter and take possession of the Property and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Mortgagor promises to pay upon demand together with interest at the rate applicable to the Note at the time such expenses are incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken

pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Property, Mortgagee may, in the event the Property become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Rate.

21. Compliance with Indiana Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any applicable provision of the law of the state in which the Land is located governing foreclosure, (herein collectively called the "Mortgage Foreclosure Laws"), the provisions of the Mortgage Foreclosure Laws shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Mortgage Foreclosure Laws.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Mortgage Foreclosure Laws in the absence of said provision, Mortgagee shall be vested with the rights granted in the Mortgage Foreclosure Laws to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the Mortgage Foreclosure Laws, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Paragraph 20(c) or Paragraph 23 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

22. Waiver of Right to Redeem From Sale; Waiver of Appraisal, Valuation, Etc. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives, to the extent permitted by law, the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives, to the extent permitted by law, any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Note and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that the Property does not constitute agricultural real estate or residential real estate. To the fullest extent permitted by law, Mortgagor hereby voluntarily and knowingly waives any and all rights of redemption on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

23. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs

and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Property, and all of which expenditures shall become so much additional indebtedness hereby secured which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

24. Insurance After Foreclosure. Wherever provision is made in the Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale.

25. Protective Advances. All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by Mortgage Foreclosure Laws (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Mortgage Foreclosure Laws, including those provisions herein below referred to:

(a) All advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Property; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage;

(b) Payments by Mortgagee of: (i) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title;

(c) Advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) Reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the sheriff's sale of the Property to satisfy the judgment of foreclosure;

(g) Expenses deductible from proceeds of sale;

(h) Expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any

receiver or mortgagee takes possession of the Property; (ii) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (iii) payments required or deemed by Mortgagee to be for the benefit of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (iv) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (v) pursuant to any lease or other agreement for occupancy of the Property.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Mortgage Foreclosure Laws, apply to and be included in:

- (i) Determination of the amount of indebtedness secured by this Mortgage at any time;
- (ii) The indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (iii) Determination of amounts deductible from sale proceeds pursuant to the Mortgage Foreclosure Laws;
- (iv) Application of income in the hands of any receiver or Mortgagee in possession; and
- (v) Computation of any deficiency judgment pursuant to the Mortgage Foreclosure Laws.

26. Application of Proceeds. The proceeds of any foreclosure sale of the Property or of any sale of property pursuant to Paragraph 20(c) hereof shall be distributed in the following order of priority: first, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Paragraphs 20(b), 20(c) and 23 hereof; second, to all other items which under the terms hereof constitute indebtedness hereby secured in addition to that evidenced by the Note with interest thereon as herein provided; third, to all interest on the Note; and fourth, to all principal on the Note with any overplus to whomsoever shall be lawfully entitled to same.

27. [Intentionally Omitted]

28. Mortgagee Party to Suits. If Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Property or the title thereto or the interest of Mortgagee under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee shall incur any costs or expenses in preparation for the commencement of any foreclosure proceeding or for the defense of any threatened suit or proceeding

which might affect the Property or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Mortgagor agrees to pay to Mortgagee, immediately, all reasonable costs, charges, expenses and attorneys' fees incurred by Mortgagee in any such case, and the same shall constitute so much additional indebtedness hereby secured payable upon demand with interest at the Default Rate.

29. Modification Not To Affect Lien. Mortgagee, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Property, may in its discretion release any part of the Property or any person liable for any of the indebtedness hereby secured, may extend the time of payment of any of the indebtedness hereby secured and may grant waivers or other indulgences with respect hereto and thereto, without in any way affecting or impairing the liability of any party liable upon any of the indebtedness hereby secured or the priority of the lien of this Mortgage upon all of the Property not expressly released, and may agree with Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the indebtedness hereby secured (including modifications in the rates of interest applicable thereto).

30. Notices. Any and all notices given in connection with this Mortgage shall be deemed adequately given only if in writing and (i) personally delivered; or (ii) sent by a nationally-recognized overnight courier service; or (iii) sent by certified United States mail, postage prepaid, return receipt requested, to the party or parties for whom such notices are intended. A written notice shall be deemed received (i) when delivered in person; (ii) on the next business day immediately following the day sent by overnight courier; and (iii) on the third (3rd) business day following the day sent by certified mail. A written notice shall also be deemed received on (i) the date delivery shall have been refused at the address required by this Mortgage; or (ii) with respect to notices sent by United States mail but not delivered, the date as of which the postal service shall have indicated such notice to be undeliverable at the address required by this Mortgage. Any and all notices referred to in this Mortgage or which any party desires to give to another shall be addressed as follows:

If to Mortgagee: Pinnacle Diversified Private Income Limited Partnership
c/o Berry Riddell LLC
6750 E. Camelback Road
Suite 100
Scottsdale, Arizona 85251
Attn: John A. Hink

If to Mortgagor: 37th Avenue Carwash LP
2398 East Camelback Road,
Suite 615,
Phoenix, AZ 85016

with a courtesy copy to: Gallagher & Kennedy, P.A.
2575 E. Camelback Road
Phoenix, Arizona 85016
Attention: Brian J. Zavislak

or in such other manner or to such other address, as such party shall designate in a written notice to the other party hereto.

31. Partial Invalidity. All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be

held to be invalid or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

32. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

33. [Intentionally Omitted]

34. Headings. The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

35. Changes, etc. This instrument and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

36. Governing Law. This Mortgage shall be governed by and construed under the laws of the State of Arizona without regard to principles of conflicts of laws, except that the laws of the State of Indiana shall govern the creation, perfection and foreclosure of the liens created hereunder on the Property or any interest therein.

37. Special State Provisions. In the event of any inconsistencies between the terms and conditions of this Paragraph 37 and the other provisions of this Mortgage, the terms and conditions of this Paragraph 37 shall control and be binding.

(a) Recitals and Definitions (State Specific). The recitals set forth herein above are incorporated herein by reference and made a part of this Mortgage as if fully set forth herein. Terms used in this Paragraph 37 that are not otherwise defined are given the same meaning as set forth in this Mortgage. The following terms and references (for purposes of this Paragraph 37 only) shall mean the following:

(i) “Applicable State Law” means statutory and case law in the State, including, but not by way of limitation, Mortgages, Ind. Code 32-29, Mortgage Foreclosure Actions, Ind. Code 32-30-10, Receiverships, Ind. Code 32-30-5, and the Uniform Commercial Code - Secured Transactions, Ind. Code 26-1-9.1 (the “UCC”), as amended, modified and/or recodified from time to time; provided, however, if by reason of mandatory provisions of law, the perfection, the effect of perfection or nonperfection, and the priority of a security interests in any personal property are governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State, “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to perfection, effect of perfection or non-perfection, and the priority of the security interests in any such personal property.

(ii) “County” means the County in the State in which the Property is located.

(iii) “Hazardous Materials Laws” as used in this Mortgage, shall include, without limitation, the “Environmental Management Laws” as defined in Ind. Code 13-11-2-71. Neither Mortgagor nor, to the best of Mortgagor’s knowledge, after diligent inquiry and investigation, any tenant of the Property has received a notice of intention to hold a lien as may be imposed under Ind. Code 13-25-

4-2, et seq.

(iv) **“Leases”** means any lease or leases of the Property (including any extensions, amendments or renewals thereof), whether due or to become due, including all such leases in existence or coming into existence during the period this Mortgage is in effect.

(v) **“Rents”** means all the rents, profits and income under any of the Leases.

(vi) **“State”** means the state in which the Property is located.

(b) **Indebtedness.** The terms **“Indebtedness”** or **“indebtedness hereby secured”** as defined in this Mortgage shall not include any judgment(s) or final decree(s) rendered in another jurisdiction, which judgment(s) or final decree(s) would be unenforceable by a State Court pursuant to Ind. Code 34-54-3-4.

(c) **Unenforceable Remedies.** Notwithstanding any provision in this Mortgage relating to a power of sale or other provision for sale of the Property upon an Event of Default other than under a judicial proceeding, any sale of the Property pursuant to this Mortgage will be made through a judicial proceeding, except as otherwise may be permitted under the UCC. To the extent Applicable State Law limits: (i) the availability of the exercise of any of the remedies set forth in this Mortgage, including without limitation the remedies involving a power of sale on the part of Mortgagee, and the right of Mortgagee to exercise self help in connection with the enforcement of the terms of this Mortgage, or (ii) the enforcement of waivers and indemnities made by Mortgagor, such remedies, waivers, or indemnities shall be exercisable or enforceable, any provisions in this Mortgage to the contrary notwithstanding, if, and to the extent, permitted by the laws in force at the time of the exercise of such remedies or the enforcement of such waivers or indemnities without regard to whether such remedies, waivers or indemnities were enforceable at the time of the execution and delivery of this Mortgage.

(d) **Future Advances.** This Mortgage shall secure all of the Indebtedness including all future advances of every kind and whenever occurring (including Protective Advances), whether made as an obligation or made at the option of Mortgagee, including but not limited to advances made after a reduction to a zero or other balance, or made otherwise; provided, however, that the maximum amount of the Indebtedness secured by this Mortgage outstanding at any time, including future advances (but excluding Protective Advances), shall not exceed 110% of the face value of the Note, such maximum amount being stated herein pursuant to and in accordance with Ind. Code 32-29-1-10 (the **“maximum amount secured hereby”**). This Mortgage shall further secure all modifications, extensions, and renewals of any Indebtedness secured by this Mortgage. Pursuant to Ind. Code 32-29-1-10, the lien of this Mortgage with respect to any future advances, modifications, extensions, and renewals referred to herein and made from time to time up to the maximum amount secured hereby shall have the same priority to which this Mortgage otherwise would be entitled as of the date of this Mortgage is executed and recorded without regard to the fact that such future advance, modification, extension or renewal may occur after this Mortgage is executed.

(e) **Indiana Responsible Property Transfer Law.** Mortgagor represents and warrants that it has delivered to Mortgagee disclosure document described and provided for in Indiana Responsible Property Transfer Law (Ind. Code 13-25-3) and except as disclosed in any environmental audits, reports or written disclosures delivered to Mortgagee, the Property does not, to the actual knowledge of Mortgagor, contain any environmental defect as defined in Ind. Code 13-11-2-70.

(f) **Assignment of Leases and Rents.** Without limiting the scope of this Mortgage, the assignment of Leases and Rents set forth herein is made pursuant to, and includes, but is not limited

to, all rights conferred by Ind. Code 32-21-4-2 and 32-29-1-11, and this Mortgage hereby creates, and Mortgagor hereby grants, a security interest and lien to Mortgagee in the Leases and Rents that will be perfected upon the recording of this Mortgage. Such assignment shall run with the Property and be good and valid as against Mortgagor and those claiming by, under or through Mortgagor, from the date of recording of this Mortgage. Such assignment shall continue to be operative during the foreclosure or any other proceedings taken to enforce this Mortgage. Such assignment does not and shall not be construed as obligating Mortgagee or any of its successors or assigns to perform any of the covenants or undertakings required to be performed by Mortgagor in any Leases.

(g) Covenants Running with the Land. All Indebtedness contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Property.

(h) No Waiver of Right to Seek Deficiency. Anything contained in Ind. Code. 32-29-7-5 to the contrary notwithstanding, no waiver made by Mortgagor in this Mortgage shall constitute the consideration for or be deemed to be a waiver or release by Mortgagee or any judgment holder of the Indebtedness of the right to seek a deficiency judgment against the Mortgagor or any other person or entity who may be personally liable for the Indebtedness, which right to seek a deficiency judgment is hereby reserved, preserved and retained by Mortgagee for its own behalf and its successors and assigns

(i) Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Property shall be distributed and applied pursuant to this Mortgage, to the fullest extent permitted by Applicable State Law.

(j) Credit Bid Purchase by Mortgagee. Upon any foreclosure sale or sales of all or any portion of the Property under this Mortgage and Applicable State Law, Mortgagee may bid for and purchase the Property and shall be entitled to apply all or any part of the Indebtedness secured hereby as a credit to the purchase price.

(k) Consent To Receiver and No Mortgagee-In-Possession. Any receiver appointed under this Mortgage shall have all of the usual powers and duties of receivers pursuant to Applicable State Law. Mortgagor hereby irrevocably consents to the appointment of such receiver and waives notice of any application therefore. It is understood and agreed that the exercise by Mortgagee of any of its rights or remedies under this Mortgage, or any appointment of a receiver for the Property by a court at the request of Mortgagee or by agreement with the Mortgagor, or the entering into possession of any part of the Property by such receiver, shall not be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Leases or Rents or the use, occupancy, enjoyment or any portion of the Property, unless and until Mortgagee, in person or by agent, assumes actual possession thereof.

(l) Consolidation of Actions. If Mortgagee brings an action in the State to recover judgment under the Note and during the pendency of such action brings a separate action in the State under this Mortgage, such actions shall be consolidated if and to the extent required pursuant to Ind. Code 32-30-10-10.

(m) Survival. Notwithstanding anything in this Mortgage to the contrary, any of the terms and provisions of this Mortgage that are intended to survive shall nevertheless survive the release or satisfaction of this Mortgage whether voluntarily granted by Mortgagee, as a result of a judgment upon judicial foreclosure of this Mortgage or in the event a deed in lieu of foreclosure is granted by Mortgagor to Mortgagee.

(n) Fraudulent Transfer Laws. Anything contained in this Mortgage to the contrary notwithstanding, the Indebtedness secured hereunder shall be limited to a maximum aggregate amount equal to the greatest amount that would not render Mortgagor's Indebtedness hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Title 11 of the United States Code or any provisions of applicable Indiana law (collectively, the "**Fraudulent Transfer Laws**"), in each case after giving effect to all other liabilities of Mortgagor, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws.

(o) Reimbursable Costs. All costs incurred by Mortgagee pursuant to this Mortgage or the Note, to the extent reimbursable under Applicable State Law, whether or not enumerated in this Mortgage ("**Reimbursable Costs**"), shall be added to the indebtedness hereby secured or by the judgment of foreclosure. The amount of any such Reimbursable Costs which may be paid or incurred after the decree or judgment for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness hereby secured in the foreclosure judgment or decree for or sale.

(p) Hazard Insurance Coverage. Anything contained in this Mortgage or the Note to the contrary notwithstanding, Mortgagee or Mortgagee's assignee or representative may not require Mortgagor, as a condition of receiving or maintaining this Mortgage to obtain hazard insurance coverage against risks to Improvements in an amount exceeding the replacement value of the Improvements in violation of Ind. Code 32-29-1-2.5.

(q) Financing Statements. Mortgagor shall prepare and deliver to Mortgagee such financing statements, and shall execute and deliver to Mortgagee such documents, instruments and further assurances, in each case in form and substance reasonably satisfactory to Mortgagee, as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder. Mortgagor hereby irrevocably authorizes Mortgagee to cause financing statements (and amendments thereto and continuations thereof) and any such documents, instruments and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor represents and warrants to Mortgagee that Mortgagor's jurisdiction of organization is the State of Delaware. After the date of this Mortgage, Mortgagor shall not change its name, type of organization, organizational identification number, jurisdiction of organization or location (within the meaning of the UCC).

(r) Fixture Filing. Mortgagor hereby authorizes Mortgagee, to the extent permitted by Applicable State Law, to file financing statements covering the security interest granted Mortgagee in this Mortgage in the fixtures, as such term is defined in Ind. Code 26-1-9.1-102(41), that are part of the Property, and this Mortgage shall be effective as a continuously perfected financing statement filed pursuant to Applicable State Law as a fixture filing from the date of the filing of this Mortgage for record with the Recorder of the County in the State. In order to satisfy Applicable State Law, the following information is hereby provided:

Name of Debtor:	37th Avenue Carwash LP
Address of Debtor:	2398 East Camelback Road, Suite 615, Phoenix, AZ 85016
Type of Organization:	Limited Partnership
State of Organization:	Arizona
Organization Number:	2026786
Name of Secured Party:	Pinnacle Diversified Private Income Limited Partnership
Address of Secured Party:	c/o Berry Riddell LLC, 6750 E. Camelback Road, Suite 100, Scottsdale, Arizona 85251, Attn: John A. Hink

Record Owner of Property: 37th Avenue Carwash LP

(s) Receipt of Fixture Filing. Mortgagor hereby acknowledges receipt of a copy of this Mortgage in compliance with Mortgagee's obligation under the UCC to deliver a copy of the fixture filing to Mortgagor pursuant to Section 9.1-502(f) of the UCC.

(t) Utility Refunds and Rebates. The definition of "Property" is hereby amended to include all utility refunds and rebates, irrespective of the time periods to which the same relate.

(u) Business Purpose. Mortgagor hereby represents and agrees that the Indebtedness secured by this Mortgage is being obtained for business or commercial purposes, and the proceeds thereof will not be used for personal, family, residential, household or agricultural purposes.

(v) Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, with full authority in the place and stead of Mortgagor, and in the name of Mortgagor or otherwise (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee; (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, and any of the other Property in favor of the grantee of any such deed and as may be necessary or desirable for such purpose; (c) to prepare and file or record financing statements and continuation statements, and to prepare, execute and file or record applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Property, and (d) after the occurrence and during the continuance of any Event of Default, to perform any obligation of Mortgagor hereunder; provided, however, that (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Paragraph.

(w) Other Collateral. Mortgagor acknowledges and agrees that the Indebtedness is secured by the Property and various other collateral including, without limitation, at the time of execution of this Mortgage certain personal property of Mortgagor and properties of the Other Borrowers. Mortgagor specifically acknowledges and agrees that the Property, in and of itself, if foreclosed or realized upon would not be sufficient to satisfy the outstanding amount of the Indebtedness. Accordingly, Mortgagor acknowledges that it is in Mortgagor's contemplation that the other collateral pledged to secure the Indebtedness may be pursued by Mortgagee in separate proceedings in the various states and counties where such collateral may be located and additionally that Mortgagor and Other Borrowers liable for payment of the Indebtedness will remain liable for any deficiency judgments in addition to any amounts Mortgagee may realize on sales of other property or any other collateral given as security for the Indebtedness. Specifically, and without limitation of the foregoing, it is agreed that it is the intent of the parties hereto that in the event of a foreclosure of this Mortgage, that the Indebtedness shall not be deemed merged into any judgment of foreclosure, but shall rather remain outstanding to the fullest extent permitted by Applicable State Law. It is the further intent and understanding of the parties that Mortgagee, following an Event of Default, may pursue all of its collateral with the Indebtedness remaining outstanding and in full force and effect notwithstanding any judgment of foreclosure or any other judgment which Mortgagee may obtain.

(X) Indemnification Notice. **IT IS EXPRESSLY AGREED AND UNDERSTOOD BY MORTGAGOR THAT THIS MORTGAGE MAY INCLUDE INDEMNIFICATION PROVISIONS WHICH, IN CERTAIN CIRCUMSTANCES, INCLUDE AN INDEMNIFICATION BY MORTGAGOR OF MORTGAGEE FROM CLAIMS OR LOSSES ARISING AS A RESULT OF MORTGAGEE'S OWN NEGLIGENCE AND SUCH INDEMNIFICATION PROVISIONS SHALL SURVIVE THE SATISFACTION OR RELEASE OF THIS MORTGAGE.**

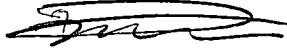
[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the undersigned has executed this Mortgage as of the date first above written.

37TH AVENUE CARWASH LP, an Arizona limited partnership

By: Clear Sky Carwash GP II, Inc., an Arizona corporation,
Its General Partner



By Marcus Kurschat, President



STATE OF Arizona)
COUNTY OF Maricopa)

SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Marcus Kurschat, personally known to me to be the President of Clear Sky Carwash GP II, Inc., the general partner of 37th Avenue Carwash LP, an Arizona limited partnership, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such President of the General Partner of such company, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth and pursuant to such company's authority.

GIVEN under my hand and Notarial Seal this 14th day of November, 2016.

My Commission Expires:

July 5, 2017

Document is NOT OFFICIAL
This Document is the property of the Lake County Recorder!

Printed Name

Resident of

Donna Guzek
Donna Guzek
Maricopa County, AZ

Notary Public

This Instrument Prepared by Brian J. Zavislak.

Upon Recording Mail to:

John A. Hink, Esq.
BERRY RIDDELL LLC
6750 E. Camelback Road, Suite 100
Scottsdale, Arizona 85251



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. John A. Hink.

EXHIBIT A

Legal Description

Property Address: 8585 E. 37th Avenue, Hobart, Indiana 46342

Legal Description:

A PARCEL OF LAND IN THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 30 NORTH, RANGE 7 WEST OF THE SECOND PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS COMMENCING AT A POINT 99 FEET EAST OF THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID NORTHWEST QUARTER AND RUNNING THENCE WEST ALONG THE NORTH LINE OF SAID SECTION 28 A DISTANCE OF 297 FEET; THENCE RUNNING SOUTH ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER A DISTANCE OF 440 FEET; THENCE RUNNING WEST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID SECTION 28 A DISTANCE OF 297 FEET; THENCE RUNNING NORTH A DISTANCE OF 440 FEET TO THE PLACE OF BEGINNING, IN THE CITY OF HOBART, LAKE COUNTY, INDIANA;

EXCEPT THAT PART FALLING WITHIN THE HIGHWAY AND EXCEPTING THAT PORTION LYING WITHIN WARRANTY DEED RECORDED AUGUST 18, 1994 AS DOCUMENT NO. 94058858.

Tax Parcel Number is 45-09-28-126-002.000-018

