

Loan Number: 2878

ENT 3945:2024 PG 1 of 25  
ANDREA ALLEN  
UTAH COUNTY RECORDER  
2024 Jan 22 03:43 PM FEE 40.00 BY AC  
RECORDED FOR GT Title Services - Spanish  
ELECTRONICALLY RECORDED

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Copa Lending LLC  
3740 E Southern Ave Ste 214  
Mesa, Arizona 85206

GT-SF55855C

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

**Date:** January 22nd, 2024

**Trustor:** Stewart VanValkenburg  
693 S 170 W  
Springville, UT 84663

**Beneficiary:** Copa Lending LLC, an Arizona Limited Liability Company  
3740 E Southern Ave Ste 214  
Mesa, AZ 85206

**Trustee:** Halliday Watkins & Mann  
Benjamin Mann  
376 East 400 South, Suite 300  
Salt Lake City, Utah 84111

**Note:** Means the Secured Promissory Note dated on or about the date hereof in the principal amount of **\$100,000.00** executed by Trustor in favor of Beneficiary, as amended or restated from time to time.

**Loan Agreement:** Means the Loan and Security Agreement dated on or about the date hereof executed by Trustor and Beneficiary, as amended or restated from time to time.

**WITNESSETH:**

**FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, TRUSTOR, BY EXECUTION AND DELIVERY OF THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as amended or restated from time to time, this "Deed of Trust"), HEREBY GRANTS, REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:**

**SECTION 1. GRANTING CLAUSE.**

1.1 Grant of Trust Property to Trustee. Trustor hereby irrevocably grants, bargains, sells, transfers, conveys and assigns unto Trustee, its successors and assigns, in trust, with power

of sale and right of entry and possession, for the benefit of Beneficiary, its participants, successors and assigns, all of Trustor's right, title and interest, both tangible and intangible, whether now owned or hereafter acquired, in and to the following described property (referred to collectively as the "**Trust Property**"):

(a) The real property described in Exhibit A attached hereto and incorporated herein (the "**Real Property**"), and the buildings, structures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "**Improvements**", with the Real Property and the Improvements referred to collectively herein as the "**Premises**");

(b) All fixtures located on or in the Premises;

(c) All easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, declarant rights and special declarant rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises, all reversions, all remainders, all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof, and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, in and to the Premises and every part and parcel thereof, with the appurtenances thereto together with all architectural plans, specifications and contracts, building permits and other entitlements;

(d) All of the following types of collateral owned by Trustor and located at, used in connection with or otherwise related to the Premises, as such types of collateral are defined in the Uniform Commercial Code as in effect from time to time in the State of Arizona (the "**UCC**"): accounts, contract rights, general intangibles, chattel paper, documents, instruments, inventory, goods, equipment, investment property, deposit accounts, letter of credit rights, commercial tort claims, and all books and records relating to the foregoing; provided that Trustor will cooperate with Beneficiary in obtaining "control" as defined in the UCC, with respect to collateral consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper;

(e) All "goods" and "equipment," as such terms are defined in Article 9 of the UCC, and other property of every kind and nature, whether tangible or intangible, owned by Trustor, or in which Trustor has or hereafter acquires an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements, including all machinery, equipment, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), building equipment, materials and supplies (hereinafter collectively called the "**Equipment**"), together with the proceeds of any sale or transfer of the foregoing, and, without limiting the generality of the foregoing, if any such Equipment is subject to any prior security interest or prior security agreement as such terms are defined in the UCC

applicable to such Equipment, then the Trust Property shall include, without limitation, all of the right, title and interest of Trustor in and to any such Equipment, together with all deposits and payments now or hereafter made by Trustor with respect to such Equipment.

(f) All materials and supplies used or to be used in the development, construction, rehabilitation or renovation of the Premises.

(g) All leases, reciprocal easement agreements, and other agreements and arrangements affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or at the Premises heretofore or hereafter entered into (the "**Leases**"), all income, rents (including, without limitation, all percentage rents), issues, profits and revenues (including, without limitation, all oil, gas or other mineral royalties and bonuses) from the Premises (the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Indebtedness;

(h) All proceeds of, and any unearned premiums on, any insurance policies covering the Premises, or the personal property located at the Premises, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Premises or the personal property located at the Premises.

(i) The right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Premises or the personal property located at the Premises and to commence any action or proceeding to protect the interest of Beneficiary in the Premises or the personal property located at the Premises.

(j) All other property or collateral of any nature whatsoever, now or hereafter given as additional security for the payment of the Indebtedness, including without limitation, all agreements (including, without limitation, construction contracts) entered into between Trustor and any contractor, architect, engineer, supplier or other person with respect to the development, construction, entitlement, rehabilitation or renovation of the Premises, as such agreements may be amended or otherwise modified from time to time (the "**Construction Agreements**"), all agreements, leases, contracts, plans, specifications and reports with respect to the Premises, all development rights, developer rights, declarant rights and special declarant rights under the plats, replats, maps, declarations of covenants and/or restrictions or similar documents and agreements affecting the Premises (the "**Project Documents**"), all property management agreements now or hereafter entered into with any person or entity providing management services to the Premises, all service contracts, common area agreements, licenses, permits, construction warranties, architectural contracts and other contracts, agreements and instruments relating to the Premises or the personal property located at the Premises (including, without limitation, agreements pursuant to which Trustor acquired any of the Premises or the personal property located at the Premises, and including any security or indemnities given in connection therewith), all security deposits, royalties, refunds, expense reimbursements, reserve or escrow deposits or accounts related to the Premises or any Lease, and all documents relating to each of the foregoing;

(k) All furniture, furnishings, objects of art, machinery, goods, tools, exercise equipment, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever as defined in and subject to the provisions of the UCC, other than Fixtures, which are now or hereafter owned by Trustor and which are located within or about the Premises and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Trustor in and to any of the Personal Property which may be subject to any security interests, as defined in the UCC, superior in lien to the lien of Security Instrument and all proceeds and products of the above;

(l) All tradenames, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Premises.

(m) All right, title and interest of Trustor, if any, under and with respect to any covenants, conditions and restrictions but only to the extent such rights relate to the Premises including, without limitation, all of Trustor's rights as a "declarant" or "builder" under any such covenants, conditions and restrictions, all of Trustor's rights to become "declarant" under any such covenants, conditions and restrictions, and all of Trustor's voting, approval and other rights under any such covenants, conditions and restrictions; and

(n) All proceeds of all or any part of the property described herein, and all proceeds of the conversion, whether voluntary or involuntary, of all or part of the foregoing into cash or liquidated claims, including, without limitation by reason of specification, all proceeds of insurance and all awards, payments or compensation, and all interest thereon, which may be made in respect of all or any part of the foregoing described property, or any estate or easement therein, as a result of any damage to or destruction of any part of the foregoing described property, the exercise of the right of condemnation or eminent domain, the closing of, or the alteration of the grade of, any street on or adjoining the Premises (including, without limitation, payments for any transfer made in lieu of or in anticipation of the exercise of said rights), or any other injury or decrease in the value of all or any part of the foregoing described property.

1.2 Grant of Rents to Beneficiary. Trustor also absolutely and irrevocably assigns to Beneficiary the Rents for the purposes and upon the terms and conditions hereinafter set forth in Section 4 below.

1.3 Warranty of Title. Trustor warrants that it is well and truly seized of a good and marketable title in fee simple to the Trust Property hereby conveyed; and Trustor warrants that the title to all Trust Property conveyed by this Deed of Trust is clear, free and unencumbered, and Trustor shall forever warrant and defend the same unto Beneficiary, its successors and assigns (as well as any successor, assignees and participants in the loan secured by this Deed of Trust), against all claims whatsoever; and Trustor shall fully indemnify and hold Beneficiary harmless for any expenses Trustor incurs in defending the same.

## SECTION 2. OBLIGATIONS SECURED.

2.1 Purpose. This Deed of Trust is given, and the grant, transfer, conveyance and assignment of the Trust Property made in trust, for the purpose of securing in such order of priority as Beneficiary may elect:

(a) Payment of the indebtedness evidenced by the Note, together with interest thereon, any applicable late charges, prepayment premiums and attorneys' fees and all amounts due from Trustor to Beneficiary or any other third party pursuant to the terms of the Loan Documents.

(b) Payment with interest thereon of all moneys expended or advanced by Beneficiary or on its behalf to protect or preserve any right of Beneficiary under this Deed of Trust, the Loan Agreement, the Promissory Note, any and all guaranties and other agreements, documents and instruments executed or delivered in connection with the Loan Agreement (as amended or restated from time to time, collectively, the "**Loan Documents**"), or to protect or preserve the Trust Property, or any part thereof;

(c) Performance, payment and observance by Trustor of each agreement, term, provision and condition contained in this Deed of Trust or in any of the other Loan Documents; and

(d) Payment with interest thereon, in accordance with the terms of the obligation or obligations evidencing same, of any and all additional loans, indebtedness or advances made by Beneficiary to or for the benefit of Trustor and/or the then owner or owners of the Trust Property, or any part thereof, and any and all extensions, modifications, renewals or replacements thereof.

2.2 Obligations Defined. All of the obligations described in Section 2.1 above may be referred to herein, individually as an "**Obligation**", and collectively as the "**Obligations**" or as "**the sums secured**". The portion of the Obligations consisting of monetary amounts is referred to herein as the "**Indebtedness**".

## SECTION 3. TRUSTOR'S COVENANTS.

3.1 Affirmative Covenants. To protect the security of this Deed of Trust, Trustor covenants and agrees as follows:

(a) Waste; Maintenance. Trustor shall neither commit nor suffer to occur any waste upon the Trust Property but will at all times make or cause to be made such repairs, maintenance, renewals and replacements, or otherwise, as may be necessary to maintain the Trust Property, including, without limitation, all Improvements, fixtures, appurtenances, machinery, equipment and appliances thereon and therein in good repair. Trustor shall keep all buildings and other Improvements now or hereafter on the Trust Property free of termites, dry rot, fungus, beetles and all other harmful or destructive insects, and shall keep all plants, trees and shrubs on the Trust Property neatly pruned and in good condition. The Trustor shall keep the Trust Property free of rubbish and other unsightly or unhealthful conditions.

(b) Improvements. Trustor shall promptly, and in good and workmanlike manner, and in conformity with plans and specifications approved by Beneficiary, complete any improvements that may be commenced, and Trustor shall repair and restore any portions of the Trust Property that may be damaged or destroyed. Trustor shall pay when due all claims for work performed or materials furnished, or both, on or in connection with the Trust Property or any part thereof, and shall pay, discharge, or cause to be removed, all mechanic's, artisan's, laborer's or materialman's charges, liens, claims of liens or encumbrances upon the Trust Property. Trustor shall comply with all laws, ordinances and regulations now or hereafter enacted affecting the Trust Property or requiring any alterations or improvements to be made. The Trustor shall not remove, substantially alter, or demolish any building or improvements on or in the Trust Property located on the Premises at any time without Beneficiary's consent, except as required by law.

(c) Insurance. Trustor shall provide and maintain policies of insurance with coverage, limits and deductibles in such form and amounts as provided in the Loan Agreement including, without limitation, coverage for the full replacement value for all of the Improvements on the Premises. All such policies shall be with companies or associations of companies from time to time approved by Beneficiary and shall have standard trust deed beneficiary clauses endorsed thereon making losses payable to Beneficiary, or naming Beneficiary as an additional insured, and shall otherwise be in the form and substance satisfactory to Beneficiary. Trustor will also, when requested by Beneficiary, provide insurance against flood damage in such amounts and such policies as may be required under any regulation or law applicable to loans made by Beneficiary, and against any other risk commonly insured against by persons operating like properties in the locality of the Trust Property. If applicable, all policies shall include replacement coverage in accordance with municipal fire and building codes. Trustor shall assign and deliver any and all policies of insurance to Beneficiary or shall provide Beneficiary with certificates of such insurance coverage that shall be irrevocable without thirty (30) days prior notice to Beneficiary and not subject to modification without Beneficiary's prior written approval. At least thirty (30) days before expiration of such policies, Trustor shall deliver renewals thereof, or renewal certificates therefore, with all premiums paid. All insurance policies shall be carried out with insurance companies which shall be approved by Beneficiary, and which shall be rated not less than A class VII or better in Best Key Rating Guide. In the event of loss, the Trustor shall give immediate notice by mail to the Beneficiary, and Beneficiary may make proof of loss if not made promptly by Trustor. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor, or Trustor and Beneficiary jointly, and such insurance proceeds or any part thereof may be applied by Beneficiary at its option to the payment of interest due on the Note, the reduction of the principal amount of the Note, the payment of any other Indebtedness or Obligation hereby secured, or the restoration or the repair of the Trust Property. The beneficiary shall not be responsible for such insurance or for the collection of any insurance money, or for the insolvency of any insurer or other insurance writer. Application of insurance proceeds by Beneficiary shall not cure or waive any default hereunder or invalidate any act done hereunder because of any such default. In the event of sale of the Trust Property under the power of sale herein granted to Trustee, or foreclosure of this Deed of Trust as

a mortgage, or in the event Beneficiary or a receiver appointed by the court shall take possession of the Trust Property without sale, all right, title and interest of Trustor in and to all insurance policies then in force shall inure to the benefit of and pass to the Beneficiary in possession, receiver or purchaser at such sale, as the case may be, and Beneficiary is hereby appointed attorney-in-fact for Trustor to assign and transfer said policies.

(d) Casualty. In the event of a casualty loss with respect to the Trust Property, Trustor shall give immediate notice by mail to Beneficiary, and Beneficiary may make proof of loss if not made promptly by Trustor. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Beneficiary instead of to the Trustor, or the Trustor and Beneficiary jointly, and such insurance proceeds or any part thereof may be applied by Beneficiary at its option to the payment of interest due on the Note, the reduction of the principal amount of the Note, the payment of any other Indebtedness or Obligation hereby secured, or the restoration or the repair of the Trust Property. Application of insurance proceeds by Beneficiary shall not cure or waive any default hereunder or invalidate any act done hereunder because of any such default.

(e) Property Taxes and Assessments. At least twenty (20) days before such become delinquent, Trustor shall pay or cause to be paid all taxes and assessments of every kind, nature and description levied or assessed on the Trust Property, and will pay when due all dues and charges for water and water delivery, electric power and light, sewers, waste removal, bills for repairs, and any and all other claims, encumbrances and expenses incident to the ownership of the Trust Property, in order that no lien may be created upon the Trust Property during the term of this Deed of Trust which is or may become prior to the lien of this Deed of Trust. If requested by the Beneficiary, Trustor shall deposit with Beneficiary, at such place as Beneficiary may designate, receipts showing payment of all such taxes, assessments, and other charges. Beneficiary may obtain, and Trustor will pay for, a tax reporting service for the life of the Obligations.

(f) Mortgage Taxes. Trustor shall protect Beneficiary insofar as it may be lawful so to do, against any and all loss from any taxation on notes, indebtedness, mortgages or deeds of trust, direct or indirect, that may be or might be imposed on the Note, this Deed of Trust, the lien of this Deed of Trust on said Trust Property, or upon the Indebtedness, by any law, rule, regulation or levy of the Federal government, the State of Arizona or any other state, or any political subdivision thereof, by the payment by Trustor of any such tax or taxes. Should Trustor fail, neglect or refuse to pay before the same becomes delinquent any such tax or taxes, Beneficiary may, at its option, pay the same, and the amount or amounts thereof shall be secured by this Deed of Trust, shall be due and payable on demand, and shall bear interest at the Default Interest Rate (as defined in the Note, the "Default Interest Rate") from the date of payment by Beneficiary.

(g) Liens and Encumbrances. Except as otherwise permitted by the Beneficiary, the Trustor shall pay and promptly discharge at Trustor's sole cost and expense, all liens, encumbrances and charges upon the Trust Property, or any part thereof or interest therein. Trustor shall have the right to contest in good faith the validity of any

such lien, encumbrance or charge, provided Trustor shall first deposit with Beneficiary a Bond or other security satisfactory to Beneficiary in such amounts as Beneficiary shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim and provided further that Trustor shall thereafter diligently prove to cause such lien, encumbrance or charge to be removed and discharged. If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond for the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge of any such lien, encumbrance or charge, together with interest thereon from the date of such expenditure at the Default Interest Rate.

(h) Advances by Beneficiary. If Trustor shall fail to pay any taxes, assessments, expenses or charges, or to keep all of the Trust Property free from liens and claims of liens, or to keep and maintain and repair the Trust Property, or to procure and maintain insurance thereon, or to do any other thing required of Trustor in this Deed of Trust, or any other Loan Document, Beneficiary, at its option, but without any obligation so to do, may advance the necessary moneys to pay the same or to accomplish said maintenance and repairs or to procure and maintain such insurance or to do such things, and all moneys to advanced shall be added to the Indebtedness secured hereby, and shall bear interest at the Default Interest Rate, from the date of such advance. All such advancements shall be due and payable by Trustor to Beneficiary upon demand and, should Trustor fail to repay Beneficiary any such advancements as herein required immediately after demand for payment of same, Beneficiary may, at its option, declare all sums secured by this Deed of Trust to be immediately due and payable and may avail itself of any and all remedies provided herein for default.

(i) Impounds. In order to insure the payment of taxes and assessments that are now, or hereafter may be, a lien upon the Trust Property, Trustor shall pay to Beneficiary in addition to any other payments required hereunder (but in lieu of direct payment of taxes, assessments by Trustor as required under subsections (c) and (e) above) an installment of the taxes and special assessments levied or to be levied against the Trust Property, and Trustor shall deliver promptly to Beneficiary all bills and notices for such taxes. Such installments are to be paid according to the terms of the Note and shall be equal to one-twelfth (1/12th) of the estimated taxes and assessments (as reasonably estimated by Beneficiary giving due consideration to the previous year's tax). In the Event of Default (as provided below), upon Beneficiary's request, and in addition to the payments required herein above, to ensure the payment of premiums upon policies of insurance as required hereunder, Trustor shall pay to Beneficiary an installment of the annual insurance premiums on the Trust Property, and Trustor shall deliver promptly to Beneficiary all bills and notices for such premiums and insurance. If amounts paid to Beneficiary under provisions of this section are insufficient to discharge the obligation of Trustor for such taxes and assessments (and insurance premiums if applicable), as the



same become due, Trustor shall pay to Beneficiary upon demand such additional sums as may be required to fully pay and discharge these items. All money paid to Beneficiary under the terms of this section will be held by Beneficiary (or its servicing agent) to pay taxes, assessments (and insurance premiums if applicable) before the same become delinquent. Nothing in this section shall release Trustor of its obligation to pay said taxes and assessments (and insurance premiums if applicable), as the same become due and payable under the provisions of this Deed of Trust.

(j) Condemnation Proceeds. All compensation in each and every award of damages in connection with any condemnation for public or private use of, or injury to, the Trust Property or any part thereof, to the extent of the Indebtedness then remaining unpaid and secured by the lien of this Deed of Trust, is hereby assigned and shall be paid to Beneficiary, to be applied, at the option of Beneficiary, to the payment of interest on or principal of said Indebtedness, the payment or performance of any other Obligation secured hereby, or the restoration or repair of the Trust Property.

3.2 Negative Covenants. Further, Trustor covenants and agrees that, without the prior written consent of Beneficiary, Trustor shall not: (i) change its name, state of organization, or move its principal place of business or chief executive office, (ii) incur any additional debt with respect to, or in connection with its ownership and operation of the Trust Property or otherwise (including, without limitation, any contingent or guarantor liability) except for short term accounts payable incurred in connection with the ownership and operation of the Trust Property, (iii) allow any additional liens, encumbrances or other interests to affect the Trust Property or any part thereof or Beneficiary's first priority lien therein, (iv) sell, convey, assign, transfer, lease or otherwise dispose of all or any portion of the Trust Property, or (v) cease to exist or cease to own the Trust Property.

#### **SECTION 4. LEASES AND RENTS**

4.1 Assignment of Leases and Rents. Without limiting the generality of the granting clauses in Section 1 above, Trustor hereby grants, bargains, sells, transfers, assigns, conveys, sets over and delivers to Beneficiary all the right, title and interest of Trustor in and to all existing and future lease agreements, occupancy agreements, short term rental agreements and use agreements, including, without limitation, the Leases, whether written or oral and whether for a definite term or month to month, or day to day, relating to the Trust Property, or any part thereof, and all Rents, issues and profits, and all Rents generated by or from or related to the Trust Property. Trustor hereby gives to and confers upon Beneficiary the right, power, and authority to collect such Rents, issues, and profits. This assignment shall extend to and cover any and all extensions and renewals of existing and future Leases and to any and all present and future rights against guarantors of any such obligations and to any and all such Rents, issues and profits collected under the Leases or other rental agreements. This assignment is given to facilitate payment and performance of the aforementioned Note, this Deed of Trust, and the other Loan Documents. In pursuance of this assignment, and not in lieu hereof, following the demand of Beneficiary, Trustor shall, from time-to-time hereafter, execute and deliver to Beneficiary recordable assignments of any or all Leases. Each such assignment shall be made by an instrument (herein, an "**Assignment of Lease**") in form and substance satisfactory to

Beneficiary; provided, however, that no such Assignment of Lease shall be construed as imposing upon Beneficiary any obligation with respect to the Leases or any of them. A default by Trustor in the performance of any covenant of any Lease so assigned to Beneficiary, by reason of which default the lessee or other party thereunder has the right to cancel such Lease or to claim any diminution or offset against future Rents shall, at the option of Beneficiary, constitute an Event of Default hereunder and Beneficiary shall have all the rights and remedies set forth herein as if such Event of Default had occurred hereunder. The beneficiary may, at its option, exercise its rights hereunder or under any such Assignment of Lease, and such exercise shall not constitute a waiver of any right hereunder or thereunder. To the extent not inconsistent, all rights and remedies of Beneficiary under any such Assignment of Lease and under this Deed of Trust shall be cumulative.

4.2 Assignment of Construction Agreements and Project Documents Including Development Rights. Except as provided below, Trustor, hereby sells, assigns, transfers, sets over and delivers to Beneficiary all of Trustor's right, title, and interest in and to the Construction Agreements and the Project Documents. The foregoing assignment encompasses the right of Trustor to (i) terminate any of the Construction Agreements or the Project Documents (to the extent Trustor has right), (ii) perform or compel performance and otherwise exercise all remedies under the Construction Agreements or the Project Documents and (iii) collect and receive all sums which may become due to Trustor or which Trustor may now or hereafter become entitled to demand or claim under the Construction Agreements or the Project Documents. With respect to the developer's rights under the Project Documents, Trustor hereby appoints and designates Beneficiary as the successor to Trustor's interest in such development rights; provided, however, that such appointment shall not take effect until Beneficiary accepts such appointment in a writing which is recorded in the public records of the county in which the Premises is located.

4.3 License Conferred to Trustor. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, with full power of substitution at the option of Beneficiary, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in its name or the name of Trustor for all Rents, and apply the same to the Indebtedness, subject to the terms hereof. The appointment granted herein shall be deemed to be a power coupled with an interest. The assignment under this Section 4 is an absolute assignment, not an assignment for security only, and Beneficiary's right to rents, issues, profits and sums due to Trustor is not contingent upon, and may be exercised without possession of, the Trust Property; provided, however, that Beneficiary hereby confers upon Trustor a license (the "License") until the occurrence of a breach or default described in Section 8.1 hereof to collect and retain the rents, issues, profits and sums due to Trustor. Upon such breach or default, the License shall be automatically revoked, and Beneficiary may collect and retain the Rents, issues, profits and sums due (but not more than one month in advance unless the written approval of Beneficiary has first been obtained) without notice and without taking possession of the Trust Property. Neither this right to collect rents, issues, profits and sums due, nor the termination of the License, shall impose upon Beneficiary the duty to produce rents, issues, profits or sums due, or to maintain all or any part of the Trust Property. Trustor acknowledges and agrees that the definition of "rent" as described herein includes compensation for the use of the Trust Property.

4.4 Collection of Rents. Until Beneficiary notifies any lessees and tenants to make all payments required under the Leases to Beneficiary, in writing, Trustor shall be entitled to collect all such rents and/or payments. Beneficiary is hereby authorized to give such notification upon the occurrence of any breach or default described in Section 8.1 hereof, and upon the expiration of any applicable grace period following notice of default, and such notification may be given thereafter at any time during which said default remains uncured. Trustor shall relieve any lessee and tenants from any liability to Trustor by reason of making payments directly to Beneficiary in accordance with the terms herein. To the extent permitted by law, upon the occurrence of an Event of Default hereunder, Beneficiary may, at any time without notice, either in person, by agent, or by a receiver appointed by a court, and without regard to the adequacy of any security for the Indebtedness, enter upon and take possession of the Premises, or any part thereof, and, with or without taking possession of the Premises or any portion thereof, in its own name sue for or otherwise collect such Rents (including those past due and unpaid, and all prepaid rents and all other monies which may have been or may hereafter be deposited with Trustor by any lessee or tenant of Trustor to secure the payment of any rent or for any services thereafter to be rendered by Trustor for any other obligation of any tenant to Trustor arising under any lease, and Trustor agrees that, upon the occurrence of any Event of Default hereunder, Trustor upon the request of Beneficiary shall promptly deliver all such Rents and other monies to Beneficiary), and Beneficiary may apply the same, less costs and expenses of operation and collection, including, but not limited to, attorneys' fees and expenses, whether or not suit is brought or prosecuted to judgment, upon any of the Indebtedness, notwithstanding that said Indebtedness or the performance of said Indebtedness may not then be due. The collection of such Rents, or the entering upon and taking possession of the Premises, or the application thereof as aforesaid, shall not cure or waive any default, notice of default or Event of Default hereunder or invalidate any act done in response to such default or Event of Default or pursuant to such notice of default and shall not be deemed or construed to make Beneficiary a mortgagee-in-possession of the Property or any portion thereof.

4.5 Application of Rents. All rents collected by Trustor shall be applied in the following manner:

(a) FIRST, to the payment of all taxes and lien assessments levied against the Trust Property, where provision for paying such is not otherwise made.

(b) SECOND, to the payment of ground rents (if any) payable with respect to the Trust Property.

(c) THIRD, to the payment of any amounts due or owing to Beneficiary under the Note, this Deed of Trust and the other Loan Documents, including, without limitation, principal and interest under the Note, any advances pursuant to Section 3.1(h) hereof, Beneficiary's costs incurred in connection with this Deed of Trust or otherwise under the Loan Documents, default interest, prepayment premiums, and professional fees and costs.

(d) FOURTH, to the payment of current operating costs and expenses (including, without limitation, repairs, maintenance and necessary acquisitions of property and expenditures for capital improvements) arising in connection with the Trust Property; and

(e) FIFTH, to Trustor or its designee.

4.6 Collection of Rents Not a Waiver. Receipt by Beneficiary of such rents, issues and profits shall not constitute a waiver of any right that Beneficiary may enjoy under this Deed of Trust or under the laws of the State of Arizona, nor shall the receipt and application, hereof cure any default hereunder nor affect any foreclosure proceeding or any sale authorized by this Deed of Trust and the laws of the State of Arizona.

4.7 Leased Personal Property. It is understood that the payment of the Obligations secured by this Deed of Trust is also secured by security interests in Trustor's rights and interests in all personal property used on, in or about any Improvements at any time situated on the Premises or used by Trustor in connection with said Improvements or any business conducted by Trustor on Trust Property. Trustor covenants and agrees that it will cause Beneficiary to acquire a valid and effectual security interest in all such personal property, or all of Trustor's right title and interest therein. In the event Trustor owns or acquires only a lessee's interest in any such personal property, then in addition to the foregoing requirements, before any of said personal property with a fair market value in excess of Ten Thousand Dollars (\$10,000.00) is placed in, on, or about the Premises or the Improvements at any time situated thereon, Trustor shall first obtain to the satisfaction of Beneficiary:

(a) the written approval of Beneficiary to the leasing agreements under which Trustor owns or acquires such lessee's interest; and

(b) all consents of the lessor of any such leasing agreements to such security interests and all agreements of the lessor in favor of Beneficiary deemed necessary by Beneficiary.

## **SECTION 5. ENCUMBERED AS ONE UNIT; WAIVER OF MARSHALING.**

5.1 Trust Property Encumbered as One Unit. Trustor agrees that all property of every nature and description, whether real or personal, covered by this Deed of Trust, including, without limitation, the Premises, the Improvements, any fixtures and all personal property for which a security interest is granted under this Deed of Trust, are encumbered as one unit, and that upon default by Trustor under the Note, this Deed of Trust or any other Loan Document, this Deed of Trust and any other security agreements together with the liens and security interests granted therein, at Beneficiary's option, may be foreclosed upon and sold as such in one unit as a going business, subject to the provisions of Arizona Revised Statutes, Section §33-801(A). The filing (or the failure to file) of any financing statement relative to any personal property or rights or interests generally or specifically described herein shall not be construed to diminish or alter any of Beneficiary's rights or priorities hereunder.

5.2 Waiver of Marshaling of Assets. Trustor on its own behalf and on behalf of its successors and assigns hereby expressly waives all rights to require a marshaling of assets by Trustee or Beneficiary or to require Trustee or Beneficiary to first resort to the sale of any portion of the Premises which might have been retained by Trustor before foreclosing upon and selling any other portion as may be conveyed by Trustor subject to this Deed of Trust.

## **SECTION 6. HAZARDOUS MATERIALS.**

6.1 Representation and Warranty. Trustor represents and warrants to Beneficiary that, to the best of Trustor's actual knowledge after due investigation, as of the date hereof, the Trust Property is not in violation of any federal, state or local law, ordinance, rule or regulation relating to industrial hygiene, Hazardous Materials, environmental matters, or to the environmental conditions on, under or about the Trust Property, including, without limitation, air, soil, surface water and groundwater conditions. Trustor further represents and warrants that during the time Trustor has owned the Trust Property, neither Trustor, nor to the best of Trustor's knowledge and belief, any third party has used, generated, manufactured, stored or disposed of on, under or about the Trust Property any Hazardous Materials. Trustor further represents and warrants that so long as any Indebtedness or other Obligation of Trustor under the Loan Documents shall remain outstanding, unpaid and unsatisfied, Trustor shall not use, generate, manufacture, store or dispose of on, under or about the Trust Property, any Hazardous Materials. As used in this Deed of Trust, "Hazardous Materials" shall have the meaning given such term in Section 1 of the Environmental Certification and Indemnity Agreement executed by Trustor and dated on or about the date of this Deed of Trust.

6.2 Indemnification. Trustor hereby agrees to indemnify, defend (with counsel approved by Beneficiary), and hold harmless Beneficiary, any participants, successors or assigns of Beneficiary's interest in the chain of title to the Trust Property in the event Beneficiary or its participants, successors or assigns should take fee title to the Trust Property, as provided herein, and their respective shareholders, members, partners, directors, officers, trustees, employees, agents, representatives, successors and assigns, for, from and against any and all liability (i) including, without limitation, all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of any Hazardous Materials by Trustor or any prior owner or operator of the Trust Property, and (ii) including, without limitation, the cost of any required or necessary clean-up, repair, or detoxification and the preparation of any closure or other required plans, including the generation of any information, or reports, whether such action is required or necessary prior to or following transfer of title to the Trust Property to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of Hazardous Materials by any person on the Trust Property prior to transfer of title thereto to Beneficiary or any other third party acquiring title to the Trust Property through foreclosure.

## **SECTION 7. ACCELERATION ON SALE OR TRANSFER OF TRUST PROPERTY OR INTEREST IN TRUSTOR.**

In order to induce Beneficiary to make the loan under the Note and any other Indebtedness secured hereby, Trustor agrees that, in the event of (i) any sale, option, transfer, conveyance, sub-division, parcel or lot split, hypothecation, encumbrance, or vesting of the Trust Property or any part thereof or interest therein to any person, firm, corporation partnership, limited liability company, trust or other entity, whether voluntary, involuntary, or by operation of law, or otherwise, (ii) or any sale, option, transfer, conveyance, hypothecation, encumbrance, or vesting of any direct or indirect ownership, membership or managerial interest in and to Trustor or any member or manager of Trustor or any part thereof or interest therein to any person, firm, corporation partnership, limited liability company, trust or other entity, whether voluntary, involuntary, or by operation of law, or otherwise, then Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due

and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. If consent should be given, any such transfer shall be subject to this Deed of Trust, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption, however, shall not release Trustor or any guarantor of the Note and Obligations secured hereby from any liability thereunder without the prior written consent of Beneficiary, which may be withheld in Beneficiary's sole discretion.

## **SECTION 8. EVENTS OF DEFAULT; REMEDIES.**

8.1 Events of Default. The occurrence of any of the following events or conditions shall constitute an "**Event of Default**" under this Deed of Trust:

(a) Any failure to pay any sum due under this Deed of Trust as and when the same shall become due and payable.

(b) Any default, failure or neglect of Trustor to perform or observe any of the terms, provisions, or covenants of this Deed of Trust not covered under another subsection of this Section 8.1 and such default, failure or neglect either cannot be remedied or if it can be remedied, it remains unremedied for a period of three (3) days after written notice of such default is given by Beneficiary to Trustor.

(c) Any warranty, representation or statement contained in this Deed of Trust, in the Note or in any other Loan Document shall be or shall prove to have been materially false or misleading when made or furnished.

(d) (i) The filing by Trustor, any endorser of the Note, or any guarantor of the Note (or against Trustor or such endorser or guarantor to which Trustor or such endorser or guarantor acquiesces or which is not dismissed within forty-five (45) days after the filing thereof) of any proceeding under federal or state bankruptcy or receivership laws now or hereafter existing or any other similar statute now or hereafter in effect; (ii) the entry of an order for relief under such laws with respect to Trustor or such endorser or guarantor; or (iii) the appointment of a receiver, trustee, custodian or conservator of all or any part of the assets of Trustor or such endorser or guarantor;

(e) (i) The insolvency of Trustor, any endorser of the Note or any guarantor of the Obligations; (ii) the execution by Trustor or such guarantor or endorser of an assignment for the benefit of creditors; (iii) the convening by Trustor or any guarantor or endorser of a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium upon or extension or composition of its debts; (iv) the failure of Trustor or of any such guarantor or endorser to pay its debts as they mature; or (v) if Trustor or such guarantor or endorser is generally not paying its debts as they mature;

(f) The admission in writing by a Trustor, any endorser of the Note or any guarantor that it is unable to pay its debts as they mature or that it is generally not paying its debts as they mature.

(g) The liquidation, termination or dissolution of Trustor or any such endorser or guarantor of the Note, if a corporation, limited liability company, partnership, trust or joint venture if Beneficiary is not reasonably reassured of timely performance and payment hereunder and under the Note and all documents relating thereto.

(h) Any attachment, garnishment, levy or execution upon, or judicial seizure of, any portion of any collateral or security for the Note which may impair the first lien position of Beneficiary.

(i) The sale, conveyance, transfer, lease, encumbrance, or other disposal of the Real Property or the Trust Property or any part thereof or interest therein, or any direct or indirect ownership, membership or managerial interest in Trustor or any member or manager of Trustor.

(j) Any Event of Default (as defined therein) occurs under the Note, the Loan Agreement or any other Loan Document. (k) Any default occurs under any document or instrument given by Trustor in connection with any other indebtedness of Trustor and such default is not cured within any applicable cure period set forth therein;

(l) Any material adverse change occurs in the financial condition, net worth or assets of Trustor or Guarantor.

(m) Lender believes in good faith that the prospect of payment or performance by Trustor or Guarantor under the Deed of Trust or any of the other Loan Documents is adversely affected, impaired, or reduced; or

(n) Lender in good faith believes that it is insecure or that the value or marketability of the Trust Property or Lender's ability to be fully and adequately remedied by the Trust Property is negatively affected, diminished or inadequate.

8.2 Remedies. In addition to other rights and remedies set forth in this Deed of Trust or the other Loan Documents, Beneficiary shall have the rights and remedies set forth below.

(a) Acceleration. After an Event of Default and while such Event of Default continues, the entire Indebtedness secured hereby (including principal and interest on the Note and all other sums secured hereby) may be declared by Beneficiary, at Beneficiary's election, to be immediately due and payable with or without notice to Trustor, and the same, with all costs and charges, shall be thereupon collectible by action at law, and Beneficiary, or Trustee as directed by Beneficiary, shall be entitled to exercise any and all remedies under the Note, this Deed of Trust and the other Loan Documents.

(b) Foreclosure or Trustee's Sale. After an Event of Default and while such Event of Default continues, Beneficiary may commence proceedings for foreclosure of this Deed of Trust as a mortgage, or Beneficiary may deliver to Trustee a written notice of default and of election to cause the Trust Property to be sold, whereupon the Trustee shall cause a Notice of Trustee's Sale to be duly recorded. The beneficiary also shall deposit with the Trustee this Deed of Trust, said Note, and all documents evidencing expenditure secured hereby. At least ninety (90) days having elapsed after recordation of

said Notice of Trustee's Sale, and having given notice of sale thereof as required by law, Trustee may sell the Trust Property at the time and place of sale fixed by Trustee in its notice of sale, as a whole or in separate parcels if directed by Beneficiary or Trustor present at sale, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. The Trustee may, as directed by the Beneficiary or as required by law, from time to time, postpone or continue the sale of all or any portion of the Trust Property, by public declaration at the time and place last appointed for the sale. No other notice of the postponed sale is required. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matter of fact shall be conclusive proof of the truthfulness thereof. Any person (including Trustor, Trustee or Beneficiary) may purchase at such sale.

(c) Notices to Tenant. Upon default by Trustor as hereinabove provided in Section 8.1, or upon the occurrence of any of the events therein described, Beneficiary may, at its option, send notifications to any and all lessees and tenants of the Trust Property that future payments under or relating to the Leases shall be made to Beneficiary. Thereafter, the Beneficiary shall be entitled to collect said rents and payments until the Trustor cures all defaults hereunder and shall apply such rents and payments collected in the manner set forth in Section 4.5 hereof.

(d) Take Possession of Trust Property. After an Event of Default and while such Event of Default continues, Beneficiary may, without regard to the adequacy of any security for the Indebtedness or Obligation hereby secured, in person or by agent or employee, or by a receiver appointed by a court of competent jurisdiction, enter upon and take possession of all or any part of the Trust Property, and Trustor shall on demand peaceably surrender possession thereof to Beneficiary. Beneficiary, in its own name or in the name of Trustor, may complete construction of the improvements on the real property, operate and maintain all or any part of the Trust Property to such extent as Beneficiary deems advisable, and may rent and lease the same to such persons, for such periods of time, and on such terms and conditions as Beneficiary in its sole discretion may determine, and may sue for or otherwise collect any and all of the rents, issue and profits thereof, including those past due and unpaid. In dealing with the Trust Property as a beneficiary in possession, Beneficiary shall be without any liability, charge or obligation therefor to Trustor other than for willful misconduct and shall be entitled to operate any business then being conducted or which could be conducted thereon or therewith at the expense of or for the account of Trustor (and all net losses, costs and expenses hereby incurred shall be advancements governed by Section 3.1(h) hereof), to the same extent as the owner thereof could do, and to apply the rents, issues and profits, first to the payment of receiver's expenses, if any, for management of the Trust Property, and then in the manner provided in Section 4.5 hereof.

(e) Appointment of Receiver. After an Event of Default has occurred and while such Event of Default continues (and either before or after the institution of foreclosure proceedings or the recording by Trustee of Notice of Trustee's Sale), a receiver may, upon application of Beneficiary, be appointed by any court of competent jurisdiction, without notice or bond, to take charge of all the Trust Property, to manage,



operate and carry on any business then being conducted or that could be conducted on the Trust Property, and to carry on, protect, preserve, replace and repair the Trust Property, and receive and collect all the rents and issues or profits thereof and to apply the same first to the payment of receiver's expenses for management, operation and protection of such business and the Trust Property, and then in the manner provided in Section 4.5 hereof. Upon appointment of said receiver, Trustor shall deliver possession of all Trust Property and the whole thereof to such receiver forthwith.

(f) Additional Rights and Remedies. Beneficiary shall have, in addition to all other rights and remedies provided herein and at law or in equity, the rights and remedies afforded by Arizona Revised Statutes Section 33-702.B, without regard to the adequacy of the security or to the solvency of Trustor or to whether Trustee or Beneficiary has commenced to exercise any other right or remedy provided herein or at law or in equity.

8.3 Costs; Attorneys' Fees. If any default occurs under this Deed of Trust or any of the other Loan Documents, whether or not any action or proceeding is brought to enforce the provisions of this Deed of Trust and the other Loan Documents, Trustor promises to pay to Beneficiary (i) all costs of any default notice, demand for cure, enforcement, collection, exercise of other remedies, forbearance and modification with respect to the Indebtedness and the Loan Documents, (ii) all costs of any other action taken to collect the Indebtedness, to enforce any provision of the Loan Documents or to protect Beneficiary's interests under this Deed of Trust and the other Loan Documents, (iii) all costs of participating in any proceeding related to the Indebtedness or the Loan Documents (including, without limitation, all such costs incurred in connection with any threatened or filed bankruptcy, receivership, or other court proceeding, whether at the trial or appellate level), and (iv) all costs of preparing for any of the foregoing. All of the foregoing described costs shall be a lien upon the Trust Property and secured by this Deed of Trust, and all such costs shall include, without limitation, any costs of title searches and title policy commitments, reasonable attorneys' fees and expenses, any other professional fees, any expert witness fees and any court costs.

8.4 Remedies Cumulative; No Waiver. In addition to any remedies provided herein for breach or default hereof, Beneficiary shall have all other remedies provided for in the Loan Documents and allowed under the laws of the State of Arizona (including specifically that of foreclosure of this instrument as though it were a mortgage), and the laws of the United States. No failure on the part of Beneficiary to exercise any of its rights hereunder arising upon any default or breach of covenant shall be construed to prejudice its rights in the event of any other or subsequent default or breach of covenant. No delay on the part of Beneficiary in exercising any of such rights shall be construed to preclude it from the exercise thereof at any time during the continuance of such default or breach of covenant. Beneficiary may enforce any one or more remedies or rights hereunder successively or concurrently at its option. By accepting payment of any sums secured hereby after its due date, Beneficiary shall not thereby waive the agreement herein contained that time is of the essence, nor shall Beneficiary waive either its rights to require prompt payment when due of all other sums secured or to consider failure so to pay a default hereunder.

8.5 Application of Impound Funds. In the event of a payment default or any other default under this Deed of Trust or the other Loan Documents, then any funds in the possession

of Beneficiary under the provisions of Section 3.1(i) hereof or otherwise pursuant to any other Loan Documents, may, at the option of Beneficiary, be applied to the payment of principal and/or interest upon the Obligations secured hereby, in lieu of being applied to any of the purposes for which said fund is established under Section 3.1(i) or as applicable under the Loan Documents.

## **SECTION 9. SECURITY AGREEMENT; FIXTURE FILING.**

9.1 Grant of Security Interest. Trustor hereby grants and conveys to Beneficiary, as secured party, a security interest in and to so much of the Trust Property as constitutes property the perfection of a security interest in which is governed by the UCC adopted in Arizona or which is governed by the UCC of another state to the extent applicable (collectively, the "UCC Collateral") as security for the payment of all Indebtedness and the performance of all Obligations secured by this Deed of Trust.

9.2 Deed of Trust Constitutes Security Agreement. This Deed of Trust shall constitute a security agreement within the meaning of the UCC. In the event of a default under this Deed of Trust, the Beneficiary shall have the option of exercising any and all remedies available to a secured party under the UCC with respect to the UCC Collateral. In the event the Beneficiary shall elect to proceed with respect to the UCC Collateral separately from the real property, ten (10) days' notice of the sale of the UCC Collateral shall be reasonable notice. The reasonable expenses incurred by Beneficiary in connection with retaking, holding, preparing for sale and selling the UCC Collateral, which shall be paid by Trustor and secured hereby, shall include, without limitation, reasonable attorneys' fees and legal expenses incurred by Beneficiary.

9.3 Deed of Trust Constitutes Fixture Filing. It is intended that the recording of this Deed of Trust shall be effective as a "fixture filing" under Article 9 of the UCC with respect to any and all fixtures included within the Trust Property and all goods or personal property that are now or may hereafter become affixed to the Trust Property, and this Deed of Trust is to be filed and indexed in the real estate records not only as a deed of trust, but also as a fixture filing. Notwithstanding the foregoing, Trustor hereby authorizes Beneficiary to file UCC financing statements in the jurisdictions and to the extent Beneficiary deems necessary to perfect its security interests in the Trust Property.

9.4 Impound Accounts. All funds of Trustor held by Beneficiary in any impound account or otherwise are hereby assigned by Trustor to Beneficiary as additional security for the Loan and for all other indebtedness and obligations of Trustor under the Note and the other Loan Documents.

## **SECTION 10. GENERAL PROVISIONS.**

10.1 No Effect on Other Security. The taking or acceptance of this Deed of Trust shall in no event be considered as a waiver of or in any way to affect or impair any other security that Beneficiary may have, or acquire simultaneously herewith, or hereafter acquire for the payment of the Indebtedness, nor shall the taking by Beneficiary at any time of any such additional security be construed as a waiver of, or in any way to affect or impair the security of this Deed of

Trust; and Beneficiary may resort, for the payment of the Indebtedness, to its several securities therefor in such order and manner as it may determine.

10.2 No Release Implied. Without affecting the obligation of Trustor to pay and perform as herein required, without affecting the personal liability of any person for payment of the Indebtedness, and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option, extend the time for payment of the Indebtedness or any part hereof, reduce the payment thereon, give partial releases of any parts of the Trust Property from the lien, terms and provisions hereof or of the other Loan Documents, release any person liable on any of the Indebtedness, accept a renewal note therefor, modify the terms of the Indebtedness, take and release other or additional security, join in any extension, modification, forbearance or subordination agreement, or direct the Trustee to release from this Deed of Trust any part of the Trust Property. Any such action by Beneficiary or by the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder and shall not affect the priority of this Deed of Trust over any junior lien.

10.3 Waivers by Trustor. Trustor waives any requirements of presentment, demands for payment, notices of nonpayment or late payment protest, notices of protest, notices of dishonor, and all other formalities. Trustor waives all rights and/or privileges it might otherwise have to require Trustee and/or Beneficiary to proceed against or exhaust the assets encumbered hereby or by any other security document or instrument securing the Note or to proceed against any guarantor of the Indebtedness, or to pursue any other remedy available to Beneficiary in any particular manner or order under the legal or equitable doctrine or principle of marshalling and/or suretyship and further agrees that Trustee and/or Beneficiary may proceed against any and all of the assets encumbered hereby or by any other security document or instrument securing the Note or the Obligations in the event of default and after expiration of any applicable grace period following notice in such order and manner as Beneficiary in its sole discretion may determine. Any Trustor that has signed this Deed of Trust as a surety or accommodation party, or that has subjected its property to this Deed of Trust to secure the indebtedness of another hereby expressly waives the benefits of the provisions of Arizona Revised Statutes §12-1641 et seq., waives any defense arising by reason of any disability or other defense of Trustor or by reason of the cessation from any cause whatsoever of the liability of Trustor, and waives the benefit of any statutes of limitation affecting the enforcement hereof.

10.4 Inspection of Trust Property. Beneficiary or Trustee, or both, shall have the right to inspect the Trust Property at all reasonable times.

10.5 Time of the Essence. Time is of the essence hereof.

10.6 Successors and Assigns. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, personal representatives, successors, and assigns (as well as any participants in the loan secured by this Deed of Trust). The term "**Beneficiary**" shall include not only the original beneficiary or beneficiaries hereunder but also any future owner and holder, including assignees, pledgees, and participants, of the Note secured hereby.

10.7 Acceptance of Trust. The acceptance by the Trustee of this trust shall be evidenced when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

10.8 Waiver of Statutes of Limitations. The right to plead any and all statutes of limitations as a defense to any Obligation secured by this Deed of Trust is hereby waived.

10.9 Trust Irrevocable by Trustor. The trust created hereby is irrevocable by the Trustor.

10.10 Modifications. This Deed of Trust cannot be changed except by an agreement in writing signed by Trustor and Beneficiary and recorded in the real property records where the Premises are located.

10.11 Joint and Several Liability. The liability of each person, entity or party signing this Deed of Trust as Trustor shall be joint and several.

10.12 No Offset. No offset or claim that Trustor now or may in the future have against Beneficiary shall relieve Trustor from paying installments due under the Note or performing any other obligation herein or any Obligation secured hereby.

10.13 Notice of Sale. The undersigned Trustor requests that a copy of any notice of sale hereunder be mailed to it in accordance with the notice instructions set forth in Section 10.15 below.

10.14 Enforceability. Should any term provision, covenant or condition of this Deed of Trust be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Deed of Trust, but the remainder hereof shall be effective as though such term provision, covenant or condition had not been contained herein. Also, should this instrument be or become ineffective as a deed of trust, then the provisions hereof shall be construed and enforced as a realty mortgage with Trustor being the mortgagor, and Beneficiary becoming the mortgagee. The provisions hereof shall apply to the parties according to the context thereof and without regard to the number or gender of words or expressions used.

10.15 Notices. All notices and demands required or permitted to be given hereunder shall be in writing and shall be delivered either by (i) by electronic mail to the email address provided by one party to the other, (ii) personal hand delivery, or (iii) recognized overnight courier. Notice shall be deemed given when delivered if hand delivered, upon confirmation of transmission if sent via electronic mail, or one (1) business day after such notice is deposited with the overnight courier if delivered by overnight courier. Such notices shall be sent to the address set forth at the beginning of this Deed of Trust, or to such other address as such party may, from time to time, designate in writing.

10.16 Indemnification by Trustor. Trustor agrees to exonerate, protect, indemnify and defend Beneficiary and Trustee acting on behalf of and at the direction of Beneficiary, their successors and assigns (as well as any participants in the loan secured by this Deed of Trust), and their respective shareholders, members, partners, directors, officers, trustees, employees, agents, representatives, successors and assigns, from and save them harmless against, any and all

liability, expenses (including, without limitation, attorneys' fees), or damage of any kind or nature and from any suits, claims and demands, or on account of any matter or thing, whether in suit or not, which arises out of the Indebtedness or any of the Loan Documents, whether in connection with any claim or dispute between Trustor and any principal, employee or agent of Trustor or any materialman, supplier, contractor, subcontractor, purchaser, broker, municipal or public authority, creditor, debtor, tenant, lessee or other third party, except those arising out of the gross negligence or willful misconduct of Beneficiary. Trustor waives any and all right to claim or recover against Beneficiary, its successors or assigns (as well as any participants in the loan secured by this Deed of Trust), or their respective shareholders, members, partners, managers, directors, officers, trustees, employees, agents, representatives, successors or assigns, for loss of or damage to Trustor, the Trust Property, Trustor's other property or the property of others under Trustor's control or in which Trustor has an interest from any cause, except those arising out of the gross negligence or willful misconduct of Beneficiary.

10.17 Choice of Law; Jurisdiction; Venue; WAIVER OF JURY TRIAL. All questions with respect to the construction of this Deed of Trust and the rights, remedies and liabilities of the parties hereto shall be determined in accordance with the applicable provisions of the internal laws of the State of Arizona without regard to the principles of conflicts of laws. Further, this Deed of Trust shall be subject to all of the provisions of Section 8.4 of the Loan Agreement, including, without limitation, provisions with respect to jurisdiction, venue and WAIVER OF JURY TRIAL.

10.18 Waiver of Homestead Exemption; Business Loan. The trustor agrees to waive, relinquish, and set aside all rights of homestead exemption in and to the Trust Property which may now exist or hereafter be created. The Indebtedness under the Note secured hereby is acknowledged to have been undertaken as a business loan for business purposes and is in no respect a consumer note, consumer loan or consumer debt.

## **SECTION 11. SPECIAL PROVISIONS.**

11.1 Remedies Not Exclusive; Waiver. Trustee and Beneficiary shall have all powers, rights, and remedies under applicable law whether or not specifically or generally granted or described in this Deed of Trust. Nothing contained herein shall be construed to impair or to restrict such powers, rights, and remedies or to preclude any procedures or process otherwise available to trustees or beneficiaries under the deeds of trust in the State of Arizona. Trustee and Beneficiary, and each of them, shall be entitled to enforce the payment and performance of any Indebtedness or other Obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any other Loan Document or other agreement or any laws now or hereafter in force, notwithstanding the fact that some or all of the Indebtedness and other Obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained herein, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other rights or security now or hereafter held by Trustee or Beneficiary. Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other rights or security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No

remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy contained herein or by law provided or permitted, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue inconsistent remedies. By exercising or by failing to exercise any right, option or election hereunder, Beneficiary shall not be deemed to have waived any provision hereof or to have released Trustor from any of the Obligations secured hereby unless such waiver or release is in writing and signed by Beneficiary. Proceeding under this Deed of Trust, filing suit for foreclosure or pursuing any other remedy will not constitute an election of remedies. The waiver by Beneficiary of Trustor's failure to perform or observe any term, covenant or condition referred to or contained herein to be performed or observed by Trustor shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent failure of Trustor to perform or observe the same or any other such term, covenant or condition referred to or contained herein, and no custom or practice which may develop between Trustor and Beneficiary during the term hereof shall be deemed a waiver of or in any way affect the right of Beneficiary to insist upon the performance by Trustor of the Obligations secured hereby in strict accordance with the terms hereof or of any other Loan Document.

11.2 Right of Rescission. The beneficiary may from time to time rescind any notice of default or notice of sale before any Trustee's sale in accordance with the laws of the State of Arizona. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other declarations or notices of default to satisfy the obligations of this Deed of Trust or the Obligations secured hereby, nor otherwise affect any provision, covenant or condition of any Loan Document or any of the rights, obligations or remedies of Trustee or Beneficiary hereunder or thereunder.

11.3 Termination and Reconveyance; Partial Release. Upon written request of Beneficiary stating that all sums secured hereby have been paid, upon surrender to Trustee of the original Note and the original or a certified copy of this Deed of Trust for cancellation and retention, and upon payment of its fees, Trustee shall fully reconvey, without warranty, the remaining Trust Property then held hereunder. The recitals in such reconveyance of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto". In lieu of the Trustee executing such reconveyance, Beneficiary may execute such reconveyance upon the payment of all amounts owed to Beneficiary under the Note and the other Loan Documents. Partial release provisions, if any, set forth in Section 7 of the Schedule to Loan Agreement shall be applicable to this Deed of Trust, but only to the extent expressly provided therein.

11.5 Future Advances. The Deed of Trust was and is given to secure the Obligations under, or in respect of, the Note and the Loan Documents and shall secure not only Obligations with respect to presently existing indebtedness under the foregoing documents and agreements but also (to the extent permitted under applicable law) any and all other indebtedness which may hereafter be owing to the Beneficiary under the Loan Documents, however incurred, whether

additional principal, interest, discount, fees, charges or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances and re-advances, pursuant to the Note and Loan Documents, whether such advances are obligatory or to be made at the option of the Beneficiary, or otherwise, to the same extent as if such future advances were made on the date of the execution of the Deed of Trust. The Lien of the Deed of Trust shall be valid as to all indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's office of the county in which the Trust Property is located. This Deed of Trust is intended to and shall be valid and has priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Real Property.

11.6 Cross-Collateralization and Cross-Default. Any default under any other loan between Trustor, any affiliate of Trustor, or any managing or majority member of Trustor or of any Guarantor and Beneficiary including, without limitation, any existing loans between Trustor and Beneficiary, any affiliate of Beneficiary or any managing or majority member of Beneficiary, shall be deemed an Event of Default under this Deed of Trust, and in such case Beneficiary shall be entitled to exercise each and every right and remedy available to Beneficiary pursuant to this Deed of Trust and the other Loan Documents.

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

*[Signature Page to Follow]*

“TRUSTOR”:

Stewart VanValkenburg,

By:

Stewart VanValkenburg

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

STATE OF

Utah

COUNTY OF

Utah

MC

2024 The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of January,  
~~2023~~, by N/A the N/A of Stewart VanValkenburg, for  
and on behalf thereof.

(SEAL)



Marci K. Clark  
Notary Public

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2023, by \_\_\_\_\_ the \_\_\_\_\_ of Stewart VanValkenburg, for  
and on behalf thereof.

(SEAL)

\_\_\_\_\_  
Notary Public



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

BEGINNING AT A POINT 1739.7 FEET ALONG THE CENTER LINE OF 800 WEST STREET, OREM, UTAH, BEARING NORTH 0°10' WEST AND 25 FEET NORTH 89°14.5' EAST FROM THE SOUTHWEST CORNER OF SECTION 15, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 89°14.5' EAST 108 FEET; THENCE NORTH 0°19' WEST 65.0 FEET; THENCE SOUTH 89°14.5' WEST 108 FEET; THENCE SOUTH 0°19' EAST 65.0 FEET TO THE POINT OF BEGINNING.

APN: 18-001-0018